The Downside of Constitutional "Protection" for Religious Liberty (or, How can Constitutional Protection for Religious Liberty Actually Undermine It?)

Gary D. Glenn

This essay explores the forgotten First Congress debate about Madison's proposed religion amendments. While anti-Federalists had demanded amendments to protect religion and religious liberty, they "feared" that the language proposed by Madison might instead be used "by the people in power . . . to abolish religion altogether"; or at least to be "extremely hurtful to the cause of religion." There was particular concern about what meaning federal courts might "construe into" this language, particularly the language against "establishment" of religion. The debate aimed at minimizing this problem while still permitting the federal government to assist and promote religion in certain ways (e.g., by exempting those "religiously scrupulous of bearing arms" from having to do so). This "construe into" problem became important in our constitutional law after 1947. Its existence in the first Congress debate suggests this modern development may not be simply a product of progressive jurisprudence.

This hopefully provocative title is meant to prepare the reader to learn from a now all but forgotten debate concerning the Constitution and religion/religious liberty. I submit it as continuing evidence that the history of American political thought, can provide useful, even indispensable, insights into our current and ongoing challenges.

This debate occurred in the First Congress (1789) over the constitutional amendments proposed by Madison pursuant to anti-Federalist demands in the State ratifying conventions.[1] It brought to the surface a problem articulated mostly by anti-Federalist Representatives. Surprisingly, the anti-Federalists "feared"[2] that language proposed to protect religion and religious liberty might be used by "the people in power"[3] "to abolish religion altogether";[4] or would at least to be "extremely hurtful to the cause of religion."[5]

Both the pedigree and the substance of this all but forgotten objection suggest the possibility that explicit constitutional protection of religious liberty might actually permit (and even facilitate) "the people in power"

©2018 *The Catholic Social Science Review* 23 (2018): 7–19

undermining religion to some degree. If so, this anti-Federalist concern/suspicion/insight might be instructive both in itself and regarding the present and prospective constitutional situation of religious liberty.

RELIGION AND THE CONSTITUTION: ANTI-FEDERALIST CONCERNS

Madison had sent Jefferson in Paris a draft of the proposed Constitution. Jefferson responded on December 20, 1787, praising the draft but recommending adding a "bill of rights" including "Religion." Madison replied to Jefferson October 17, 1788. "There is," he wrote,

> great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. . . . [T]he rights of conscience in particular, if submitted to public definition, would be narrowed much more than they are likely ever to be by an assumed power. One of the objections in New England was that the Constitution, by prohibiting religious tests, opened a door for Jews, Turks and infidels.

Madison says nothing more explicit about how some "rights of conscience" might be so "narrowed" but he may have in mind the right to profess no religion.

So what did the Ratification debates show anti-Federalists wanted the Constitution to do about religion? The most complete modern answer to this question is from Herbert J. Storing (1981).

> Many Anti-Federalists were concerned with the maintenance of religious conviction as a support of republican government. 'Refiners may weave as fine a web of reason as they please, but the experience of all times,' Richard Henry Lee wrote to James Madison in 1784, 'shows Religion to be the guardian of morals.' The opinions of men need to be formed 'in favour of virtue and religion.'

Storing continues:

> An anonymous Massachusetts writer in 1787 . . . explained that there are but three ways of controlling the 'turbulent passions of mankind': by punishment; by reward; and 'by prepossessing the people in favour of virtue by affording publick protection to religion.' All are necessary, but especially the last, '[I]t is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the public protection of religion.' . . . [A]n anonymous Virginian . . . urged that . . . 'Whatever influence speculative vanity may ascribe to . . . an artful collusion of interest, sound reason as well as experience proves that a due sense of responsibility to the Deity, as the author of those moral laws, an observance of which constitutes the

> happiness and welfare of societies as well as individuals, is the means most likely to give a right direction to the conduct of mankind.'[6]

Whether religion's moral restraints were necessary to republican government, or whether it was sufficient to properly structure an "artful collusion of interest" (the multiplicity of sects), these considerations: separated Anti-Federalists from Federalists.[7]

PROPOSED CONSTITUTIONAL AMENDMENTS CONCERNING RELIGION

To secure ratification, the Federalists had to promise the Constitution's opponents that, if the Constitution was adopted, the Federalists would introduce amendments in the First Congress to take account of the opponents' objections and concerns. James Madison introduced such amendments in a speech on June 8, 1789.[8]

Three of these amendments concerned religion:

1) "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience by in any manner, or on any pretext infringed."

2) "The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person."

3) "No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases."

The first two amendments had been proposed by state ratifying conventions, but the third was Madison's own.[9]

One of Madison's amendments was revised by a House Committee as "no religion shall be established by law, nor shall the equal rights of conscience be infringed." Debate on this amendment began in the full House August 15. Representative Peter Sylvester (N.Y.) immediately expressed "some doubts of the propriety of the mode of expression" because the language "was liable to a construction different from what had been made by the committee. He feared it might be thought to abolish religion altogether." He did not further explain this fear but it was sufficiently plausible that the immediately ensuing debate produced proposals for rewording aimed at allaying it: "Mr. [Elbridge] GERRY said it would read better if it was no religious doctrine shall be established by law." But, "Mr. [Roger] SHERMAN thought the amendment altogether unnecessary, inasmuch as Congress had 'no authority whatever delegated to them by the Constitu-

tion to make religious establishments; he would, therefore, move to have it struck out.' "

Representative Daniel Carroll[10] replied that, since "many sects have concurred in the opinion that they are not well secured under the present constitution, he said he was much in favor of adopting the words [because] it would tend more towards conciliating the minds of the people to the government than almost any other opinion he heard proposed."

Representative Madison replied to all of this that

> [w]hether the words are necessary or not, he did not mean to say, but they had been required by some of the state conventions, who seemed to entertain an opinion, that under the clause of the Constitution, which gave power to Congress to make all laws necessary and proper to carry into execution the constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience, and establish a national religion; to prevent these effects he presumed the amendment was intended, and he thought it as well expressed as the nature of the language would admit.

Representative Sylvester's fear is explicitly supported by Representative Benjamin Huntington who thought "that the words might be taken in such latitude as to be extremely hurtful to the cause of religion." Huntington gives the following example:

> The ministers of their congregations to the eastward [and the expense of building meeting houses] were maintained by contributions of those who belong to their society. . . . These things were regulated by bylaws. If an action was brought before a federal court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers or buildings of places of worship might be construed into a religious establishment.

Thus, Huntington foresaw how the language purportedly intended to prohibit a religion from being "established by law" could be "construed into" a hindrance of religion as such by construing any/all governmental support (even by Courts enforcing contractual obligations) as "a religious establishment."

"Construed into" seems a way of saying that "religious establishment" does not have a sufficiently fixed legal meaning; and given that, putting it into the Constitution would give "a federal court" carte blanche to construe it in such a way as to "hinder" legitimate interests of religion like enforcing contracts.

Such "construed into" is a not unfair description of what happened with religion clause jurisprudence in the second half of the twentieth century. That it was foreseen in the First Congress debate, and by those who

wanted to better protect *both* the *interests* of religion as such and *religious liberty*, suggests the depth and enduring quality of their foresight.

The debate thus far suggests what was at stake was: (1) how to articulate what religious liberty is; (2) how to protect the "cause" of religion as such; and (3) how to recognize and protect the legitimate interest of churches in preserving themselves—in particular to avoid establishment language that might be "construed into" constitutionally forbidding any use whatsoever of government to support religion. The issue, in short, was whether the Constitution allowed the federal government to be *somehow* ("somehow" being the key) supportive of religious liberty/religion/churches; or whether, on the contrary, to look ahead to twentieth-century judicial language, it required it to be "neutral" between religion and non-religion, i.e., to publicly support only non-religion.

WHAT DID "ESTABLISHMENT" OF RELIGION MEAN?

If one attempts to figure out what was meant by a religious "establishment" in the thirteen states at the time of the Constitution's adoption, I think one will see that it had no unequivocal meaning. Different states did different things to *support/encourage* and even, for certain specific purposes, to *require* religion. The following source illustrates the variety and complexity of those things both before and after the Constitution was adopted down to the mid-nineteenth century, and the questions this situation raises:[11]

1) Did "establishment" mean government taxing the general citizenry to build and maintain churches and pay ministers? And, if it meant that, was it still "establishment" if all churches were equally supported or was it "establishment" only if a particular church was so supported and not others?

2) Or did "establishment" mean civil law establishing religious requirements for voting or serving in the legislature (e.g., that one had to be a Christian, a Protestant, etc.)?

3) Or did "establishment" mean a legal requirement to attend church services on Sunday?

4) Or did "establishment" mean that only marriages performed in a particular denominational church (e.g., Episcopal, Congregational, Protestant) would be recognized by the State?

5) Or did "establishment" mean *all* (or only some of) the foregoing things were necessary in order to have a religious "establishment"?

These questions make clear why anti-Federalist's "feared" the language "no religion shall be established by law." The problem was that what made a religion "established" was quite equivocal; and therefore

adding it to the Constitution might inadvertently give greater power to harm religion to "the people in power" (in particular, but not exclusively, the federal courts) than what might otherwise be implied in (or could be "construed into") the unamended Constitution.[12]

In recognizing this danger, the Anti-Federalists reflected Madison's October 17, 1788 letter to Jefferson: "My own opinion has always been in favor of a bill of rights; provided that it be so framed as not to imply powers not meant to be included in the enumeration."[13]

The First Congress debate so far seems to center on the question of what an "established" religion meant (or could be "construed" to mean), and how to prohibit it, without removing the federal government entirely from support for religion and religious liberty. One could fairly summarize the debate thusly: Religion and religious liberty, *good*; establishment of religion, *bad*. The debate seems to be about whether language could be found to *permit government to support* religion and religious liberty but not *establish* religion.

Representative Huntington raised this issue when he expressed "fear" that Madison's amendment stating that "no religion shall be established by law" might be "construed into" something "extremely hurtful to the cause of religion"; and, again, when he stated his concern that the proposed language might support non-religion. He hoped that "the amendment would be made in such a way as to secure the rights of conscience, and the free exercise of religion, but not to patronize those who professed no religion at all." It looks like Huntington foresaw the possibility of the late twentieth-century judicial theory that the First Amendment establishment clause requires government to support non-religion in public schools/institutions and forbids it to support religion.[14]

Representative Samuel Livermore (N.H.), shared Huntington's (Conn.) and Sylvester's (N.Y.) fears about how the proposed language could be "construed into" harming *either* or *both* religion and religious liberty. Accordingly, he "thought it would be better if it were altered, and made to read . . . , that Congress shall make no laws touching religion, or infringing the rights of conscience." "Touching" seems more precise, and less open than is "establishment" to being "construed into" meanings that would hinder religion as such. Accordingly, Livermore's proposed language was adopted (31–20) at the end debate on August 15.

But this solution did not survive. The "touching" language was soon dropped for reasons having to do with the next matter of debate. On August 17, the topic was Madison's proposal that "no person religiously scrupulous shall be compelled to bear arms." There was a long, substantive and instructive debate. But whether one thought such exemptions were

just or unjust, good or bad, practical or impractical, it is hard to see any way the language could not "touch" religion. Even not to grant an exemption would, in a manner, "touch" religion.

At the end of the August 17 debate, the "religiously scrupulous" amendment was narrowly retained (22–24). Perhaps, in contrast to its adoption of Livermore's "no laws touching" language two days earlier, the House now saw that a majority *wanted* the federal government to "touch" religion in certain ways. Some who had voted *against* the "religiously scrupulous" amendment explicitly favored its substance: but wished to "leave it to the benevolence of the Legislature, for . . . it will be impossible to express it in such a manner as to clear it from ambiguity [and] . . . the Legislature will always possess humanity enough to indulge this class of citizens . . . ; but they ought to be left to their discretion."[15]

The problem now appeared to be finding language to permit government to "touch" religion in a supportive way (exemplified by exempting those who would later be called "conscientious objectors") but not to have an "establishment" of religion;[16] and to do these things without patronizing "those who professed no religion at all."

The same anti-Federalist distrust of "construed into" surfaced early in this August 17 debate. Representative Gerry said:

> [T]his clause would give an opportunity to the people in power to destroy the constitution itself. They can declare who are those religiously scrupulous and prevent them from bearing arms. [The purpose] of a militia . . . is to prevent the establishment of a standing army, the bane of liberty. [U]nder this provision, together with their other powers, Congress could take such measures . . . to destroy the militia, . . . as to make a standing army necessary.

To remedy this problem, Gerry "wished the words to be altered so as to be confined to persons belonging to a religious sect scrupulous of bearing arms."

Gerry's remedy would solve this problem on the plausible assumption that there would probably never be enough persons belonging to pacifist religious sects to destroy the militia's ability to maintain itself.

Representative James Jackson (GA) objected to the proposed "religiously scrupulous" amendment on grounds of justice. If it was adopted "one part [of the people] would have to defend the other in case of invasion. Now this, in his opinion, was unjust, unless the constitution secured an equivalent: for this reason he moved to amend the clause, by inserting at the end of it, "upon paying an equivalent to be established by law."

Representative William Smith (SC) supported Jackson's proposal by proposing an "upon paying an equivalent" proviso. He noted such a pro-

viso was included in the exemption amendments proposed by the Virginia and Carolina ratifying conventions. While that seemed to settle this objection for now, nothing came of the "upon paying an equivalent" qualification. Instead, there was an immediate effort, to strike out the words "but no person religiously scrupulous shall be compelled to bear arms." The interesting reason given was that this is

> no natural right, and therefore ought to be left to the discretion of the Government. If this [stays in] . . . the constitution, it will be a question before the Judiciary on every regulation you make with respect to the organization of the militia, whether it comports with this declaration or not. It is extremely injudicious to intermix matters of doubt with fundamentals. . . . [T]he Legislature will always possess humanity enough to indulge this class of citizens in a matter they are so desirous of; but they ought to be left to their discretion.[17]

This motion to strike out "but no person religiously scrupulous shall be compelled to bear arms" was narrowly defeated 22 in favor and 24 against. They remained in the amendment and this ended debate on the "religiously scrupulous" amendment for now.

Three days later (on August 20) the debate on the "establishing" amendment led to its adoption as follows: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." Slightly revised, this was the form sent to the Senate August 24.

So, notwithstanding the anti-Federalist concerns about what might be "construed into" establishment language, the House approved it. Since Madison had originally proposed that language in his June 8 amendments, one could say that Madison won that debate.

Also, on August 20, the House approved the "religiously scrupulous" amendment after adding the stipulation "in person." ("In person" had been in the amendment proposed in Madison's June 8 speech. It was sent to the Senate August 24 as follows: "A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed, but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person."

The "in person" language permitted legislatures to exempt religiously scrupulous persons from being required to serve in the militia; but left open the possibility that they could be required to provide a substitute, e.g., by "paying an equivalent."

However, the whole "religiously scrupulous" clause, including the "in person" language was deleted by the Senate on September 9 and the House

agreed on September 21. This ended the attempt to amend the Constitution to exempt those religiously scrupulous of bearing arms from being required to do so. It left the matter to "the benevolence of the legislature."

We cannot say (in the absence of any record of the Senate debate) whether the Senate's objection to the amendment was because it opposed its substance (and, if so, why) or whether it simply thought the matter should be left to the legislature. The "no state" religion amendment was also sent forward in this form: "No State shall infringe the right of trial by Jury in criminal cases, nor the rights of conscience, nor the freedom of speech, or of the press."

HOW THE SENATE TREATED THE PROPOSED HOUSE AMENDMENTS

Unfortunately, there are no records of the Senate debates because the Senate kept no such records; there is only the official record of motions made, the votes, amendments to the motions, etc. The Senate debate began on September 3. The first religion amendment it considered simply stated that "Congress shall make no law establishing religion, or prohibiting the free exercise thereof; nor shall the rights of conscience be infringed." After much debate, and many proposed amendments, the Senate eventually adopted this amendment but only after striking out "nor shall the rights of conscience be infringed."

What was it about the rights of conscience language that the Senate opposed? Lacking records of the debate, we don't know. Unfortunately, On September 9, the Senate again took up the proposed House amendment minus the rights of conscience language already rejected September 3. "Congress shall make no law establishing religion, or prohibiting the free exercise thereof." It substituted "establishing articles of faith, or a mode of worship" for "establishing religion"; and "prohibiting the free exercise of religion" for "prohibiting the free Exercise thereof" ["thereof" referring to religion]. The Senate then approved this amendment as "Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble. and petition to the government for the redress of grievances."

On the same day, the Senate took up the proposed House amendment stating that "a well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed, *but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person*." The Senate deleted the italicized words.

On September 19–23, the House considered the Senate changes to "Congress shall make no law establishing religion, or prohibiting the free exercise thereof; nor shall the rights of conscience be infringed." It rejected both the Senate's deletion of the "rights of conscience" language, and its substitution of "One Religious Sect or Society in preference to others" in place of "religion or prohibiting the free exercise thereof."

On September 21, the House agreed to the Senate's deletion of "but no one religiously scrupulous of bearing arms shall be compelled to render military service in person." It then called for a conference committee with the Senate on the remaining disagreements regarding Constitutional amendments.

When the Senate received the House responses, it "recede[d]" from its changes in the "Congress shall make no law" amendment, but insisted on the others. So it did not insist on "establishing articles of faith, or a mode of worship" in place of "religion," and it apparently persuaded the House to accept its deletion of the rights of conscience language.

On September 24, the conference committee agreed to the following: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." This was the language sent to the States for ratification on September 28.

In summary: the following language which had been part of the religion amendments at various stages were ultimately rejected: "rights of conscience"; "establishing articles of faith, or a mode of worship" (in place of "establishing religion"); and "no person religiously scrupulous shall be compelled to bear arms in person."

REFLECTIONS

It is not clear either why the Senate rejected the "rights of conscience" language or why the House agreed to that rejection. What *is* clear is that the Senate tried several times to approve the amendment "Congress shall make no law establishing religion, or prohibiting the free exercise thereof; nor shall the rights of conscience be infringed"; but those attempts failed until "rights of conscience" was removed. Thus, deleting that language seems to have been decisively important to the Senate.

One might speculate about why this was the case. "Rights of conscience" would have empowered the federal government to define what individual rights of conscience in matters of religion are. Given the powerfully expressed anti-Federalist fear of including any language that might give the federal government additional power to harm religion/religious

liberty, perhaps it was thought too dangerous to give it the power to decide also what individual rights of conscience are. It might have been thought safer to leave such power to the State governments.

This speculation is made more plausible by the fact that, at the time, the Senate was elected by the State legislatures and hence directly represented the State governments. In contrast, the *people* of the States (not the State governments) elected the House. Hence the House represented the people not the State governments. The "rights of conscience" language had come from the House.

Since the Senate had substituted "establishing articles of faith, or a mode of worship" (in place of the House version "establishing religion"), one might wonder why the House ultimately insisted on "establishing religion."

Recall that "establishing" language had emerged in the House on August 20, only days before the amendments were sent to the Senate for approval. Prior to August 20, the House language had been other variants of "establish." One of Madison's original June 8 amendments had said "nor shall any national religion be established." That language had been slightly amended earlier in August to "no religion shall be established by law."[18] Thereafter in the House "establish," "established," "establishment," and "establishments" were used despite the expressed reservations/trepidations about this type of wording. The substitution of the "touching" religion language on August 15 had not lasted (though it was more precise than the establishment language) presumably because on reflection the House realized it might want the federal government to "touch" religion in certain supportive ways, as in the instance of those "religiously scrupulous of bearing arms"; or in the example of a federal court enforcing a congregations' bylaws regarding members commitments of financial support.

So notwithstanding the anti-Federalist "fear" about the language of "established," "establishing" and "establishment," the House finally accepted it and sent to the Senate August 24, the language "Congress shall make no law establishing religion or prohibiting the free exercise thereof." The Senate revisions had only attempted to specify "articles of faith and modes of worship" in place of the more general "religion." This "specification" looks like an attempt to avoid problems like a federal court refusing to enforce a church members' financial pledge to the church. While such support of a church might be "construed into" an establishment of religion, it is a bit less open to being "construed into" an establishment of articles of faith and modes of worship.

No motions in the Senate tried to change "establishing." The "respecting an establishment of religion" language we now have emerged from the

House/Senate Conference committee September 24. This language seems to strengthen the anti-Federalist defense of the States because the word "respecting" *not only* prohibits Congress from "establishing" a religion (whatever it might mean to do so); it *also* could be read to prohibit Congress from interfering with State religious establishments. Read in this way, the amendment would have a decided "states' rights" dimension.

Notes

1. See Ellis West, *The Religion Clauses of the First Amendment* (Lanham, Md.: Lexington Books, 2011), 57–88.

2. "Feared" is used by Rep. Peter Sylvester (N.Y.). These First Congress debates have been gathered together in a convenient document which is available at http://candst.tripod.com/1stdebat.htm. All quotations and citations to these debates in this paper can be found at this link.

3. The language of Rep. Elbridge Gerry (Mass.).

4. This is Sylvester's language.

5. The language of Rep. Benjamin Huntington (Conn.).

6. Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: University of Chicago Press, 1981), 22. Avaialble at at https://dfbignell.wordpress.com/2010/05/02/constitutional-perspective-the-anti-federalist-view-of-religion-in-and-for-government/.

7. See Madison in Federalist 51: "In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects."

8. Cong. Register, I, 423–37 (also reported in Gazette of the U.S.10 and 13 June 1789).

9. In introducing the amendments, Madison says: "The people have certain natural rights which are retained by them when they enter into society, such are the rights of conscience in matters of religion." Four years earlier, in Virginia's *Memorial and Remonstrance Against Religious Assessments* (1785), Madison had elaborated this argument as follows: "the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him . . . is precedent . . . in degree of obligation, to the claims of Civil Society. . . . [E]very man who becomes a member of any particular Civil Society, [must] do it with a saving of his allegiance to the Universal Sovereign." *Madison Papers*, ed. William T. Hutchinson et al., 10 vols. (Chicago: University of Chicago Press, 1962–1977), 8:298–304; available at http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html.

10. Carroll was a Catholic but not an anti-Federalist. He signed the Constitution and was its strong supporter and advocate during Ratification.

11. See "Religion in the Original 13 Colonies," http://undergod.procon.org/view.resource.php?resourceID=000069. This useful source has a state by state listing of the relevant provisions of each state constitution respecting religion.

12. In the August 15 debate, Madison acknowledged that this "construed into" problem had been a/the source of state ratification demands to better protect religious freedom. See Madison quotation above, p. 5 beginning "whether the words."

13. http://www.constitution.org/jm/17881017_bor.htm.

14. The Court first announced this understanding in *Everson v. Board of Education* (1947): "The 'establishment of religion' clause of the First Amendment means at least this: neither a state nor the Federal Government . . . can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers." 330 U.S. 15-16, 18.

15. Rep. Egbert Benson (N.Y.) on August 17.

16. When the Supreme Court had to deal with this same problem, it began by holding that granting such an exemption did not violate the Establishment clause. See *Gillette v. U.S.* (1971), http://caselaw.findlaw.com/us-supreme-court/401/437.html.

17. Rep. Egbert Benson (N.Y.).

18. Deleting "national" was a response to anti-Federalist concerns that it might imply that the new government created by the Constitution was not a federal but a national government.