

Do the Words that were *Discarded* in Writing the First Amendment  
Help Reveal the Framers' Intentions?

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The sixteen words on religion in the first half of the First Amendment seem so simple: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." But do they dictate "a wall of separation between Church & State" as Thomas Jefferson suggested in 1802, or do they merely prohibit government from choosing one religion over another, as former Chief Justice Rehnquist argued in 1985?

Wording proposed but cast aside in the Congressional debates during the summer and fall of 1789, before the amendment was submitted to the states for ratification, can help us decipher the meaning of the words that remain. Congress never adopted James Madison's early wording: ". . . nor shall any national religion be established." Congress did not take up language protecting "rights of conscience." Perhaps most significantly, Congress turned away specific wording that would have limited government from aiding "one religious sect or society in preference to others" or "establishing any religious sect or society," meaning any specific church or denomination.

Instead, the final Amendment spoke broadly about both "establishment" and "religion." In writing that Congress should "make no law respecting an establishment of religion," the deliberate vagueness of the words, "an establishment". recognized the many ways the old colonies had supported different groups --

through taxes collected differently in different places, varieties of civil penalties for dissenters, and varieties of coercion, ranging from prohibiting office-holding by non-Christians, or religious gatherings of enslaved Africans, to whipping and jail for preaching by unlicensed ministers.

The second half of the Amendment's words on religion - "and prohibiting the free exercise thereof" - reinforces the breadth intended in the term "religion" in the preceding clause about prohibiting "an establishment of religion." "Prohibiting the free exercise thereof" means the free exercise of religion broadly and generally, not merely one form that no longer could be "established." In fact, Americans knew better than any Europeans the breadth of religious expression. The new United States had Congregationalists, Baptists, Muslims, Free Will Baptists, Catawba, Iroquois, and the religions of the many American Indian groups, Methodists, Roman Catholics, Moravians, Lutherans, Jews, German Reformed, Dutch Reformed, Quakers, Ashanti, Ibo, and the many religions of enslaved and free Africans, French Huguenots, Sandemanians, Dunkers, Rogerenes, and Swedenborgians, among others! A best-selling book from 1784 even listed an *Alphabetical Compendium of the Various Sects which have Appeared in the World from the Beginning of the Christian Era to the Present Day*. Written by Hannah Adams of Massachusetts five years before Congress considered the First Amendment, it appeared in more editions over the next twenty years.

So the congressmen who shaped the First Amendment's words on religion and those who ratified it knew well that religion would mean many things to many people. The Amendment employed the word "religion"

to prevent federal establishments of many kinds in religion broadly, not merely to prevent a national church as one congressman proposed, just as it unprecedentedly guaranteed "free exercise" to all religions, which the infant nation already knew in greater variety than any other nation in the world.