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Richard Henry Lee's Proposed Amendments in the Confederation Congress, 27 September 1787

The delegates to the Constitutional Convention signed the engrossed Constitution on 17 September 1787. Article VII of the Constitution abandoned the procedure for ratifying amendments to the Articles of Confederation found in Article XIII. Instead, the responsibility for the ratification of the proposed constitution was transferred from the unanimous approval of the state legislatures to the approval by nine states in ratifying conventions called by the state legislatures and elected by the people. Although the Constitution did not require the approval of Congress, the delegates to the Constitutional Convention agreed to send the Constitution to Congress for transmittal to the states.

Congress received and read the Constitution on 20 September 1787. It was decided to consider the Constitution beginning on 26 September. Of the thirty-three members attending Congress between 20 and 28 September, ten had been delegates to the Constitutional Convention. All signed the Constitution, except for William Pierce who had left Philadelphia earlier to attend Congress. Five delegates had serious objections to the Constitution while two others expressed some concerns. Those who supported the Constitution wanted to transmit it to the states with the approbation of Congress, while Antifederalists wanted to transmit the Constitution with an indication that the delegates to the Constitutional Convention had violated the Articles of Confederation, the Congress' resolution of 21 February 1787 calling the Convention, and their state instructions. These opponents of the Constitution wanted amendments proposed that would be submitted to a second general convention of the states. Toward the end of the debate on 27 September, Virginia delegate Richard Henry Lee proposed amendments to the Constitution that included a bill of rights.

All the delegates to Congress realized that the majority were in favor of the Constitution and that the approbation of Constitution was easily obtainable. But Federalists wanted to avoid any appearance of opposition, thus a compromise was achieved. The Constitution was to be sent to the states without the approbation of Congress and all opposition to the Constitution (including Lee's amendments) were to be stricken from Congress' Journals. A resolution "unanimously" transmitting the Constitution was adopted on 28 September.

Lee made copies of his amendments and sent them to a number of friends, sometimes indicating that he was not averse to the publication and distribution of his letter and the amendments. Lee's letter to Virginia Governor Edmund Randolph (including Lee's

amendments as a postscript) was published and circulated widely throughout the country in newspapers, magazines, and anthologies. Only his proposed amendments are included here.

It having been found from universal experience, that the most express declarations and reservations are necessary to protect the just rights and liberty of mankind from the silent, powerful and ever active conspiracy of those who govern; and it appearing to be the sense of the good people of America, by the various bills or declarations of rights whereon the government of the greater number of states are founded. That such precautions are necessary to restrain and regulate the exercise of the great powers given to rulers. In conformity with these principles, and from respect for the public sentiment on this subject, it is submitted,—That the new constitution proposed for the government of the United States be bottomed upon a declaration or bill of rights, clearly and precisely stating the principles upon which this social compact is founded, to wit: That the rights of conscience in matters of religion ought not to be violated—That the freedom of the press shall be secured—That the trial by jury in criminal and civil cases, and the modes prescribed by the common law for the safety of life in criminal prosecutions, shall be held sacred—That standing armies in times of peace are dangerous to liberty, and ought not to be permitted, unless assented to by two-thirds of the members composing each house of the legislature under the new constitution—That the elections should be free and frequent; That the right administration of justice should be secured by the independency of the judges; That excessive bail, excessive fines, or cruel and unusual punishments, should not be demanded or inflicted: That the right of the people to assemble peaceably, for the purpose of petitioning the legislature, shall not be prevented; That the citizens shall not be exposed to unreasonable searches, seizure of their persons, houses, papers or property; and it is necessary for the good of society, that the administration of government be conducted with all possible maturity of judgment, for which reason it hath been the practice of civilized nations, and so determined by every state in the Union: That a council of state or privy council should be appointed to advise and assist in the arduous business assigned to the executive power. Therefore let the new constitution be so amended, as to admit the appointment of a privy council, to consist of eleven members chosen by the president, but responsible for the advice they may give. For which purpose the advice given shall be entered in a council book, and signed by the giver, in all affairs of great moment, and that the counsellors act under an oath of office. In order to prevent the dangerous blending of the legislative and executive powers, and to secure responsibility, the privy, and not the senate shall be joined with the president in the appointment of all officers, civil and military, under the new constitution; that the constitution be so altered as not to admit the creation of a vice-president, when duties as assigned may be discharged by the privy council, except in the instance of proceeding in the senate, which may be supplied by a speaker chosen from the body of senators by themselves, as usual, that so may be avoided the establishment of a great officer of state, who is sometimes to be joined with the legislature, and sometimes to administer the government, rendering responsibility difficult, besides giving unjust and needless preeminence to that state from whence this officer may have come. That such parts of the new constitution be amended as provide imperfectly for the trial of criminals by a jury of the vicinage, and to supply the omission of a jury trial in civil causes or disputes about property between individuals,

whereby the common law is directed, and as generally it is secured by the several state constitutions. That such parts of the new constitution be amended, as permit the vexatious and oppressive callings of citizens from their own country, and all controversies between citizens of different states and between citizens and foreigners, to be tried in a far distant court, and as it may be without a jury, whereby in a multitude of cases, the circumstances of distance and expence may compel numbers to submit to the most unjust and ill-founded demand—That in order to secure the rights of the people more effectually from violation, the power and respectability of the house of representatives be increased, by increasing the number of delegates to that house, where the popular interest must chiefly depend for protection—That the constitution be so amended as to increase the number of votes necessary to determine questions in cases where a bare majority may be seduced by strong motives of interest to injure and oppress the minority of the community, as in commercial regulations, where advantage may be taken of circumstances to ordain rigid and premature laws, that will in effect amount to monopolies, to the great impoverishment of those states whose peculiar situation expose them to such injuries.

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