A significant number of state constitutions in the late Eighteenth Century already had essentially similar provisions.

For example, the Constitution of the State of New York adopted in 1777 abrogated all laws which "may be construed to establish or maintain any particular denomination of Christians or their ministers."

The New Jersey Constitution of 1776 declared that "there shall be no establishment of any one religious sect .... in preference to another."

The Delaware Constitution of 1776 forbade the "establishment of one religious sect in this state in preference to another."

The Pennsylvania Constitution of 1776 prohibited compulsory attendance at or support of churches.

The Maryland Constitution of 1776 forbade compulsory church attendance or support.

Other examples could be cited. It is crystal-clear, and so far as this General Assembly knows never contested, that the First Amendment to the Constitution of the United States, insofar as it applies to the establishment of religion and the free exercise of religion, was drafted and adopted against this well-known Eighteenth Century background.

It is interesting to note that at the Constitutional Convention in 1787, James Madison proposed that the Bill of Rights should be drafted so as to apply to the states as well as to the federal government. This proposition was specifically discussed and specifically rejected.

Following the obvious intention of the sovereign people in adopting the First Amendment and other portions of the Bill of Rights, the Supreme Court for many years held that no part of the Bill of Rights imposed any restraint upon the states. In the case of Barron vs. Baltimore in 1833, Chief Justice Marshall pointed out that the amendments in the Bill of Rights "contained no expression indicating an intention to apply them to the state governments. This court cannot so apply them . . ."

This decision was followed in 1845 in the case of Permoli vs. First Municipality of New Orleans in which the Supreme Court held that "the Constitution makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the state constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the states."

In the late 1860's, the Fourteenth Amendment was added to the Constitution of the United States. It provided in part that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Beginning during the 1920's, the Supreme Court began a series of judicial holdings to the general effect that by a combination of the