

of liberty and independence as any other citizens are most unjustly excluded from the advantages which they contributed to establish. But if bigotry and narrow prejudices have hitherto prevented the cure of these evils be it the duty of every lover of peace and justice to extend no further."¹¹⁴

On September 25, 1789, the First Amendment to the United States Constitution was accepted by Congress, and on December 15, 1791, it went into effect. To be sure, this was but a partial step on the path to full equality. The Tenth Amendment reserved non-delegated powers to the states and the people; the states had some distance to travel. In Maryland, it would not be until 1798 that Quakers, Mennonites and other conscientious objectors to taking oaths be constitutionally permitted to make an affirmation instead;¹¹⁵ until 1810 that the legislature be forbidden to lay a tax for the support of religion;¹¹⁶ until 1819 that harsh blasphemy laws, carrying penalties of death and confiscation of property, be repealed;¹¹⁷ until 1826 that Unitarians and Jews receive full political rights;¹¹⁸ nor until the mid-Nineteenth Century that non-Christian sects could claim full religious liberty under the state Constitution.¹¹⁹ However, the enduring foundation had been laid. At last, after more than a century and a half of struggle for a principle, did the policy so vigorously espoused by the Calverts, the

¹¹⁴ *Id.* at 391. See also *id.* at 400 and *supra* note 106.

¹¹⁵ 3 THE FEDERAL AND STATE CONSTITUTIONS 1702 (F. Thorpe ed. 1909).

¹¹⁶ ANTIEAU, DOWNEY & ROBERTS, *supra* note 77 at 147.

¹¹⁷ *Id.* at 78-79, 185.

¹¹⁸ MARNELL, *supra* note 96 at 67.

¹¹⁹ WERLINE, *supra* note 111 at 208.

Carrolls and their constituencies become firmly embedded in the Law of the Land—that

“Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof.”

**SUBSEQUENT MARYLAND
CONSTITUTIONS
1851/1864/1867**

There were four articles in the first (1776) Maryland Constitution that had relevance to the freedom of religion and these four provisions, though modified through the years, are still present in our law. They are the current Articles 36, 37, 38 and 39 of the Declaration of Rights.¹²⁰

Article 36

Article 36 of the present Declaration of Rights has undergone an interesting evolution. In 1776 it provided for a guarantee of religious liberty to “all per-

¹²⁰ Although the preamble to the Constitution contains a reference to God, this has no legal force “except so far as it recognizes the existence of God and thereby implies that the government is a Christian, or at least a deistic government. NILES, *supra* note 81 at 12. The Supreme Court has constitutionalized that implication. See, e.g., *Zorack v. Clauson*, 343 U.S. 306, 72 S.Ct. 679 (1952), and footnote and accompanying text, *infra*. See APPENDIX I, VI (note 15).

Also, Article III, Section 11 of the present Constitution, which prevents clergymen of any denomination from being senators or delegates, would not seem to offend the First Amendment to the United States Constitution and hence will not be dealt with at length here. For the arguments pro and con, see DEBATES OF THE MARYLAND CONSTITUTIONAL CONVENTION OF 1867, at 258-63 (P. Pearlman comp. 1923). The provision (which in 1776 was Article 37 of the Constitution proper; 1851, Article III, Section 11; 1864, nonexistent; Article III, Section 11) has never been tested in a Maryland court.