

RELIGIOUS FREEDOM AND THE CHURCH-STATE  
RELATIONSHIP IN MARYLAND<sup>1</sup>

A SHORT HISTORY AND DEVELOPMENT

Maryland holds the unique and admirable distinction of having been the State whose early history most directly effected, and whose citizenry was most directly affected by, the First Amendment's grant of religious liberty. With the Supreme Court increasingly called upon to interpret the Establishment Clause, and with the task of drawing a new state constitution at hand, the time is appropriate for tracing Maryland's contribution to the cause of toleration and the principle of church-state separation.

The validity of an historical approach has long been acknowledged by both the textwriters and the courts. As early as 1819, the Supreme Court endorsed the wisdom of looking to the views of the Founding Fathers in interpreting the Constitution.<sup>2</sup> In 1872 the Court noted the importance of observing "the history of the times" surrounding the adoption of constitutional amendments.<sup>3</sup> The special propriety of an historical analysis for the First Amendment has likewise been evident. The edict that "Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof" has proved to be obscure in meaning; determination of the scope of the First Amendment's religion clauses requires a determination of the intent of the First Congress, as well as the intent of the citizens of the states that ratified the amendment.<sup>4</sup> In an 1878 decision the Supreme Court observed that the word "religion" was not defined by the Constitution and added: "We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in which the provision was adopted."<sup>5</sup> Again, in a 1947 case involving religion, the Court concerned itself with the "conditions and practices which they [the Founding Fathers] fervently wished to stamp out in order to preserve liberty for themselves and for their posterity." Justice Black concluded that, "It is not inappropriate to review the background and environment of the period in which the constitutional language [establishment of religion] was fashioned and adopted."<sup>6</sup>

Although the First Amendment was a reflection on the situation in most of the colonies of early America, Maryland's role was of paramount significance. Maryland stood out among all the original states as the real champion

<sup>1</sup> This article was prepared for the Commission by Kenneth L. Lasson, a research assistant for the Commission and at present Assistant to the Dean at the University of Maryland School of Law; B.A., 1963, The Johns Hopkins University; LL.B., 1966, University of Maryland School of Law; M.A., 1967, The Johns Hopkins University.

<sup>2</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 406 (1819).

<sup>3</sup> *Slaughter House Cases*, 83 U.S. (16 Wall.) 36, 67 (1872).

<sup>4</sup> C. ANTIEAU, A. DOWNEY & E. ROBERTS, *FREEDOM FROM FEDERAL ESTABLISHMENT* vii, (1963).

<sup>5</sup> *Reynolds v. United States*, 98 U.S. 145, 162 (1878).

<sup>6</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1, 8 (1947); *Horace Mann League v. Bd. of Pub. Works*, 242 Md. 645, 220 A.2d 51, 55-60 (1966).