

contribute, unless on contract, to maintain, any place of worship, or any ministry . . ."). Cited were a large number of cases to the effect that "grants to educational institutions at a level where the state has not attempted to provide universal educational facilities for its citizens have never, in Maryland, been held to be impermissible under Article 36, even though the institutions may be under the control of a religious order."¹⁴⁹

In a vigorous dissent, Judge Hammond and two other members of the Court of Appeals argued that the grants of state aid served a sufficiently secular purpose to withdraw them from First Amendment prohibition. Both sides have appealed the majority decision to the Supreme Court. It would be difficult to predict with any degree of certainty that Court's decision.¹⁵⁰

SOME CONCLUSIONS

The question most directly involved in interpreting the Establishment Clause of the First Amendment is whether the Founding Fathers intended a complete separation of church and state or would, rather, permit government participation if such were non-discriminatory. A comprehensive analysis will not be attempted here but, on the basis of the historical sketch offered above, some arguments will be suggested.¹⁵¹

"It is revealing to note that in every

¹⁴⁹ *Id.* at 76.

¹⁵⁰ For other recent Maryland cases touching upon the freedom of religion, see *Levitsky v. Levitsky*, 231 Md. 388, 190 A.2d 621 (1963); and *Craig v. State*, 220 Md. 590, 155 A.2d 684 (1959).

¹⁵¹ For more complete treatments, see Kempner, *The Supreme Court and the Establishment and Free Exercise of Religion* 87-99 (1958), and A. STOKES & L. PFEFFER, *CHURCH AND STATE IN THE UNITED STATES* (1964).

state constitution in force between 1776 and 1789 where 'establishment' was mentioned, it was equated or used in conjunction with 'preference.'¹⁵² A logical inference might be drawn that Congress would advocate non-preferential treatment of religion. Or perhaps the major concern revolved around the protection of "free exercise" rather than complete denial of government aid.¹⁵³ Undoubtedly, some of the Founders, in particular Madison and Thomas Jefferson, favored full severance of church and state.¹⁵⁴ However, that feeling was hardly unanimous. Charles Carroll of Carrollton had voted in favor of a state tax to support religion.¹⁵⁵ Daniel Carroll had endorsed a 1784 act of the Maryland General Assembly, "earnestly desiring to promote every pious and charitable design for the relief and assistance of the widowless and fatherless, and especially those of the respectable and useful body of clergy of all denominations."¹⁵⁶ An 1811 issue of the *Baltimore Gazette* asked:

"What was the meaning of the Constitution in providing against a religious establishment? Does any man but Mr. Madison imagine it

¹⁵² C. ANTIEAU, A. DOWNEY & E. ROBERTS, *FREEDOM FROM FEDERAL ESTABLISHMENT* 132 (1963).

¹⁵³ *Id.* at 137-38.

¹⁵⁴ See W. TORPEY, *JUDICIAL DOCTRINES OF RELIGIOUS RIGHTS IN AMERICA* 13ff. (1948), and De Marr, *The Regulation of Religious Corporations in the State of Maryland* 72 (Md. Hist. Soc.).

Madison himself indicated that whenever it was necessary to go beyond the words of the Constitution to ascertain its meaning, the Congress and courts should look for it in the State Conventions, which accepted and ratified the Constitution. ANTIEAU, DOWNEY & ROBERTS, *supra* note 152 at ix.

¹⁵⁵ WERLINE, *supra* note 111 at 151.

¹⁵⁶ M. GEIGER, DANIEL CARROLL, FRAMER OF THE CONSTITUTION 83 (1943).