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Dokumenty

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VII. Dokumenty

VII.1. Maryland Act Concerning Religion (1649)

Forasmuch as in a well governed and Christian Commonwealth matters concerning Religion and the honor of God ought in the first place to be taken into serious consideration and endeavored to be settled. Be it therefore ordered and enacted by the Right Noble Cecil Lord Baron of Baltimore absolute Lord and Proprietary of this Province with the advice and consent of this General Assembly. That whatsoever person or persons within this Province and the Islands thereunto belonging shall from henceforth blaspheme God, that is Curse him, or deny our Savior Jesus Christ to bee the son of God, or shall deny the holy Trinity the father son and holy Ghost, or the Godhead of any of the said Three persons of the Trinity or the Unity of the Godhead, or shall use or utter any reproachful Speeches, words or language concerning the said Holy Trinity, or any of the said three persons thereof, shall be punished with death and confiscation for forfeiture of all his or her lands and goods to the Lord Proprietary and his heirs, And bee it also Enacted by the Authority and with the advise and assent aforesaid. That whatsoever person or persons shall from henceforth use or utter any reproachful words or Speeches concerning the blessed Virgin Mary the Mother of our Savior or the holy Apostles or Evangelists or any of them shall in such case for the first offence forfeit to the said Lord Proprietary and his heirs Lords and Proprietaries of this Province the sum of five pound Sterling or the value thereof to be Levied on the goods and chattels of every such person so offending, but in case such Offender or Offenders, shall not then have goods and chattels sufficient for the satisfying of such forfeiture, or that the same bee not otherwise speedily satisfied that then such Offender or Offenders shall be publically whipped and bee imprisoned during the pleasure of the Lord Proprietary or the Lieut or chief Governor of this Province for the time being.

And that every such Offender or Offenders for every second offence shall forfeit ten pound sterling or the value thereof to bee Levied as aforesaid, or in case such Offender or Offenders shall not then have goods and chattels within this Province sufficient for that purpose then to bee publically and severely whipped and imprisoned as before is

expressed. And that every person or persons before mentioned offending herein the third time, shall for such third Offence forfeit all his lands and Goods and bee for ever banished and expelled out of this Province. And be it also further Enacted by the same authority advise and assent that whatsoever person or persons shall from henceforth upon any occasion of Offence or otherwise in a reproachful manner or Way declare call or denominate any person or persons whatsoever inhabiting residing trafficking trading or commercing within this Province or within any the Ports, Harbors, Creeks or Havens to the same belonging an heretic, Schismatic, Idolater, puritan, Independent, Presbyterian popish priest, Jesuit, Jesuited papist, Lutheran, Calvinist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or any other name or term in a reproachful manner relating to matter of Religion shall for every such Offence forfeit and loose the some or ten shillings sterling or the value thereof to bee Levied on the goods and chattels of every such Offender and Offenders, the one half thereof to be forfeited and paid unto the person and persons of whom such reproachful words are or shall be spoken or uttered, and the other half thereof to the Lord Proprietary and his heirs Lords and Proprietaries of this Province, But if such person or persons who shall at any time utter or speake any such reproachful words or Language shall not have Goods or Chattels sufficient and overt within this Province to bee taken to satisfy the penalty aforesaid or that the same bee not otherwise speedily satisfied, that then the person or persons so offending shall be publically whipped, and shall suffer imprisonment. Without bails or maineprise until he, she or they respectively shall satisfy the party so offended or grieved by such reproachful Language by asking him or her respectively forgiveness publically for such his Offence before the Magistrate or chief Officer or Officers of the Town or place where such Offence shall be given. And be it further likewise Enacted by the Authority and consent aforesaid That every person and persons within this Province that shall at any time hereafter profane the Sabbath or Lords day called Sunday by frequent swearing, drunkenness or by any uncivil or disorderly recreation, or by working on that day when absolute necessity doth not require it shall for every such first offence forfeit 2s 6d sterling or the value thereof, and for the second offence 5s sterling or the value thereof, and for the third offence and so for every time he shall offend in like manner afterwards 10s sterling or the value thereof.

And in case such offender and offenders shall not have sufficient goods or Chattels within this Province to satisfy any of the said Penalties respectively hereby imposed for profaning the Sabbath or Lords day called Sunday as aforesaid, That in Every such case the party so offending shall for the first and second offence in that kind be impriso-

ned till he or she shall publically in open Court before the chief Commander Judge or Magistrate, of that County Town or precinct where such offence shall be committed acknowledge the Scandal and offence he hath in that respect given against God and the good and civil Government of this Province And for the third offence and for every time after shall also bee publically whipped. And whereas the enforcing of the conscience in matters of Religion hath frequently fallen out to be of dangerous Consequence in those commonwealths where it hath been practiced, And for the more quiet and peaceable government of this Province, and the better to preserve mutual Love and amity amongst the Inhabitants thereof. Be it Therefore also by the Lo: Proprietary with the advise and consent of this Assembly Ordained & enacted (except as in this present Act is before Declared and sett forth) that no person or persons whatsoever within this Province, or the Islands, Ports, Harbors, Creeks, or havens hereunto belonging professing to believe in Jesus Christ, shall from henceforth bee any ways troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province or the Islands hereunto be-longing nor any way compelled to the belief or exercise of any other Religion against his or her consent, so as they be not unfaithful to the Lord Proprietary, or molest or conspire against the civil Government. Established or to be established in this Province under him or his heirs.

And that all & every person and persons that shall presume Contrary to this Act and the true intent and meaning thereof directly or indirectly either in person or estate willfully to wrong disturb trouble or molest any person whatsoever within this Province professing to believe in Jesus Christ for or in respect of his or her religion or the free exercise thereof within this Province other than is provided for in this Act that such person or persons so offending, shall be compelled to pay treble damages to the party so wronged or molested, and for every such offence shall also forfeit 20s sterling in money or the value thereof, half thereof for the use of the Lo: Proprietary, and his heirs Lords and Proprietaries of this Province, and the other half for the use of the party so wronged or molested as aforesaid, Or if the party so offending as aforesaid shall refuse or bee unable to recompense the party so wronged, or to satisfy such fine or forfeiture, then such Offender shall be severely punished by public whipping & imprisonment. During the pleasure of the Lord Proprietary, or his Lieutenant or chief Governor of this Province for the time being without bails or mainepriise. And be it further also Enacted by the authority and consent aforesaid That the Sheriff or other Officer or Officers from time to time to bee appointed & authorized for that purpose, of the County Town or precinct where every particular offence in this present Act contained shall happen at any time to

bee committed and whereupon there is hereby a forfeiture fine or penalty imposed shall from time to time distrain and seize the goods and estate of every such person so offending as aforesaid against this present Act or any pt thereof, and sell the same or any part thereof for the full satisfaction of such forfeiture, fine, or penalty as afore said, Restoring unto the party so offending the Remainder or over plus of the said goods or estate after such satisfaction so made as aforesaid.

Zdroj: *The Founders' Constitution, vol. 5, s. 49–50.*

VII.2. Thomas Jefferson: *A Bill for Establishing Religious Freedom* (1779; přijato Kongresem státu Virginia v 1786)

SECTION I.

Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested his supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to exalt it by its influence on reason alone; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time: That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness; and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed

these are criminals who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that the opinions of men are not the object of civil government, nor under its jurisdiction; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order; and inally, that truth is great and will prevail if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition disarmed of her natural weapons, free argument and debate; errors ceasing to be dangerous when it is permitted freely to contradict them.

SECTION II.

We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

SECTION III.

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

Zdroj: Julian P. Boyd (ed.), *The Papers of Thomas Jefferson*, vol. 2, Princeton, N.J.: Princeton University Press 1950, s. 345–347.

VII.3. Článek VI, odstavec 3, Ústavy Spojených států amerických (1787; ratifikováno 1788)

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Zdroj: <http://www.law.cornell.edu/constitution/constitution.articlevi.html>

VII.4. 1. Dodatek Ústavy Spojených států amerických (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Zdroj: *<http://www.law.cornell.edu/constitution/constitution.billofrights.html>*

VII.5. Plan of Union přijatý Kongregacionalisty a Presbyteriány v roce 1801

Regulations adopted by the General Assembly of the Presbyterian Church in America, and by the General Association of the State of Connecticut, with a view to prevent alienation, and to promote union and harmony in those new settlements which are composed of inhabitants from these bodies.

1. It is strictly enjoined on all their missionaries to the new settlements, to endeavor, by all proper means, to promote mutual forbearance, and a spirit of accommodation, between those inhabitants of the new settlements who hold the Presbyterian, and those who hold the Congregational, form of Church government.
2. If, in the new settlements, any church of the Congregational order shall settle a minister of the Presbyterian order, that church may, if they choose, still conduct their discipline according to Congregational principles, settling their difficulties among themselves, or by a council mutually agreed upon for that purpose. But, if any difficulty shall exist, between the minister and the church, or any member of it, it shall be referred to the Presbytery to which the minister shall belong, provided both parties agree to it; if not, to a council consisting of an equal number of Presbyterians and Congregationalists, agreed upon by both parties.
3. If a Presbyterian church shall settle a minister of Congregational principles, that church may still conduct their discipline according to Presbyterian principles, excepting that if a difficulty arise between him and his church, or any member of it, the cause shall be tried by the Association to which the said minister shall belong, provided both parties agree to it; otherwise by a council, one half Congregationalists and the other Presbyterians, mutually agreed upon by the parties.
4. If any congregation consist partly of those who hold the Congregational form of discipline, and partly of those who hold the Presbyterian form, we recommend to both parties, that this be no obstruction to their uniting in one church and settling a minister; and that, in this case, the church choose a standing committee, from the communicants of said church, whose business it shall be to call to account every member of the church who shall conduct himself inconsistently with the laws of Christianity, and to give judgment on such conduct. That if the person condemned by their judgment were a Presbyterian, he shall have liberty to appeal to the Pres-

bytery; if he were a Congregationalist, he shall have liberty to appeal to the body of the male communicants of the church. In the former case, the determination of the Presbytery shall be final, unless the church shall consent to a further appeal to the Synod, or to the General Assembly; and, in the latter case, if the party condemned shall wish for a trial by a mutual council, the cause shall be referred to such a council. And provided the standing committee of any church shall depute one of themselves to attend the Presbytery, he may have the same right to sit and act in the Presbytery as a ruling elder of the Presbyterian Church.

Zdroj: Williston Walker, *The Creeds and Platforms of Congregationalism*, Boston: Pilgrim Press 1960, s. 530–531.

VII.6. Stanovisko soudce Hugo Blacka pro Nejvyšší soud Spojených států v případě *Engel v. Vitale* (1963)

Mr. Justice BLACK delivered the opinion of the Court. The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country." This daily procedure was adopted on the recommendation of the State Board of Regents, a governmental agency created by the State Constitution to which the New York Legislature has granted broad supervisory, executive, and legislative powers over the State's public school system. [...]

Shortly after the practice of reciting the Regents' prayer was adopted by the School District, the parents of ten pupils brought this action in a New York State Court insisting that use of this official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. [...]

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious. [...]

[W]e think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government. It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America. The Book of Common Prayer, which was created under governmental direction and which was approved by Acts of Parliament in 1548

and 1549, set out in minute detail the accepted form and content of prayer and other religious ceremonies to be used in the established, tax-supported Church of England.

The controversies over the Book and what should be its content repeatedly threatened to disrupt the peace of that country as the accepted forms of prayer in the established church changed with the views of the particular ruler that happened to be in control at the time. Powerful groups representing some of the varying religious views of the people struggled among themselves to impress their particular views upon the Government and obtain amendments of the Book more suitable to their respective notions of how religious services should be conducted in order that the official religious establishment would advance their particular religious beliefs.

Other groups, lacking the necessary political power to influence the Government on the matter, decided to leave England and its established church and seek freedom in America from England's governmentally ordained and supported religion. It is an unfortunate fact of history that when some of the very groups, which had most strenuously opposed the established Church of England, found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies. Indeed, as late as the time of the Revolutionary War, there were established churches in at least eight of the thirteen former colonies and established religions in at least four of the other five.

But intense opposition to the practice of establishing religion by law shortly followed the successful Revolution against English political domination. This opposition crystallized rapidly into an effective political force in Virginia where the minority religious groups such as Presbyterians, Lutherans, Quakers and Baptists had gained such strength that the adherents to the established Episcopal Church were actually a minority themselves. In 1785–1786, those opposed to the established Church, led by James Madison and Thomas Jefferson, who, though themselves not members of any of these dissenting religious groups, opposed all religious establishments by law on grounds of principle, obtained the enactment of the famous 'Virginia Bill for Religious Liberty' by which all religious groups were placed on an equal footing so far as the State was concerned. Similar though less far-reaching legislation was being considered and passed in other States.

By the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church

and State. These people knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services. They knew the anguish, hardship and bitter strife that could come when zealous religious groups struggled with one another to obtain the Government's stamp of approval from each King, Queen, or Protector that came to temporary power. The Constitution was intended to avert a part of this danger by leaving the government of this country in the hands of the people rather than in the hands of any monarch. But this safeguard was not enough. Our Founders were no more willing to let the content of their prayers and their privilege of praying whenever they pleased be influenced by the ballot box than they were to let these vital matters of personal conscience depend upon the succession of monarchs. The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say—that the people's religions must not be subjected to the pressures of government for change each time a new political administration is elected to office.

Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity. There can be no doubt that New York's state prayer program officially establishes the religious beliefs embodied in the Regents' prayer. The respondents' argument to the contrary, which is largely based upon the contention that the Regents' prayer is 'nondenominational' and the fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program's constitutional defects. Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom.

The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support for government to spread its faith.

The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate. Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand. The Founders knew that only a few years after the Book of Common Prayer became the only accepted form of religious services in the established Church of England, an Act of Uniformity was passed to compel all Englishmen to attend those services and to make it a criminal offense to conduct or attend religious gatherings of any other kind—a law which was consistently flouted by dissenting religious groups in England and which contributed to widespread persecutions of people like John Bunyan who persisted in holding 'unlawful (religious) meetings... to the great disturbance and distraction of the good subjects of this kingdom...'

And they knew that similar persecutions had received the sanction of law in several of the colonies in this country soon after the establishment of official religions in those colonies. It was in large part to get completely away from this sort of systematic religious persecution that the Founders brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion.

The New York laws officially prescribing the Regents' prayer are inconsistent both with the purposes of the Establishment Clause and with the Establishment Clause itself. It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong.

The history of man is inseparable from the history of religion. And perhaps it is not too much to say that since the beginning of that history many people have devoutly believed that 'More things are wrought by prayer than this world dreams of.' It was doubtless largely due to men who believed this that there grew up a sentiment that caused men to leave the cross-currents of officially established state religions and religious persecution in Europe and come to this country filled with the hope that they could find a place in which they could pray when they pleased to the God of their faith in the language they chose. And there were men of this same faith in the power of prayer who led the fight for adoption of our Constitution and also for our Bill of Rights with the very guarantees of religious freedom that forbid the sort of governmental activity which New York has attempted here.

These men knew that the First Amendment, which tried to put an end to governmental control of religion and of prayer, was not written to destroy either. They knew rather that it was written to quiet well-justified fears which nearly all of them felt arising out of an awareness that governments of the past had shackled men's tongues to make them speak only the religious thoughts that government wanted them to speak and to pray only to the God that government wanted them to pray to. It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance. It is true that New York's establishment of its Regents' prayer as an officially approved religious doctrine of that State does not amount to a total establishment of one particular religious sect to the exclusion of all others—that, indeed, the governmental endorsement of that prayer seems relatively insignificant when compared to the governmental encroachments upon religion which were commonplace 200 years ago. To those who may subscribe to the view that because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

‘(I)t is proper to take alarm at the first experiment on our liberties.... Who does not see that the same authority, which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?’

The judgment of the Court of Appeals of New York is reversed and the cause remanded for further proceedings not inconsistent with this opinion. Reversed and remanded.

Zdroj: *370 U.S. 421*, 1962, s. 422–36 .