CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – "Contemplation of Justice"

Lynch v. Donnelly, 465 U.S. 668 (1984)

Held: Notwithstanding the religious significance of the creche, Pawtucket has not violated the Establishment Clause. Pp. 465 U. S. 672-687.

(a) The concept of a "wall" of separation between church and state is a useful metaphor, but is not an accurate description of the practical aspects of the relationship that in fact exists. The Constitution does not require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. Anything less would require the "callous indifference," Zorach v. Clauson, 343 U. S. 306, 343 U. S. 314, that was never intended by the Establishment Clause. Pp. 465 U. S. 672-673.

(b) This Court's interpretation of the Establishment Clause comports with the contemporaneous understanding of the Framers' intent. That neither the draftsmen of the Constitution, who were Members of the First Congress, nor the First Congress itself saw any establishment problem in employing Chaplains to offer daily prayers in the Congress is a striking example of the accommodation of religious beliefs intended by the Framers. Pp. 465 U. S. 673-674.

(c) Our history is pervaded by official acknowledgment of the role of religion in American life, and equally pervasive is evidence of accommodation of all faiths and all forms of religious expression and hostility toward none. Pp. 465 U. S. 674-678.

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(d) Rather than taking an absolutist approach in applying the Establishment Clause and mechanically invalidating all governmental conduct or statutes that confer benefits or give special recognition to religion in general or to one faith, this Court has scrutinized challenged conduct or

legislation to determine whether, in reality, it establishes a religion or religious faith or tends to do so. In the line-drawing process called for in each case, it has often been found useful to inquire whether the challenged law or conduct has a secular purpose, whether its principal or primary effect is to advance or inhibit religion, and whether it creates an excessive entanglement of government with religion. But this Court has been unwilling to be confined to any single test or criterion in this sensitive area. Pp. 465 U. S. 678-679.

(e) Here, the focus of the inquiry must be on the creche in the context of the Christmas season. Focus exclusively on the religious component of any activity would inevitably lead to its invalidation under the Establishment Clause. Pp. 465 U. S. 679-680.

(f) Based on the record in this case, the city has a secular purpose for including the creche in its Christmas display, and has not impermissibly advanced religion or created an excessive entanglement between religion and government. The display is sponsored by the city to celebrate the Holiday recognized by Congress and national tradition and to depict the origins of that Holiday; these are legitimate secular purposes. Whatever benefit to one faith or religion or to all religions inclusion of the creche in the display effects, is indirect, remote, and incidental, and is no more an advancement or endorsement of religion than the congressional and executive recognition of the origins of Christmas, or the exhibition of religious paintings in governmentally supported museums. This Court is unable to discern a greater aid to religion from the inclusion of the creche than from the substantial benefits previously held not violative of the Establishment Clause. As to administrative entanglement, there is no evidence of contact with church authorities concerning the content or design of the exhibition prior to or since the city's purchase of the creche. No expenditures for maintenance of the creche have been necessary, and, since the city owns the creche, now valued at $200, the tangible material it contributes is de minimis. Political divisiveness alone cannot serve to invalidate otherwise permissible conduct, and, in any event, apart from the instant litigation, there is no evidence of political friction or divisiveness over the creche in the 40-year history of the city's Christmas celebration. Pp. 465 U. S. 680-685.

(g) It would be ironic if the inclusion of the creche in the display, as part of a celebration of an event acknowledged in the Western World for 20 centuries, and in this country by the people, the Executive Branch,

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Congress, and the courts for 2 centuries, would so "taint" the exhibition as to render it violative of the Establishment Clause. To forbid the use of this one passive symbol while hymns and carols are sung and played in public places including schools, and while Congress and state legislatures open public sessions with prayers, would be an overreaction contrary to this Nation's history and this Court's holdings. Pp. 465 U. S. 685-686.
691 F.2d 1029, reversed.

BURGER, C.J., delivered the opinion of the Court, in which WHITE, POWELL, REHNQUIST, and O'CONNOR, JJ., joined. O'CONNOR, J., filed a concurring opinion, post, p. 465 U. S. 687. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, BLACKMUN, and STEVENS,

JJ., joined, post, p. 465 U. S. 694. BLACKMUN, J., filed a dissenting opinion, in which STEVENS, J., joined, post, p. 465 U. S. 726.

No significant segment of our society, and no institution within it, can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. "It has never been thought either possible or desirable to enforce a regime of total separation. . . ." Committee for Public Education & Religious Liberty v. Nyquist, 413 U. S. 756, 413 U. S. 760 (1973). Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. See, e.g., Zorach v. Clauson, 343 U. S. 306, 343 U. S. 314, 343 U. S. 315 (1952); Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203, 333 U. S. 211 (1948). Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause. Zorach, supra, at 343 U. S. 314. Indeed, we have observed, such hostility would bring us into "war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion." McCollum, supra, at 333 U. S. 211-212.

There are countless other illustrations of the Government's acknowledgment of our religious heritage and governmental sponsorship of graphic manifestations of that heritage. Congress has directed the President to proclaim a National Day of Prayer each year "on which [day] the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals." 36 U.S.C. § 169h. Our Presidents have repeatedly issued such Proclamations. [Footnote 5] Presidential Proclamations and messages have also issued to commemorate Jewish Heritage Week, Presidential Proclamation No. 4844, 3 CFR 30 (1982), and the Jewish High Holy Days, 17 Weekly Comp. of Pres.Doc. 1058 (1981). One cannot look at even this brief resume without finding that our history is pervaded by expressions of religious beliefs such as are found in Zorach. Equally pervasive is the evidence of accommodation of all faiths and all forms of religious expression, and hostility toward none. Through this accommodation,

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as Justice Douglas observed, governmental action has "follow[ed] the best of our traditions" and "respect[ed] the religious nature of our people." 343 U.S. at 3 343 U. S. 14.

Rather than mechanically invalidating all governmental conduct or statutes that confer benefits or give special recognition to religion in general or to one faith -- as an absolutist approach would dictate -- the Court has scrutinized challenged legislation or official conduct to determine whether, in reality, it establishes a religion or religious faith, or tends to do so. See Walz, supra, at 397 U. S. 669. Joseph Story wrote a century and a half ago:

"The real object of the [First] Amendment was . . . to prevent any national ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government."

3 J. Story, Commentaries on the Constitution of the United States 728 (1833).

In each case, the inquiry calls for line-drawing; no fixed, per se rule can be framed. The Establishment Clause, like the Due Process Clauses, is not a precise, detailed provision in a legal code capable of ready application. The purpose of the Establishment Clause "was to state an objective, not to write a statute." Walz, supra, at 397 U. S. 668. The line between permissible relationships and those barred by the Clause can no

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more be straight and unwavering than due process can be defined in a single stroke or phrase or test. The Clause erects a "blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship." Lemon, 403 U.S. at 403 U. S. 614

That this Court has been alert to the constitutionally expressed opposition to the establishment of religion is shown in numerous holdings striking down statutes or programs as violative of the Establishment Clause. See, e.g., Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203 (1948); Epperson v. Arkansas, 393 U. S. 97 (1968); Lemon v. Kurtzman, supra; Levitt v. Committee for Public Education & Religious Liberty, 413 U. S. 472 (1973); Committee

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for Public Education & Religious Liberty v. Nyquist, 413 U. S. 756 (1973); Meek v. Pittenger, 421 U. S. 349 (1975); and Stone v. Graham, 449 U. S. 39 (1980). The most recent example of this careful scrutiny is found in the case invalidating a municipal ordinance granting to a church a virtual veto power over the licensing of liquor establishments near the church. Larkin v. Grendel's Den, Inc., 459 U. S. 116 (1982). Taken together, these cases abundantly demonstrate the Court's concern to protect the genuine objectives of the Establishment Clause. It is far too late in the day to impose a crabbed reading of the Clause on the country.

JUSTICE O'CONNOR, concurring.

The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. Government can run afoul of that prohibition in two principal ways. One is excessive

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entanglement with religious institutions, which may interfere with the independence of the institutions, give the institutions access to government or governmental powers not fully shared by nonadherents of the religion, and foster the creation of political constituencies defined along religious lines. E.g., Larkin v. Grendel's Den, Inc., 459 U. S. 116 (1982). The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message. See generally Abington School District v. Schempp, 374 U. S. 203 (1963).