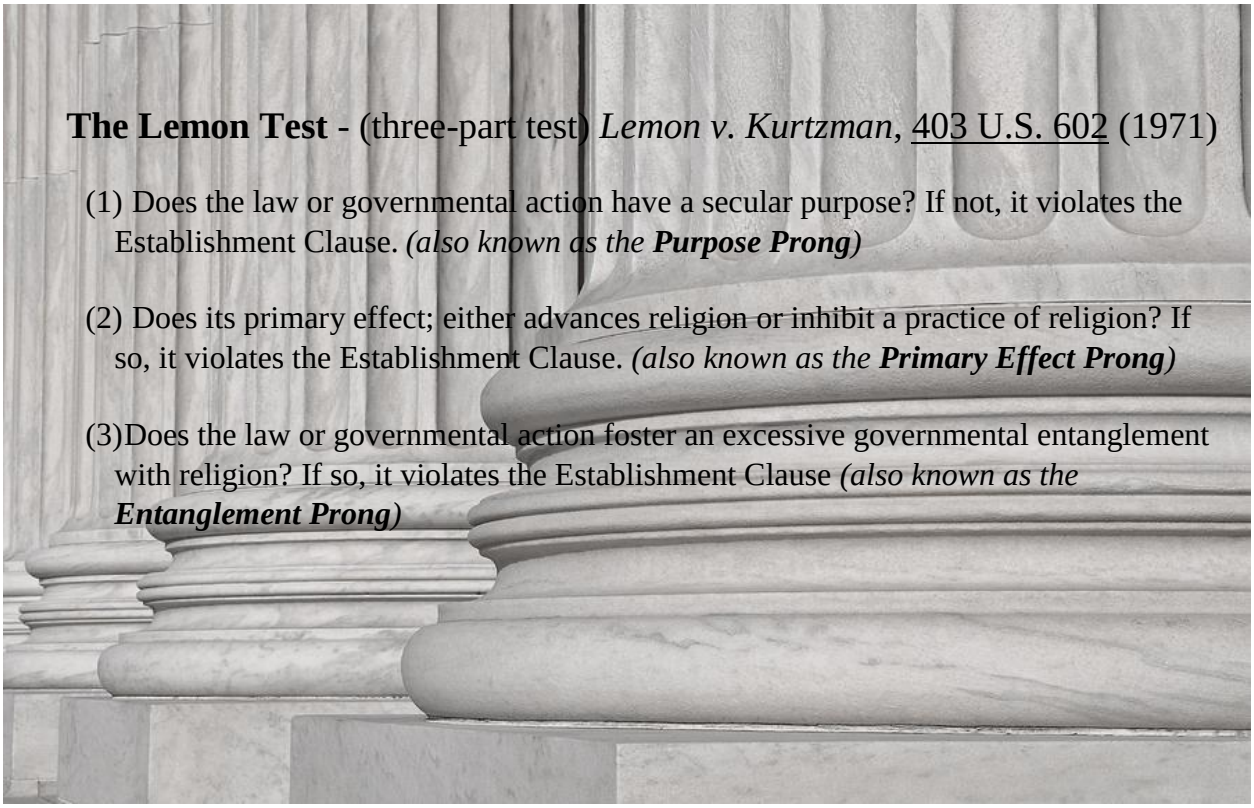
CONTROLLING CONSTITUTIONAL PRINCIPLES, PURPOSES & PRACTICES
U. S. Supreme Court Establishment Clause Doctrine - A Landmark Case
Lemon v. Kurtzman, 403 U.S. 602 (1971)



The language of the Religion Clauses of the First Amendment is, at best, opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead, they commanded that there should be "no law respecting an establishment of religion." A law may be one "respecting" the forbidden objective while falling short of its total realization. **A law "respecting" the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not establish a state religion, but nevertheless be one "respecting" that end in the sense of being a step that could lead to such establishment, and hence offend the First Amendment.**

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: "sponsorship, financial support, and active involvement of the sovereign in religious activity." Walz v. Tax Commission, 397 U. S. 664, 397 U. S. 668 (1970).

This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction of church schools, and hence of churches. The Court noted "the hazards of government supporting churches" in Walz v. Tax Commission, supra, at 397 U. S. 675, and we cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion and thus conflict with the Religion Clauses.

The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.

Of course, as the Court noted in Walz, "[a]dherents of particular faiths and individual churches frequently take strong positions on public issues." Walz v. Tax Commission, supra, at 397 U. S. 670. We could not expect otherwise, for religious values pervade the fabric of our national life.

We said in unequivocal words in Everson v. Board of Education, 330 U. S. 1, 330 U. S. 16,

"**No tax in any amount, large or small,** can be levied to support any **religious activities** or **institutions**, whatever they may be called, or whatever form they may adopt to teach or practice religion."

We reiterated the same idea in Zorach v. Clauson, 343 U. S. 306, 343 U. S. 314, and in McGowan v. Maryland, 366 U. S. 420, 366 U. S. 443, and in Torcaso v. Watkins, 367 U. S. 488, 367 U. S. 493.

MR. JUSTICE BRENNAN wrote

I continue to adhere to the view that, to give concrete meaning to the Establishment Clause,

"the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First

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Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice.

Schempp, 374 U.S. at 374 U. S. 295 (BRENNAN, J., concurring).

"[G]overnment and religion have discrete interests which are mutually best served when each avoids too close a proximity to the other. It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but, in as high degree, it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government."

Id. at 374 U. S. 259 (BRENNAN, J., concurring).

"Tax exemptions and general subsidies, however, are qualitatively different. Though both provide economic assistance, they do so in fundamentally different ways. A subsidy involves the direct transfer of public monies to the subsidized enterprise, and uses resources exacted from taxpayers as a whole. An exemption, on the other hand, involves no such

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transfer. It assists the exempted enterprise only passively, by relieving a privately funded venture of the burden of paying taxes. In other words, '[i]n the case of direct subsidy, the state forcibly diverts the income of both believers and nonbelievers to churches,' while,"

"[i]n the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions."

"Thus,"

"the symbolism of tax exemption is significant as a manifestation that organized religion is not expected to support the state; by the same token the state is not expected to support the church."

397 U.S. at 397 U. S. 690-691 (footnotes and citations omitted) (concurring opinion).