CONTROLLING CONSTITUTIONAL PRINCIPLES, PURPOSES & PRACTICES
U. S. Supreme Court Establishment Clause Decision
Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982)

Here that "wall" is substantially breached by vesting discretionary governmental powers in religious bodies.

This Court has consistently held that a statute must satisfy three criteria to pass muster under the Establishment Clause:

"First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster 'an excessive government entanglement with religion.'"

Lemon v. Kurzman, supra, at 403 U. S. 612-613, quoting Walz v. Tax Comm'n, supra, at 397 U. S. 674. See also Widmar v. Vincent, 454 U. S. 263, 454 U. S. 271 (1981); Wolman v. Walter, 433 U. S. 229, 433 U. S. 236 (1977). Independent of the first of those criteria, the statute, by delegating a governmental power to religious institutions, inescapably implicates the Establishment Clause.

This statute enmeshes churches in the exercise of substantial governmental powers contrary to our consistent interpretation of the Establishment Clause; "[t]he objective is to prevent, as far as possible, the intrusion of either [Church or State] into the precincts of the other." Lemon v. Kurtzman, 403 U.S. at 403 U. S. 614. We went on in that case to state:

"Under our system, the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that, while some involvement and entanglement are inevitable, lines must be drawn."

Id. at 403 U. S. 625 (emphasis added).

Our contemporary views do no more than reflect views approved by the Court more than a century ago:

"'The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority.'"

Watson v. Jones, 13 Wall. 679, 80 U. S. 730 (1872), quoting Harmon v. Dreher, 1 Speers Eq. 87, 120 (S.C. App. 1843).

As these and other cases make clear, the core rationale underlying the Establishment Clause is preventing "a fusion of governmental and religious functions," Abington School District

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v. Schempp, 374 U. S. 203, 374 U. S. 222 (1963). See, e.g., Walz v. Tax Comm'n, 397 U.S. at 397 U. S. 674-675; Everson v. Board of Education, 330 U. S. 1, 330 U. S. 8-13 (1947). [Footnote 10] The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions.

We need not decide whether, or upon what conditions, such power may ever be delegated to nongovernmental entities; here, of two classes of institutions to which the legislature has delegated this important decision making power, one is secular, but one is religious. Under these circumstances, the deference normally due a legislative zoning judgment is not merited. [Footnote 5]

The purposes of the First Amendment guarantees relating to religion were two-fold: to foreclose state interference with the practice of religious faiths, and to foreclose the establishment of a state religion familiar in other 18th-century systems. Religion and government, each insulated from the other, could then coexist. Jefferson's idea of a "wall," see Reynolds v. United States, 98 U. S. 145, 98 U. S. 164 (1879), quoting reply from Thomas Jefferson to an address by a committee of

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the Danbury Baptist Association (January 1, 1802), reprinted in 8 Writings of Thomas Jefferson 113 (H. Washington ed. 1861), was a useful figurative illustration to emphasize the concept of separateness. Some limited and incidental entanglement between church and state authority is inevitable in a complex modern society, see, e.g., Lemon v. Kurtzman, 403 U. S. 602, 403 U. S. 614 (1971); Walz v. Tax Comm'n, 397 U. S. 664, 397 U. S. 670 (1970), but the concept of a "wall" of separation is a useful signpost. ***Here that "wall" is substantially breached by vesting discretionary governmental powers in religious bodies.***

JUSTICE REHNQUIST, ***dissenting.***

Dissenting opinions in previous cases have commented that "great" cases, like "hard" cases, make bad law. Northern Securities Co. v. United States, 193 U. S. 197, 193 U. S. 400-401 (1904) (Holmes, J., dissenting); Nixon v. Administrator of General

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Services, 433 U. S. 425, 433 U. S. 505 (1977) (BURGER, C.J., dissenting).