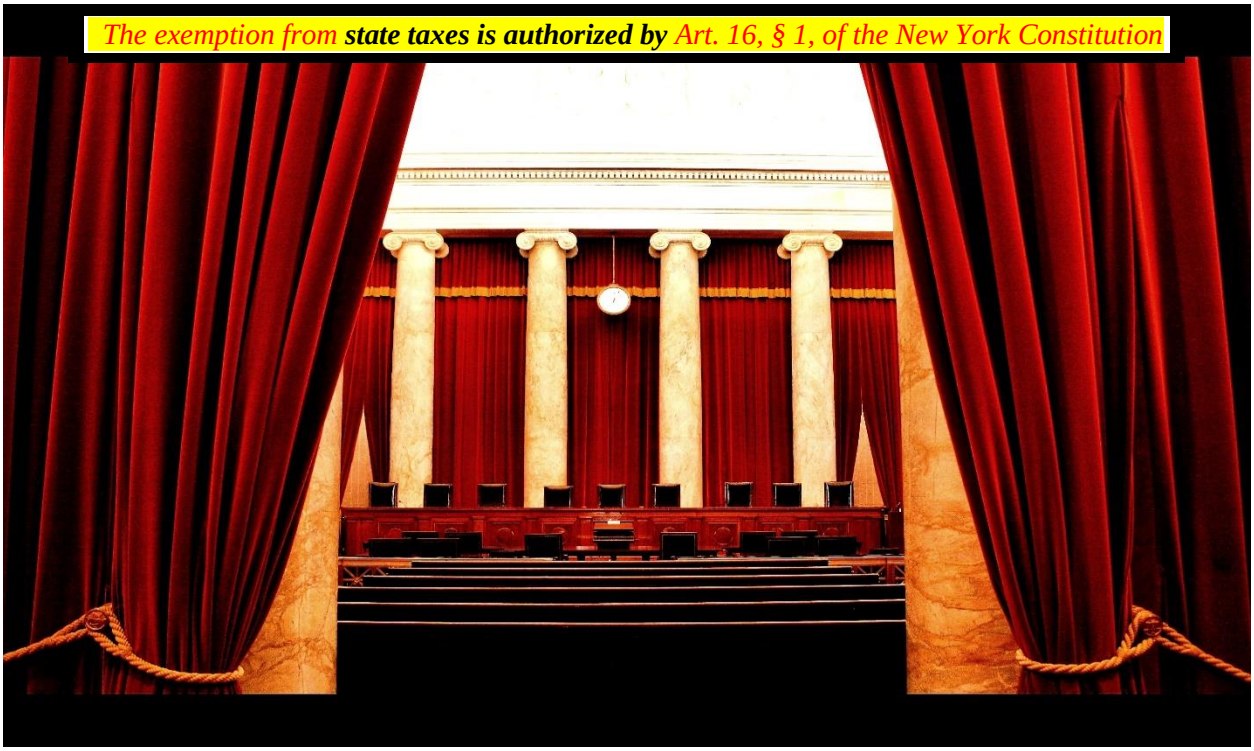
CONTROLLING CONSTITUTIONAL PRINCIPLES, PURPOSES & PRACTICES
U. S. Supreme Court Establishment Clause Decision
Walz v. Tax Comm'n of City of New York, 397 U.S. 664 (1970)

The exemption from ***state taxes is authorized by*** *Art. 16, § 1, of the New York Constitution*



MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Appellant, owner of real estate in Richmond County, New York, sought an injunction in the New York courts to prevent the New York City Tax Commission from granting property tax exemptions to religious organizations for religious properties used solely for religious worship. **The exemption from *state taxes is authorized by Art. 16, § 1, of the New York Constitution***, which provides in relevant part:

"Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or

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charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit. [Footnote 1]"

The Establishment and Free Exercise Clauses of the First Amendment are not the most precisely drawn portions of the Constitution. *The sweep of the absolute prohibitions in the Religion Clauses may have been calculated, but the purpose was to state an objective, not to write a statute.* In attempting to articulate the scope of the two Religion Clauses, the Court's opinions reflect the limitations inherent in formulating general principles on a case by-case basis.

The argument that making "fine distinctions" between what is and what is not absolute under the Constitution is to render us a government of men, not laws, gives too little weight to the fact that it is an essential part of adjudication to draw distinctions, including fine ones, in the process of interpreting the Constitution. We must frequently decide, for example, what are "reasonable" searches and seizures under the Fourth Amendment. Determining what acts of government tend to establish or **interfere with religion falls well within what courts have long been called upon to do in sensitive areas.**

The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a

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logical extreme, would tend to clash with the other. For example, in *Zorach v. Clauson,*343 U. S. 306 (1952), MR. JUSTICE DOUGLAS, writing for the Court, noted:

"The First Amendment, however, does not say that, in every and all respects, there shall be a separation of Church and State."

Id. at 343 U. S. 312.

"We sponsor an attitude on the part of government that shows no partiality to any one group, and that lets each flourish according to the zeal of its adherents and the appeal of its dogma."

Id. at 343 U. S. 313.

Prior opinions of this Court have discussed the development and historical background of the First Amendment in detail. *See Everson v. Board of Education,*330 U. S. 1 (1947); *Engel v. Vitale,*370 U. S. 421 (1962). It would therefore serve no useful purpose to review in detail the background of the Establishment and Free

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Exercise Clauses of the First Amendment or to restate what the Court's opinions have reflected over the years.

There is no genuine nexus between tax exemption and establishment of religion. As Mr. Justice Holmes commented in a related context, "a page of

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history is worth a volume of logic." *New York Trust Co. v. Eisner,*256 U. S. 345, 256 U. S. 349

“It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence, and indeed predates it. Yet an unbroken practice of according the exemption to churches, openly and by affirmative state action, not covertly or by state inaction, is not something to be lightly cast aside.”

"In the exercise of this [taxing] power, Congress, like any State legislature unrestricted by constitutional provisions, may, at its discretion, wholly exempt certain classes of property from taxation, or

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may tax them at a lower rate than other property."

*Gibbons v. District of Columbia*116 U. S. 404, 116 U. S. 408 (1886).

The hazards of placing too much weight on a few words or phrases of the Court is abundantly illustrated within the pages of the Court's opinion in *Everson.* MR. JUSTICE BLACK, writing for the Court s majority, said the First Amendment

"means at least this: neither a state nor the Federal Government can . . . pass laws which aid one religion, aid all religions, or prefer one religion over another."

330 U.S. at 330 U. S. 15. Yet he had no difficulty in holding that:

"Measured by these standards, we cannot say that the First Amendment prohibits New Jersey from spending tax raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools. *It is undoubtedly true that children are helped to get to church schools. There is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets. . . .*"

Id. at 330 U. S. 17. (Emphasis added.)

Nothing in this national attitude toward religious tolerance and two centuries of uninterrupted freedom from taxation has given the remotest sign of leading to an established church or religion, and, on the contrary, it has operated affirmatively to help guarantee the free exercise of all forms of religious belief. Thus, it is hardly useful to suggest that tax exemption is but the "foot in the door" or the "nose of the camel in the tent" leading to an established church. If tax exemption can be seen as this first step toward "establishment" of religion, as MR. JUSTICE DOUGLAS fears, the second step has been long in coming. Any move that realistically "establishes" a church or tends to do so can be dealt with "while this Court sits."

Mr. Justice Cardozo commented in The Nature of the Judicial Process 51 (1921) on the "tendency of a principle

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to expand itself to the limit of its logic"; such expansion must always be contained by the historical frame of reference of the principle's purpose, and there is no lack of vigilance on this score by those who fear religious entanglement in government.

The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders. In any particular case, the critical question is whether the circumference of legislation encircles a class so broad that it can be fairly concluded that religious institutions could be thought to fall within the natural perimeter.