

CONTROLLING LEGAL PRINCIPLES

*Free Exercise Clause Decision – The “Contemplation of Justice”
Estate of Thornton v. Caldor, Inc. 472 U.S. 703 (1984)*



Under the Religion Clauses, **government must guard against activity that impinges on religious freedom, and must take pains not to compel people to act in the name of any religion.** In setting the appropriate boundaries in Establishment Clause cases, the Court has frequently relied on our holding in *Lemon, supra*, for guidance, and we do so here. To pass constitutional muster under *Lemon* a statute must not only have a secular purpose and not foster excessive entanglement of government with religion, its primary effect must not advance or inhibit religion.

This unyielding weighting in favor of Sabbath observers over all other interests contravenes a fundamental principle of the Religion Clauses, so well-articulated by Judge Learned Hand:

"The First Amendment . . . gives no one the right to insist that, in pursuit of their own interests, others must conform their conduct to his own religious necessities."

Ottens v. Baltimore & Ohio R. Co., 205 F.2d 58, 61 (CA2 1953). As such, the statute goes beyond having an incidental or remote effect of advancing religion. See, e.g., *Roemer v. Maryland Bd. of Public Works*, 426 U. S. 736, 426 U. S. 747 (1976); *Board of Education v. Allen*, 392 U. S. 236 (1968).

