

## CONTROLLING LEGAL PRINCIPLES

### *Free Exercise Clause Decision – “Contemplation of Justice”*

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



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