109 S.Ct. 3086, 106 L.Ed.2d 472, 57 USLW 5045

KeyCite Red Flag - Severe Negative Treatment
Abrogated by Town of Greece, N.Y. v. Galloway, U.S., May 5, 2014

109 S.Ct. 3086
Supreme Court of the United States

COUNTY OF ALLEGHENY, et al., Petitioners
v.
AMERICAN CIVIL LIBERTIES UNION GREATER PITTSBURGH CHAPTER et al.
CHABAD, Petitioner,
v.
AMERICAN CIVIL LIBERTIES UNION et al.
CITY OF PITTSBURGH, Petitioner,
v.
AMERICAN CIVIL LIBERTIES UNION GREATER PITTSBURGH CHAPTER et al.

Nos. 87–2050, 88–90 and 88–96.
|
Argued Feb. 22, 1989.
|
Decided July 3, 1989.

Synopsis

Civil liberties organization and certain individuals brought action against county and city to challenge constitutionality of **crèche** in county courthouse and Chanukah menorah outside city and county building as violations of establishment clause. The United States District Court for the Western District of Pennsylvania, Barron P. McCune, J., entered judgment in favor of defendants. The Court of Appeals, 842 F.2d 655, reversed and remanded. Certiorari was granted. The Supreme Court, Justice Blackmun, held that: (1) display of **crèche** violated establishment clause, and (2) display of menorah next to Christmas tree did not have unconstitutional effect of endorsing Christian and Jewish faiths.

Court of Appeals affirmed in part and reversed in part, and cases remanded.

Justice O'Connor concurred in part, concurred in judgment, and filed opinion joined in part by Justices Brennan and Stevens.

Justice Brennan concurred in part, dissented in part, and filed opinion joined by Justices Marshall and Stevens.

Justice Stevens concurred in part, dissented in part, and filed opinion joined by Justices Brennan and Marshall.

Justice Kennedy concurred in judgment in part, dissented in part, and filed opinion joined by Chief Justice Rehnquist and Justices White and Scalia.

West Headnotes (35)

[1] **Constitutional Law** Establishment of Religion

Constitutional Law Advancement, endorsement, or sponsorship of religion; favoring or preferring religion

Constitutional Law Religious Organizations in General

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))
92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1298 Advancement, endorsement, or sponsorship of religion; favoring or preferring religion
(Formerly 92k84.1, 92k84(1))
92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1327 Religious Organizations in General
92k1328 In general
(Formerly 92k84.1)

Establishment clause means that government may not promote or affiliate itself with any religious doctrine or organization, may not discriminate among persons on basis of their religious beliefs and practices, may not delegate governmental power to religious institution, and

may not involve itself too deeply in institution's affairs. U.S.C.A. Const.Amend. 1.

134 Cases that cite this headnote

[2] **Constitutional Law** Establishment of Religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))

Under *Lemon* analysis, statute or practice which touches upon religion, if it is to be permissible under establishment clause, must have secular purpose; it must neither advance nor inhibit religion in principal or primary effect; and it must not foster excessive entanglement with religion. U.S.C.A. Const.Amend. 1.

69 Cases that cite this headnote

[3] **Constitutional Law** Establishment of Religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))

Establishment clause, at very least, prohibits government from appearing to take position on questions of religious belief or from making adherence to religion relevant in any way to person's standing in political community. U.S.C.A. Const.Amend. 1.

59 Cases that cite this headnote

[4] **Constitutional Law** Freedom of Religion and Conscience

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 In general
(Formerly 92k84.1, 92k84(1))

Government's use of religious symbolism is unconstitutional if it has effect of endorsing religious beliefs; that effect depends upon context. (Per Justice Blackmun with one Justice joining and four Justices concurring in part.) U.S.C.A. Const.Amend. 1.

29 Cases that cite this headnote

[5] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(11))

Crèche displayed on grand staircase of county courthouse and surrounded by traditional Christmas greens had effect of endorsing patently Christian message and violated establishment clause, even though it was setting for county's annual Christmas carole program and contained sign disclosing ownership by Roman Catholic organization; **crèche** was its own display distinct from other decorations or exhibitions in the building; angel was presented as saying "Glory to God in the Highest!"; and **crèche** sent message of support and promotion of Christian praise. U.S.C.A. Const.Amend. 1.

147 Cases that cite this headnote

[6] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(1))

Effect of **crèche** display which is challenged as violation of establishment clause turns on its setting. U.S.C.A. Const.Amend. 1.

26 Cases that cite this headnote

[7] **Constitutional Law** Religious Organizations in General

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1327 Religious Organizations in General
92k1328 In general
(Formerly 92k84.5(7.1), 92k84.5(7))

Establishment clause does not limit only religious content of government's own communication; it also prohibits government's support and promotion of religious communications by religious organizations. U.S.C.A. Const.Amend. 1.

21 Cases that cite this headnote

[8] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(11))

By prohibiting government endorsement of religion, establishment clause prohibited county from lending support to communication of religious organization's religious message in form of **crèche** at county courthouse. U.S.C.A. Const.Amend. 1.

87 Cases that cite this headnote

[9] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(11))

Celebration of Christmas as national holiday did not validate constitutionality of **crèche** displayed on grand staircase of county courthouse. U.S.C.A. Const.Amend. 1.

33 Cases that cite this headnote

[10] **Constitutional Law** Holidays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1388 Holidays
(Formerly 92k84.5(15))

Although government may acknowledge Christmas as cultural phenomenon, establishment clause prohibits it from observing it as Christian holy day by suggesting that people praise God for birth of Jesus. U.S.C.A. Const.Amend. 1.

16 Cases that cite this headnote

[11] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(11))

Display of **crèche** in county courthouse could not be justified as accommodation of religion; display of **crèche** did not remove any burden on free exercise of Christianity. U.S.C.A. Const.Amend. 1.

10 Cases that cite this headnote

[12] **Constitutional Law** Establishment of Religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))

Government efforts to accommodate religion are permissible under establishment clause when they remove burdens on free exercise of religion. U.S.C.A. Const.Amend. 1.

27 Cases that cite this headnote

[13] **Constitutional Law** Holidays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1388 Holidays
(Formerly 92k84.5(15))

Government may celebrate Christmas in some manner and form, but not in way that endorses Christian doctrine. U.S.C.A. Const.Amend. 1.

7 Cases that cite this headnote

[14] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(11))

For purposes of establishment clause, there is distinction between **crèche** displays and references to God in Pledge of Allegiance and national motto, "In God We Trust." U.S.C.A. Const.Amend. 1.

28 Cases that cite this headnote

[15] **Constitutional Law** Freedom of Religion and Conscience

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 In general
(Formerly 92k84.1, 92k84(1))

However history may affect constitutionality of nonsectarian references to religion by government, history cannot legitimate practices that demonstrate government's allegiance to particular sect or creed. U.S.C.A. Const.Amend. 1.

20 Cases that cite this headnote

[16] **Constitutional Law** Particular Issues and Applications

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1310 In general
(Formerly 92k84.5(1))

United States' heritage of official discrimination against non-Christians has no place in jurisprudence of establishment clause. U.S.C.A. Const.Amend. 1.

8 Cases that cite this headnote

[17] **Constitutional Law** Advancement, endorsement, or sponsorship of religion; favoring or preferring religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1298 Advancement, endorsement, or sponsorship of religion; favoring or preferring religion
(Formerly 92k84.1, 92k84(1))

Whatever else the establishment clause may mean, it certainly means at the very least that government may not demonstrate preference for one particular sect or creed, including preference for Christianity over other religions. U.S.C.A. Const.Amend. 1.

27 Cases that cite this headnote

[18] **Constitutional Law** Advancement, endorsement, or sponsorship of religion; favoring or preferring religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1298 Advancement, endorsement, or sponsorship of religion; favoring or preferring religion
(Formerly 92k84.1, 92k84(1))

Historical incidents of preference for one particular sect or creed cannot diminish in any way force of establishment clause's command not to demonstrate preference for one particular sect or creed. U.S.C.A. Const.Amend. 1.

19 Cases that cite this headnote

[19] **Constitutional Law** Establishment of Religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))

Establishment clause cannot be interpreted in light of any favoritism for Christianity that may have existed among founders of republic. U.S.C.A. Const.Amend. 1.

1 Case that cites this headnote

[20] **Constitutional Law** Establishment of Religion

Constitutional Law Advancement, endorsement, or sponsorship of religion; favoring or preferring religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))
92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1298 Advancement, endorsement, or sponsorship of religion; favoring or preferring religion
(Formerly 92k84.1, 92k84(1))

Question whether particular practice would constitute governmental proselytization is much the same as endorsement inquiry under establishment clause, except to extent that proselytization test requires "obvious" allegiance between government and favored sects; however, strict scrutiny is required for practices suggesting denominational preference. U.S.C.A. Const.Amend. 1.

119 Cases that cite this headnote

[21] **Constitutional Law** Freedom of Religion and Conscience

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1290 In general
(Formerly 92k84.1, 92k84(1))

Constitution mandates that government remain secular, rather than affiliating itself with religious beliefs or institutions, precisely in order to avoid discriminating among citizens on basis of their religious faith. U.S.C.A. Const.Amend. 1.

27 Cases that cite this headnote

[22] **Constitutional Law** Establishment of Religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))

Claim that lack of established religion discriminates against some preferences contradicts fundamental, antidiscrimination premise of establishment clause itself. U.S.C.A. Const.Amend. 1.

[23] **Constitutional Law** Establishment of Religion

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 In general
(Formerly 92k84.1, 92k84(1))

Antidiscrimination principle inherent in establishment clause necessarily means that

would-be discriminators on basis of religion cannot prevail. U.S.C.A. Const.Amend. 1.

[24] **Constitutional Law** Holidays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1388 Holidays
(Formerly 92k84.5(15))

Claim that prohibiting government from celebrating Christmas as religious holiday discriminates against Christians in favor of nonadherents contradicts fundamental premise of establishment clause. U.S.C.A. Const.Amend. 1.

24 Cases that cite this headnote

[25] **Constitutional Law** Holidays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1388 Holidays
(Formerly 92k84.5(15))

Confining government's own celebration of Christmas to holiday's secular aspects does not favor religious beliefs of non-Christians over those of Christians, but simply permits government to acknowledge holiday without expressing allegiance to Christian beliefs, an allegiance that would truly favor Christians over non-Christians. U.S.C.A. Const.Amend. 1.

20 Cases that cite this headnote

[26] **Constitutional Law** Government Property

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1374 In general
(Formerly 92k84.5(11))

Not all religious celebrations of Christmas located on government property violate establishment clause. U.S.C.A. Const.Amend. 1.

13 Cases that cite this headnote

[27] **Constitutional Law** Government Property

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1374 In general
(Formerly 92k84.5(11))

Once judgment has been made that particular proclamation of Christian belief, when disseminated from particular location on government property, has effect of demonstrating government's endorsement of Christian faith, then practice must be enjoined to protect constitutional rights of citizens following some creed other than Christianity. U.S.C.A. Const.Amend. 1.

9 Cases that cite this headnote

[28] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(11))

Conclusion that **crèche** displayed in county courthouse demonstrated county's endorsement of Christianity did not represent hostility or indifference to religion, but demonstrated respect for religious diversity required by Constitution. U.S.C.A. Const.Amend. 1.

11 Cases that cite this headnote

[29] **Constitutional Law** Nativity scenes; **creches**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1378 Nativity scenes; **creches**
(Formerly 92k84.5(11))

Permitting display of **crèche** in county courthouse would not be "accommodation" of religion. U.S.C.A. Const.Amend. 1.

12 Cases that cite this headnote

[30] **Constitutional Law** 🔑 Holiday and seasonal displays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1377 Holiday and seasonal displays
(Formerly 92k84.5(11))

Display of 18–foot Chanukah menorah and 45–foot Christmas tree under sign saluting liberty did not simultaneously endorse Christian and Jewish faiths, but was secular celebration of Christmas coupled with acknowledgement of Chanukah as contemporaneous alternative tradition, even though menorah retained religious significance in display; sign confirmed that menorah was recognition of cultural diversity; and absence of more secular alternative to menorah was itself part of context in which city's actions were to be judged. (Per Justice Blackmun with the Chief Justice and four Justices concurring in the judgment.) U.S.C.A. Const.Amend. 1.

156 Cases that cite this headnote

[31] **Constitutional Law** 🔑 Particular Issues and Applications

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1310 In general
(Formerly 92k84.5(1))

Inquiry concerning government's use of religious object to determine whether that use results in religious preference in violation of establishment clause requires review of factual record concerning religious object. (Per Justice Blackmun with the Chief Justice and four Justices concurring in the judgment.) U.S.C.A. Const.Amend. 1.

6 Cases that cite this headnote

[32] **Constitutional Law** 🔑 Holidays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1388 Holidays
(Formerly 92k84.5(15))

If city celebrates Christmas and Chanukah as religious holidays, then it violates establishment clause; simultaneous endorsement of Judaism and Christianity is no less constitutionally infirm than endorsement of Christianity alone. (Per Justice Blackmun with the Chief Justice and four Justices concurring in the judgment.).

12 Cases that cite this headnote

[33] **Constitutional Law** 🔑 Holidays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1388 Holidays
(Formerly 92k84.5(15))

If city celebrates both Christmas and Chanukah as secular holidays, then its conduct is beyond reach of establishment clause. (Per Justice Blackmun with the Chief Justice and four Justices concurring in the judgment.) U.S.C.A. Const.Amend. 1.

2 Cases that cite this headnote

[34] **Constitutional Law** 🔑 Holiday and seasonal displays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1377 Holiday and seasonal displays
(Formerly 92k84.5(11))

While adjudication of effect of display containing Christmas tree and Chanukah menorah must take into account perspective of one who is neither Christian nor Jewish, as well as of those who adhere to either

of these religions, constitutionality of effect under establishment clause must also be judged according to standard of reasonable observer. (Per Justice Blackmun with the Chief Justice and four Justices concurring in the judgment.) U.S.C.A. Const.Amend. 1.

95 Cases that cite this headnote

[35] Constitutional Law Holiday and seasonal displays

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1373 Government Property
92k1377 Holiday and seasonal displays
(Formerly 92k84.5(11))

Christmas tree alone outside city and county building would not endorse Christian belief. (Per Justice Blackmun with the Chief Justice and four Justices concurring in the judgment.) U.S.C.A. Const.Amend. 1.

15 Cases that cite this headnote

****3089 *573** *Syllabus* *

This litigation concerns the constitutionality of two recurring holiday displays located on public property in downtown Pittsburgh. The first, a **crèche** depicting the Christian Nativity scene, was placed on the Grand Staircase of the Allegheny County Courthouse, which is the "main," "most beautiful," and "most public" part of the courthouse. The **crèche** was donated by the Holy Name Society, a Roman Catholic group, and bore a sign to that effect. Its ****3090** manger had at its crest an angel bearing a banner proclaiming "Gloria in Excelsis Deo," meaning "Glory to God in the Highest." The second of the holiday displays in question was an 18–foot Chanukah menorah or candelabrum, which was placed just outside the City–County Building next to the city's 45–foot decorated Christmas tree. At the foot of the tree was a sign bearing the mayor's name and containing text declaring the city's "salute to liberty." The menorah is owned by Chabad, a Jewish group, but is stored, erected, and removed each year by the city. Respondents, the Greater Pittsburgh Chapter of the American Civil Liberties Union and seven local residents, filed suit seeking permanently to enjoin the county from displaying the **crèche** and the city from displaying the menorah on the ground that the displays violated the Establishment Clause of the First Amendment, made applicable to state governments by the Fourteenth Amendment. The District Court denied relief, relying on *Lynch v. Donnelly,* 465 U.S. 668, 104 S.Ct. 1355, 79 L.Ed.2d 604, which held that a city's inclusion of a **crèche** in its annual Christmas display in a private park did not violate the Establishment Clause. The Court of Appeals reversed, distinguishing *Lynch v. Donnelly,* and holding that the **crèche** and the menorah in the present case must be understood as an impermissible governmental endorsement of Christianity and Judaism under *Lemon v. Kurtzman,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745.

***574** *Held:* The judgment is affirmed in part and reversed in part, and the cases are remanded.

842 F.2d 655 (CA 3 1988), affirmed in part, reversed in part, and remanded.

Justice BLACKMUN delivered the opinion of the Court with respect to Parts III–A, IV, and V, concluding that:

1. Under *Lemon v. Kurtzman,* 403 U.S., at 612, 91 S.Ct., at 2111, a "practice which touches upon religion, if it is to be permissible under the Establishment Clause," must not, *inter alia,* "advance [or] inhibit religion in its principal or primary effect." Although, in refining the definition of governmental action that unconstitutionally "advances" religion, the Court's subsequent decisions have variously spoken in terms of "endorsement," "favoritism," "preference," or "promotion," the essential principle remains the same: The Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from "making adherence to a religion relevant in any way to a person's standing in the political community." *Lynch v. Donnelly,* 465 U.S., at 687, 104 S.Ct., at 1367 (O'CONNOR, J., concurring). Pp. 3099–3101.

2. When viewed in its overall context, the **crèche** display violates the Establishment Clause. The **crèche** angel's words

endorse a patently Christian message: Glory to God for the birth of Jesus Christ. Moreover, in contrast to *Lynch,* nothing in the **crèche's** setting detracts from that message. Although the government may acknowledge Christmas as a cultural phenomenon, it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus. Pp. 3103–3105.

3. Justice KENNEDY's reasons for permitting the **crèche** on the Grand Staircase and his condemnation of the Court's reasons for deciding otherwise are unpersuasive. Pp. 3105–3111.

(a) History cannot legitimate practices like the **crèche** display that demonstrate the government's allegiance to a particular sect or creed. Pp. 3106–3107.

(b) The question whether a particular practice would constitute governmental proselytization is much the same as the endorsement inquiry, except to the extent the proselytization test requires an "obvious" allegiance between the government and the favored sect. This Court's decisions, however, impose no such burden on demonstrating that the government has favored a particular sect or creed, but, to the contrary, have required strict scrutiny of practices suggesting a denominational preference. *E.g.,* ****3091** *Larson v. Valente,* 456 U.S. 228, 246, 102 S.Ct. 1673, 1684, 72 L.Ed.2d 33. Pp. 3107–3109.

(c) The Constitution mandates that the government remain secular, rather than affiliating itself with religious beliefs or institutions, precisely in order to avoid discriminating against citizens on the basis of their religious faiths. Thus, the claim that prohibiting government from celebrating Christmas as a religious holiday discriminates against Christians ***575** in favor of nonadherents must fail, since it contradicts the fundamental premise of the Establishment Clause itself. In contrast, confining the government's own Christmas celebration to the holiday's secular aspects does *not* favor the religious beliefs of non-Christians over those of Christians, but simply permits the government to acknowledge the holiday without expressing an impermissible allegiance to Christian beliefs. Pp. 3109–3111.

Justice BLACKMUN, joined by Justice STEVENS, concluded in Part III–B that the concurring and dissenting opinions in *Lynch v. Donnelly* set forth the proper analytical framework for determining whether the government's display of objects having religious significance improperly advances religion. 465 U.S., at 687–694, 104 S.Ct., at 1366–1370 (O'CONNOR, J., concurring); *id.,* at 694–726, 104 S.Ct., at 1370–1387 (BRENNAN, J., dissenting). Pp. 3101–3103.

Justice BLACKMUN concluded in Part VI that the menorah display does not have the prohibited effect of endorsing religion, given its "particular physical setting." Its combined display with a Christmas tree and a sign saluting liberty does not impermissibly endorse both the Christian and Jewish faiths, but simply recognizes that both Christmas and Chanukah are part of the same winter-holiday season, which has attained a secular status in our society. The widely accepted view of the Christmas tree as the preeminent secular symbol of the Christmas season emphasizes this point. The tree, moreover, by virtue of its size and central position in the display, is clearly the predominant element, and the placement of the menorah beside it is readily understood as simply a recognition that Christmas is not the only traditional way of celebrating the season. The absence of a more secular alternative to the menorah negates the inference of endorsement. Similarly, the presence of the mayor's sign confirms that in the particular context the government's association with a religious symbol does not represent sponsorship of religious beliefs but simply a recognition of cultural diversity. Given all these considerations, it is not sufficiently likely that a reasonable observer would view the combined display as an endorsement or disapproval of his individual religious choices. Pp. 3111–3115.

Justice O'CONNOR also concluded that the city's display of a menorah, together with a Christmas tree and a sign saluting liberty, does not violate the Establishment Clause. The Christmas tree, whatever its origins, is widely viewed today as a secular symbol of the Christmas holiday. Although there may be certain secular aspects to Chanukah, it is primarily a religious holiday and the menorah its central religious symbol and ritual object. By including the menorah with the tree, however, and with the sign saluting liberty, the city conveyed a message of pluralism and freedom of belief during the holiday season, which, in this particular physical setting, could not be interpreted by a reasonable ***576** observer as an endorsement of Judaism or Christianity or disapproval of alternative beliefs. Pp. 3122–3124.

Justice KENNEDY, joined by The Chief Justice, Justice WHITE, and Justice SCALIA, concluded that both the menorah display and the crèche display are permissible under the Establishment Clause. Pp. 3134–3140.

(a) The test set forth in *Lemon v. Kurtzman,* 403 U.S. 602, 612, 91 S.Ct. 2105, 2111, 29 L.Ed.2d 745– which prohibits the "principal or primary effect" of a challenged governmental practice from either advancing or inhibiting religion—when applied with the proper sensitivity to our traditions ****3092** and case law, supports the conclusion that both the crèche and the menorah are permissible displays in the context of the holiday season. The requirement of neutrality inherent in the *Lemon* formulation does not require a relentless extirpation of all contact between government and religion. Government policies of accommodation, acknowledgment, and support for religion are an accepted part of our political and cultural heritage, and the Establishment Clause permits government some latitude in recognizing the central role of religion in society. Any approach less sensitive to our heritage would border on latent hostility to religion, as it would require government in all its multifaceted roles to acknowledge only the secular, to the exclusion and so to the detriment of the religious. Thus, this Court's decisions disclose two principles limiting the government's ability to recognize and accommodate religion: It may not coerce anyone to support or participate in any religion or its exercise; and it may not, in the guise of avoiding hostility or callous indifference, give direct benefits to a religion in such a degree that it in fact establishes a state religion or tends to do so. In other words, the government may not place its weight behind an obvious effort to proselytize on behalf of a particular religion. On the other hand, where the government's act of recognition or accommodation is passive and symbolic, any intangible benefit to religion is unlikely to present a realistic risk of establishment. To determine whether there exists an establishment, or a tendency toward one, reference must be made to the other types of church-state contacts that have existed unchallenged throughout our history or that have been found permissible in our case law. For example, *Lynch v. Donnelly,* 465 U.S. 668, 104 S.Ct. 1355, 79 L.Ed.2d 604, upheld a city's holiday display of a crèche, and *Marsh v. Chambers,* 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019, held that a State's practice of employing a legislative chaplain was permissible. Pp. 3134–3138.

(b) In permitting the displays of the menorah and the crèche, the city and county sought merely to "celebrate the season," and to acknowledge the historical background and the religious as well as secular nature of the Chanukah and Christmas holidays. This interest falls well within the tradition of governmental accommodation and acknowledgment of religionthat ***577** has marked our history from the beginning. If government is to participate in its citizens' celebration of a holiday that contains both a secular and a religious component, enforced recognition of only the secular aspect would signify the callous indifference toward religious faith that our cases and traditions do not require; for by commemorating the holiday only as it is celebrated by nonadherents, the government would be refusing to acknowledge the plain fact, and the historical reality, that many of its citizens celebrate the religious aspects of the holiday as well. There is no suggestion here that the government's power to coerce has been used to further Christianity or Judaism or that the city or the county contributed money to further any one faith or intended to use the crèche or the menorah to proselytize. Thus, the crèche and menorah are purely passive symbols of religious holidays and their use is permissible under *Lynch, supra.* If *Marsh, supra,* allows Congress and the state legislatures to begin each day with a state-sponsored prayer offered by a government-employed chaplain, a menorah or crèche, displayed in the limited context of the holiday season, cannot be invalid. The facts that, unlike the crèche in *Lynch,* the menorah and crèche at issue were both located on government property and were not surrounded by secular holiday paraphernalia are irrelevant, since the displays present no realistic danger of moving the government down the forbidden road toward an establishment of religion. Pp. 3138–3140.

BLACKMUN, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts III–A, IV, and V, in which BRENNAN, MARSHALL, STEVENS, and ****3093** O'CONNOR, JJ., joined, an opinion with respect to Parts I and II, in which STEVENS and O'CONNOR, JJ., joined, an opinion with respect to Part III–B, in which STEVENS, J., joined, an opinion with respect to Part VII, in which O'CONNOR, J., joined, and an opinion with respect to Part VI. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment, in Part

II of which BRENNAN and STEVENS, JJ., joined, *post,* p. 3117. BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and STEVENS, JJ., joined, *post,* p. 3124. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which BRENNAN and MARSHALL, JJ., joined, *post,* p. 3129. KENNEDY, J., filed an opinion concurring in the judgment in part and dissenting in part, in which REHNQUIST, C.J., and WHITE and SCALIA, JJ., joined, *post,* p. 3134.

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