

The Establishment Clause

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- How “separate” is separate enough when it comes to church and state?

The Letter of Thomas Jefferson to the Danbury Baptist Association

January 1, 1802

Gentlemen:

The affectionate sentiments of esteem and approbation which you are so good to express towards me, on behalf of the Danbury Baptist Association, give me the highest satisfaction. My duties dictate a faithful and zealous pursuit of the interests of my constituents, and in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more and more pleasing.

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole

American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection and blessings of the common Father and Creator of man, and tender you and your religious association, assurances of my high respect and esteem.

Thomas Jefferson

Early Establishment Clause Jurisprudence

- *Everson v. Board of Education* (1947)
- *Board of Education v. Allen* (1968)
- *Engel v. Vitale* (1962)
- *School District of Abington Township v. Schempp* (1963)



- *Walz v. Tax Commission of the City of New York* (1970)
- *Lemon v. Kurtzman* (1971)
- *Tilton v. Richardson* (1971)



The Lemon Test

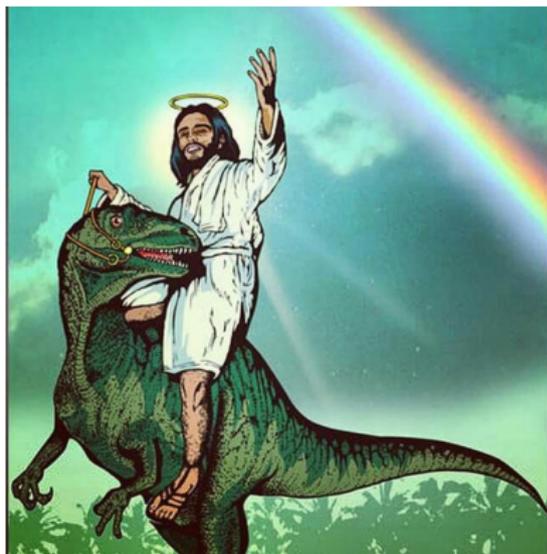
- 1) an action or a law must not lead to excessive government entanglement/involvement with religion (monitoring this boundary should not require extensive effort)
- 2) an action or a law cannot either inhibit (restrict) or advance (promote) a particular religious practice (it should be neutral when there is an affect on religion)
- 3) an action or a law must have a secular (non-religious) purpose or justification for the action or law

The Erosion of *Lemon*

- *Zelman v. Simmons-Harris* (2002)
- *Lamb's Chapel v. Center Moriches Union Free School District* (1993)
- *Rosenberger v. University of Virginia* (1995)
- *Trinity Lutheran Church v. Comer* (2017)



- *Epperson v. Arkansas* (1968)
- *Edwards v. Aguillard* (1987)
- *Wallace v. Jaffree* (1985)
- *Santa Fe Independent School District v. Doe* (2000)



Religious Displays in the Public Square

- *County of Allegheny v. ACLU* (1989)
- *Van Orden v. Perry* (2005)
- *Town of Greece v. Galloway* (2014)
- *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012)



- Establishment Clause jurisprudence remains one of the most fraught areas of constitutional law.
- The Supreme Court has proved unable to settle upon a consistent paradigm under which religion cases (either exercise or establishment-related) are to be adjudicated.