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Lynch v. Donnelly

465 U.S. 668 (1984)

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the Establishment Clause of the First Amendment prohibits a municipality from including a creche, or Nativity scene, in its annual Christmas display.

Each year, in cooperation with the downtown retail merchants' association, the city of Pawtucket, R. I., erects a Christmas display as part of its observance of the Christmas holiday season. The display is situated in a park owned by a nonprofit organization and located in the heart of the shopping district. The display is essentially like those to be found in hundreds of towns or cities across the Nation -- often on public grounds -- during the Christmas season. The Pawtucket display comprises many of the figures and decorations traditionally associated with Christmas, including, among other things, a Santa Claus house, reindeer pulling Santa's sleigh, candy-striped poles, a Christmas tree, carolers, cutout figures representing such characters as a clown, an elephant, and a teddy bear, hundreds of colored lights, a large banner that reads "SEASONS GREETINGS," and the creche at issue here. All components of this display are owned by the city.

The creche, which has been included in the display for 40 or more years, consists of the traditional figures, including the Infant Jesus, Mary and Joseph, angels, shepherds, kings, and animals, all ranging in height from 5" to 5'. In 1973, when the present creche was acquired, it cost the city $1,365; it now is valued at $200. The erection and dismantling of the creche costs the city about $20 per year; nominal expenses are incurred in lighting the creche. No money has been expended on its maintenance for the past 10 years.

Respondents, Pawtucket residents and individual members of the Rhode Island affiliate of the American Civil Liberties Union, and the affiliate itself, brought this action in the United States District Court for Rhode Island, challenging the city's inclusion of the creche in the annual display. The District Court held that the city's inclusion of the creche in the display violates the Establishment Clause. The District Court found that, by including the creche in the Christmas display, the city has "tried to endorse and promulgate religious beliefs," and that "erection of the creche has the real and substantial effect of affiliating the City with the Christian beliefs that the creche represents." This "appearance of official sponsorship," it believed, "confers more than a remote and incidental benefit on Christianity." Last, although the court acknowledged the absence of administrative entanglement, it found that excessive entanglement has been fostered as a result of the political divisiveness of including the creche in the celebration. The city was permanently enjoined from including the creche in the display.

A divided panel of the Court of Appeals for the First Circuit affirmed. We granted certiorari, and we reverse.

This Court has explained that the purpose of the Establishment and Free Exercise Clauses of the First Amendment is

> to prevent, as far as possible, the intrusion of either [the church or the state] into the precincts of the other. *Lemon* v. *Kurtzman* (1971).

At the same time, however, the Court has recognized that

> total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. *Ibid*.

In every Establishment Clause case, we must reconcile the inescapable tension between the objective of preventing unnecessary intrusion of either the church or the state upon the other, and the reality that, as the Court has so often noted, total separation of the two is not possible.

The Court has sometimes described the Religion Clauses as erecting a "wall" between church and state. The concept of a "wall" of separation is a useful figure of speech probably deriving from views of Thomas Jefferson. The metaphor has served as a reminder that the Establishment Clause forbids an established church or anything approaching it. But the metaphor itself is not a wholly accurate description of the practical aspects of the relationship that in fact exists between church and state.

No significant segment of our society and no institution within it can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government. Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any.

The Court's interpretation of the Establishment Clause has comported with what history reveals was the contemporaneous understanding of its guarantees. In *Marsh* v. *Chambers* (1983), we noted that 17 Members of that First Congress had been Delegates to the Constitutional Convention where freedom of speech, press, and religion and antagonism toward an established church were subjects of frequent discussion. We saw no conflict with the Establishment Clause when Nebraska employed members of the clergy as official legislative Chaplains to give opening prayers at sessions of the state legislature.

There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. Seldom in our opinions was this more affirmatively expressed than in Justice Douglas' opinion for the Court validating a program allowing release of public school students from classes to attend off-campus religious exercises. Rejecting a claim that the program violated the Establishment Clause, the Court asserted pointedly:

> We are a religious people whose institutions presuppose a Supreme Being. *Zorach* v. *Clauson*.

Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders. Beginning in the early colonial period long before Independence, a day of Thanksgiving was celebrated as a religious holiday to give thanks for the bounties of Nature as gifts from God. President Washington and his successors proclaimed Thanksgiving, with all its religious overtones, a day of national celebration and Congress made it a National Holiday more than a century ago. That holiday has not lost its theme of expressing thanks for Divine aid any more than has Christmas lost its religious significance.

Executive Orders and other official announcements of Presidents and of the Congress have proclaimed both Christmas and Thanksgiving National Holidays in religious terms. And, by Acts of Congress, it has long been the practice that federal employees are released from duties on these National Holidays, while being paid from the same public revenues that provide the compensation of the Chaplains of the Senate and the House and the military services. Thus, it is clear that Government has long recognized -- indeed it has subsidized -- holidays with religious significance.

Other examples of reference to our religious heritage are found in the statutorily prescribed national motto "In God We Trust," which Congress and the President mandated for our currency, and in the language "One nation under God," as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children -- and adults -- every year.

There are countless other illustrations of the Government's acknowledgment of our religious heritage and governmental sponsorship of graphic manifestations of that heritage. Congress has directed the President to proclaim a National Day of Prayer each year "on which [day] the people of the United States may turn to God in prayer and meditation at churches, in groups, and as individuals." Our Presidents have repeatedly issued such Proclamations. Equally pervasive is the evidence of accommodation of all faiths and all forms of religious expression, and hostility toward none. Through this accommodation, as Justice Douglas observed, governmental action has "[followed] the best of our traditions" and "[respected] the religious nature of our people." *Zorach* v. *Clauson.*

This history may help explain why the Court consistently has declined to take a rigid, absolutist view of the Establishment Clause. We have refused "to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective *as illuminated by history." Walz* v. *Tax Comm'n* (1970). In our modern, complex society, whose traditions and constitutional underpinnings rest on and encourage diversity and pluralism in all areas, an absolutist approach in applying the Establishment Clause is simplistic and has been uniformly rejected by the Court.

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.

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*. The line between permissible relationships and those barred by the Clause can no 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.*

In the line-drawing process we have often found it useful to inquire whether the challenged law or conduct has a secular purpose, whether its principal or primary effect is to advance or inhibit religion, and whether it creates an excessive entanglement of government with religion. *Lemon, supra*. But, we have repeatedly emphasized our unwillingness to be confined to any single test or criterion in this sensitive area. In two cases, the Court did not even apply the *Lemon* "test."

The Court has invalidated legislation or governmental action on the ground that a secular purpose was lacking, but only when it has concluded there was no question that the statute or activity

was motivated wholly by religious considerations. Even where the benefits to religion were substantial, we saw a secular purpose and no conflict with the Establishment Clause.

The District Court inferred from the religious nature of the creche that the city has no secular purpose for the display. In so doing, it rejected the city's claim that its reasons for including the creche are essentially the same as its reasons for sponsoring the display as a whole. The District Court plainly erred by focusing almost exclusively on the creche. When viewed in the proper context of the Christmas Holiday season, it is apparent that, on this record, there is insufficient evidence to establish that the inclusion of the creche is a purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message. In a pluralistic society a variety of motives and purposes are implicated. The city, like the Congresses and Presidents, however, has principally taken note of a significant historical religious event long celebrated in the Western World. The creche in the display depicts the historical origins of this traditional event long recognized as a National Holiday.

The narrow question is whether there is a secular purpose for Pawtucket's display of the creche. The display is sponsored by the city to celebrate the Holiday and to depict the origins of that Holiday. These are legitimate secular purposes. The District Court's inference, drawn from the religious nature of the creche, that the city has no secular purpose was, on this record, clearly erroneous.

The District Court found that the primary effect of including the creche is to confer a substantial and impermissible benefit on religion in general and on the Christian faith in particular. Comparisons of the relative benefits to religion of different forms of governmental support are elusive and difficult to make. But to conclude that the primary effect of including the creche is to advance religion in violation of the Establishment Clause would require that we view it as more beneficial to and more an endorsement of religion, for example, than expenditure of large sums of public money for textbooks supplied throughout the country to students attending church-sponsored schools; expenditure of public funds for transportation of students to church-sponsored schools; federal grants for college buildings of church-sponsored institutions of higher education combining secular and religious education; noncategorical grants to church-sponsored colleges and universities; and the tax exemptions for church properties sanctioned in *Walz*. It would also require that we view it as more of an endorsement of religion than the Sunday Closing Laws upheld in *McGowan* v. *Maryland*; the release time program for religious training in *Zorach* v. *Clauson*; and the legislative prayers upheld in *Marsh* v. *Chambers*.

We are unable to discern a greater aid to religion deriving from inclusion of the creche than from these benefits and endorsements previously held not violative of the Establishment Clause. What was said about the legislative prayers in *Marsh* and implied about the Sunday Closing Laws in *McGowan* is true of the city's inclusion of the creche: its "reason or effect merely happens to coincide or harmonize with the tenets of some . . . religions."

This case differs significantly from *Larkin* v. *Grendel's Den, Inc.* and *McCollum*, where religion was substantially aided. In *Grendel's Den*, important governmental power -- a licensing veto authority -- had been vested in churches. In *McCollum*, government had made religious instruction available in public school classrooms; the State had not only used the public school buildings for the teaching of religion, it had "[afforded] sectarian groups an invaluable aid . . . [by] [providing] pupils for their religious classes through use of the State's compulsory public school machinery." No comparable benefit to religion is discernible here.

The dissent asserts some observers may perceive that the city has aligned itself with the Christian faith by including a Christian symbol in its display and that this serves to advance religion. We can assume, arguendo, that the display advances religion in a sense; but our precedents plainly contemplate that on occasion some advancement of religion will result from governmental action. The Court has made it abundantly clear, however, that "not every law that confers an 'indirect,' 'remote,' or 'incidental' benefit upon [religion] is, for that reason alone, constitutionally invalid." *Nyquist*. Here, whatever benefit there is to one faith or religion or to all religions, is indirect, remote, and incidental; display of the creche is no more an advancement or endorsement of religion than the Congressional and Executive recognition of the origins of the Holiday itself as "Christ's Mass," or the exhibition of literally hundreds of religious paintings in governmentally supported museums.

The District Court found that there had been no administrative entanglement between religion and state resulting from the city's ownership and use of the creche. But it went on to hold that some political divisiveness was engendered by this litigation. Coupled with its finding of an impermissible sectarian purpose and effect, this persuaded the court that there was "excessive entanglement." The Court of Appeals expressly declined to accept the District Court's finding that inclusion of the creche has caused political divisiveness along religious lines, and noted that this Court has never held that political divisiveness alone was sufficient to invalidate government conduct.

Entanglement is a question of kind and degree. In this case, however, there is no reason to disturb the District Court's finding on the absence of administrative entanglement. There is no evidence of contact with church authorities concerning the content or design of the exhibit prior to or since Pawtucket's purchase of the creche. No expenditures for maintenance of the creche have been necessary; and since the city owns the creche, now valued at $200, the tangible material it contributes is *de minimis*. In many respects the display requires far less ongoing, day-to-day interaction between church and state than religious paintings in public galleries. There is nothing here, of course, like the "comprehensive, discriminating, and continuing state surveillance" or the "enduring entanglement" present in *Lemon*.

The Court of Appeals correctly observed that this Court has not held that political divisiveness alone can serve to invalidate otherwise permissible conduct. And we decline to so hold today. This case does not involve a direct subsidy to church-sponsored schools or colleges, or other religious institutions, and hence no inquiry into potential political divisiveness is even called for, *Mueller* v. *Allen* (1983). In any event, apart from this litigation there is no evidence of political friction or divisiveness over the creche in the 40-year history of Pawtucket's Christmas celebration. The District Court stated that the inclusion of the creche for the 40 years has been "marked by no apparent dissension" and that the display has had a "calm history." Curiously, it went on to hold that the political divisiveness engendered by this lawsuit was evidence of excessive entanglement. A litigant cannot, by the very act of commencing a lawsuit, however, create the appearance of divisiveness and then exploit it as evidence of entanglement.

We are satisfied that the city has a secular purpose for including the creche, that the city has not impermissibly advanced religion, and that including the creche does not create excessive entanglement between religion and government.

That this Court has been alert to the constitutionally expressed opposition to the establishment of religion is shown in numerous holdings striking down statutes or programs as violative of the Es-

tablishment Clause. The most recent example of this careful scrutiny is found in the case invalidating a municipal ordinance granting to a church a virtual veto power over the licensing of liquor establishments near the church. Taken together these cases abundantly demonstrate the Court's concern to protect the genuine objectives of the Establishment Clause. It is far too late in the day to impose a crabbed reading of the Clause on the country.

We hold that, notwithstanding the religious significance of the creche, the city of Pawtucket has not violated the Establishment Clause of the First Amendment. Accordingly, the judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE O'CONNOR, concurring.

I concur in the opinion of the Court. I write separately to suggest a clarification of our Establishment Clause doctrine. The suggested approach leads to the same result in this case as that taken by the Court, and the Court's opinion, as I read it, is consistent with my analysis.

I

The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. Government can run afoul of that prohibition in two principal ways. One is excessive entanglement with religious institutions, which may interfere with the independence of the institutions, give the institutions access to government or governmental powers not fully shared by nonadherents of the religion, and foster the creation of political constituencies defined along religious lines. The second and more direct infringement is government endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message.

Our prior cases have used the three-part test articulated in *Lemon* v. *Kurtzman* as a guide to detecting these two forms of unconstitutional government action. It has never been entirely clear, however, how the three parts of the test relate to the principles enshrined in the Establishment Clause. Focusing on institutional entanglement and on endorsement or disapproval of religion clarifies the *Lemon* test as an analytical device.

The central issue in this case is whether Pawtucket has endorsed Christianity by its display of the creche. To answer that question, we must examine both what Pawtucket intended to communicate in displaying the creche and what message the city's display actually conveyed. The purpose and effect prongs of the *Lemon* test represent these two aspects of the meaning of the city's action.

The purpose prong of the *Lemon* test asks whether government's actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid.

The purpose prong of the *Lemon* test requires that a government activity have a secular purpose. That requirement is not satisfied, however, by the mere existence of some secular purpose, however dominated by religious purposes. In *Stone* v. *Graham*, for example, the Court held that posting copies of the Ten Commandments in schools violated the purpose prong of the *Lemon* test, yet the State

plainly had some secular objectives, such as instilling most of the values of the Ten Commandments and illustrating their connection to our legal system. The proper inquiry under the purpose prong of *Lemon*, I submit, is whether the government intends to convey a message of endorsement or disapproval of religion.

Applying that formulation to this case, I would find that Pawtucket did not intend to convey any message of endorsement of Christianity or disapproval of non-Christian religions. The evident purpose of including the creche in the larger display was not promotion of the religious content of the creche but celebration of the public holiday through its traditional symbols. Celebration of public holidays, which have cultural significance even if they also have religious aspects, is a legitimate secular purpose.

Focusing on the evil of government endorsement or disapproval of religion makes clear that the effect prong of the *Lemon* test is properly interpreted not to require invalidation of a government practice merely because it in fact causes, even as a primary effect, advancement or inhibition of religion. It is only practices having that effect, whether intentionally or unintentionally, that make religion relevant, in reality or public perception, to status in the political community.

Pawtucket's display of its creche, I believe, does not communicate a message that the government intends to endorse the Christian beliefs represented by the creche. Although the religious and indeed sectarian significance of the creche, as the District Court found, is not neutralized by the setting, the overall holiday setting changes what viewers may fairly understand to be the purpose of the display -- as a typical museum setting, though not neutralizing the religious content of a religious painting, negates any message of endorsement of that content. The display celebrates a public holiday, and no one contends that declaration of that holiday is understood to be an endorsement of religion. The holiday itself has very strong secular components and traditions. Government celebration of the holiday, which is extremely common, generally is not understood to endorse the religious content of the holiday, just as government celebration of Thanksgiving is not so understood. The creche is a traditional symbol of the holiday that is very commonly displayed along with purely secular symbols, as it was in Pawtucket.

These features combine to make the government's display of the creche in this particular physical setting no more an endorsement of religion than such governmental "acknowledgments" of religion as legislative prayers of the type approved in *Marsh* v. *Chambers*, government declaration of Thanksgiving as a public holiday, printing of "In God We Trust" on coins, and opening court sessions with "God save the United States and this honorable court." Those government acknowledgments of religion serve, in the only ways reasonably possible in our culture, the legitimate secular purposes of solemnizing public occasions, expressing confidence in the future, and encouraging the recognition of what is worthy of appreciation in society.

Every government practice must be judged in its unique circumstances to determine whether it constitutes an endorsement or disapproval of religion. In making that determination, courts must keep in mind both the fundamental place held by the Establishment Clause in our constitutional scheme and the myriad, subtle ways in which Establishment Clause values can be eroded. Government practices that purport to celebrate or acknowledge events with religious significance must be subjected to careful judicial scrutiny.

The city of Pawtucket is alleged to have violated the Establishment Clause by endorsing the Christian beliefs represented by the creche included in its Christmas display. Giving the challenged

practice the careful scrutiny it deserves, I cannot say that the particular creche display at issue in this case was intended to endorse or had the effect of endorsing Christianity. I agree with the Court that the judgment below must be reversed.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, dissenting.

The principles announced in the compact phrases of the Religion Clauses have, as the Court today reminds us, proved difficult to apply. Faced with that uncertainty, the Court properly looks for guidance to the settled test announced in *Lemon* v. *Kurtzman* for assessing whether a challenged governmental practice involves an impermissible step toward the establishment of religion. Applying that test to this case, the Court reaches an essentially narrow result which turns largely upon the particular holiday context in which the city of Pawtucket's nativity scene appeared. The Court's decision implicitly leaves open questions concerning the constitutionality of the public display on public property of a creche standing alone, or the public display of other distinctively religious symbols such as a cross. Despite the narrow contours of the Court's opinion, our precedents in my view compel the holding that Pawtucket's inclusion of a life-sized display depicting the biblical description of the birth of Christ as part of its annual Christmas celebration is unconstitutional. Nothing in the history of such practices or the setting in which the city's creche is presented obscures or diminishes the plain fact that Pawtucket's action amounts to an impermissible governmental endorsement of a particular faith.

In my view, Pawtucket's maintenance and display at public expense of a symbol as distinctively sectarian as a creche simply cannot be squared with our prior cases. And it is plainly contrary to the purposes and values of the Establishment Clause to pretend, as the Court does, that the otherwise secular setting of Pawtucket's nativity scene dilutes in some fashion the creche's singular religiosity, or that the city's annual display reflects nothing more than an "acknowledgment" of our shared national heritage. Neither the character of the Christmas holiday itself, nor our heritage of religious expression supports this result. Indeed, our remarkable and precious religious diversity as a Nation, which the Establishment Clause seeks to protect, runs directly counter to today's decision.

As we have sought to meet new problems arising under the Establishment Clause, our decisions, with few exceptions, have demanded that a challenged governmental practice satisfy the following criteria:

> "First, the [practice] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, [it] must not foster 'an excessive government entanglement with religion.'" *Lemon* v. *Kurtzman*.

This well-defined three-part test expresses the essential concerns animating the Establishment Clause. Thus, the test is designed to ensure that the organs of government remain strictly separate and apart from religious affairs, for "a union of government and religion tends to destroy government and degrade religion." *Engel* v. *Vitale* (1962). And it seeks to guarantee that government maintains a position of neutrality with respect to religion and neither advances nor inhibits the promulgation and practice of religious beliefs. In this regard, we must be alert in our examination of any challenged practice not only for an official establishment of religion, but also for those other evils at which the Clause was aimed -- "'sponsorship, financial support, and active involvement of the sovereign in religious activity.'" *Committee for Public Education & Religious Liberty* v. *Nyquist*.

Applying the three-part test to Pawtucket's creche, I am persuaded that the city's inclusion of the creche in its Christmas display simply does not reflect a "clearly secular . . . purpose." *Nyquist*. Unlike the typical case in which the record reveals some contemporaneous expression of a clear purpose to advance religion, or, conversely, a clear secular purpose, here we have no explicit statement of purpose by Pawtucket's municipal government accompanying its decision to purchase, display, and maintain the creche. Governmental purpose may nevertheless be inferred. For instance, in *Stone* v. *Graham* this Court found, despite the State's avowed purpose of reminding schoolchildren of the secular application of the commands of the Decalogue, that the "pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature." In the present case, the city claims that its purposes were exclusively secular. Pawtucket sought, according to this view, only to participate in the celebration of a national holiday and to attract people to the downtown area in order to promote pre-Christmas retail sales and to help engender the spirit of goodwill and neighborliness commonly associated with the Christmas season.

To be found constitutional, Pawtucket's seasonal celebration must at least be nondenominational and not serve to promote religion. The inclusion of a distinctively religious element like the creche, however, demonstrates that a narrower sectarian purpose lay behind the decision to include a nativity scene. That the creche retained this religious character for the people and municipal government of Pawtucket is suggested by the Mayor's testimony at trial in which he stated that for him, as well as others in the city, the effort to eliminate the nativity scene from Pawtucket's Christmas celebration "is a step towards establishing another religion, non-religion that it may be." Plainly, the city and its leaders understood that the inclusion of the creche in its display would serve the wholly religious purpose of "[keeping] 'Christ in Christmas.'" From this record, therefore, it is impossible to say with the kind of confidence that was possible in *McGowan* v. *Maryland* that a wholly secular goal predominates.

The "primary effect" of including a nativity scene in the city's display is, as the District Court found, to place the government's imprimatur of approval on the particular religious beliefs exemplified by the creche. Those who believe in the message of the nativity receive the unique and exclusive benefit of public recognition and approval of their views. The effect on minority religious groups, as well as on those who may reject all religion, is to convey the message that their views are not similarly worthy of public recognition nor entitled to public support. It was precisely this sort of religious chauvinism that the Establishment Clause was intended forever to prohibit.

Finally, it is evident that Pawtucket's inclusion of a creche as part of its annual Christmas display does pose a significant threat of fostering "excessive entanglement." As the Court notes, the District Court found no administrative entanglement in this case, primarily because the city had been able to administer the annual display without extensive consultation with religious officials. Of course, there is no reason to disturb that finding, but it is worth noting that after today's decision, administrative entanglements may well develop. Jews and other non-Christian groups, prompted perhaps by the Mayor's remark that he will include a Menorah in future displays, can be expected to press government for inclusion of their symbols, and faced with such requests, government will have to become involved in accommodating the various demands. More importantly, although no political divisiveness was apparent in Pawtucket prior to the filing of respondents' lawsuit, that act, as the District Court found, unleashed powerful emotional reactions which divided the city along religious lines. The fact that calm had prevailed prior to this suit does not immediately suggest the absence of any division on the point for, as the District Court observed, the quiescence of those op-

posed to the creche may have reflected nothing more than their sense of futility in opposing the majority.

In sum, considering the District Court's careful findings of fact under the three-part analysis called for by our prior cases, I have no difficulty concluding that Pawtucket's display of the creche is unconstitutional.