the standard of restraint on governmental action.[20] The concept of neutrality itself is "a coat of many colors,"[21] and three standards that seemingly could be stated in objective fashion emerged as tests of Establishment Clause validity. The first two standards emerged together. "The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."[22] The third test emerged several years later and asks whether the governmental program results in "an excessive government entanglement with religion. The test is inescapably one of degree . . . [T]he questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement."[23] In 1971, these three tests were combined and restated in Chief Justice Burger's opinion for the Court in *Lemon v. Kurtzman*,[24] and are frequently referred to by reference to that case name.

Although at one time accepted in principle by all the Justices,[25] the tests have sometimes been difficult to apply,[26] have re-

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[20] Zorach v. Clauson, 343 U.S. 306, 314 (1952); Engel v. Vitale, 370 U.S. 421 (1962); Sherbert v. Verner, 374 U.S. 398 (1963); Abington School District v. Schempp, 374 U.S. 203, 305 (1963) (Justice Goldberg concurring); Walz v. Tax Comm'n, 397 U.S. 664, 694–97 (1970) (Justice Harlan concurring). In the opinion of the Court in *Walz*, Chief Justice Burger wrote: "The course of constitutional neutrality in this area cannot be an absolutely straight line; rigidity could well defeat the basic purpose of these provisions, which is to insure that no religion be sponsored or favored, none commanded, and none inhibited. The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." Id. at 669.

[21] Board of Education v. Allen, 392 U.S. 236, 249 (1968) (Justice Harlan concurring).

[22] Abington School District v. Schempp, 374 U.S. 203, 222 (1963).

[23] Walz v. Tax Comm'n, 397 U.S. 664, 674–75 (1970).

[24] 403 U.S. 602, 612–13 (1971).

[25] *E.g.*, Committee for Pub. Educ. and Religious Liberty v. Regan, 444 U.S. 646, 653 (1980), and id. at 665 (dissenting opinion); Stone v. Graham, 449 U.S. 39, 40 (1980), and id. at 43 (dissenting opinion).

[26] The tests provide "helpful signposts," Hunt v. McNair, 413 U.S. 734, 741 (1973), and are at best "guidelines" rather than a "constitutional caliper"; they must be used to consider "the cumulative criteria developed over many years and applying to a wide range of governmental action." Inevitably, "no 'bright line' guidance is afforded." Tilton v. Richardson, 403 U.S. 672, 677–78 (1971). *See also* Committee for