cently come under direct attack by some Justices,[27] and in several instances the Court has not applied them at all.[28] Nonetheless, the Court employed the *Lemon* tests in several recent Establishment Clause decisions,[29] and those tests remain the primary standard of Establishment Clause validity. Other tests, however, have also been formulated and used. Justice Kennedy has proffered "coercion" as an alternative test for violations of the Establishment Clause,[30] and the Court has used that test as the basis for decision from time to time.[31] But that test has been criticized on the grounds that it would

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Pub. Educ. and Religious Liberty v. Nyquist, 413 U.S. 756, 761 & n.5, 773 n.31 (1973); Committee for Public Educ. and Religious Liberty v. Regan, 444 U.S. 646, 662 (1980), and id. at 663 (Justice Blackmun dissenting).

[27] *See*, *e.g.*, Edwards v. Aguillard, 482 U.S. 578, 636–40 (1987) (Justice Scalia, joined by Chief Justice Rehnquist, dissenting) (advocating abandonment of the "purpose" test); Wallace v. Jaffree, 472 U.S. 38, 108–12 (1985) (Justice Rehnquist dissenting); Aguilar v. Felton, 473 U.S. 402, 426–30 (1985) (Justice O'Connor, dissenting) (addressing difficulties in applying the entanglement prong); Roemer v. Maryland Bd. of Public Works, 426 U.S. 736, 768–69 (Justice White concurring in judgment) (objecting to entanglement test). Justice Kennedy has also acknowledged criticisms of the *Lemon* tests, while at the same time finding no need to reexamine them. *See*, *e.g.*, Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 655–56 (1989). At least with respect to public aid to religious schools, Justice Stevens would abandon the tests and simply adopt a "no-aid" position. Committee for Public Educ. & Religious Liberty v. Regan, 444 U.S. 646, 671 (1980).

[28] *See* Marsh v. Chambers, 463 U.S. 783 (1983) (upholding legislative prayers on the basis of historical practice); Lee v. Weisman, 505 U.S. 577, 587 (1992) (rejecting a request to reconsider *Lemon* because the practice of invocations at public high school graduations was invalid under established school prayer precedents). The Court has also held that the tripartite test is not applicable when law grants a denominational preference, distinguishing between religions; rather, the distinction is to be subjected to the strict scrutiny of a suspect classification. Larson v. Valente, 456 U.S. 228, 244–46 (1982). *See also* Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993) (upholding provision of sign-language interpreter to deaf student attending parochial school); Board of Educ. of Kiryas Joel Village v. Grumet, 512 U.S. 687 (1994) (invalidating law creating special school district for village composed exclusively of members of one religious sect); Rosenberger v. University of Virginia, 515 U.S. 819 (1995) (upholding the extension of a university subsidy of student publications to a student religious publication).

[29] Agostini v. Felton, 521 U.S. 203 (1997) (upholding under the *Lemon* tests the provision of remedial educational services by public school teachers to sectarian elementary and secondary schoolchildren on the premises of the sectarian schools); Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000) (holding unconstitutional under the *Lemon* tests as well as under the coercion and endorsement tests a school district policy permitting high school students to decide by majority vote whether to have a student offer a prayer over the public address system prior to home football games); and Mitchell v. Helms, 530 U.S. 793 (2000) (upholding under the *Lemon* tests a federally funded program providing instructional materials and equipment to public and private elementary and secondary schools, including sectarian schools).

[30] County of Allegheny v. Greater Pittsburgh ACLU, 492 U.S. 573, 655 (1989) (Justice Kennedy concurring in part and dissenting in part); and Lee v. Weisman, 505 U.S. 577 (1992).

[31] Lee v. Weisman, 505 U.S. 577 (1992), and Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000).