and neutral law of general applicability.'" On the Establishment Clause the Court has not wholly repudiated its previous holdings, but recent decisions have evidenced a greater sympathy for the view that the clause bars "preferential" governmental promotion of some religions but allows governmental promotion of all religion in general.[14] Nonetheless, the Court remains sharply split on how to interpret both clauses.

Court Tests Applied to Legislation Affecting Religion.— Before considering in detail the development of the two religion clauses by the Supreme Court, one should notice briefly the tests the Court has articulated to adjudicate the religion cases. At the same time it should be emphasized that the Court has noted that the language of earlier cases "may have [contained] too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles."[15] While later cases have relied on a series of well-defined, if difficult-to-apply, tests, the Court has cautioned that "the purpose [of the religion clauses] was to state an objective, not to write a statute."[16]

In 1802, President Jefferson wrote a letter to a group of Baptists in Danbury, Connecticut, in which he declared that it was the purpose of the First Amendment to build "a wall of separation between Church and State."[17] In *Reynolds v. United States*,[18] Chief Justice Waite for the Court characterized the phrase as "almost an authoritative declaration of the scope and effect of the amendment." In its first encounters with religion-based challenges to state programs, the Court looked to Jefferson's metaphor for substantial guidance.[19] But a metaphor may obscure as well as illuminate, and the Court soon began to emphasize neutrality and voluntarism as

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[14] *See* Agostini v. Felton, 521 U.S. 203 (1997); Mitchell v. Helms, 530 U.S. 793 (2000); and Zelman v. Simmons-Harris, 536 U.S. 639 (2002). The fullest critique of the Court's broad interpretation of the Establishment Clause was given by then-Justice Rehnquist in dissent in Wallace v. Jaffree, 472 U.S. 38, 91 (1985).

[15] Walz v. Tax Comm'n, 397 U.S. 664, 668 (1970).

[16] 397 U.S. at 668.

[17] 16 THE WRITINGS OF THOMAS JEFFERSON 281 (A. Libscomb ed., 1904).

[18] 98 U.S. 145, 164 (1879).

[19] Everson v. Board of Education, 330 U.S. 1, 16 (1947); Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 211, 212 (1948); *cf.* Zorach v. Clauson, 343 U.S. 306, 317 (1952) (Justice Black dissenting). In Lemon v. Kurtzman, 403 U.S. 602, 614 (1971), Chief Justice Burger remarked that "the line of separation, far from being a 'wall,' is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship." In his opinion for the Court, the Chief Justice repeated similar observations in Lynch v. Donnelly, 465 U.S. 668, 673 (1984) (the metaphor is not "wholly accurate"; the Constitution does not "require complete separation of church and state [but] affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any").