

not to advance religion. The benefit to religion was called “indirect, remote, and incidental,” and in any event no greater than the benefit resulting from other actions that had been found to be permissible, such as the provision of transportation and textbooks to parochial school students, various assistance to church-supported colleges, Sunday closing laws, and legislative prayers.²³⁰ The Court also reversed the lower court’s finding of entanglement based only on “political divisiveness.”²³¹

Allegheny County was also decided by a 5–4 vote, Justice Blackmun writing the opinion of the Court on the creche issue, and there being no opinion of the Court on the menorah issue.²³² To the majority, the setting of the creche was distinguishable from that in *Lynch*. The creche stood alone on the center staircase of the county courthouse, bore a sign identifying it as the donation of a Roman Catholic group, and also had an angel holding a banner proclaiming “Gloria in Excelsis Deo.” Nothing in the display “detract[ed] from the creche’s religious message,” and the overall effect was to endorse that religious message.²³³ The menorah, on the other hand, was placed outside a government building alongside a Christmas tree and a sign saluting liberty, and bore no religious messages. To Justice Blackmun, this grouping merely recognized “that both Christmas and Chanukah are part of the same winter-holiday season, which has attained a secular status”;²³⁴ to concurring Justice O’Connor, the display’s “message of pluralism” did not endorse religion over nonreligion even though Chanukah is primarily a religious holiday and even though the menorah is a religious symbol.²³⁵ The dissenters, critical of the endorsement test proposed by Justice O’Connor and of the three-part *Lemon* test, would instead distill two principles from the Establishment Clause: “government may not coerce anyone to support or participate in any religion or its exercise; and it may not, in the guise of avoiding hostility or callous indifference, give direct benefits to religion in such a degree that it in fact ‘establishes a state religion or religious faith, or tends to do so.’”²³⁶

²³⁰ 465 U.S. at 681–82. Although the extent of benefit to religion was an important factor in earlier cases, it was usually balanced against the secular effect of the same practice rather than the religious effects of other practices.

²³¹ 465 U.S. at 683–84.

²³² Justice O’Connor, who had concurred in *Lynch*, was the pivotal vote, joining the *Lynch* dissenters to form the majority in *Allegheny County*. Justices Scalia and Kennedy, not on the Court in 1984, replaced Chief Justice Burger and Justice Powell in voting to uphold the creche display; Justice Kennedy authored the dissenting opinion, joined by the other three.

²³³ 492 U.S. at 598, 600.

²³⁴ 492 U.S. at 616.

²³⁵ 492 U.S. at 635.

²³⁶ 492 U.S. at 659.