eliminate a principal distinction between the Establishment Clause and the Free Exercise Clause and make the former a "virtual nullity."[32] Justice O'Connor has suggested "endorsement" as a clarification of the *Lemon* test; *i.e.*, that the Establishment Clause is violated if the government intends its action to endorse or disapprove of religion or if a "reasonable observer" would perceive the government's action as such an endorsement or disapproval.[33] But others have criticized that test as too amorphous to provide adequate guidance.[34] Justice O'Connor has also suggested that it may be inappropriate to try to shoehorn all Establishment Clause cases into one test, and has called instead for recognition that different contexts may call for different approaches.[35] In two Establishment Clause decisions, the Court employed all three tests in one decision[36] and relied primarily on a modified version of the *Lemon* tests in the other.[37]

In interpreting and applying the Free Exercise Clause, the Court has consistently held religious beliefs to be absolutely immune from governmental interference.[38] But it has used a number of standards to review government action restrictive of religiously motivated conduct, ranging from formal neutrality[39] to clear and present danger[40] to strict scrutiny.[41] For cases of intentional governmental discrimination against religion, the Court still employs strict scrutiny[42] But for most other free exercise cases it has now reverted to a standard of formal neutrality. "[T]he right of free exercise," it has stated, "does not relieve an individual of the obligation to comply

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[32] Lee v. Weisman, 505 U.S. 577, 621 (Souter, J., concurring). *See also* County of Allegheny v. Greater Pittsburgh ACLU, 492 U.S. 573, 623 (1989) (O'Connor, J., concurring in part and concurring in the judgment).

[33] Lynch v. Donnelly, 465 U.S. 668, 688 (1984) (concurring); Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 625 (1989) (concurring); Board of Educ. of Kiryas Joel Village v. Grumet, 512 U.S. 687, 712 (1994) (concurring).

[34] County of Allegheny v. Greater Pittsburgh ACLU, 492 U.S. 573, 655 (1989) (Justice Kennedy, concurring in the judgment in part and dissenting in part); and Capitol Square Review Bd. v. Pinette, 515 U.S. 753, 768 n.3 (1995) (Justice Scalia).

[35] Board of Educ. of Kiryas Joel Village v. Grumet, 512 U.S. 687, 718–723 (1994) (O'Connor, J., concurring in part and concurring in the judgment).

[36] Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000).

[37] Mitchell v. Helms, 530 U.S. 793 (2000).

[38] Reynolds v. United States, 98 U.S. (8 Otto) 145 (1878); Cantwell v. Connecticut, 310 U.S. 296 (1940); Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993).

[39] Reynolds v. United States, 98 U.S. (8 Otto) 145 (1879); Braunfeld v. Brown, 366 U.S. 599 (1961).

[40] Cantwell v. Connecticut, 310 U.S. 296 (1940).

[41] Sherbert v. Verner, 374 U.S. 398 (1963); Wisconsin v. Yoder, 406 U.S. 205 (1972).

[42] Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993).