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### Separation of Santa and State is Smart, Fair

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## Comment

# Separation of Santa and state is smart, fair

'Tis the season to bring lawsuits, fa law-law-law-law-lawlaw-lawyers!

Every year, Christmas brings lawsuits claiming that the government breached the wall separating church and state. Maybe there is a crèche display on the City Hall steps. Perhaps a public school is teaching overtly religious songs for the winter concert.

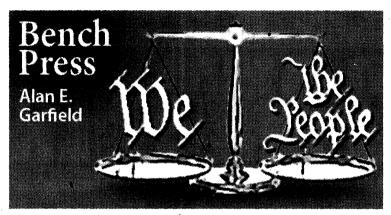
Why do courts entertain these lawsuits? Aren't most Americans Christian? So why shouldn't the government celebrate Christmas?

Good questions! Perhaps the best way to understand why these cases raise constitutional concerns is to imagine yourself as a member of a religious minority living in a country without separation of church and state. Say, for instance, you're a Christian living in Iran.

Since Iran has no separation of church and state, the government enthusiastically endorses the majority's Islamic faith. Thus, the country calls itself the "Islamic Republic of Iran" and Muslim clerics are the supreme political leaders.

Now how would this make you feel as a Christian? Wouldn't vou always feel like a second-class citizen? Wouldn't it bother you that your own government openly favors Islam?

Fortunately, in the U.S., members of minority faiths never have to feel this sense of exclusion. This is because the Constitution's Establishment Clause ("Congress shall make no law respecting an establishment of religion") prohibits the government from endorsing one religion over another.



**Retired Justice Sandra Day** O'Connor explained that the **Establishment Clause forbids** the government from making a person's faith, or even lack of faith, "relevant in any way to a person's standing in the political community." Consequently, the government may not endorse a particular religion because that would send a message to nonadherents that "they are outsiders" and a message to adherents that they are "favored members of the political community.'

So which do you prefer? The Iranian model of no separation of church and state, or ours? The framers preferred our model because they were well aware of the dangers of mixing government with religion. They knew that religious wars, mostly between members of different Christian sects, had been fought in Europe for centuries. They adopted the Establishment Clause to create, as Justice Stephen Breyer has observed, "an American Nation free of the religious strife that had long plagued the nations of Europe.

that mean our Constitution is at war with Christmas? Before you start thinking that, consider the following.

First, the constitutional requirement of separating church and state applies only to government, not private parties. So nothing in the Constitution prevents radio stations from playing Christmas songs from Halloween to New Year's. Nothing stops malls from having a Santa to entertain children. And nothing prevents store clerks from wishing customers a "Merry Christmas."

The Constitution specifically protects the rights of private parties to practice their religion. So while it might forbid a public school teacher from teaching overtly religious songs, it protects the right of a Sunday school teacher to do so. And if the government ever tried to stop her, the same lawyers who challenge public crèche displays would be the first to defend her.

You should also keep in mind that the Supreme Court has never insisted on complete But wait a second! Doesn't separation of church and state.

The court, for instance, realizes that Christmas has morphed into a mixed secular/religious holiday and tolerates a wide range of less overtly religious Christmas symbols like Santas, reindeer and Christmas trees. It even upheld a public crèche display when it was mixed in with more secular holiday symbols.

This flexibility has benefits. but it produces a muddled rule of law. It's not always easy to know when a public display crosses the line from a constitutional acknowledgment of the holiday season to an unconstitutional endorsement of Christianity. Nor is it always obvious when a school concert goes from being a seasonal celebration to a celebration of Christ.

These are the issues that keep courts humming during the holiday season. But don't interpret these lawsuits as a sign that something's wrong. They're merely a sign that our country, in contrast to a country like Iran, is constantly struggling to find the proper balance between accommodating the majority's faith and ensuring that members of minority faiths are not excluded.

In a decision written four vears after 9/11. Justice O'Connor noted how one could see the "violent consequences" of governments assuming religious authority. By contrast, she said. "Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing religious exercise to flourish.

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