

Widener University Delaware Law School

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Separation of Santa and State is Smart, Fair

Alan E Garfield



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

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

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.

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.

**Alan E.
Garfield**



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.

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 separation of church and state.

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 years 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."

Alan E. Garfield is a professor at Widener University School of Law. He can be reached at aegarfield@widener.edu.