

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 03–1693

MCCREARY COUNTY, KENTUCKY, ET AL., PETI-
TIONERS *v.* AMERICAN CIVIL LIBERTIES
UNION OF KENTUCKY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 27, 2005]

JUSTICE SOUTER delivered the opinion of the Court.

Executives of two counties posted a version of the Ten Commandments on the walls of their courthouses. After suits were filed charging violations of the Establishment Clause, the legislative body of each county adopted a resolution calling for a more extensive exhibit meant to show that the Commandments are Kentucky’s “precedent legal code,” Def. Exh. 1 in Memorandum in Support of Defendants’ Motion to Dismiss in Civ. A. No. 99–507, p. 1 (ED Ky.) (hereinafter Def. Exh. 1). The result in each instance was a modified display of the Commandments surrounded by texts containing religious references as their sole common element. After changing counsel, the counties revised the exhibits again by eliminating some documents, expanding the text set out in another, and adding some new ones.

The issues are whether a determination of the counties’ purpose is a sound basis for ruling on the Establishment Clause complaints, and whether evaluation of the counties’ claim of secular purpose for the ultimate displays

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quotation marks omitted). In both counties, this was the version of the Commandments posted:

“Thou shalt have no other gods before me.

“Thou shalt not make unto thee any graven images.

“Thou shalt not take the name of the Lord thy God in vain.

“Remember the sabbath day, to keep it holy.

“Honor thy father and thy mother.

“Thou shalt not kill.

“Thou shalt not commit adultery.

“Thou shalt not steal.

“Thou shalt not bear false witness.

“Thou shalt not covet.

“Exodus 20:3–17.”² Def. Exh. 9 in Memorandum in Support of Defendants’ Motion to Dismiss in Civ. A. No. 99–507 (ED Ky.) (hereinafter Def. Exh. 9).

In each county, the hallway display was “readily visible to . . . county citizens who use the courthouse to conduct their civic business, to obtain or renew driver’s licenses and permits, to register cars, to pay local taxes, and to register to vote.” 96 F. Supp. 2d., at 684; *American Civil Liberties Union of Kentucky v. Pulaski County, Kentucky*, 96 F. Supp. 2d 691, 695 (ED Ky. 2000).

In November 1999, respondents American Civil Liberties Union of Kentucky et al. sued the Counties in Federal District Court under Rev. Stat. §1979, 42 U. S. C. §1983, and sought a preliminary injunction against maintaining the displays, which the ACLU charged were violations of the prohibition of religious establishment included in the

²This text comes from a record exhibit showing the Pulaski County Commandments that were part of the County’s first and second displays. The District Court found that the displays in each County were functionally identical. 96 F. Supp. 2d 679, 682, n. 2 (ED Ky. 2000); 96 F. Supp. 2d 691, 693, n. 2 (ED Ky. 2000).

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cluded eight other documents in smaller frames, each either having a religious theme or excerpted to highlight a religious element. The documents were the “endowed by their Creator” passage from the Declaration of Independence; the Preamble to the Constitution of Kentucky; the national motto, “In God We Trust”; a page from the Congressional Record of February 2, 1983, proclaiming the Year of the Bible and including a statement of the Ten Commandments; a proclamation by President Abraham Lincoln designating April 30, 1863, a National Day of Prayer and Humiliation; an excerpt from President Lincoln’s “Reply to Loyal Colored People of Baltimore upon Presentation of a Bible,” reading that “[t]he Bible is the best gift God has ever given to man”; a proclamation by President Reagan marking 1983 the Year of the Bible; and the Mayflower Compact. 96 F. Supp. 2d, at 684; 96 F. Supp. 2d, at 695–696.

After argument, the District Court entered a preliminary injunction on May 5, 2000, ordering that the “display . . . be removed from [each] County Courthouse IMMEDIATELY” and that no county official “erect or cause to be erected similar displays.” 96 F. Supp. 2d, at 691; 96 F. Supp. 2d, at 702–703. The court’s analysis of the situation followed the three-part formulation first stated in *Lemon v. Kurtzman*, 403 U. S. 602 (1971). As to governmental purpose, it concluded that the original display “lack[ed] any secular purpose” because the Commandments “are a distinctly religious document, believed by many Christians and Jews to be the direct and revealed word of God.” 96 F. Supp. 2d, at 686; 96 F. Supp. 2d, at 698. Although the Counties had maintained that the original

of the second display in this Court. “[After erecting the first display] Petitioners posted additional donated documents. . . . This display consisted of the Ten Commandments along with other historical documents.” Brief for Petitioners 2. Like the District Court, we find our analysis applies equally to either format.

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tion of them that hate me.

“Thou shalt not take the name of the LORD thy God in vain: for the LORD will not hold him guiltless that taketh his name in vain.

“Remember the sabbath day, to keep it holy.

“Honour thy father and thy mother: that thy days may be long upon the land which the LORD thy God giveth thee.

“Thou shalt not kill.

“Thou shalt not commit adultery.

“Thou shalt not steal.

“Thou shalt not bear false witness against thy neighbour.

“Thou shalt not covet thy neighbour’s house, thou shalt not covet th[y] neighbor’s wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor anything that is th[y] neighbour’s.” App. to Pet. for Cert. 189a.

Assembled with the Commandments are framed copies of the Magna Carta, the Declaration of Independence, the Bill of Rights, the lyrics of the Star Spangled Banner, the Mayflower Compact, the National Motto, the Preamble to the Kentucky Constitution, and a picture of Lady Justice. The collection is entitled “The Foundations of American Law and Government Display” and each document comes with a statement about its historical and legal significance. The comment on the Ten Commandments reads:

“The Ten Commandments have profoundly influenced the formation of Western legal thought and the formation of our country. That influence is clearly seen in the Declaration of Independence, which declared that ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.’

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As requested, the trial court supplemented the injunction, and a divided panel of the Court of Appeals for the Sixth Circuit affirmed. The Circuit majority stressed that under *Stone*, displaying the Commandments bespeaks a religious object unless they are integrated with other material so as to carry “a secular message,” 354 F. 3d 438, 449 (2003). The majority judges saw no integration here because of a “lack of a demonstrated analytical or historical connection [between the Commandments and] the other documents.” *Id.*, at 451. They noted in particular that the Counties offered no support for their claim that the Ten Commandments “provide[d] the moral backdrop” to the Declaration of Independence or otherwise “profoundly influenced” it. *Ibid.* (Internal quotation marks omitted). The majority found that the Counties’ purpose was religious, not educational, given the nature of the Commandments as “an active symbol of religion [stating] ‘the religious duties of believers,’” *Id.*, at 455. The judges in the majority understood the identical displays to emphasize “a single religious influence, with no mention of any other religious or secular influences,” *id.*, at 454, and they took the very history of the litigation as evidence of the Counties’ religious objective, *id.*, at 457.

Judge Ryan dissented on the basis of wide recognition that religion, and the Ten Commandments in particular, have played a foundational part in the evolution of American law and government; he saw no reason to gainsay the Counties’ claim of secular purposes. *Id.*, at 472–473. The dissent denied that the prior displays should have any bearing on the constitutionality of the current one: a “history of unconstitutional displays can[not] be used as a

of the controversy surrounding these displays, which has focused on only one of the nine framed documents: the Ten Commandments.” *Id.*, at 851, 852.

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A

Ever since *Lemon v. Kurtzman* summarized the three familiar considerations for evaluating Establishment Clause claims, looking to whether government action has “a secular legislative purpose” has been a common, albeit seldom dispositive, element of our cases. 403 U. S., at 612. Though we have found government action motivated by an illegitimate purpose only four times since *Lemon*,⁹ and “the secular purpose requirement alone may rarely be determinative . . . , it nevertheless serves an important function.”¹⁰ *Wallace v. Jaffree*, 472 U. S. 38, 75 (1985) (O’CONNOR, J., concurring in judgment).

The touchstone for our analysis is the principle that the “First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *Epperson v. Arkansas*, 393 U. S. 97, 104 (1968); *Everson v. Board of Ed. of Ewing*, 330 U. S. 1, 15–16 (1947); *Wallace v. Jaffree*, *supra*, at 53. When the government acts with the ostensible and predominant purpose of advancing religion, it violates that central Establishment Clause value of official religious neutrality, there being no neutrality when the government’s ostensible object is to take sides. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U. S. 327, 335 (1987) (“*Lemon*’s ‘purpose’ requirement aims at preventing [government] from abandoning neutrality and

⁹*Stone v. Graham*, 449 U. S. 39, 41 (1980) (*per curiam*); *Wallace v. Jaffree*, 472 U. S. 38, 56–61 (1985); *Edwards v. Aguillard*, 482 U. S. 578, 586–593 (1987); *Santa Fe Independent School District v. Doe*, 530 U. S., at 308–309.

¹⁰At least since *Everson v. Board of Ed. of Ewing*, 330 U. S. 1 (1947), it has been clear that Establishment Clause doctrine lacks the comfort of categorical absolutes. In special instances we have found good reason to hold governmental action legitimate even where its manifest purpose was presumably religious. See, e.g., *Marsh v. Chambers*, 463 U. S. 783 (1983) (upholding legislative prayer despite its religious nature). No such reasons present themselves here.

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tive: according to them, true “purpose” is unknowable, and its search merely an excuse for courts to act selectively and unpredictably in picking out evidence of subjective intent. The assertions are as seismic as they are unconvincing.

Examination of purpose is a staple of statutory interpretation that makes up the daily fare of every appellate court in the country, *e.g.*, *General Dynamics Land Systems, Inc. v. Cline*, 540 U. S. 581, 600 (2004) (interpreting statute in light of its “text, structure, purpose, and history”), and governmental purpose is a key element of a good deal of constitutional doctrine, *e.g.*, *Washington v. Davis*, 426 U. S. 229 (1976) (discriminatory purpose required for Equal Protection violation); *Hunt v. Washington State Apple Advertising Comm’n*, 432 U. S. 333, 352–353 (1977) (discriminatory purpose relevant to dormant Commerce Clause claim); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520 (1993) (discriminatory purpose raises level of scrutiny required by free exercise claim). With enquiries into purpose this common, if they were nothing but hunts for mares’ nests deflecting attention from bare judicial will, the whole notion of purpose in law would have dropped into disrepute long ago.

But scrutinizing purpose does make practical sense, as in Establishment Clause analysis, where an understanding of official objective emerges from readily discoverable fact, without any judicial psychoanalysis of a drafter’s heart of hearts. *Wallace v. Jaffree*, *supra*, at 74 (O’CONNOR, J., concurring in judgment). The eyes that look to purpose belong to an “objective observer,” one who takes account of the traditional external signs that show up in the “text, legislative history, and implementation of the statute,” or comparable official act. *Santa Fe Independent School Dist. v. Doe*, *supra*, at 308 (quoting *Wallace v. Jaffree*, 472 U. S., at 73) (O’CONNOR, J., concurring in judgment)); see also *Edwards v. Aguillard*, 482 U. S. 578,

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of the corollary that Establishment Clause analysis does not look to the veiled psyche of government officers could be that in some of the cases in which establishment complaints failed, savvy officials had disguised their religious intent so cleverly that the objective observer just missed it. But that is no reason for great constitutional concern. If someone in the government hides religious motive so well that the “objective observer, acquainted with the text, legislative history, and implementation of the statute,” *Santa Fe Independent School Dist. v. Doe*, 530 U. S., at 308 (quoting *Wallace, supra*, at 73) (O’CONNOR, J., concurring in judgment)), cannot see it, then without something more the government does not make a divisive announcement that in itself amounts to taking religious sides. A secret motive stirs up no strife and does nothing to make outsiders of nonadherents, and it suffices to wait and see whether such government action turns out to have (as it may even be likely to have) the illegitimate effect of advancing religion.

C

After declining the invitation to abandon concern with purpose wholesale, we also have to avoid the Counties’ alternative tack of trivializing the enquiry into it. The Counties would read the cases as if the purpose enquiry were so naive that any transparent claim to secularity would satisfy it, and they would cut context out of the enquiry, to the point of ignoring history, no matter what bearing it actually had on the significance of current circumstances. There is no precedent for the Counties’ arguments, or reason supporting them.

1

Lemon said that government action must have “a secular . . . purpose,” 403 U. S., at 612, and after a host of cases it is fair to add that although a legislature’s stated

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ble or inadequate:¹¹ *Stone*, 449 U. S., at 41; *Abington*, 374 U. S., at 223–224.¹² See also *Bowen v. Kendrick*, 487 U. S. 589, 602 (1988) (using the “motivated wholly by an impermissible purpose” language, but citing *Lynch* and *Stone*). As we said, the Court often does accept governmental statements of purpose, in keeping with the respect owed in the first instance to such official claims. But in those unusual cases where the claim was an apparent sham, or the secular purpose secondary, the unsurprising results have been findings of no adequate secular object, as against a predominantly religious one.¹³

2

The Counties’ second proffered limitation can be dispatched quickly. They argue that purpose in a case like

¹¹Moreover, JUSTICE O’CONNOR provided the fifth vote for the *Lynch* majority and her concurrence emphasized the point made implicitly in the majority opinion that a secular purpose must be serious to be sufficient. 465 U. S., at 691 (The purpose inquiry “is not satisfied . . . by the mere existence of some secular purpose, however dominated by religious purposes”).

¹²*Stone* found the sacred character of the Ten Commandments pre-eminent despite an avowed secular purpose to show their “adoption as the fundamental legal code of Western Civilization and the Common Law” 449 U. S., at 39–40, n. 1 (internal quotation marks omitted). And the *Abington* Court was unconvinced that music education or the teaching of literature were actual secular objects behind laws requiring public school teachers to lead recitations from the Lord’s Prayer and readings from the Bible. 374 U. S., at 273.

¹³The dissent nonetheless maintains that the purpose test is satisfied so long as any secular purpose for the government action is apparent. *Post*, at 18–19 (opinion of SCALIA, J.). Leaving aside the fact that this position is inconsistent with the language of the cases just discussed, it would leave the purpose test with no real bite, given the ease of finding some secular purpose for almost any government action. While heightened deference to legislatures is appropriate for the review of economic legislation, an approach that credits any valid purpose, no matter how trivial, has not been the way the Court has approached government action that implicates establishment.

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Santa Fe Independent School Dist. v. Doe, *supra*, at 315.

III

This case comes to us on appeal from a preliminary injunction. We accordingly review the District Court’s legal rulings *de novo*, and its ultimate conclusion for abuse of discretion.¹⁵ *Ashcroft v. American Civil Liberties Union*, 542 U. S. 656 (2004).

We take *Stone* as the initial legal benchmark, our only case dealing with the constitutionality of displaying the Commandments. *Stone* recognized that the Commandments are an “instrument of religion” and that, at least on the facts before it, the display of their text could presumptively be understood as meant to advance religion: although state law specifically required their posting in public school classrooms, their isolated exhibition did not leave room even for an argument that secular education explained their being there. 449 U. S., at 41, n. 3 (internal quotation marks omitted). But *Stone* did not purport to decide the constitutionality of every possible way the Commandments might be set out by the government, and under the Establishment Clause detail is key. *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 595 (1989) (opinion of

In general, like displays tend to show like objectives and will be treated accordingly. But where one display has a history manifesting sectarian purpose that the other lacks, it is appropriate that they be treated differently, for the one display will be properly understood as demonstrating a preference for one group of religious believers as against another. See *supra*, at 11–12. While posting the Commandments may not have the effect of causing greater adherence to them, an ostensible indication of a purpose to promote a particular faith certainly will have the effect of causing viewers to understand the government is taking sides.

¹⁵We note that the only factor in the preliminary injunction analysis that is at issue here is the likelihood of the ACLU’s success on the merits.

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than the postings at issue in *Stone*.¹⁶ See also *County of Allegheny, supra*, at 598 (“Here, unlike in *Lynch* [*v. Donnelly*], nothing in the context of the display detracts from the crèche’s religious message”). Actually, the posting by the Counties lacked even the *Stone* display’s implausible disclaimer that the Commandments were set out to show their effect on the civil law.¹⁷ What is more, at the ceremony for posting the framed Commandments in Pulaski County, the county executive was accompanied by his pastor, who testified to the certainty of the existence of God. The reasonable observer could only think that the Counties meant to emphasize and celebrate the Commandments’ religious message.

This is not to deny that the Commandments have had influence on civil or secular law; a major text of a majority religion is bound to be felt. The point is simply that the original text viewed in its entirety is an unmistakably religious statement dealing with religious obligations and with morality subject to religious sanction. When the government initiates an effort to place this statement alone in public view, a religious object is unmistakable.

B

Once the Counties were sued, they modified the exhibits and invited additional insight into their purpose in a display that hung for about six months. This new one was the product of forthright and nearly identical Pulaski and McCreary County resolutions listing a series of American

¹⁶Although the Counties point out that the courthouses contained other displays besides the Ten Commandments, there is no suggestion that the Commandments display was integrated to form a secular display.

¹⁷In *Stone*, the Commandments were accompanied by a small disclaimer: “The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States.” 449 U. S., at 39–40, n. 1 (internal quotation marks omitted).

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third display, without a new resolution or repeal of the old one. The result was the “Foundations of American Law and Government” exhibit, which placed the Commandments in the company of other documents the Counties thought especially significant in the historical foundation of American government. In trying to persuade the District Court to lift the preliminary injunction, the Counties cited several new purposes for the third version, including a desire “to educate the citizens of the county regarding some of the documents that played a significant role in the foundation of our system of law and government.”¹⁸ 145 F. Supp. 2d, at 848 (internal quotation marks omitted). The Counties’ claims did not, however, persuade the court, intimately familiar with the details of this litigation, or the Court of Appeals, neither of which found a legitimizing secular purpose in this third version of the display. “When both courts [that have already passed on the case] are unable to discern an arguably valid secular purpose, this Court normally should hesitate to find one.” *Edwards*, 482 U. S., at 594, n. 15 (quoting *Wallace*, 472 U. S., at 66 (Powell, J., concurring)). The conclusions of the two courts preceding us in this case are well warranted.

These new statements of purpose were presented only as a litigating position, there being no further authorizing action by the Counties’ governing boards. And although repeal of the earlier county authorizations would not have erased them from the record of evidence bearing on cur-

¹⁸The Counties’ other purposes were:

“to erect a display containing the Ten Commandments that is constitutional; . . . to demonstrate that the Ten Commandments were part of the foundation of American Law and Government; . . . [to include the Ten Commandments] as part of the display for their significance in providing ‘the moral background of the Declaration of Independence and the foundation of our legal tradition.’” 145 F. Supp. 2d, at 848 (some internal quotation marks omitted).

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adopted since the original Framing. And it is no less baffling to leave out the original Constitution of 1787 while quoting the 1215 Magna Carta even to the point of its declaration that “fish-weirs shall be removed from the Thames.” App. to Pet. for Cert. 205a, ¶33. If an observer found these choices and omissions perplexing in isolation, he would be puzzled for a different reason when he read the Declaration of Independence seeking confirmation for the Counties’ posted explanation that the “Ten Commandments’ . . . influence is clearly seen in the Declaration,” *id.*, at 180a; in fact the observer would find that the Commandments are sanctioned as divine imperatives, while the Declaration of Independence holds that the authority of government to enforce the law derives “from the consent of the governed,” *id.*, at 190a.²¹ If the observer had not thrown up his hands, he would probably suspect that the Counties were simply reaching for any way to keep a religious document on the walls of courthouses constitutionally required to embody religious neutrality.²²

²¹The Counties have now backed away from their broad assertion that the Commandments provide “the” moral background of the Declaration of Independence, and now merely claim that many of the Commandments “regarding murder, property, theft, coveting, marriage, rest from labor and honoring parents are compatible with the rights to life, liberty and happiness.” Brief for Petitioners 10, n. 7.

²²The Counties grasp at *McGowan v. Maryland*, 366 U. S. 420 (1961), but it bears little resemblance to this case. As noted *supra*, at 12–13, *McGowan* held that religious purposes behind centuries-old predecessors of Maryland’s Sunday laws were not dispositive of the purposes of modern Sunday laws, where the legislature had removed much of the religious reference in the laws and stated secular and pragmatic justifications for them. 366 U. S., at 446–452. But a conclusion that centuries-old purposes may no longer be operative says nothing about the relevance of recent evidence of purpose, and this case is far more like *Santa Fe*, with its evolution of a school football game prayer policy over the course of a single lawsuit. Like that case, “[t]his [one] comes to us as the latest step in developing litigation brought as a challenge to institutional practices that unquestionably violated the Establishment

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IV

The importance of neutrality as an interpretive guide is no less true now than it was when the Court broached the principle in *Everson v. Board of Ed. of Ewing*, 330 U. S. 1 (1947), and a word needs to be said about the different view taken in today's dissent. We all agree, of course, on the need for some interpretative help. The First Amendment contains no textual definition of "establishment," and the term is certainly not self-defining. No one contends that the prohibition of establishment stops at a designation of a national (or with Fourteenth Amendment incorporation, *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940), a state) church, but nothing in the text says just how much more it covers. There is no simple answer, for more than one reason.

The prohibition on establishment covers a variety of issues from prayer in widely varying government settings, to financial aid for religious individuals and institutions, to comment on religious questions. In these varied settings, issues of about interpreting inexact Establishment Clause language, like difficult interpretative issues generally, arise from the tension of competing values, each constitutionally respectable, but none open to realization to the logical limit.

The First Amendment has not one but two clauses tied to "religion," the second forbidding any prohibition on the "the free exercise thereof," and sometimes, the two clauses compete: spending government money on the clergy looks like establishing religion, but if the government cannot pay for military chaplains a good many soldiers and sailors would be kept from the opportunity to exercise their chosen religions. See *Cutter v. Wilkinson*, 544 U. S. ____, ____ (2005) (slip. op., at 8–9). At other times, limits on governmental action that might make sense as a way to avoid establishment could arguably limit freedom of speech when the speaking is done under government

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every possible case, to trace the line of separation between the rights of religion and the Civil authority with such distinctness as to avoid collisions & doubts on unessential points”); *Sherbert v. Verner*, 374 U. S. 398, 422 (1963) (Harlan, J., dissenting) (“The constitutional obligation of ‘neutrality’ . . . is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation”). But invoking neutrality is a prudent way of keeping sight of something the Framers of the First Amendment thought important.

The dissent, however, puts forward a limitation on the application of the neutrality principle, with citations to historical evidence said to show that the Framers understood the ban on establishment of religion as sufficiently narrow to allow the government to espouse submission to the divine will. The dissent identifies God as the God of monotheism, all of whose three principal strains (Jewish, Christian, and Muslim) acknowledge the religious importance of the Ten Commandments. *Post*, at 9–10. On the dissent’s view, it apparently follows that even rigorous espousal of a common element of this common monotheism, is consistent with the establishment ban.

But the dissent’s argument for the original understanding is flawed from the outset by its failure to consider the full range of evidence showing what the Framers believed. The dissent is certainly correct in putting forward evidence that some of the Framers thought some endorsement of religion was compatible with the establishment ban; the dissent quotes the first President as stating that “national morality [cannot] prevail in exclusion of religious principle,” for example, *post*, at 3, and it cites his first Thanksgiving proclamation giving thanks to God, *post*, at 2 (internal quotation marks omitted). Surely if expressions like these from Washington and his contemporaries were all we had to go on, there would be a good case that the neutrality principle has the effect of broadening the

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post, at 4, criticized Virginia’s general assessment tax not just because it required people to donate “three pence” to religion, but because “it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority.” 505 U. S., at 622 (internal quotation marks omitted); see also Letter from J. Madison to E. Livingston (July 10, 1822), in 5 *The Founders’ Constitution*, at 106 (“[R]eligion & Govt. will both exist in greater purity, the less they are mixed together”); Letter from J. Madison to J. Adams (Sept. 1833) in *Religion and Politics in the Early Republic* 120 (D. Dresbach ed. 1996) (stating that with respect to religion and government the “tendency to a usurpation on one side, or the other, or to a corrupting coalition or alliance between them, will be best guarded against by an entire abstinence of the Government from interference”); *Van Orden v. Perry*, 545 U. S. ____ (2005) (STEVENS, J., dissenting) (slip op., at 19-20).²⁵

The fair inference is that there was no common understanding about the limits of the establishment prohibition, and the dissent’s conclusion that its narrower view was the original understanding, *post*, at 2–3, stretches the evidence beyond tensile capacity. What the evidence does show is a group of statesmen, like others before and after them, who proposed a guarantee with contours not wholly worked out, leaving the Establishment Clause with edges still to be determined. And none the worse for that. Indeterminate edges are the kind to have in a constitution

²⁵The dissent cites material suggesting that separationists like Jefferson and Madison were not absolutely consistent in abstaining from official religious acknowledgment. *Post*, at 4. But, a record of inconsistent historical practice is too weak a lever to upset decades of precedent adhering to the neutrality principle. And it is worth noting that Jefferson thought his actions were consistent with non-endorsement of religion and Madison regretted any backsliding he may have done. *Lee v. Weisman*, 505 U. S. 577, 622–25 (1992) (SOUTER, J., concurring). “Homer nodded.” *Id.*, at 624, n. 5 (corrected in erratum at 535 U. S., at II).

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a touchstone of establishment interpretation.²⁶ Even on originalist critiques of existing precedent there is, it seems, no escape from interpretative consequences that would surprise the Framers. Thus, it appears to be common ground in the interpretation of a Constitution “intended to endure for ages to come,” *McCulloch v. Maryland*, *supra*, at 415, that applications unanticipated by the Framers are inevitable.

Historical evidence thus supports no solid argument for changing course (whatever force the argument might have when directed at the existing precedent), whereas public discourse at the present time certainly raises no doubt about the value of the interpretative approach invoked for 60 years now. We are centuries away from the St. Bartholomew’s Day massacre and the treatment of heretics in early Massachusetts, but the divisiveness of religion in current public life is inescapable. This is no time to deny the prudence of understanding the Establishment Clause to require the Government to stay neutral on religious belief, which is reserved for the conscience of the individual.

V

Given the ample support for the District Court’s finding

²⁶There might, indeed, even have been some reservations about monotheism as the paradigm example. It is worth noting that the canonical biography of George Washington, the dissent’s primary exemplar of the monotheistic tradition, calls him a deist. J. Flexner, *George Washington: Anguish and Farewell (1793–1799)* 490 (1972) (“Washington’s religious belief was that of the enlightenment: deism”). It would have been odd for the First Congress to propose an Amendment with Religion Clauses that took no account of the President’s religion. As with other historical matters pertinent here, however, there are conflicting conclusions. R. Brookhiser, *Founding Father: Rediscovering George Washington* 146 (1996) (“Washington’s God was no watchmaker”). History writ small does not give clear and certain answers to questions about the limits of “religion” or “establishment.”

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of a predominantly religious purpose behind the Counties' third display, we affirm the Sixth Circuit in upholding the preliminary injunction.

It is so ordered.