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**LYNCH v. DONNELLY**  
**SUPREME COURT OF THE UNITED STATES**  
**465 U.S. 668**  
**March 5, 1984**  
**[5 - 4]**

**THIS CASE IS DESERVING OF SPECIAL ATTENTION  
AS AN INSTRUCTIONAL TOOL, IF NOTHING ELSE.**

I JUST CANNOT RESIST THE TEMPTATION TO HAVE SOME FUN WITH THIS CASE. SO, I WILL TAKE SOME TIME WITH IT AND INTERJECT MY PERSONAL COMMENTS. HOWEVER, AS ALL SHOULD KNOW BY NOW, THE MISSION OF ELL IS NOT TO PERSUADE ANYONE TO ANY ULTIMATE POSITION. RATHER, FIRST AND FOREMOST, WE WANT OUR CITIZENRY TO KNOW THE TRUTH ABOUT WHAT THE SUPREME COURT DOES AND TO AT LEAST KNOW "THEIR" REASONING.

**I AM A CHRISTIAN.  
YET, IN MY HUMBLE OPINION:**

**THIS CASE IS WRONGLY DECIDED!!!**

- 1. CHRISTIANS (JEWS, ETC.) HAVE EVERY RIGHT TO WIELD POLITICAL INFLUENCE AS A GROUP ON A PAR WITH THE NRA, THE ACLU, THE NAACP, THE KU KLUX KLAN OR ANY OTHER GROUP OR INDIVIDUAL. EXAMPLE: ANY RELIGION HAS THE ABSOLUTE RIGHT TO TAKE A POLITICAL STAND ON ABORTION. IT'S CALLED FREE SPEECH.**

2. **BUT, THERE IS A DIFFERENCE BETWEEN LOBBYING FOR A “CAUSE” FOUNDED UPON A RELIGIOUS BELIEF AND SEEKING GOVERNMENT SUPPORT OF RELIGION ITSELF.**
3. **CHRISTIANS (OR ANY SECT) SHOULD BE VERY, VERY CAREFUL ABOUT DECIDING TO *SEEK* THE SUPPORT OF GOVERNMENT. THEY JUST MIGHT GET WHAT THEY ASK FOR AND, IN THIS CASE, THEY DID — IN MY OPINION, TO THEIR LONG TERM DETRIMENT.**
4. **THE MAJORITY HAD THE HUTZPAH (IRONICALLY, A HEBREW TERM MEANING “UNBELIEVABLE GALL”) TO ATTEMPT A SNOW JOB ON US WITH INTELLECTUALLY DISHONEST CONCLUSIONS.**
5. **IT IS NOT DIFFICULT TO READ BETWEEN THE LINES. IN SPITE OF A CLEAR CONSTITUTIONAL MANDATE TO REMOVE THIS NATIVITY SCENE, THE MAJORITY DID NOT WANT TO BE LABELED AS “THE COURT THAT TOOK CHRIST OUT OF CHRISTMAS.” WHAT THEY HAVE DONE, HOWEVER, FORETELLS OF SERIOUS HARM TO THE VICTOR; I.E., TO CHRISTIANITY. AS I WAS INITIALLY READING THE OPINION, I PREDICTED PROBLEMS AHEAD. YOU WILL SEE WHAT I MEAN WHEN WE COME TO *ALLEGHENY COUNTY VS. ACLU*.**

**THE MAJORITY OPINION LOVES TO CITE *McGOWAN* (SUNDAY CLOSING LAWS) AND *ALLEN* (LOAN OF TEXTBOOKS) AND *MARSH* (LEGISLATIVE PRAYER) IN SUPPORT OF ITS POSITION HERE.**

**I BELIEVE THESE THREE CASES WERE INCORRECTLY DECIDED.  
I WILL EXPLAIN.**

## **The Issue:**

Whether the Establishment Clause prohibits a **municipality** from including a creche (Nativity scene) in its annual Christmas display?

## **The Holding:**

This particular Nativity scene (incorporated into the entire Christmas display) does not violate the Constitution.

## **The Facts:**

Pawtucket, Rhode Island, erects a Christmas display it paid for, owns and maintains in a private park. The display includes a Santa Claus house, reindeer pulling Santa's sleigh, candy-striped poles, a Christmas tree, carolers, cutout figures (representing a clown, an elephant and a teddy bear), colored lights, a large banner reading "SEASONS GREETINGS" and a **NATIVITY SCENE**.

The creche, which has been included in the display for 40 or more years, consists of the traditional figures, including the Infant Jesus, Mary and Joseph, angels, shepherds, kings, and animals, all ranging in height from 5" to 5'. The Nativity scene originally cost the City \$1,365. It now has a value of \$200. Annual erection and dismantling costs \$20. Nominal expense is required to light it and no money has been expended on maintenance for 10 years.

## **The Opinion:**

**OPINION:** BURGER (Presbyterian), O'CONNOR (Episcopalian), WHITE (Episcopalian), POWELL (Presbyterian) & REHNQUIST (Lutheran). [THEY APPROVED OF THIS NATIVITY SCENE. REMEMBER THESE NAMES WHEN WE COME TO ALLEGHENY COUNTY.]

**THE MAJORITY:**...Pawtucket residents and...the ACLU brought this action...challenging the city's inclusion of the creche in the annual display. The District Court held that the city's inclusion of the creche in the display violates the *Establishment Clause* [and]...found that, by including the creche in the Christmas display, the city has "tried to endorse and promulgate religious beliefs" and that "erection of the creche has the real and substantial effect of affiliating the City with the Christian beliefs that the creche represents." This "appearance of official sponsorship," it believed, "confers more than a remote and incidental benefit on Christianity." Last, although the court acknowledged the absence of administrative entanglement, it found that excessive entanglement has been fostered as a result of the political divisiveness of including the creche in the celebration. The city was permanently enjoined from including the creche in the display. A divided panel of the Court of Appeals for the First Circuit affirmed. We...reverse.

This Court has explained that the purpose of the Establishment and Free Exercise Clauses of the 1<sup>st</sup> Amendment is "to prevent, as far as possible, the intrusion of either the church or the state

into the precincts of the other." *Lemon v. Kurtzman*<sup>1</sup>. At the same time, however, the Court has recognized that "total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable."

**COMMENT:** "To prevent as far as possible?" Why does Christianity need the "government of all faiths or those of no faith" to purchase, erect, light or maintain one of its most cherished symbols? Christian sects are perfectly capable of expending their own money to erect a Nativity scene on their own church property!!! Yet, the majority apparently says, in permitting this display, "we have gone as far as possible in preventing the intrusion of either the church or the state into the precincts of the other." Here, although I, too, do not believe that "total separation is either required or possible," in this instance, not only is it obviously possible, it is, I contend, very desirable. Read on.

**THE MAJORITY:** The Constitution does not require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. *Zorach*<sup>2</sup>; *McCullum*<sup>3</sup>. Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause. *Zorach*.

**COMMENT:** This is not "accommodation of all religions." It is hostile to all but Christianity. Forbidding city ownership, erection and maintenance is not callous indifference. Forbidding a church to place its own Nativity scene on its own property (through a zoning law, etc.) would likely be a callous indifference which would serve to strike down the zoning law, but denying this Nativity scene clearly does not portray a callous indifference to Christianity. Now that the Court has ruled that Pawtucket's Nativity scene is permitted, if Jews, Buddhists or Satanists want the City to purchase, erect and maintain a Menorah, a statue of Buddha or the Devil himself at Christmas, it appears Pawtucket must either abandon its Nativity scene or comply with legitimate requests of its "other" citizens who also contribute tax money to Pawtucket. Pawtucket City Hall got its victory precisely because its majority (Christians) had the political power to prevail in even purchasing the Nativity scene, much less in winning Supreme Court approval. The political war is now "on" for Pawtucket's purse. And who are the potential combatant's? Religions of every faith and denomination. Congratulations to the Christians of Pawtucket. You got exactly what you asked for. Are you as willing to live with the consequences?

Government should stay out of the business of purchasing, erecting or maintaining tangible clearly religious property...[T]hat is the business of the church and only the church. I cannot believe this opinion. It strikes at the very core of the 200 + "religion clause cases" the court has correctly decided.

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<sup>1</sup> Case 1A-R-042 on this website.

<sup>2</sup> Case 1A-R-025 on this website.

<sup>3</sup> Case 1A-R-023 on this website.

**THE MAJORITY:** The Majority cites to the First Congress who paid a chaplain to open legislative sessions with prayer and says that 17 of the delegates to the Constitutional Convention wound up in the First Congress, the implication being that if the delegates who were also in the First Congress thought legislative prayer was OK, they really didn't intend the "wall of separation" to be as impenetrable as the Court has made it over the years.

**COMMENT:** While that may be so and I do not necessarily disagree, none of the Justices raise the issue I raise. My research indicates that 19, not 17, of the Constitution delegates were in the First Congress. Whether 17 or 19, I ask two questions: How many total Congressmen were in the First Congress? How did the former delegates vote on the legislative prayer question? It seems to me that is highly significant. My research indicates that "9 of the 26 members of the Senate were former delegates" and "10 of the 65 members of the House were former delegates." Although I have not been able to obtain their voting record on this issue, I do agree it is likely a majority of the "former delegate Senators" and a majority of the "former delegate Representatives" voted for paying a legislative chaplain. Yet, isn't this knowledge important? For, it is possible the measure passed in spite of all of the former delegates voting "no." Then, the argument in support of the Framers' intent fails.

**THE MAJORITY:** The majority finds that "there is insufficient evidence to establish that the inclusion of the Nativity scene is a purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message."

**COMMENT:** I simply do not understand how this majority expects to sell such a concept. Would Pawtucket display a Nativity scene without the Christ child in it? What reaction would the city fathers get if, instead of a Nativity scene, the city displayed a Menorah or a miniature mosque, etc., etc.?

**THE MAJORITY:** The majority finds a secular purpose of the Nativity scene in "celebrating 'the Holiday' and in 'depicting historical origins of the Holiday.'" "To conclude that the primary effect of including the Nativity scene is to advance religion would require that we view it as more beneficial to and more an endorsement of religion, for example, than expenditure of large sums of public money for textbooks (*Allen*<sup>4</sup>), bus transportation (*Everson*<sup>5</sup>), federal grants for college buildings (*Tilton*<sup>6</sup>) and tax exemptions for church property (*Walz*<sup>7</sup>). It would also require that we view it as more of an endorsement of religion than the Sunday Closing Laws (*McGowan*<sup>8</sup>) and the off-campus released time program (*Zorach*)."

**COMMENT:** What? Note that the Court must be embarrassed by its logic, for it cannot even bring itself to refer to "CHRISTMAS" in this analysis — it refers instead to the "HOLIDAY." There is simply no question but that this City's

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<sup>4</sup> Case 1A-R-037 on this website.

<sup>5</sup> Case 1A-R-022 on this website.

<sup>6</sup> Case 1A-R-043 on this website.

<sup>7</sup> Case 1A-R-039 on this website.

<sup>8</sup> Case 1A-R-028 on this website.

**purchase of a purely Christian religious symbol advances the cause of religion — one religion. To state the contrary does not make it so. As for “large sums of public money,” hold on!** As I recall, the Court found of great significance that the textbooks in *Allen* were not given to the schools or the parents — they were “loaned” to the students. Plus, of great significance in *Allen* and *Tilton* was the fact that the books and buildings were secular and not to be used for religious purposes, respectively. And, in *Everson*, I recall the Court saying the bus subsidy was relatively minimal. Please...this argument is disingenuous, for, regardless of the sum, this Nativity scene is NOT secular in nature. Also, *Walz* was decided on “entanglement” grounds and, as I recall, it made a big deal of saying that government was, after all, not giving money to religion or sponsoring religion, it was simply not charging religion a tax. Consistency, please! *McGowan* was wrongly decided, but at least a “day of tranquility for all” is far more of a secular purpose than the “historical significance” of a Nativity scene. And, at least in theory, the *Zorach* released time program was available to all faiths. Hardly a case to cite for a Nativity scene.

**THE MAJORITY:** “Here, whatever benefit there is to one faith or religion or to all religions is indirect, remote and incidental. This is no more an endorsement of religion than...exhibition of hundreds of religious paintings in governmentally supported museums.”

**COMMENT:** First, there clearly is no benefit “to all religions” — just the Christian religion. It also is “absolutely direct, hardly remote and absolutely not incidental.” And, please, “paintings in a museum” is to “a Nativity scene at the hub of a City’s shopping district at Christmas” as “apples” are to “oranges.” First, to my knowledge, government does not typically own paintings it displays in museums. They are on loan for display. Second, one presumes that government owned museums display a wide variety of religious paintings. I don’t see a Buddha or a Menorah on Pawtucket’s “Religious Display Inventory.”

**THE MAJORITY:** “Entanglement is a question of kind and degree. In this case, however, there [was no administrative entanglement.]...There is no evidence of contact with the church authorities concerning the content or design of the exhibit prior to or since Pawtucket’s purchase of the creche.”

**COMMENT:** The majority makes this comment to support a lack of “entanglement.” In other words, if there had been annual controversial debate over the “design of the display,” the Court would be more inclined to find “entanglement” and, therefore, it would be more inclined to order the display removed. But, the majority again attempts to fool us. The creche is 40 years old. The design of the display likely occurred once with little or no record made of the “discussion” which likely did not come up again. But, far more importantly, the very reason why there is likely no record of “debate” or “entanglement” is the very reason the creche should go. That is, there is no debate or church “contact” because the members of city government were likely the majoritarian Christians. There is no need to “contact” the church when the “City Fathers” already represent “the church.” And, that is the problem — the very idea that “City Fathers”

represent “the church” in a government activity is what is forbidden by the Establishment clause.

**THE MAJORITY:** “No expenditure for maintenance of the creche has been necessary; and, since the City owns the creche, now valued at \$200, the tangible material it contributes is *de minimis*.”

**COMMENT:** Clearly, this Majority places some degree of significance on the “insignificance” of this Nativity scene. It would appear that even the Majority could have a problem with Pawtucket if the Nativity scene had cost \$15,000 and the gifts to Jesus had been gold, frankincense and myrrh. Once again, congratulations to the Christian political majority of Pawtucket. Apparently, because your depiction of one of the most sacred of Christian events was “shabby,” you won the right to “keep it shabby.” Better not upgrade.

**THE MAJORITY:** The majority implicitly agrees with the District Court who found that this display has had a “calm 40 year history.” And, although the District Court found that the political divisiveness engendered by this very lawsuit was evidence of excessive entanglement, the Majority held that “a litigant cannot, by the very act of commencing a lawsuit, create the appearance of divisiveness and then exploit it as evidence of entanglement.”

**COMMENT:** I agree with the stated principle. However, once again, Christians across the land can thank the powers that be in Pawtucket. For, now that this case has been decided in their favor, will the next 40 years or 10 or 1 be so “calm”? How will the City Fathers react to a Jewish application for a Menorah? A Buddhist application? Will this result in political divisiveness not caused by the act of commencing a lawsuit in the future, but by the result of this lawsuit in the present?

**THE MAJORITY:** The Majority states: “Justice Brennan [in dissent] describes the creche as a ‘re-creation of an event that lies at the heart of Christian faith.’ The creche, like a painting, is passive; admittedly it is a reminder of the origins of Christmas.”

**COMMENT:** This opinion is so wrought with fiction that I could comment on nearly every sentence. Justice Brennan is clearly correct. The Majority is attempting to minimize the significance of the Nativity scene by even commenting on Justice Brennan’s description at all. **And, let’s explore what the Majority is trying to prove with the “passive” comment. Is that supposed to mean that, because it is passive, it is Constitutional?** Would live animals and actors playing Mary, Joseph and Jesus make it Un-Constitutional? Why? Would it be because people may actually contemplate the “origins” of Christmas and recognize the Nativity scene for what it truly represents if it was “live”? Again, is it the “insignificance,” the “poor quality” and the “passivity” of this particular Nativity scene that the Majority relies upon to “keep Christ in Christmas”? What irony!!! While Pawtucket likely had good intentions, the rationale for its victory is outrageously insulting to Christians. Here is a short list of so-called “passive” symbols: The Confederate Flag; The Swastika; A White Hooded Robe; Cartoon Caricatures of Mohammed. Need I say more?

Finally, the creche is far more than a reminder of the **origins** of Christmas. It is the sole reason to have Christmas. Here they go, again. The only way they can justify “keeping Christ in Christmas” is to minimize Christ’s importance at Christmas! Truly unbelievable. How can these obviously very intelligent folks be so blind to reality? That is what happens when core religious issues are discussed anywhere. Good friends can almost come to blows at a social gathering when “religion” surfaces. And, that is the very point. In order to avoid strife between various faiths or within various faiths and, therefore, in order to help religion flourish and prosper, there should be a “wall of separation.” If that wall comes down, so will religion.

**THE MAJORITY:** “The ‘fears and political problems’ that gave rise to the Religion Clauses in the 18<sup>th</sup> Century are of far less concern today. Any notion that these symbols pose a real danger of establishment of a state church is farfetched indeed.”

**COMMENT:** First, with this ruling, the Majority is likely inviting fears and political problems of the past to the table of the present. Second, it is true that Pawtucket’s Nativity scene is not likely to be the precursor of “*The State Church of Rhode Island.*” However, time and time again, the Court has said, “This Court has given the Amendment a ‘broad interpretation...in the light of its history and the evils it was designed forever to suppress...’ *Everson*. It has found that the Constitution affords protection against religious establishment far more extensive than merely to forbid a national or state church.”

**THE MAJORITY:** We hold that, notwithstanding the religious significance of the creche, the city of Pawtucket has not violated the Establishment Clause...[J]udgment...reversed.

### THE O’CONNOR CONCURRENCE

**O’CONNOR:** Paraphrasing: The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person’s standing in the political community. Government can run afoul of that prohibition in two ways. (1) Excessive entanglement which may give institutions access to government not fully shared by nonadherents of the religion and foster the creation of political constituencies defined along religious lines. (2) Government endorsement or disapproval of religion. Endorsement sends a message to non-adherents that they are outsiders, not full members of the political community and to adherents that they are the favored ones.

**COMMENT:** Then why, Justice O’Connor, did you side with the Majority? Are not Jews, in this case, the “politically disfavored outsiders” of whom you speak?

Now, to put a sense of reality to my ranting, let us assume that the fictional city of Pleasantville has 20 aldermen. It is a college town. College towns attract a more diverse group of citizens than other communities. For the last 40 years, prior to the establishment of a new college, Pleasantville has owned, maintained and erected a Nativity scene at Christmas. The aldermen are made up of 9 Jews, 2 Moslems and 9 Christians. There has

been a lot of controversy over some topic in city government that, coincidentally, pits the Jews and Moslems against the Christians. For purely political reasons, the Jews and Moslems vote against the Christians (11-9). They don't want the Nativity scene any more and wish to replace it with a Menorah. Who's disfavored, now?

Personally, I cannot recall a local election (one in which I have voted) where a person's religion was "an issue." But, when religion enters government, every election would be about "religion." And, let me be clear. I welcome any politician to exercise his faith, even in government. In fact, he/she would be a hypocrite to do otherwise. No, I object to "religious issues being the subject of political votes." There is quite a difference.

**O'CONNOR:** Paraphrasing...**The central issue is whether Pawtucket has endorsed Christianity. Pawtucket did not intend to convey any message of endorsement of Christianity or disapproval of non-Christian religions. The evident purpose of including the creche was not promotion of the religious content but celebration of the public holiday through its traditional symbols. What is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion. Although the religious significance of the creche is not neutralized by the setting, the overall holiday setting changes what viewers may fairly understand to be the purpose of the display, just as a museum setting for a painting negates any message of endorsement of content.**

**COMMENT:** Justice O'Connor seems to be saying that because the Nativity scene has lost its religious significance and has become just another "plastic Santa" or "clown" or "elephant," it does not convey a message of government endorsement. What a slap in the face to Christianity. Pawtucket, you got what you asked for.

## **The Dissents:**

**THE BRENNAN DISSENT: JUSTICE BRENNAN (Catholic), MARSHALL (Episcopalian), BLACKMUN (Methodist) & STEVENS (Protestant)...[REMEMBER THESE NAMES WHEN WE COME TO ALLEGHENY COUNTY.]**

**THE BRENNAN DISSENT:** "The Majority leaves open the question of a free-standing creche or a cross. **Nothing in the setting in which this creche is displayed obscures or diminishes the plain fact that Pawtucket's action amounts to endorsement of a particular faith.** Although the Majority's reluctance to disturb a community's chosen method of celebrating such an agreeable holiday is understandable, that cannot justify departure from controlling precedent. Pawtucket's maintenance and display at public expense of a symbol as distinctively sectarian as a creche simply cannot be squared with our prior cases. It is plainly contrary to the purposes and values of the Establishment Clause **to pretend**, as the Court does, that the otherwise secular setting of Pawtucket's nativity scene dilutes in some fashion the creche's singular religiosity, or that the city's annual display reflects nothing more than an "acknowledgment" of our shared national heritage. Neither the character of the Christmas holiday itself, nor our heritage of religious expression supports this result. Indeed, our remarkable and precious religious diversity

as a Nation, which the Establishment Clause seeks to protect, runs directly counter to this decision.”

**COMMENT: DITTO!**

**THE BRENNAN DISSENT:** Paraphrasing: This fails the 3 prongs of the *Lemon* test. “A union of government and religion tends to destroy government and degrade religion.” *Engel*<sup>9</sup>. In order to support the secular purpose prong of *Lemon*, Pawtucket said it sought to attract people to the downtown area to promote Christmas retail sales and to engender a spirit of goodwill. All of Pawtucket’s stated purposes can be accomplished through other means. In fact, such motives are fully served by the plastic Santa Claus, reindeer, etc., in the remainder of the display. No, the primary effect of including the creche is to place government’s imprimatur of approval on the particular religious beliefs exemplified by the creche. Those who believe in the message of the Nativity receive the unique and exclusive benefit of public recognition and approval of their views. The views of those who do not believe in such a message are apparently not worthy of the same public support. It was precisely this form of religious chauvinism that the Establishment Clause was intended to forever prohibit. Government will now have to become involved in accommodating similar requests from other religions, thus bringing on the real potential for considerable civil strife. To suggest, as the Court does, that such a symbol is merely "traditional" and therefore no different from Santa's house or reindeer is not only offensive to those for whom the creche has profound significance, but insulting to those who insist for religious or personal reasons that the story of Christ is in no sense a part of "history" nor an unavoidable element of our national "heritage." For a non-Christian, to be excluded on religious grounds by one’s elected government is an insult and an injury that, until today, could not be countenanced by the Establishment Clause.

**COMMENT: DITTO! I COULDN’T AGREE MORE!**

**THE BLACKMUN DISSENT:** The creche has been relegated to the role of a neutral harbinger of the holiday season, useful for commercial purposes, but devoid of any inherent meaning and incapable of enhancing the religious tenor of a display of which it is an integral part. The city has its victory, albeit a Pyrrhic one. The import of this decision is to encourage use of the creche in a municipally sponsored display where Christians feel constrained in acknowledging its symbolic meaning and non-Christians feel alienated by its presence. This is a misuse of a sacred symbol. I cannot join the Court in denying either the force of our precedents or the sacred message that is at the core of the Nativity scene.



**COMMENT:** Can Pawtucket now erect a shabby inexpensive CROSS at Easter? Maybe, if it makes sure to place hundreds of plastic eggs and Easter bunnies nearby so as to diminish the significance of the Crucifixion and Resurrection. Would this Court ever attempt to justify a government sponsored Cross on the basis that “other” artifacts nonreligious in nature “diminish its significance”? Unfortunately,

<sup>9</sup> Case 1A-R-033 on this website.

**although not likely intended, this Court's fear of "taking Christ out of Christmas" has served to degrade Christianity, at least in my opinion and in the opinions of Justices Blackmun, Stevens, Marshall and Brennan.**

**CONCLUSION: I predict that if this Opinion is not someday overruled, it will lead to chaos and strife among all religions and, indeed, even within Christian denominations. Surely, the Christians that lobbied to continue with this Nativity tradition did not do so for its commercial value. Is Christianity so weak that it cannot provide its message without government expenditure? On its own property?**