



SAINT LOUIS UNIVERSITY

—
SCHOOL OF LAW



Church, state, and COVID-19

Chad Flanders

Professor of Law

Saint Louis University

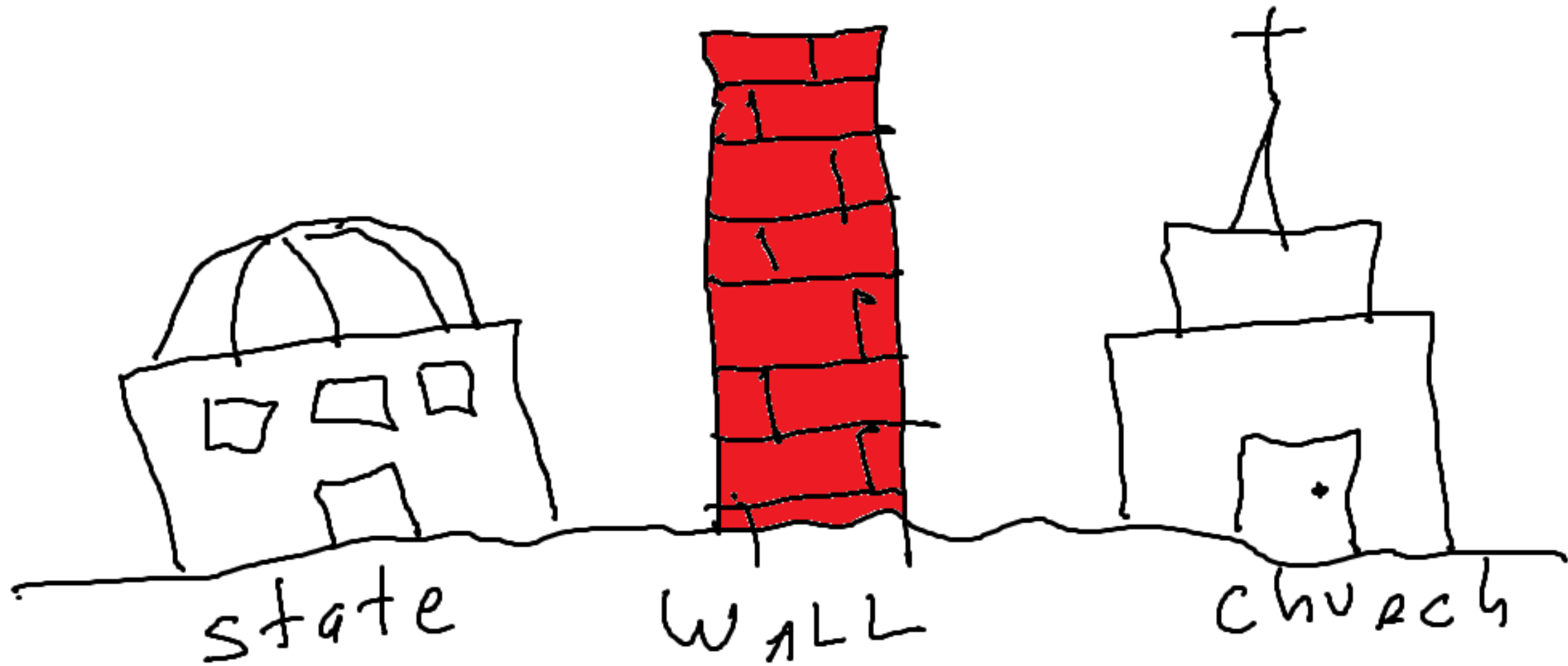
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The two religion clauses

- **Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;** or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

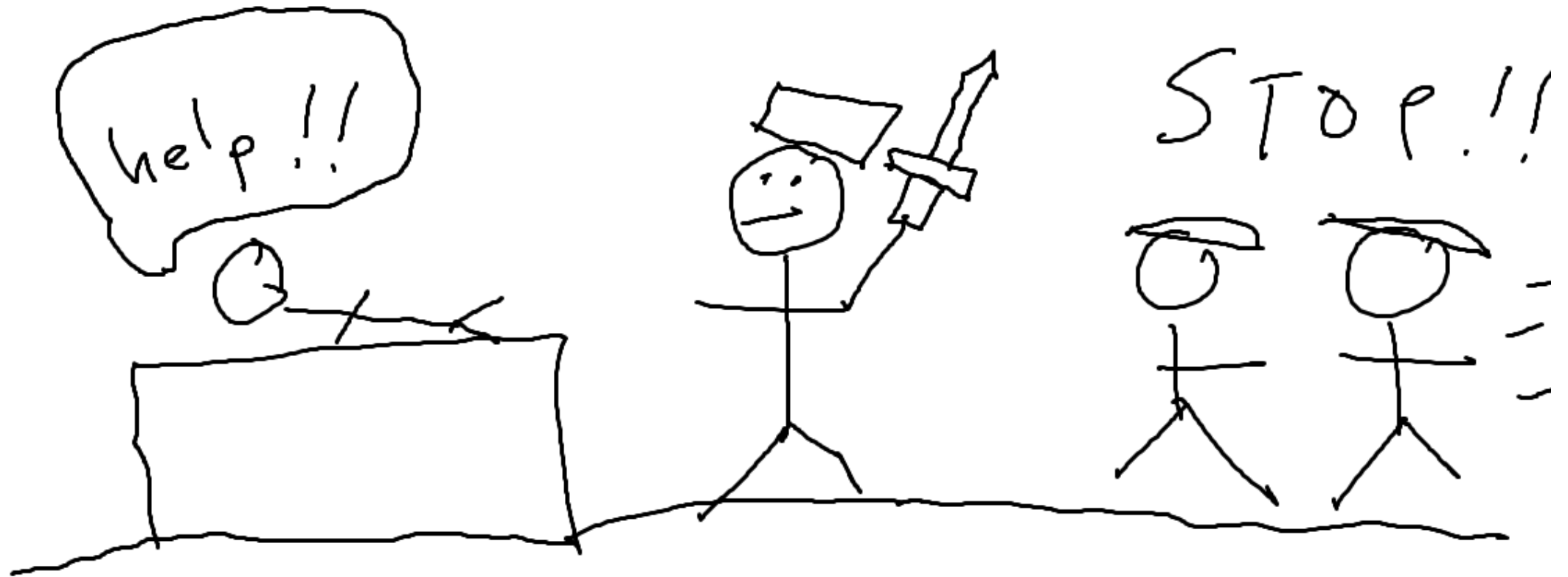
Two sides of the same coin?

- No *establishment*. There can't be a state church, nor can the state *endorse* religion. Church can't bother the state.
- Protection for religious exercise. Can't ban worship, can't burden people's religious behavior unfairly. The state can't bother the church.



A "wall of separation"

Government can ban human sacrifice—that's not a violation of free exercise.



But it's OK for me to give money the government gives me to my church—that's not establishment.



This isn't establishment, either.



Religion and COVID-19, part 1: shut-downs

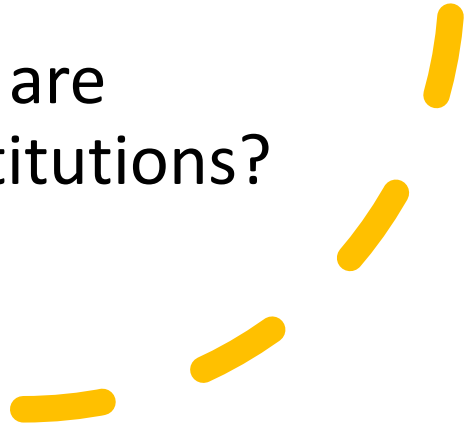


Phase 1: *we
all shut down
everything.*

- Non-tailored, across the board.
- Rough categorizations of what is “essential” and what is not.
- Courts tend to defer, based on the idea that the “Constitution is not a suicide pact.”
- Concessions to state officials working under enormous time pressure and information deficiencies.



Phase 2: *we start opening up*

- States begin to open up, and some businesses can open up sooner than others. Gyms? Saunas? Liquor stores.
 - But churches feel left behind.
 - The argument is that churches and other houses of worship are being treated *unfairly*.
 - In a question: how come the *casinos* get to open but not the *churches*?
 - Doesn't this mean that churches are disfavored relative to secular institutions?
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Religion and COVID, part 2: gov't money.



The image is a screenshot of a web browser displaying a CBS News article. The browser's address bar shows the URL: <https://www.cbsnews.com/news/catholic-churches-paycheck-protection-program-12000-applied-9000-got-them>. The article's main headline is "More than 12,000 Catholic churches in the U.S. applied for PPP loans - and 9,000 got them". The author is identified as Christina Capatides, and the article was published on May 8, 2020, at 12:17 PM. The article text begins with: "As suffering small businesses around the country clamor for much-needed loans from the federal Paycheck Protection Program, news of prominent national chains receiving millions of dollars sparked an outcry among owners of smaller businesses who have been shut out. Now, many will likely be surprised to learn that between 12,000 and 13,000 of the 17,000 Catholic churches in the U.S. also applied for those coveted PPP loans". The browser's taskbar at the bottom shows the time as 3:33 PM on 8/5/2020.

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More than 12,000 Catholic churches in the U.S. applied for PPP loans - and 9,000 got them

BY CHRISTINA CAPATIDES
MAY 8, 2020 / 12:17 PM / CBS NEWS

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As suffering small businesses around the country clamor for much-needed loans from the federal Paycheck Protection Program, news of prominent national chains receiving millions of dollars sparked an outcry among owners of smaller businesses who have been shut out. Now, many will likely be surprised to learn that between 12,000 and 13,000 of the 17,000 Catholic churches in the U.S. also applied for those coveted PPP loans

3:33 PM 8/5/2020

Paycheck protection act

- Gives money to small businesses to help them pay the bills that they can't pay because of the shut down.
- But aren't churches, etc. *sort of like* businesses?
- They have to make payroll.
- They have suffered because of the shut down.
- Why shouldn't they be able to benefit from government funding?

Establishment problems

- But this means that the government will be directly funding the salaries of, e.g., priests.
- Or directly funding, e.g., repairs to church buildings.
- This looks like *establishment*.
- That is, it looks like government support for religion.
- At the same time, wouldn't it be *unfair* to exclude religion?
- But then: what does the prohibition on establishment mean then?