

Although the general issue is now settled, it is to be expected that variations of the exemption upheld in *Walz* will present the Court with an opportunity to elaborate the field still further.<sup>194</sup> For example, the Court determined that a sales tax exemption applicable only to religious publications constituted a violation of the Establishment Clause,<sup>195</sup> and, on the other hand, that application of a general sales and use tax provision to religious publications violates neither the Establishment Clause nor the Free Exercise Clause.<sup>196</sup>

***Exemption of Religious Organizations from Generally Applicable Laws.***—The Civil Rights Act's exemption of religious organizations from the prohibition against religious discrimination in employment<sup>197</sup> does not violate the Establishment Clause when applied to a religious organization's secular, nonprofit activities. In *Corporation of the Presiding Bishop v. Amos*,<sup>198</sup> the Court held that a church-run gymnasium operated as a nonprofit facility open to the public could require that its employees be church members. Declaring that "there is ample room for accommodation of religion under the Establishment Clause,"<sup>199</sup> the Court identified a legitimate purpose in freeing a religious organization from the burden of predicting which of its activities a court will consider to be secular and which religious. The rule applying across-the-board to nonprofit activities and thereby "avoid[ing] . . . intrusive inquiry into religious belief" also serves to lessen entanglement of church and state.<sup>200</sup>

<sup>194</sup> For example, the Court subsequently accepted for review a case concerning property tax exemption for church property used as a commercial parking lot, but state law was changed, denying exemption for purely commercial property and requiring a pro rata exemption for mixed use, and the Court remanded so that the change in the law could be considered. *Diffenderfer v. Central Baptist Church*, 404 U.S. 412 (1972).

<sup>195</sup> *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989).

<sup>196</sup> *Jimmy Swaggart Ministries v. California Bd. of Equalization*, 493 U.S. 378 (1990). Similarly, there is no constitutional impediment to straightforward application of 26 U.S.C. § 170 to disallow a charitable contribution for payments to a church found to represent a reciprocal exchange rather than a contribution or gift. *Hernandez v. Commissioner*, 490 U.S. 680 (1989).

<sup>197</sup> Section 703 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, makes it unlawful for any employer to discriminate in employment practices on the basis of an employee's religion. Section 702, 42 U.S.C. § 2000e-1, exempts from the prohibition "a religious corporation . . . with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation . . . of its activities."

<sup>198</sup> 483 U.S. 327 (1987).

<sup>199</sup> 483 U.S. at 338.

<sup>200</sup> 483 U.S. at 339.