stall." [273] Other religious exemptions not required by the Free Exercise Clause have been upheld against Establishment Clause challenges,[274] although it is also possible for legislation to go too far in promoting free exercise.[275] Government need not, however, offer the same accommodations to secular entities that it extends to religious practitioners in order to facilitate their religious exercise; "[r]eligious accommodations . . . need not 'come packaged with benefits to secular entities.'" [276]

"Play in the joints" can work both ways, the Court ruled in upholding a state's exclusion of theology students from a college scholarship program.[277] Although the state could have included theology students in its scholarship program without offending the Establishment Clause, its choice "not to fund" religious training did not offend the Free Exercise Clause even though that choice singled out

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[273] 374 U.S. at 409. *Accord*, Thomas v. Review Bd., 450 U.S. 707, 719–20 (1981). Dissenting in *Thomas*, Justice Rehnquist argued that *Sherbert* and *Thomas* created unacceptable tensions between the Establishment and Free Exercise Clauses, and that requiring the states to accommodate persons like Sherbert and Thomas because of their religious beliefs ran the risk of "establishing" religion under the Court's existing tests. He argued further, however, that less expansive interpretations of both clauses would eliminate this artificial tension. Thus, Justice Rehnquist would have interpreted the Free Exercise Clause as not requiring government to grant exemptions from general requirements that may burden religious exercise but that do not prohibit religious practices outright, and would have interpreted the Establishment Clause as not preventing government from voluntarily granting religious exemptions. 450 U.S. at 720–27. By 1990 these views had apparently gained ascendancy, Justice Scalia's opinion for the Court in the "peyote" case suggesting that accommodation should be left to the political process, *i.e.*, that states could constitutionally provide exceptions in their drug laws for sacramental peyote use, even though such exceptions are not constitutionally required. Employment Div. v. Smith, 494 U.S. 872, 890 (1990).

[274] *See*, *e.g.*, Walz v. Tax Comm'n, 397 U.S. 664 (upholding property tax exemption for religious organizations); Corporation of the Presiding Bishop v. Amos, 483 U.S. 327 (1987) (upholding Civil Rights Act exemption allowing religious institutions to restrict hiring to members of religion); Gillette v. United States, 401 U.S. 437, 453–54 (1971) (interpreting conscientious objection exemption from military service); Cutter v. Wilkinson, 544 U.S. 709 (2005) (upholding a provision of the Religious Land Use and Institutionalized Persons Act of 2000 that prohibits governments from imposing a "substantial burden on the religious exercise" of an institutionalized person unless the burden furthers a "compelling governmental interest").

[275] *See*, *e.g.*, Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 788–89 (1973) (tuition reimbursement grants to parents of parochial school children violate Establishment Clause in spite of New York State's argument that program was designed to promote free exercise by enabling low-income parents to send children to church schools); Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989) (state sales tax exemption for religious publications violates the Establishment Clause) (plurality opinion); Board of Educ. of Kiryas Joel Village v. Grumet, 512 U.S. 687, 706–07 (1994) ("accommodation is not a principle without limits;" one limit is that "neutrality as among religions must be honored").

[276] Cutter v. Wilkinson, 544 U.S. 709, 724 (2005) (quoting Corporation of the Presiding Bishop v. Amos, 483 U.S. 327, 338 (1987)).

[277] Locke v. Davey, 540 U.S. 712 (2004).