The 2001 Amendment to the New Jersey Property Tax Exemption Statute as It Pertains to Religious Organizations: A Statute that Grants an Overdue Extension of the Complete Exemption but Raises Establishment Clause Concerns with the Partial Exemption

By: Michael P. Hackett[?]

I. INTRODUCTION

[1] In *Roman Catholic Archdiocese of Newark v. City of East Orange*,[1] the New Jersey Tax Court denied a property tax exemption challenge by a religious organization because the property tax exemption statute, N.J. Stat. Ann. § 54:4-3.6,[2] did not grant exemptions to religious

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[?] J.D. candidate, Rutgers University School of Law – Camden, May 2003; Lead Notes Editor for the Rutgers Journal of Law and Religion.

[1] 17 N.J. Tax 298 (N.J. Tax Ct. 1998).

[2] N.J. STAT. ANN. § 54:4-3.6 (1993) (amended 2001). Prior to amendment, the property tax exemption statute provided that:

> [t]he following property shall be exempt from taxation under this chapter: . . . all buildings actually and exclusively used for . . . religious worship; . . . all buildings actually used in the work of associations or corporations organized exclusively for religious . . . purposes; . . . the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent . . . . The foregoing exemption shall apply only where the associations, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and is authorized to carry out the purposes on account of which the exemption is claimed . . . .

Id.

institutions that leased property to other exempt non-religious organizations.[3] Prior to this case, the New Jersey Legislature had granted complete exemptions over the last twenty-five years to educational organizations, corporations organized for hospital purposes, and moral and mental improvement organizations when they leased their property to other exempt organizations.[4] Even when they leased a portion of their property to non-exempt organizations, the legislature had allowed them to receive an exemption for any remaining property.[5] Yet, neither the complete nor the partial exemption was extended to religious or charitable organizations.[6] In response to *Roman Catholic Archdiocese of Newark*, the New Jersey Legislature amended N.J. Stat. Ann. § 54:4-3.6 in 2001 to allow religious and charitable organizations the complete exemption when their property is leased to another non-profit organization and a partial exemption when some of their property is leased to a profit-making organization.[7]

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[3] Roman Catholic Archdiocese of Newark v. City of East Orange, 17 N.J. Tax 298, 320 (N.J. Tax Ct. 1998).

[4] *Id.* at 316.

[5] *Id.* at 319-20 (citing N.J. STAT. ANN. 54:4-3.6 (1993) (amended 2001)).

[6] *Id.* at 316, 319-20.

[7] N.J. STAT. ANN. § 54:4-3.6 (2001). The statute now provides:

> The following property shall be exempt from taxation under this chapter: . . . all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation . . . .

[2] This note provides an overview of the most significant Supreme Court Establishment Clause[8] cases that pertain to the religious tax exemption. Included in this overview are the majority, as well as the concurring and dissenting opinions. It is important to examine all these opinions because they not only reflect a wide range of viewpoints but also because they reveal the different approaches used by the Justices when analyzing an Establishment Clause challenge. Next, this note discusses the general history of New Jersey's property tax exemption and examines the three requirements for the property tax exemption[9] in the context of religious organizations.[10] This note then traces the history of the partial exemption and explores how the legislature gradually granted partial exemptions to educational institutions, hospitals, and moral and mental improvement entities. Included in the analysis is a review of the purpose for and legislative history of the 2001 amendment to N.J. Stat. Ann. § 54:4-3.6.

[3] After discussing the implications of the 2001 amendment to N.J. Stat. Ann. § 54:4-3.6, and considering possible enforcement problems and the effect on religious organizations, this

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Id.

[8] U.S. CONST. amend. I. The Establishment Clause provides: "Congress shall make no law respecting an establishment of religion . . . . *Id.* Most significantly, in *Walz v. Tax Commission of New York*, 397 U.S. 664 (1970), the Supreme Court upheld the validity of religious based tax exemptions despite four separate opinions.

[9] Over the last century, New Jersey has granted tax exemptions to non-profit corporations when the following three requirements are met: (1) the corporation is "organized exclusively for the moral and mental improvement of men, women and children; (2) its property must be actually and exclusively used for the tax-exempt purpose; and (3) its operation and use of its property must not be conducted for profit." Paper Mill Playhouse v. Millburn Township, 472 A.2d 517, 518 (N.J. 1984).

[10] Religious organizations need to establish that they are "organized exclusively for religious purposes," their property is "actually and exclusively used for religious . . . purposes," and that they were not organized to make a profit. *Roman Catholic Archdiocese of Newark*, 17 N.J. Tax at 304.

note argues that the complete exemption[11] was long overdue and is constitutional in light of the Supreme Court's Establishment Clause cases, which have emphasized the need for breadth in an exemption and the need to avoid excessive government entanglement in religion. Finally, this note argues that the partial exemption[12] raises Establishment Clause concerns because it has the primary effect of advancing religion by creating a subsidy for religious organizations and by increasing state involvement in religion through the taxing system.

II. THE ESTABLISHMENT CLAUSE AND THE RELIGIOUS TAX EXEMPTION

A. Taxing Religious Activity

[4] In *Murdock v. Pennsylvania*[13] and *Follett v. Town of McCormick*,[14] the Supreme Court examined whether religious solicitors were constitutionality entitled to tax benefits.[15] Although the question of tax subsidies arose in both cases, the Court fashioned a tax exemption for religious activity in light of the requirements set forth by the First Amendment.[16]

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[11] *See supra* note 7 and accompanying text.

[12] *See supra* note 7 and accompanying text.

[13] 319 U.S. 105 (1943).

[14] 321 U.S. 573 (1944).

[15] Edward A. Zelinsky, *Are Tax "Benefits" for Religious Institutions Constitutionally Dependent on Benefits for Secular Entities?*, 42 B.C. L. REV. 805, 813 (2001) (citing Murdock v. Pennsylvania, 319 U.S. 105 (1943); Follett v. Town of McCormick, 321 U.S. 573 (1994)).

[16] *Id.* In addition to the Establishment Clause, the First Amendment contains a second provision that addresses religious freedom – the Free Exercise Clause. *See* U.S. CONST. amend. I. The Free Exercise Clause provides: "Congress shall make no law . . . prohibiting the free exercise" of religion. *Id.*

[5] In *Murdock*, Jehovah's Witnesses appealed their convictions of having violated a Pennsylvania ordinance that required all persons soliciting goods to purchase a license.[17] The state maintained that the Witnesses solicited funds in exchange for literature and thus their activities fell under the ordinance.[18] In response, the Witnesses claimed "that the ordinance deprived them of the freedom of speech, press, and religion guaranteed by the First Amendment."[19] The Court rejected the state's claims, holding that the Witnesses were involved in a religious venture because their sales practices were "incidental" to their main objective – to preach and spread their religious beliefs.[20] Finally, the Court noted that even though it may be acceptable to tax the property or income of a preacher, "[i]t is quite another thing to exact a tax from him for the privilege of delivering a sermon."[21]

[6] In his dissent, Justice Reed criticized the majority for allowing the tax exemption because it, in effect, subsidized the distribution of literature.[22] Moreover, the exemption increased the community's tax burden because it would have to now pay the "cost of policing the sales of religious literature."[23] Responding to the claim that a tax may be used to restrict speech,

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[17] *Murdock*, 319 U.S. at 106-07. The ordinance required solicitors to pay for a license; the fee to be determined by the length of time needed to solicit their goods. *Id.* at 106.

[18] *Id.* at 110. The Witnesses distributed literature door to door, asking people to donate money in exchange for the religious material. *Id.* at 106. Although the Witnesses requested a "'contribution' of twenty-five cents," they agreed to accept smaller donations and offered the material for free to those who were unable to pay the contribution. *Id.* at 107.

[19] *Id.*

[20] *Id.* at 111-12 (citing State v. Mead, 300 N. W. 523, 524 (Iowa 1941)).

[21] *Id.* at 112.

[22] *Id.* at 130 (Reed, J., dissenting).

[23] *Id.* (Reed, J., dissenting).

Justice Reed recognized the potential for "misuse" but found that the possibility alone should not bar the state from asserting its taxing power.[24] Instead, victims should turn to the law for protection when that power has been abused.[25] Apparently, Justice Reed's dissent did little to persuade the Court, which reaffirmed its position in *Follett v. Town of McCormick*.

[7] In *Follett*, decided the year following *Murdock*, the Court was asked again to rule on the constitutionality of imposing a flat tax on persons who exercised their First Amendment privileges.[26] Unlike the Supreme Court of South Carolina, which distinguished the case from *Murdock* because the appellant in *Follett* was a resident of the town where he distributed the books and because he made his living from the sales,[27] the Court held that preachers do not lose First Amendment privileges when they are financially dependent on their religious "calling."[28] Moreover, the Court held that a preacher enjoys these privileges regardless of whether he decides to stay within his own town or village.[29] The majority also pointed out that its holding did not

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[24] *Id.* (Reed, J., dissenting).

[25] *See id.* (Reed, J., dissenting).

[26] Follett v. Town of McCormick, 321 U.S. 573, 576, 578 (1994). The ordinance at issue in *Follett* was alike the ordinance at issue in *Murdock*. *Id.* at 574-75.

[27] *Id.* at 575. As in *Murdock*, the appellant challenging the tax in *Follett* was a Jehovah's Witness who peddled religious literature door-to-door. *Id.* at 574.

[28] *Id.* at 576 (stating that the "[f]reedom of religion is not merely reserved for those with a long purse").

[29] *Id.* at 577. The Court noted that it "referred to the itinerant nature of the activity in the *Murdock* case merely in emphasis of the prohibitive character of the license tax as so applied. Its unconstitutionality was not dependent on that circumstance." *Id.*

call for the subsidization of "religious undertakings" as preachers would still be subject to income and property taxes.[30]

[8] Although the majority insisted that its decision in *Follett* merely applied and did not extend the *Murdock* rule, the dissent maintained that the majority had not only reached beyond the *Murdock* decision but had in fact created a subsidy for the free exercise of religion.[31] The dissent found that the ordinance was neither discriminatory nor onerous since a tax is levied on all citizens who pursue an occupation within the town.[32] Furthermore, according to the dissent, Follett claimed an exemption from the tax not because he was unlike other street vendors, who were subject to the tax, but because vending was "also part of his religion."[33] Thus, to allow Follett immunity from the tax because his occupation is partly religious in nature is to afford him "a subsidy for his religion," which has the unfair consequence of shifting the tax burden to the rest of the community.[34]

[9] In *Follett* and *Murdock*, the Court allowed a complete exemption from taxes for solicitors of religious literature because the municipal ordinances violated privileges guaranteed by the First Amendment. These decisions embody "entanglement concerns in their strongest possible formulation: exemption is constitutionally compelled to separate church and state."[35] Although the essential holdings of both *Murdock* and *Follett* have not been overturned, the Court

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[30] *Id.* at 577-78.

[31] *Id.* at 581 (Roberts, J., dissenting).

[32] *Id.* at 579-80 (Roberts, J., dissenting).

[33] *Id.* at 580-81 (Roberts, J., dissenting).

[34] *Id.* (Roberts, J., dissenting); *see* Zelinsky, *supra* note 15, at 815.

[35] Zelinsky, *supra* note 15, at 817.

has revisited the issue of tax exemptions for religious institutions and has continued to shape its understanding of the relationship between exemption and constitutionality. This evolution is demonstrated by *Walz v. Tax Commission of New York*.[36] Although *Walz* produced four separate opinions, which may well demonstrate the sensitive and oft contentious nature of questions that implicate the First Amendment, eight of the Justices agreed that religious institutions could benefit from a property tax exemption.[37]

B. Taxing Church Property

1. *The Walz Majority*

[10] In *Walz*, the appellant, a taxpayer, sought an injunction to preclude New York City from allowing religious organizations to claim a state property tax exemption.[38] Appellant claimed that the exemption, which was authorized by the state constitution, effectively forced appellant to contribute money to these organizations in violation of the Establishment Clause.[39] Upon review of the legislative purpose for the exemption and after considering the relationship between exemptions and the establishment of religion, the Court held that the property tax exemption was constitutional and did not violate the Establishment Clause.[40] In rejecting the appeal, the Court first set forth how it should approach questions that implicate both church and state.

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[36] 397 U.S. 664 (1970).

[37] *See* Zelinsky, *supra* note 15, at 816.

[38] Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 666 (1970).

[39] *Id.* at 666-67.

[40] *Id.* at 680.

[11] When evaluating challenges based on either of the Religion Clauses, the Court recognized that the First Amendment requires it to maintain constitutional neutrality, however, it explained that neutrality does not equate with rigidity.[41] First Amendment challenges do not lend themselves to a mechanical approach, which could just as easily undermine as it could sustain the freedom to practice religion without state interference.[42] Indeed, the Court noted that the amendment "does not say that in every and all respects there shall be a separation of Church and State,"[43] and that the very nature of the Establishment Clause is an involvement to some degree.[44] Thus, according to the majority, the Court must ensure neutrality by determining whether the act at issue is "intended to establish or interfere with religious beliefs and practices or ha[s] the effect of doing so."[45]

[12] After setting forth how it would conduct its review, the Court then turned to a discussion of the tax exemption at issue.[46] The Court first noted that the exemption is offered to all churches that fall within a larger class of property owners,[47] which demonstrated that the New

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[41] *Id.* at 669.

[42] *See id.*

[43] *Id.* (citing Zorach v. Clauson, 343 U.S. 306 (1952)).

[44] *Id.* at 670.

[45] *Id.* at 669.

[46] *See id.* at 672-80.

[47] *Id.* at 673. The legislature

> has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical, and

York legislature did not intend to either sponsor or support religion.[48] Instead, the legislature had decided to accommodate religion by "sparing the exercise of religion from the burden of property taxation."[49] Whether the state accommodation was constitutionally sound, however, meant that the Court next had to evaluate whether the "effect" or "end result" constituted "an excessive government entanglement with religion."[50]

[13] The Court's inquiry into the entanglement issue began with a general discussion of federal and state tax exemptions for churches.[51] The majority dismissed any suggestion that tax exemption automatically gives rise to a violation of the Religion Clauses.[52] According to the majority, if freedom from taxation constituted an unacceptable entanglement of church and state then there would be some indication of "an established church or religion" since churches have enjoyed "uninterrupted freedom from taxation" for the last two hundred years.[53] Furthermore,

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> patriotic groups. The State has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest.

Id.

[48] *Id.* at 672.

[49] *Id.* at 673.

[50] *Id.* at 674.

[51] *See id.* at 675, 680.

[52] *Id.* at 675 (asserting that there is "no genuine nexus between tax exemption and establishment of religion").

[53] *Id.* at 678. Justice Douglas was unconvinced by the majority's historical justification for the exemption. He noted that "[i]f history [is] our guide, then tax exemption of church property in this country is indeed highly suspect, as it arose in the early days when the church was an agency of the state. The question here, though, concerns the meaning of the Establishment Clause and

although the exemption resulted in minimal church-state interaction, eliminating the exemption would increase state entanglement with religion due to the government's tax valuation responsibility.[54] Therefore, the Court held that New York's tax exemption was a "constitutionally 'permissible state accommodation' of religious institutions."[55]

2. *The Walz Concurrences*

[14] Although there was a sole dissenting voice,[56] two of the justices agreed with the majority's holding but did not accept its reasoning. One of the concurrences, written by Justice Brennan, did not "embrace the entanglement/accommodation reasoning," instead, he emphasized the important secular activities engaged in by churches and other nonprofit organizations that received the tax exemption.[57] According to Justice Brennan, the exemption was in part justified by these secular activities, regardless of the source, because they benefited the community at large.[58] Moreover, the exemption was warranted because these religious and non-profit

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the Free Exercise Clause made applicable to the States for only a few decades at best." *Id.* at 703 (Douglas, J., dissenting) (citation omitted).

[54] *Id.* at 674, 676. The majority concluded that the "[e]limination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes." *Id.* at 674.

[55] Zelinsky, *supra* note 15, at 817 (quoting *Walz*, 397 U.S. at 673).

[56] *See Walz*, 397 U.S. at 700-27 (Douglas, J., dissenting); *see also* Zelinsky, *supra* note 15, at 822-23 (explaining how Justice Douglas attempted to harmonize his dissent with the majority opinions he wrote in *Murdock* and *Follett*).

[57] Zelinsky, *supra* note 15, at 819; *see Walz*, 397 U.S. at 688-89 (Brennan, J., concurring).

[58] *Walz*, 397 U.S. at 689 (Brennan, J., concurring).

organizations "contribute[] to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society."[59]

[15] Justice Brennan also addressed whether the religious institutions received preferential treatment, a notion which he rejected by pointing to the statutory requirements for exemption.[60] He inferred that the legislature could not have intended to confer a special benefit upon religious institutions or it would not have included such a wide range of secular institutions.[61] Justice Brennan recognized, however, that even though "governmental purposes for granting religious exemptions may be wholly secular, exemptions can nonetheless violate the Establishment Clause if they result in extensive state involvement with religion."[62]

[16] Even though Brennan's concurrence mainly rested on the importance of secular activities and the broad class of both secular and religious institutions, he also attempted to delineate the difference between tax exemptions and general subsidies by distinguishing between direct funding and passive economic assistance.[63] Brennan maintained that unlike subsidized institutions, which directly receive public monies from the government, exempt institutions do not receive a direct monetary benefit; instead, exempt institutions benefit from passive assistance

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[59] *Id.* (Brennan, J., concurring) (citing Washington Ethical Soc'y v. District of Columbia, 249 F.2d 127, 129 (1957)); *see also id.* at 692-693 (Brennan, J., concurring) ("During their ordinary operations, most churches engage in activities of a secular nature that benefit the community; and all churches by their existence contribute to the diversity of association, viewpoint, and enterprise so highly valued by all of us.").

[60] *See id.* at 689 (Brennan, J., concurring) (citation omitted).

[61] *Id.* (Brennan, J., concurring).

[62] *Id.* at 689-90 (Brennan, J., concurring).

[63] *See id.* at 690-91 (Brennan, J., concurring).

because they are excused from "the burden of paying taxes."[64] "In other words, '[i]n the case of direct subsidy, the state forcibly diverts the income of both believers and nonbelievers to churches,' while '[i]n the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions.'"[65] Therefore, a subsidized institution benefits from "affirmative [state] involvement," while an exempt institution benefits from "passive state involvement."[66] By including religious institutions among those nonprofit organizations that enjoy an exemption, the legislature decided to equally recognize and encourage their secular activities, which would "otherwise either have to be met by general taxation, or be left undone, to the detriment of the community."[67]

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[64] *Id.* at 690 (Brennan, J., concurring).

[65] *Id.* at 690-91 (Brennan, J., concurring) (quoting Donald A. Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development, Part II: The Nonestablishment Principle*, 81 HARV. L. REV. 513, 553 (1968)).

[66] *Id.* at 691 (Brennan, J., concurring) (citing Boris I. Bittker, Churches, Taxes and the Constitution, 78 YALE L. J. 1285, 1285-1304 (1969)); *see also* Zelinsky, *supra* note 15, at 820 (arguing that Justice Brennan's "doctrinal support for the property tax exemption of religious property ultimately rests on subsidy grounds" despite his assertion that "'tax exemptions and general subsidies . . . are qualitatively different'" (quoting *Walz*, 397 U.S. at 690 (Brennan, J., concurring))).

Unlike Justice Brennan's view of the subsidy-exemption dividing line, Justice Douglas inferred in his dissent that there is little difference in the extent of state involvement when a subsidy is granted as compared to an exemption. *See Walz*, 397 U.S. at 701 (Douglas, J., dissenting) (stating "that in common understanding one of the best ways to 'establish' one or more religions is to subsidize them, which a tax exemption does"). For his part, Justice Harlan recognized the potential for increased state involvement when a subsidy is granted, but considered the discussion premature and preferred to wait "for a later case upon a record that fully develops all the pertinent considerations such as the significance and character of subsidies in our political system and the role of the government in administering the subsidy in relation to the particular program aided." *Id.* at 699 (Harlan, J., concurring) (footnote omitted).

[67] *Walz*, 397 U.S. at 687 (Brennan, J., concurring).

[17] Justice Harlan also agreed that the statute was constitutional, finding that it complied with both the voluntarism and neutrality requirements of the First Amendment.[68] He wrote in his concurrence that the statute complied with the voluntarism requirement because it "neither encourage[d] nor discourage[d] participation in religious life."[69] As for the neutrality requirement, Justice Harlan agreed with Justice Brennan that the legislation must designate a sufficiently broad class such that it would be fair for a religious institution, provided that it engaged in secular activities that the legislation was intended to further, to be included as a class member.[70] Justice Harlan, however, expanded upon Justice Brennan's reasoning by drawing a connection between "breadth and entanglement concerns."[71] He reasoned that entanglement is less likely when the exempt class is sufficiently broad because there is no need for the government to evaluate an organization's activities.[72] In contrast, "the more discriminating and

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[68] *Id.* at 695-98 (Harlan, J., concurring).

[69] *Id.* at 696 (Harlan, J., concurring).

[70] *Id.* at 696-97 (Harlan, J., concurring). Justice Harlan noted that the statute

> defined a class of nontaxable entities whose common denominator is their nonprofit pursuit of activities devoted to cultural and moral improvement and the doing of 'good works' by performing certain social services in the community that might otherwise have to be assumed by government. Included are such broad and divergent groups as historical and literary societies and more generally associations 'for the moral or mental improvement of men.' The statute by its terms grants this exemption in furtherance of moral and intellectual diversity and would appear not to omit any organization that could be reasonably thought to contribute to that goal.

Id. (Harlan, J., concurring).

[71] Zelinsky, *supra* note 15, at 820.

[72] *Walz*, 397 U.S. at 698 (Harlan, J., concurring).

complicated the basis of classification for an exemption – even a neutral one – the greater the potential for state involvement in evaluating the character of the organizations."[73] Therefore, Justice Harlan apparently viewed "the avoidance of conflict" as the key factor when evaluating potential entanglement problems.[74]

C. The *Lemon*[75] Establishment Clause Test

[18] Justice Burger drew upon the Court's prior Establishment Clause cases, including the reasoning and analysis employed in *Walz*, when he announced a new test the following year.[76] Writing for the Court, Justice Burger stated that the new three-part test, which was designed to evaluate whether a law violated the Establishment Clause, would avoid "the three main evils against which [that clause] was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.'"[77] Thus, the *Lemon* test first provides that a "statute must have a secular legislative purpose; second, its principal or primary

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[73] *Id.* at 698-99 (Harlan, J., concurring) (citing Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440 (1969)).

[74] Zelinsky, *supra* note 15, at 821.

[75] Lemon v. Kurtzman, 403 U.S. 602 (1971).

[76] *See* Tex. Monthly, Inc. v. Bullock, 489 U.S. 1 (1989) (Scalia, J., dissenting) (writing that the *Walz* Court "conducted an analysis that contains the substance of the three-pronged 'test' adopted the following term") (citing *Lemon*, 403 U.S. 602)); *Lemon*, 403 U.S. at 612-13 (noting that the new test incorporated the *Walz* entanglement test). In *Lemon*, two state statutes, which extended state funding to religiously-affiliated nonpublic schools, were challenged on First Amendment grounds and found unconstitutional because they violated the Religion Clauses. *Lemon*, 403 U.S. at 606, 613. Although *Lemon* has received negative treatment in subsequent cases, the Court continues to cite to its three-prong test. *See, e.g.*, Jimmy Swaggart Ministries v. Bd. of Equalization, 493 U.S. 378, 392-93 (1990); *Tex. Monthly*, 489 U.S. at 6-9.

[77] *Lemon*, 403 U.S. at 612 (quoting *Walz*, 397 U.S. at 668).

effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion."[78]

D. Adoption of the *Walz* Concurring Opinions

[19] Nearly two decades after *Lemon*, the Supreme Court again returned to the issue of tax exemptions for religious literature in *Texas Monthly, Inc. v. Bullock*.[79] This time, however, Justice Brennan applied the new Establishment Clause test to strike down legislation[80] that, at least according to three justices, would seem constitutional given the holdings in *Murdock*, *Follett*, and *Walz*.[81] Yet, even though it is confusing at best to understand how Justice Brennan could use *Lemon* to seemingly repudiate the *Walz* majority (given that the *Lemon* test was crafted from *Walz*), a resolution was not essential since a majority of the Court did not join his opinion. "Like *Walz*, *Texas Monthly* produced four separate opinions. However, unlike *Walz*, in *Texas Monthly*, no single opinion garnered the support of more than three justices."[82]

[20] In *Texas Monthly*, Justice Brennan held that a Texas statute violated the Establishment Clause because it permitted an exclusive tax exemption for religious faiths that either published or distributed religious materials that "advance[d] the tenets of a religious faith."[83] Applying the

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[78] *Id.* at 612-13 (internal quotations and citations omitted).

[79] 489 U.S. 1 (1989).

[80] Justices White, Blackmun, and O'Connor concurred in the judgment. *See id.* at 25 (White, J., concurring); *id.* at 26 (Blackmun, J., concurring).

[81] *See id.* at 29 (Scalia, J., dissenting). Chief Justice Rehnquist and Justice Kennedy joined Scalia's dissent. *See id.* (Scalia, J., dissenting).

[82] Zelinsky, *supra* note 15, at 823.

[83] Tex. Monthly, 489 U.S. at 5 (plurality opinion). Appellant was not a religious faith and published a "general interest magazine." *Id.* at 6. Appellant filed suit in state court to recover

Lemon test, Justice Brennan found that the Texas statute did not pass constitutional muster because the class of taxpayers that benefited from the exemption did not reflect "a secular purpose and effect."[84] He emphasized that unlike the property tax exemption at issue in *Walz*, which extended benefits to a broad class of nonreligious entities in addition to religious groups, the Texas statute was narrowly tailored to benefit religious organizations alone.[85] Although he admitted that "[e]very tax exemption constitutes a subsidy that affects non-qualifying taxpayers, forcing them to become indirect and vicarious donors," he concluded that government crosses the line separating accepted differential treatment of taxpayers and state sponsorship of religious belief when it grants an exclusive subsidy to religious organizations that is not necessitated by the Free Exercise Clause.[86] Thus, Justice Brennan linked the first two prongs of the *Lemon* test,

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the sales taxes it had collected and paid. *Id.* The state court found for the publisher, holding that the exemption ran afoul of the Establishment Clause because it was intended to promote religion. *Id.* The Texas Court of Appeals, after applying the *Lemon* test, reversed and held for the state. *Id.*

[84] *See id.* at 11-18.

[85] *Id.* at 11-15.

[86] *Id.* at 14-15. Justice Brennan stated that no evidence was presented to suggest that the denial of the sales tax exemption to "subscribers to religious periodicals or purchasers of religious books would offend their religious beliefs or inhibit religious activity." *Id.* at 18. Furthermore, the Court had previously held that a sufficient state interest can take priority to a free exercise claim. *Id.* at 19 (citing United States v. Lee, 455 U.S. 252, 257-58 (1982)). Thus, "even if members of some religious group succeeded in demonstrating that payment of a sales tax . . . would violate their religious tenets, it is by no means obvious that the State would be required by the Free Exercise Clause to make individualized exceptions for them." *Id.* Justice Blackmun had a more difficult time resolving the tension between the interests promoted by the Free Exercise Clause and the protections afforded by the Establishment Clause. *See id.* at 27-29 (Blackmun, J., concurring). He indicated that "Justice Brennan . . . would resolve the tension between the Free Exercise and Establishment Clause values simply by subordinating the Free Exercise value . . . at the expense of longstanding precedents." *Id.* at 27 (Blackmun, J., concurring) (referring to the holdings in *Follett* and *Murdock*). On the other hand, Justice Blackmun did not agree with Justice Scalia's approach, which "would subordinate the Establishment Clause value." *Id.* (Blackmun, J., concurring). For his part, Justice Blackmun

that a statute demonstrate a secular purpose and that the primary effect of the legislation neither advances nor inhibits religion, to the reasoning he, and Justice Harlan, employed in *Walz*.[87]

[21] In response to the argument that the Texas exemption was supported by establishment concerns, Justice Brennan maintained that the narrow focus of the Texas exemption actually seemed, "on its face," to increase government entanglement with religion as compared to the level of entanglement that would exist if the state denied the same exemption.[88] This statement contradicted the essential holding in both *Murdock* and *Follett*, where the Court allowed a complete exemption from taxes because the municipal ordinances violated privileges guaranteed by the First Amendment.[89] To distinguish those cases, Justice Brennan disavowed any language from *Murdock* and *Follett* that was inconsistent with his decision in *Texas Monthly*.[90] He also offered three specific reasons to demonstrate the difference:

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preferred to set aside attempts to resolve the tension by concluding that the Court only had to establish that an exemption, such as that granted by Texas, which exclusively prefers the sale of religious material by religious faiths runs afoul of the Establishment Clause. *See id.* at 28 (Blackmun, J., concurring).

[87] *See* Walz v. Tax Comm'n of N.Y., 397 U.S. 664 (1970) (Brennan, J., concurring); *id.* (Harlan, J., concurring); *supra* notes 57-61, 70 and accompanying text. When comparing the Texas exemption to the statute upheld in *Walz*, Justice Brennan maintained that "[t]he breadth of the New York's property tax exemption was essential to our holding that it was 'not aimed at establishing, sponsoring, or supporting religion.'" *Tex. Monthly*, 489 U.S. at 12 (quoting *Walz*, 397 U.S. at 674). Yet, as noted by Justice Scalia's dissent, Justice Brennan's *Texas Monthly* opinion attributes his and Justice Harlan's analysis in their concurring opinions in *Walz*, which focused on the range of services provided by the organizations that received the property tax exemption, to the *Walz* majority even though it did not base its holding on the same reasoning. *Id.* at 37-38 (Scalia, J., dissenting). This, according to Justice Scalia, is a repudiation of the accommodation rationale that was fundamental to the *Walz* majority's opinion and, therefore, a repudiation of *Walz*. *Id.* at 38 (Scalia, J., dissenting).

[88] *Tex. Monthly*, 489 U.S. at 20.

[89] *See supra* Part II.A.

[90] *Tex. Monthly*, 489 U.S. at 21.

> First, the fees challenged in those cases were 'occupation tax[es]' unlike the sales taxes at issue in *Texas Monthly*. Second the *Murdock*/*Follett* municipal fees were 'flat' levies which imposed upon religious canvassers burdens 'far from negligible.' Finally, the municipal taxes imposed in *Murdock* and *Follett* 'restrained in advance' by requiring payment before the Jehovah's Witnesses engaged in religious solicitation.[91]

Although these differences are readily recognizable, Justice Brennan did not explain why these three reasons in particular have constitutional significance.[92]

[22] In sum, Justice Brennan's plurality opinion rejected the *Murdock*/*Follett* approach (exemptions are necessary to comply with the constitutionally required separation of church and state) and the *Walz* Court's approach (narrow tax exemptions are defensible because they "accommodate[e] the autonomy of religious actors") to entanglement concerns because the plurality believed a narrow exemption for religious organizations increased government entanglement.[93] Therefore, while the exemption must have a secular legislative purpose and the

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[91] Zelinsky, *supra* note 15, at 825-26 (alteration in original, footnotes omitted) (quoting *Texas Monthly*, 489 U.S. at 23-24).

[92] *Id.* at 826 (noting that "Justice Brennan never tells us why the formalistic distinction is relevant. The economic incidence of the two levies is the same. To the extent the taxes are passed onto purchasers, both increase the final price of religious materials; to the extent the taxes are absorbed by the sellers, both levies discourage the purveyors of religious materials. Thus, as a substantive matter, it makes no difference whether the tax is styled as an occupational fee or as a sales tax.").

[93] *Id.* at 827. Unlike Justice Brennan, Justice Scalia did not believe that the statute was unconstitutional because it did not extend the same benefits to secular institutions. When addressing the issues of accommodation and entanglement, Justice Scalia understood entanglement

> as the avoidance of litigation and enforcement-based conflict, and reserved the term 'accommodation' to describe more fundamental governmental respect for the autonomy and sovereignty of religious bodies. In the end, such accommodation/entanglement concerns led Justice Scalia . . . to conclude that tax benefits for religious institutions and actors properly recognize the autonomy

primary effect must neither advance nor inhibit religion, the government can also ensure less entanglement by allowing the same exemptions to both religious and secular organizations.[94]

[23] One year later, in *Jimmy Swaggart Ministries v. Board. of Equalization*,[95] the Court unanimously upheld the constitutionality of "a generally applicable sales and use tax on the distribution of religious materials by a religious organization."[96] Swaggart Ministries argued that it was constitutionally entitled to an exemption based on the holdings in *Murdock* and *Follett*.[97] Specifically, the organization maintained that the sales and use tax imposed a "burden[on] its evangelical distribution of religious materials in a manner identical to the manner in which the evangelists in *Murdock* and *Follett* were burdened."[98]

[24] The Court rejected the organization's claim, finding that the flat taxes at issue in *Murdock* and *Follett* were struck down because they "operated as a prior restraint on the exercise

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> of religious institutions and do not depend upon the simultaneous extension of such benefits to secular entities and undertakings. Hence, such tax benefits are constitutional when extended to religious groups alone . . . .

Id. at 829.

[94] *See id.*

[95] 493 U.S. 378 (1990).

[96] *Id.* at 380, 396. "Jimmy Swaggart Ministries was a religious organization incorporated as a Louisiana nonprofit corporation," which conducted "evangelistic crusades" throughout the country. *Id.* at 381-82. During these crusades, Swaggart Ministries held religious services, which the organization sometimes recorded and either sold or broadcast. *Id.* In addition to the recordings, the organization published a magazine, which it sold to national subscribers. *Id.* The California Board of Equalization notified Swaggart Ministries that it was not exempt from sales tax. *Id.* at 382-83. Swaggart Ministries contested the Board's finding, claiming it was exempt under the First Amendment. *Id.* at 383.

[97] *Id.* at 385. The organization claimed that exemption was required by both the Free Exercise and the Establishment Clauses. *Id.* at 384.

[98] *Id.* at 385.

of religious liberty."[99] Unlike the sales and use tax, which was levied against "all sales and uses of tangible personal property in the State," the flat taxes constituted a "*precondition* to the free exercise of religious beliefs" because the Jehovah's Witnesses could not obtain a permit or a license without first paying the tax, the amount of the tax was not adjusted to reflect either the petitioners' "realized revenues" or "the scope of [their] activities," and the tax was not "imposed as a regulatory measure to defray the expenses of policing the activities in question."[100] Furthermore, the Court also cited to Justice Brennan's plurality opinion in Texas Monthly, noting that the opinion had dismissed the same arguments now raised by Swaggart Ministries.[101]

[25] When it turned to Establishment concerns, the Court reiterated its finding in *Walz* that a tax can produce the same degree of entanglement as a tax exemption.[102] The question the Court must ask, however, "is whether the imposition of sales and use tax liability in this case . . . results in 'excessive' involvement between [Swaggart Ministries] and the State and [whether] 'continuing surveillance leading to an impermissible degree of entanglement.'"[103] Upon applying the *Lemon* test, the Court held that a generally applicable sales tax does not advance or inhibit religion and demonstrates a secular purpose because "the very essence of such a tax is that it is neutral and nondiscriminatory on questions of religious belief."[104]

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[99] *Id.* at 385-86.

[100] *Id.* at 387 (quoting Murdock v. Pennsylvania, 319 U.S. 105, 113-14 (1943)).

[101] *Id.* at 388.

[102] *Id.* at 393 (citing Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 674-75 (1970)).

[103] *Id.* at 394.

[104] *Id.*

[26] After disposing of the first two components of the *Lemon* test, the Court then turned to the entanglement question. The Court first noted that the tax would not burden the organization's accounting procedures because it already had a system in place for separating sales from donations, employed a "sophisticated accounting staff," and it had a computerized accounting system.[105] Moreover, the Court had previously held that "generally applicable administrative and recordkeeping regulations may be imposed on [a] religious organization without running afoul of the Establishment Clause."[106] More importantly, the tax did not compel "the State to inquire into the religious content of the items sold or the religious motivation for selling or purchasing the items, because the materials [were] subject to the tax regardless of content or motive."[107] Therefore, the State did not have to evaluate "whether the materials [were] religious, but whether there [was] a sale or a use, a question which involves only a secular determination."[108] In short, the Court held that the denial of an exemption to Swaggart Ministies did not contravene the protections afforded to it by the Establishment Clause because the state's sales and use tax did not constitute "excessive entanglement."[109]

III. HISTORY OF THE PROPERTY TAX EXEMPTION IN NEW JERSEY

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[105] *Id.* (internal quotations and citations omitted).

[106] *Id.* at 395 (citing Hernandez v. Comm'r, 490 U.S. 680, 696-97 (1989)).

[107] *Id.* at 396.

[108] *Id.*

[109] *Id.* at 397.

A. General History of the Property Tax Exemption

[27] Since the early 1900's, New Jersey has given a property tax exemption to nonprofit organizations that have satisfied the following three-part test: (1) it is "organized exclusively for the moral and mental improvement of men, women, and children;" (2) the property is "actually and exclusively used for the tax-exempt purpose;" and (3) the operation and use of the property is not for profit.[110] When interpreting the statutory requirements, the Supreme Court of New Jersey requires that the analysis focus on the legislative intent.[111] Therefore, even though language should be strictly construed, a strict interpretation should not replace legislative intent.[112] In addition it should be noted that the party claiming the exemption has the burden of proving that it has a right to the exemption,[113] and the facts will be construed in the light most favorable to the party seeking to impose the tax.[114]

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[110] Paper Mill Playhouse v. Millburn Township, 472 A.2d 517, 518 (N.J. 1984); *see* N.J. STAT. ANN. § 54:4-3.6.

[111] *Paper Mill Playhouse*, 472 A.2d at 519 (citing Township of Princeton v. Tenacre Found., 174 A.2d 601, 604 (N.J. Super. Ct. App. Div. 1961)).

[112] *Id.*

[113] Dawn Bible Students Ass'n v. Borough of East Rutherford, 65 A.2d 532, 534 (N.J. Super. Ct. App. Div. 1949) (citing Trenton v. State Bd. Tax App., 21 A.2d 644, 645 (N.J. 1941)).

[114] *Trenton*, 21 A.2d at 645. The court noted that

> Since statutes granting exemption from taxation are in the nature of a "renunciation of sovereignty," and are at war with the sound basic principle that the "burden of taxation ought to fall equally upon all," they are most "strongly construed" against those claiming exemption. Thus the facts and circumstances in each case must clearly and convincingly establish the right to exemption within the statute granting exemption, otherwise the general rule is invoked which subjects "all property to a just share of the public burdens."

1. *Organized for the Moral and Mental Improvement of Men, Women, and Children*

[28] Although neither the statute nor the legislative history provides a bright line test for establishing what constitutes an organization organized for the moral and mental improvement of men, women, and children,[115] New Jersey courts have offered some guidance. Provided that there is some benefit bestowed upon the community, the courts have taken a somewhat liberal approach when deciding whether an organization meets the statutory requirement.[116] For example, the New Jersey Supreme Court held that a university nonprofit organization was organized for the moral and mental improvement of men, women, and children because it performed "a valuable public service" by publishing scholarly works that might not otherwise be published because they did not generate sufficient "financial returns."[117] In *Paper Mill Playhouse v. Millburn*,[118] the same court held that a non-profit theater satisfied the moral and mental improvement requirement by offering a wide range of musical and theatrical performances.[119] Despite this holding, the court admitted that it was unclear as to the exact

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Id. (citations omitted).

[115] *Paper Mill Playhouse*, 472 A.2d at 522; *see* N.J. STAT. ANN. § 54:4-3.6.

[116] *See Paper Mill Playhouse*, 472 A.2d at 522 (citing Boys' Club of Clifton, Inc. v. Jefferson, 371 A.2d 22 (N.J. 1977); Princeton Univ. Press v. Borough of Princeton, 172 A.2d 420 (N.J. 1961)).

[117] *Princeton Univ. Press*, 172 A.2d at 424.

[118] 472 A.2d 517.

[119] *Id.* at 522. It seems that the court has not scrutinized the moral and mental improvement requirement as closely as the second and third requirements for exemption. *See infra* Part III.A.2-3.

"boundaries" of the requirement.[120] Nonetheless, the cases suggest that the court takes a common sense approach to evaluating organizations.

[29] Even though the New Jersey Supreme Court was unsure of the boundaries, other courts have contributed to this boundary-shaping process. For example, in *Textile Research Institute, Inc. v. Princeton Township*,[121] the court held that a Textile Research Institute was not organized for the moral and mental improvement of men, women, and children when evidence "indicate[d] that it [was] organized for the benefit of the textile industry."[122] Similarly, a different court held that an organization did not meet the moral and mental improvement requirement when it was the organization that principally benefited from its own activities.[123]

[30] In *Fountain House of New Jersey, Inc. v. Montague Township*,[124] the court found that although the organization allowed discharged mental patients to participate in farming and maintenance activities, and even though the patients may have benefited from such "recreational activity," their services were not "in furtherance of their rehabilitation and vocational training."[125] Moreover, evidence demonstrated that the organization's primary purpose was not

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[120] *Paper Mill Playhouse*, 472 A.2d at 522.

[121] 50 A.2d 829 (N.J. Tax App. Ct. 1946)

[122] *Id.* at 830. Even though the organization's certificate of incorporation stated that it was organized "to promote, cultivate, facilitate and perform research for the benefit of the textile industries and their allied branches, in the *public interest*," the court found that the choice of language did not affect that it was organized "to furnish research facilities for and at the expense of the industry." *Id.* (emphasis added) (internal quotations omitted).

[123] Fountain House of N.J., Inc. v. Montague Township, 1993 N.J. Tax LEXIS 17, at *23-24 (N.J. Tax Ct. 1993).

[124] *Id.*

[125] *Id.* at *23-24.

patient rehabilitation; instead its principal activities included farming to secure tax status "under the Farmland Assessment Act," leasing land that was used as a "[s]tate registered tree farm," and maintaining the property for use by outside parties as a meeting place.[126] Thus, the court found that these activities were private in nature because they benefited the organization's property, and thus the organization itself, and not the patients.[127] Therefore, New Jersey courts generally have held that an organization created for the welfare of society and not the financial gain of an individual or organization will pass the moral and mental improvement test if it is organized to benefit the community and not the organization's members.

2. *Actual and Exclusive Use*

[31] In order to gain tax-exempt status, an organization must use its property exclusively for an exempt purpose.[128] Thus, tax exemption depends on how the property is used and not how funds generated by the property are used.[129] For example, in *Christian Research Inst. v. Town of Dover*,[130] the institute claimed that it was a "religious-charitable organization" and that it should be granted an exemption for its nursing and retirement facility.[131] The court found that the

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[126] *Id.* at *22-23.

[127] *Id.* at *23.

[128] N.J. STAT. ANN. § 54:4-3.6 (2001); *see* Paper Mill Playhouse v. Millburn Township, 472 A.2d 517, 518 (N.J. 1984). While this has been the case historically, the New Jersey Legislature has granted partial exemptions for several types of organizations over the last twenty years. *See infra* Part III.C.

[129] *See* Christian Research Inst. v. Town of Dover, 5 N.J. Tax 376 (N. J. Tax Ct. 1983).

[130] *Id.*

[131] *Id.* at 378-79, 383 (internal quotations omitted). The institute, which the Internal Revenue Service classified as an exempt organization, owned and operated the facility. *Id.* at 378-79.

nursing and retirement facility was not itself a religious organization and thus not entitled to an exemption.[132] To support its finding, the court noted that the institute had established the facility so that it would generate profits that could in turn be used to fund the institute.[133] Therefore, because the facility was used as a funding mechanism it was not "actually and exclusively used for an exempt purpose."[134]

[32] The current test used to evaluate "whether property is 'actually and exclusively used' for a tax exempt purpose is whether the property is 'reasonably necessary' for such purpose."[135] In applying this test, the New Jersey Supreme Court decided that "necessary" is not the same as "absolutely indispensable."[136] For example, the court stated that when considering whether buildings are reasonably necessary for the tax exempt purpose, it evaluated the use of each building in terms of how it served the particular organization.[137] Thus, "[t]he eating, sleeping and medical quarters, as well as the surrounding land [of a boys' camp], are all integrated components necessary for the proper operation of the camp."[138] Likewise, a medical center that provided housing for hospital personnel could claim the property tax exemption for the housing

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[132] *Id.* at 383.

[133] *Id.* at 384-85.

[134] *Id.* at 385.

[135] Borough of Harvey Cedars v. Sisters of Charity of Saint Elizabeth, 395 A.2d 518, 520 (N.J. Super. Ct. App. Div. 1978) (quoting City of Long Branch v. Monmouth Med. Ctr., 351 A.2d 756, 760 (N.J. Super. Ct. App. Div. 1976), *aff'd* 373 A.2d 651 (N.J. 1977)).

[136] Boys' Club of Clifton, Inc. v. Jefferson, 371 A.2d 22, 28 (N.J. 1977).

[137] *Id.* at 29.

[138] *Id.*

facilities because the buildings enabled the center to "function properly and efficiently."[139] The court noted that the center benefited from being able to recruit qualified personnel by offering low rent housing.[140] Moreover, the close proximity of the housing facilities was especially important to the center's ability to operate because "a large general hospital . . . requires the presence of properly qualified resident physicians, interns[,] and nurses."[141]

[33] Although an organization will not automatically lose exempt status if it chooses to lease out its property, it will lose the benefit of an exemption if the lessee does not use the property for an exempt purpose.[142] For example, in *Ironbound Educational and Cultural Center, Inc. v. City of Newark*,[143] the Center claimed that it was entitled to exempt status as both a non-profit organization and a registered historical site.[144] The court considered whether the Center could receive a tax exemption for property that it had leased "to an independent restaurant and catering business."[145] The court upheld the denial of an exemption because "[n]o traditional charitable or religious purpose [was] served by the operation of the restaurant facility in the

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[139] *City of Long Branch*, 351 A.2d at 761.

[140] *Id.*

[141] *Id.*

[142] Ironbound Educ. & Cultural Ctr., Inc. v. City of Newark, 532 A.2d 258, 261 (N.J Super. Ct. App. Div. 1987) (citing *City of Long Branch*, 351 A.2d at 761).

[143] *Id.*

[144] *Id.* at 259.

[145] *Id.* at 260.

Center's building. Since the restaurant facility was not reasonably necessary for a charitable or religious purpose, the Center [could not] claim either an actual or partial tax exemption."[146]

[34] New Jersey Courts have repeatedly held that an exemption is granted as a quid pro quo for the benefit conferred upon the community.[147] For example, when a fire destroyed buildings owned by a charitable organization and the land was left vacant, the court denied the exemption because the property was no longer used for an exempt purpose.[148] Therefore, the exemption continues provided the quid pro quo continues.[149] The court later stated that "[e]quality is the basic principle of taxation."[150] The purpose of laws that provide exemptions is to reward those organizations that "freely and charitably bestow[]" services, thus relieving the government of obligations it would otherwise assume.[151]

3. *Use of the Property Cannot Be for Profit*

[35] The third requirement for exemption provides that organizations claiming tax exemption cannot be run for profit.[152] The not-for-profit requirement, however, does not render an organization subject to taxation unless it operates at a loss and it does not force organizations

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[146] *Id.* at 261

[147] *See* Kimberley Sch. v. Montclair, 60 A.2d 313, 314 (N.J. Sup. Ct. 1948); Young Women's Christian Ass'n of Phila. v. Monmouth County Bd. of Taxation, 92 N.J.L. 330 (N.J. Sup. Ct. 1919).

[148] *Young Women's Christian Ass'n of Phila.*, 92 N.J.L. at 330-31.

[149] *Id.* at 331.

[150] *Kimberly Sch.*, 60 A.2d 313, 314.

[151] *Id.*

[152] *See* Paper Mill Playhouse v. Millburn Township, 472 A.2d 517, 526 (N.J. 1984); Greenwood Cemetery Ass'n of Millville, Inc. v. City of Millville, 1 N.J Tax 408, 414 (N.J. Tax Ct. 1980).

to make certain that income does not exceed expenditures.[153] Furthermore, organizations will not lose an exemption merely because they retain a surplus.[154] Thus, a court allowed Rider College to retain surplus profits because this was consistent with sound fiscal policy.[155] The court noted that to deny the college the right to accumulate a surplus would prevent it from expanding or replacing facilities.[156] Even so, the court stated that the critical question to ask is whether the excess profits benefit individuals, in which case the exemption is not allowed, or whether the profits are used for the "maintenance, expansion, and development" of the organization, in which case the exemption is granted.[157]

[36] In addition to surplus considerations, courts have also considered whether the use of exempt property for a non-exempt purpose will automatically revoke exempt status.[158] The New Jersey Supreme Court has held that "an occasional or incidental nonexempt activity, or a regular

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[153] Trenton v. N.J. Div. of Tax App., 166 A.2d 777, 781 (N.J. Tax Ct. 1980).

[154] *Id.* at 781-82; *see Paper Mill Playhouse*, 472 A.2d at 526-527. In *Paper Mill Playhouse*, the court held that the organization was not a "commercial enterprise" just because it "occasionally [ran] financially successful productions." *Paper Mill Playhouse*, 472 A.2d at 526. The court noted that the organization did not base its decision to produce a show on whether or not the show would be profitable. *Id*. Also, "a production [was] never closed before its scheduled run because it [was] losing money at the box office." *Id.* Moreover, none of the surplus profits ended up in the hands of an individual, instead the money was used to produce shows or for maintenance, improvement, or expansion purposes, and the organization did not pay dividends or excessive salaries or bonuses. *Id.* at 526-27. The court seemed to indicate, however, that the payment of excessive salaries could be cause to deny the exemption. *See id.* at 527. Finally, the court allowed the exemption because if Paper Mill were dissolved then it would have given any surplus to a similar charitable organization. *Id.*

[155] *Trenton*, 166 A.2d at 782.

[156] *Id.*

[157] *Id.*

[158] *See* Greenwood Cemetery Ass'n of Millville, Inc. v. City of Millville, 1 N.J Tax 408 (N.J. Tax Ct. 1980).

nonexempt activity which is of an inconsequential or de minimis character[,] will not preclude an organization from obtaining tax-exemption for its otherwise tax exempt property."[159] Thus, an association, which owned and operated a cemetery, was denied an exemption for the section of its building that was used by a profit earning business.[160]

B. Religious Organizations

1. *Religious Purposes*

[37] To claim an exemption for property, Religious organizations must demonstrate that their property is used for religious purposes.[161] Even though there is no bright line test, New Jersey courts have held that church property used for storage purposes will remain exempt if such property is used to store church records, religious documents, religious artifacts, or other property that contributes to "the operation of the church."[162] In addition to storage purposes, a religious organization that used its exempt property to operate a printing press met the requirements for a religious purposes exemption because printing religious material has a

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[159] *Id.* at 414 (citing Boys' Club of Clifton, Inc. v. Jefferson, 371 A.2d 22 (N.J. 1977); Princeton Univ. Press v. Borough of Princeton, 172 A.2d 420 (N.J. 1961)).

[160] *Id.* at 410. The first floor of the building, which was located on the cemetery grounds, was used by the association as an office and a "maintenance and storage facility[y]." *Id.* The second floor was used by the association's president as his residence. *Id.* Although the court admitted that it ordinarily would have allowed an exemption for the residence, since "providing of an on-site residence for a cemetery superintendent to deter vandalism is as much a cemetery function as the interment of bodies," it denied the exemption in this case because the president's wife ran a profit-earning business out of the residence. *Id.* at 411-12. Therefore, the property was not used for an exempt purpose and instead was used to operate a business that personally benefited the president's wife, who was a shareholder in the business. *Id.* at 411-12.

[161] Roman Catholic Archdiocese of Newark v. City of East Orange, 17 N.J. Tax 298, 313-15 (N.J. Tax Ct. 1998).

[162] *Id.* (citing City of East Orange v. Church of Our Lady of the Most Blessed Sacrament, 50 A.2d 390 (N.J. Div. Tax App. 1946)).

religious nature.[163] Likewise, a church was allowed to retain its exemption even though it held meetings and conducted "Catholic youth basketball practices" on exempt property because these activities were "consistent with the overall exempt purpose" of a religious organization.[164] On the other hand, the New Jersey Supreme Court has held that a retirement community did not meet the religious purpose requirement under the statute even though it housed residents of all faiths and was affiliated with the Presbyterian Church.[165]

2. *Religious Use*

[38] The current test used to evaluate "whether property is 'actually and exclusively used' for a tax exempt purpose is whether the property is 'reasonably necessary' for such purpose."[166] For example, a court denied an exemption for property that was primarily used by a religious

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[163] *Id.* at 314 (citing Dawn Bible Students Ass'n v. Borough of East Rutherford, 65 A.2d 532 (N.J. Super. Ct. App. Div. 1949)).

[164] *Id.* at 315. An organization that used its property for "prayer meetings, Sunday school, noonday prayer, morning prayer, occasional dinners, Bible classes, . . . Wednesday night prayer, and to operate a day care facility, could claim an exemption because the court found that these were all "church activities." Newark City v. Block 322, 17 N.J. Tax 103, 105 (N.J. Tax Ct. 1997).

[165] Presbyterian Homes of the Synod of N.J. v. Div. Tax App., 261 A.2d 143, 144-45, 147 (N.J. 1970). While 104 of the 266 residents were Presbyterian, the remaining residents "belonged to various Protestant denominations, [and] there were also some members of other faiths and several people professed no religious affiliation." *Id.* at 145. The court found that the community provided "various recreational and service facilities, including fishing, barbecue and picnic areas, bowling greens, barber, gift and beauty shops, arts and crafts areas, lounges, game rooms, a snack bar, a dining room, and a health center." *Id.* The residents, however, were charged an initial fee for their apartments and were required to pay a monthly fee to remain in the community. *Id.* at 146. The court also noted that the organization could evict residents for nonpayment of fees. *Id.* Therefore, the court held that the "amount and nature of the fees and rentals" that the residents were required to pay did not demonstrate that the community had a "charitable purpose." *Id.* at 148.

[166] Borough of Harvey Cedars v. Sisters of Charity of Saint Elizabeth, 395 A.2d 518, 520 (N.J. Super. Ct. App. Div. 1978) (quoting City of Long Branch v. Monmouth Med. Ctr., 351 A.2d 756, 760 (N.J. Super. Ct. App. Div. 1976), *aff'd* 373 A.2d 651 (N.J. 1977)).

organization for summer vacations because the property was not "reasonably necessary" to the work of the religious organization.[167] In contrast, a court allowed a religious organization to claim an exemption even though it used part of its rectory to store church property and records because the rectory "was actually and exclusively used for religious purposes."[168]

[39] To protect against violation of the Religious Clauses, courts will not evaluate the quantity of religious use as this "would engage the courts in an improper evaluation of religious practice."[169] Therefore, religious organizations need only demonstrate that "religious activities are conducted on the property" and "that such exempt use is exclusive."[170] Nonetheless, New

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[167] *Id.* at 519-20. The property was primarily used for vacations and as a summer residence by "sisters and others who [did] charitable work." *Id.* at 520. Although the beach property also was used for religious retreats during the summer and the off-season, it was mainly used by participants who wanted to "get away from their everyday work and routine." *Id.* at 519. Thus, the court held that

> the substantial use of the property as a summer residence or vacation spot . . . mandates that the property be denied exemption even though it is also used in part for religious retreats. Providing vacation facilities can simply not be viewed as reasonably necessary for the work of the organization. The status or vocation of the owners or occupiers of property cannot determine property tax exemption. In this regard residences for personnel or religious organizations at a great distance from their place of work and not necessary for the accomplishment of the purposes of the charity are not entitled to tax exemption.

Id. at 520 (citations omitted).

[168] City of East Orange v. Church of Our Lady of the Most Blessed Sacrament, 50 A.2d 390, 391-92 (N.J. Div. Tax App. 1946).

[169] *Roman Catholic Archdiocese of Newark*, 17 N.J. Tax at 312.

[170] *Id.* at 313. The court recognized that "minimal use creates a heavy burden on a municipality. The quid pro quo is hardly there. But once occupied and used (so long as there are no prohibited uses and there are some appropriately exempt uses), the failure to grant exemptions would be inappropriate." *Id.*

Jersey courts require religious organizations to offer some quid pro quo to the community in return for receiving the exemption.[171] For example, a church that had only been used for "incidental" religious activities while it was under construction,[172] did not meet the religious use requirement and, as a result, could not claim an exemption.[173]

3. *Religious Non-Profit*

[40] Religious organizations must demonstrate that they are not organized to make a profit.[174] In *Dawn Bible Students Association v. Borough of East Rutherford*,[175] the court found that a minimal profit obtained from selling both non-religious greeting cards and other "printed matter" does not cause an organization to lose its tax-exempt status.[176] Despite this finding, the court also held that the Association had not met its burden of proof as to whether it was a non-

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[171] *Id.* at 312.

[172] Grace & Peace Fellowship Church, Inc. v. Cranford Township, 4 N.J. Tax 391, 401-02 (N.J. Tax Ct. 1982). The court found "that the services held . . . during construction did not constitute the primary or dominant purpose for congregants being in the building . . . . The primary purpose for the volunteers being in the building was not religious but secular. The wholly secular purpose was to complete the building." *Id.*

[173] *Id.* at 399-401. The court stated that "[a]ctual public use or being ready to provide such public use is the required *quid pro quo*. Mere intention to use for an exempt purpose at some time in the future will not suffice." *Id.* at 400-01.

[174] *Roman Catholic Archdiocese of Newark*, 17 N.J. Tax at 304; *see* Abunda Life Church of Body, Mind & Spirit v. City of Asbury Park, 18 N.J. Tax 483 (N.J. Super. Ct. App. Div. 1999); Dawn Bible Students Ass'n v. Borough of East Rutherford, 65 A.2d 532, 533 (N.J. Super. Ct. App. Div. 1949).

[175] 65 A.2d 532.

[176] *Id.* at 533.

profit organization because it could not demonstrate that the organization itself had retained the profits it had earned from distributing pamphlets and conducting radio broadcasts.[177]

C. History of the Partial Exemption

[41] Piece-by-piece, the New Jersey Legislature has revised the exclusive use requirement for non-profit organizations by allowing partial exemptions to N.J. Stat. Ann. § 54:4-3.6.[178] In 1977, the New Jersey Legislature allowed educational institutions to lease a section of their property to non-exempt organizations without losing exempt status for property that was not subject to the lease.[179] Six years later, the Legislature also permitted non-profit hospitals to claim the partial exemption.[180] "In 1985, the statute was again amended to separate the moral

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[177] *Id.* at 534.

[178] *Roman Catholic Archdiocese of Newark*, 17 N.J. Tax at 317-20 (citing N.J. STAT. ANN. § 54:4-3.6 (1993) (amended 2001)).

[179] *Id.* at 317-18 (citing N.J. ASSEMB. BANKING AND INSUR. COMM., COMM. STATEMENT TO ASSEM. B. NO. 3260 (Nov. 28, 1977)). This amendment was enacted so that educational institutions "could rent part of their facilities to private retail establishments, such as banks or food operations, for the convenience of their students." *Id.* at 317 (quoting N.J. ASSEMB. BANKING AND INSUR. COMM., COMM. STATEMENT TO ASSEM. B. NO. 3260 (Nov. 28, 1977)).

[180] *Id.* at 318 (citing N.J. ASSEMB. REV., FIN. AND APPROP. COMM., STATEMENT TO ASSEM. B. NO. 1974 (Dec. 13, 1982)). The legislature noted that:

> The purpose of this [amendment] is to permit certain hospitals to lease space within [their] facility and retain [their] tax exempt status on the remainder [their] property. Occasionally, there are portions of hospital property which are not being fully utilized. That space could be rented to non[-]employee physicians and other health care related professions to provide a service within the hospital utilizing hospital equipment and laboratory services. This would produce rental income for the hospital and allow it to maximize the investment in laboratory services and equipment, all of which would serve to reduce total health care costs.

and mental improvement exemption from the religious or charitable exemption and to grant moral and mental improvement entities a partial exemption similar to that provided to hospitals in 1983."[181] In *Jersey Shore Medical Center v. Neptune Township*,[182] the court explained that the legislature's willingness to extend the partial exemption did not change the analysis for determining whether an organization qualifies for the complete exemption.[183]

Id. (quoting N.J. ASSEMB. REV., FIN. AND APPROP. COMM., STATEMENT TO ASSEM. B. NO. 1974 (Dec. 13, 1982)).

[181] Jersey Shore Medical Center v. Neptune Township, 14 N.J. Tax 49, 57 (N.J. Tax Ct. 1994); *see Roman Catholic Archdiocese of Newark*, 17 N.J. Tax at 319 (citing N.J. ASSEMB. COMMERCE AND INDUSTRY COMM., STATEMENT TO ASSEM. B. NO. 2246 (Oct. 18, 1984)).

[182] 14 N.J. Tax 49 (N.J. Tax Ct. 1994).

[183] *Id.* at 57-58. The court stated:

> "When statutory law is changed by the Legislature there is a presumption against any implied repeal or amendment of the existing provisions." In determining the Legislature's intent in altering prior law, "it is important . . . to ascertain the old law, the mischief, and the proposed remedy."
>
> There is absolutely no suggestion that, when the Legislature separated the pertinent portion of [N.J. Stat. Ann. § 54:4-3.6] into three parts, one for entities formed for moral and mental improvement purposes, another for hospital purposes, and another for religious or charitable purposes, it intended to eliminate the preexisting exemption for multipurpose entities. The sole purpose of the 1985 amendment . . . was to permit a partial exemption for entities organized for moral and mental improvement purposes. As the intent of the Legislature in 1983 and 1985 was to make it easier to qualify for the hospital and moral and mental improvement exemptions, it would defy common sense to conclude that, with no explanation, the Legislature simultaneously intended to make it more difficult to qualify by limiting the exemption to single purpose entities.

Id. (citations omitted).

[42] In *Roman Catholic Archdiocese of Newark*, the court denied an exemption to the Archdiocese, which leased property to the East Orange Board of Education in 1993 and 1994,[184] because even though the legislature had amended the exclusive use requirement for educational, hospital, and mental and moral improvement organizations, the legislature had not amended the exclusive use requirement for charitable and religious organizations.[185] Following its review of the legislative history, the court concluded that the failure to amend the "stricter requirement" for these organizations indicated "that the leasing of all or part of otherwise exempt property by an exempt religious organization will void the tax exemption for the entire property."[186] In addition, the court also noted that, in general, "revenue-raising activities of exempt organizations do not enjoy the same exemptions from taxation as do those activities which are specifically exempt from taxation despite the fact that the revenues are devoted exclusively to the charitable, religious, or other exempt activities of the exempt organization."[187]

D. History of the 2001 Amendment to *N.J. Stat § 54:4-3.6*

[43] Senators Singer and DiFrancesco responded to *Roman Catholic Archdiocese of Newark* by introducing a bill on September 21, 2000, which proposed to amend the exclusive use requirement for religious organizations.[188] The proposed changes were intended to combat the

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[184] *Roman Catholic Archdiocese of Newark*, 17 N.J. Tax at 315.

[185] *Id.* at 320 (citing N.J. STAT. ANN. § 54:4-3.6 (1993) (amended 2001)).

[186] *Id.* at 319-20.

[187] *Id.* at 320.

[188] S.B. NO. 1659, 209th Leg., 2nd Reg. Sess. (N.J. Sept. 21, 2000).

discrepancies brought to light in the court's ruling, while not expanding the bill any further.[189] The bill provided that a religious institution would not be denied an exemption when it received

> "a portion of its income from rents, fees, charges, or donations paid to [it] in connection with the use of any portion of its nonresidential property by any educational, religious, charitable, benevolent, social or civic organization as long as the entire income derived from such use is devoted to the authorized purposes of the religious organization . . . ."[190]

As the proposal did not mention the leasing of property to profit-making organizations,[191] initially it only would have authorized religious organizations to lease space to other non-profit organizations, thereby awarding religious organizations the same rights previously granted to hospitals, moral and mental improvement entities, and educational institutions. Nonetheless, on October 19, 2000, the bill was amended to extend the reach of the exemption.[192] The bill now also provided that if a religious institution leased "any portion of a building [that is] used for [religious purposes] . . . to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation . . . ."[193]

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189 *See id.*

190 *Id.*

191 *See id.*

192 S.B. NO. 1659, 209th Leg., 2nd Reg. Sess. (N.J. Oct. 19, 2000).

193 *Id.*

[44] Upon approval by the New Jersey Assembly,[194] the property tax exemption statute was amended to reflect the changes first introduced in the Senate.[195] The statute now read in relevant part:

> all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation, and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation . . . .[196]

The Assembly reiterated that the changes were enacted in direct response to *Roman Catholic Archdiocese of Newark v. City of East Orange*.[197] Moreover, the legislature concluded that this amendment was consistent with the "other partial exemptions that [had] been enacted by the Legislature" during the last twenty years.[198]

IV. EFFECTS AND ANALYSIS OF THE 2001 AMENDMENT TO N.J. Stat. 54:4-3.6

A. Examples of How the Amendment Will Be Applied in New Jersey

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194 ASSEMB. B. NO. 3038, 209th Leg., 2nd Reg. Sess. (N.J. 2000).

195 *See id.*; S.B. NO. 1659, 209th Leg., 2nd Reg. Sess. (N.J. Oct. 19, 2000).

196 N.J. STAT. ANN. § 54:4-3.6 (2001).

197 STATEMENT TO ASSEM. B. NO. 3038, 209th Leg., 2nd Reg. Sess. (N.J. 2000).

198 *Id.*

[45] Experts are expecting a large number of tax appeals as a result of the revised statute.[199] Even though religious institutions that leased a portion of their property jeopardized losing their entire tax exemption under the old statutory regime, there is evidence suggesting that the former regime was not enforced because this substantial loss would be visited upon the institutions.[200] Since the statute now provides for partial exemptions, "early indications are that municipal assessors statewide will leap at the opportunity to assess churches and synagogues for any profit-making ventures conducted regularly at such properties."[201]

[46] The St. Thomas the Apostle Church in Bloomfield, Essex County provides an example as to how assessors might decide on the appropriate tax structure when a religious organization leases property to non-exempt organizations.[202] The church allowed VoiceStream to place a cellular antenna in the church steeple.[203] The Church and Bloomfield agreed, "based in part on the floor area of the steeple and the income from leasing the space to the cellular carrier," that

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[199] Jerry Jastrab, *A Taxing Situation for Churches: New Law Levies Tax on Houses of Worship Rentals*, N.J. LAW.: THE WEEKLY NEWSPAPER, Aug. 6, 2001, at 5.

[200] *Id.*

[201] *Id.* One possible reason for the increased incentive for taxing non-profit organizations is

> the sheer size and dramatic growth of the [non-profit] sector during the pas several decades . . . . Between 1975 and 1990, the assets of these tax-exempt organizations rose over 150% in real terms and their revenues grew over 225% to approximately $560 billion. As of 1990, tax-exempt organizations accounted for approximately 10% of the country's gross domestic product, up from close to 6% in 1975.

Nina J. Crimm, *Why All is not Quiet on the "Home Front" for Charitable Organizations*, 29 N.M. L. REV. 1, 28-29 (1999).

[202] Jastrab, *supra* note 199, at 5.

[203] *Id.*

the lease would cost the church $7,500 per year in taxes.[204] While this is not an insignificant amount that the church must now pay, prior to amendment of the statute, the church risked losing the entire exemption by leasing its property to VoiceStream.[205] Therefore, "the law could be somewhat of a blessing to religious institutions, which now may be more inclined to lease their facilities without fear of losing their entire tax exemption. They also could, as appears to be the case in Bloomfield, negotiate with the renter to pay the tax liability."[206]

B. The New Jersey Legislature Properly Amended N.J. Stat § 54:4-3.6 to Allow Religious Organizations A Complete Exemption When They Lease Property to Other Exempt Organizations

[47] Allowing religious organizations the complete exemption when leasing to other non-profit organizations satisfies the *Lemon* test because (1) the statute has a "secular legislative purpose;" (2) "its principal or primary effect . . . neither advances nor inhibits religion;" and (3) the statute does "not foster an excessive government entanglement with religion."[207] Moreover, the complete exemption does not pose any of the problems that the *Walz* majority believed would render a statute unconstitutional.[208] First, the New Jersey legislature did not grant religious institutions the complete exemption with the intent of establishing, supporting, or sponsoring religion.[209] Instead, the legislature intended to provide religious organization the

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[204] *Id.*

[205] *Id.*

[206] *Id.*

[207] *See* Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971) (internal quotations and citations omitted).

[208] *See supra* Part II.B.1.

[209] *See* Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 669, 672 (1970).

same benefit already enjoyed by other non-profit organizations.[210] Therefore, the exemption satisfies the Court's requirement that a statute advance a policy of neutrality[211] because non-profit organizations in New Jersey are treated equally. Finally, the statute does not result in an excessive entanglement with religion[212] because New Jersey is not required to monitor church properties, asses the value of such property, or levy taxes against religious institutions entitled to the complete exemption. Therefore, under the majority opinion in *Walz*, the complete exemption does not constitute an Establishment Clause violation.

[48] The complete exemption also finds support in Justice Brennan's concurrence in *Walz*, which is "the controlling statement of the Court's jurisprudence in this area."[213] Justice Brennan recognized that tax exemptions, such as the complete exemption granted by New Jersey, are justified by the important secular activities engaged in by churches and other nonprofit organizations.[214] Moreover, Justice Harlan agreed that the exempt class should be sufficiently broad, finding that entanglement is less likely in such cases because there is no need for the government to evaluate an organization's activities.[215] Here, the New Jersey legislature expanded the exempt class to include religious institutions and the statute ensures that the government will not become entangled in difficult classifications since the complete exemption is applied in a uniform manner to all non-profit organizations that qualify for exempt status.

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[210] *See* STATEMENT TO ASSEM. B. NO. 3038, 209th Leg., 2nd Reg. Sess. (N.J. 2000).

[211] *See id.* at 669.

[212] *See id.* at 674.

[213] *See* Zelinsky, *supra* note 15, at 816.

[214] *See Walz*, 397 U.S. at 688-89 (Brennan, J., concurring).

[215] *See id.* at 696-98 (Harlan, J., concurring).

C. The New Jersey Legislature Violated the Establishment Clause When It Amended N.J. Stat. § 54:4-3.6 to Allow Religious Organizations A Partial Exemption When They Lease Property to A For-profit Organization

[49] The second and third prongs of the *Lemon* test state that a statute must not have the primary effect of advancing or inhibiting religion and the statute must "not foster an excessive government entanglement with religion."[216] The New Jersey Legislature's grant of a partial exemption to religious organizations violates both of these prongs. First, the partial exemption has the primary effect of advancing religion by "subsidizing" religious organizations at the expense of taxpayers in the community and any organization that otherwise would lease property to a for-profit organization. Second, the partial exemption fosters excessive government entanglement with religion by requiring the government to make complicated assessments on a pro-rata basis, which leads to far greater government involvement than with either a complete exemption or no exemption at all.

[50] The primary effect of the partial exemption amendment to N.J. Stat. Ann. § 54:4-3.6 is that it advances religion by subsidizing religious organizations. Religious organizations can afford to lease their property at a lower rate than a for-profit organization would have to pay if it leased space from another for-profit organization. Moreover, a religious organization can include a lease provision that would render the lessee responsible for the tax levied as a result of the new partial exemption. While the religious organization would have to report this amount as income, it can lease the property at a rate that is low enough to take such income into account. The overall effect is that the lower amount charged for leasing the property will decrease government revenue received via state taxes, which in turn increases the tax burden on the community. In addition, for-profit businesses are unfairly disadvantaged because they will have

[216] Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971) (internal quotations and citations omitted).

to reduce rental fees in order to compete with the lower rates charged by religious organizations. In sum, the community, including the government itself, sustains a loss as a result of the partial exemption, which unfairly advances religious organizations in violation of the Establishment Clause.

[51] In his *Texas Monthly* dissent, Justice Scalia maintained that two important factors in avoiding entanglement are avoiding litigation and enforcement-based conflict.[217] The New Jersey partial exemption for religious organizations would result in both excessive litigation and enforcement problems. The large number of expected tax appeals as a result of the new partial exemption will most likely increase litigation and conflict over enforcement of the property tax statute. Moreover, determining the tax rate that religious organizations should pay could result in additional litigation because some organizations are bound to challenge the government's determination. Overall, any method used by the state to determine tax rates for religious property will create excessive church-state involvement, thereby threatening to violate the protections afforded by the Establishment Clause.

V. CONCLUSION

[52] The New Jersey Legislature properly allowed religious organizations to lease property to other non-exempt organizations without losing their complete tax exemption. On the other hand, the New Jersey Legislature should not have granted religious organizations the right to lease their property to for-profit organizations because this unfairly subsidizes religious organizations and increases state involvement in religious activities in violation of the

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[217] *See* Zelinsky, *supra* note 15, at 829.

Establishment Clause. The New Jersey Legislature and the judicial system should take a close look at this amendment and address the possible Establishment Clause problems.