Baltimore-Washington Conference
The United Methodist Church

THOMAS E. STARNES
CONFERENCE CHANCELLOR
WWW.BWCUMC.ORG
TEL. (202) 630-9948
EMAIL TOMSTARNES@STARNESPLLC.COM

Testimony of Thomas E. Starnes, Chancellor
The Baltimore-Washington Conference of The United Methodist Church
Re: Senate Bill 586
(UNFAVORABLE)

INTRODUCTION & SUMMARY

My name is Thomas Starnes. I serve as Chancellor of the Baltimore-Washington Conference of The United Methodist Church ("BW Conference"), which under the episcopal leadership of Bishop LaTrelle Miller Easterling oversees the ministry of more than 600 local United Methodist churches that conduct ministry in Maryland, the District of Columbia, and the eastern panhandle of West Virginia.[1] I also provide legal advice from time to time to the Peninsula-Delaware Conference of The United Methodist Church ("Pen-Del Conference"), over which Bishop Easterling also presides, and which oversees another 293 United Methodist churches located on Maryland's Eastern Shore and in Delaware. Taken together, approximately 700 of the United Methodist churches affiliated with those two conferences are located in Maryland, and I submit this testimony in opposition to Senate Bill 586 not merely on behalf of BW Conference and the Pen-Del Conference, but also on behalf of their Maryland-based local churches and the more than 100,000 Maryland citizens that are members of those churches.

I previously presented written and oral testimony to the House Economic Matters Committee in connection with the Committee's hearing on February 25, 2025, regarding House Bill 1182, the terms of which are identical to the terms of Senate Bill 586 *in its original form*. To minimize redundancy, I have attached hereto as Exhibit A the written testimony I previously submitted on February 21, which outlines in detail the reasons why the General Assembly should decline to approve even the more

[1] In United Methodist polity, Chancellors essentially function as outside general counsel to the Bishop and to the Annual Conference over which the Bishop presides. See *The Book of Discipline of The United Methodist Church* (2020/2024), ¶ 603.8. My knowledge of the matters addressed in this testimony, however, is not limited to my service as Chancellor of the BW Conference. In addition, I have served as counsel on behalf of the interests of The United Methodist Church and a number of other connectional denominations in civil litigation filed to resolve ownership rights to church property held by a local church pursuant to trust provisions in the parent churches favor. I am particularly familiar with the approach Maryland's highest courts have adopted in such cases, having represented the interests of the African Methodist Episcopal Zion Church and the African Methodist Episcopal Church in *From the Heart Church Ministries, Inc. v. Philadelphia-Baltimore Annual Conference,* 184 Md. App. 11, *cert. denied,* 408 Md. 148 (2009); *From the Heart Church Ministries, Inc. v. African Methodist Episcopal Zion Church, Mid-Atl. II Episcopal Dist.,* 370 Md. 152, 179, 803 A.2d 548 (2002); and *Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of African Methodist Episcopal Church Inc.,* 348 Md. 299 (1997).

limited objective of those cross filed bills in their original form. The Committee will recall that the *initial* objective of SB 586 and HB 1182 was solely to *repeal*, without offering any replacement for, §§ 5-326 and 5-327 of the Corporations and Associations Article, provisions that since 1953 have accommodated the longstanding principle of United Methodist Church governance that all United Methodist church property is held in trust for the benefit of the denomination as a whole and subject to the terms of *The Book of Discipline of The United Methodist Church* ("*Discipline*"). The reasons identified in my prior testimony for leaving those Methodist trust provisions in the Maryland Code still apply. In short:

1. It is entirely constitutional for the Maryland legislature to adopt statutory provisions that expressly allow for the distinct rules of church governance of certain religious denominations—as the Maryland Code does not merely for The United Methodist Church, but the Roman Catholic, Episcopal, and Presbyterian Churches—rather than force-fitting such "*connectional*" (or "hierarchical") denominations into the "*general* provisions of the Religious Corporations law," which Maryland precedent holds "contemplates a *congregational* form of church government." Mt. Olive, 348 Md. at 314.

2. SB 586 and HB 1182 would selectively target the Methodist trust provision for repeal, while leaving intact the Maryland Code provisions that relate to Presbyterian and Episcopal congregations, and which likewise function to make statutorily enforceable trust obligations imposed on those congregations property by the constitutions and canon law of their respective denominations. *See* Ex. A at 2-3, *discussing* Md. Code, Corp. & Ass'ns § 5-330 (regarding Presbyterian congregations), and §§ 5-334(b), 5-338(b), and 5-342(b) (regarding Episcopal congregations). Such discriminatory treatment of similarly structured denominations conflicts with established Supreme Court precedent holding that the "clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another," *Larson v. Valente*, 456 US 228, 244 (1982), and that the "constitutional prohibition of denominational preferences is [also] inextricably connected with the continuing vitality of the Free Exercise Clause." Id. at 245.

While the above-mentioned concerns remain, the principal focus of the testimony presented here is the amendment that was made to SB 586 before it was passed by the Senate. No longer content with simply repealing §§ 5-326 and 5-327, Senate Bill 586 as amended adds an entirely new § 5-326 that purports to bestow on all United Methodist churches in Maryland a state-conceived right to "*disaffiliate* from the United Methodist Conference and retain ownership of its property," SB 586, Amendment No. 2, § 5-326(A), free and clear not merely of the trust obligations recognized in the current iterations of §§ 5-326 and 5-327, but apparently even to the extent such trust obligations have been imposed by the express terms of the *Discipline* (as they have been since 1797), or for that matter by any express trust provisions that may appear in the local church's own deeds, articles of incorporation, or bylaws.

In short, for all intents an purposes, Senate Bill 586 proposes to nullify The United Methodist Church's beneficial interest in church property located in Maryland whenever a local church unilaterally opts to exercise a state-sponsored right to sever its ties with The United Methodist Church. The only limitation the bill proposes to place on that option is a requirement that the "disaffiliating local church shall reimburse the United Methodist Conference for financial investments made by the United Methodist Conference for the acquisition, maintenance, or improvement of real property used by the local church," § 5-326(B), but then only to the extent the Conference proves up the amount of its

investment in "a full and transparent accounting." *Id*. § 5-326(C).

It should go without saying that this amended version of Senate Bill 586 constitutes a flagrant violation of the free exercise rights of The United Methodist Church. Indeed, as explained below, a strikingly similar state statute enacted by Alabama's legislature has previously been invalidated by the United States Court of Appeals for the Fifth Circuit, based on binding precedent issued by the U.S. Supreme Court.

THE PROPOSED NEW VERSION OF § 5-326 VIOLATES THE FIRST AMENDMENT

There can be no serious doubt that SB 586 constitutes an unconstitutional infringement of the religious freedoms protected by the First Amendment and Maryland's Declaration of Rights. Supreme Court precedent is "clear . . . that 'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.'" Jones v. Wolf, 443 U.S. 595, 602 (1979) (quoting Presbyterian Church v. Hull Church, 393 U. S. 440, 449 (1969)). And with equal force, the Supreme Court forbids state legislatures from enacting statutes that purport to dictate the outcome of church property disputes in a fashion that effectively nullifies the result required by the church's own ecclesiastical rules. As the Supreme Court explained long ago:

> Ours is a government which by the "law of its being" allows no statute, state or national, that prohibits the free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion.

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 120-21 (1952).

In *Kedroff*, the above-quoted principle was applied to invalidate a statute the New York legislature had enacted in 1945 which recognized a convention of North American-based Russian Orthodox churches as "administratively autonomous" from the Moscow-based hierarchy of the Russian Orthodox Church. The Court of Appeals of New York had relied upon that statute in holding that the right to the use and occupancy of St. Nicholas Cathedral belonged to an archbishop chosen by that purportedly "autonomous" convention of American-based churches, and not to a distinct archbishop recognized by the church hierarchy in Moscow.

In overruling the New York Court of Appeals' decision, the U.S. Supreme Court concluded that the "controversy concerning the right to use St. Nicholas Cathedral is strictly a matter of ecclesiastical government," which turned on "the power of the Supreme Church Authority of the Russian Orthodox Church to appoint the ruling hierarch of the archdiocese of North America." Kedroff, 344 U.S. at 116. Quoting extensively from its earlier decision in Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871), Kedroff made clear that the freedom guaranteed to religious organizations by the First Amendment includes "an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." Kedroff, 344 U.S. at 116. In turn, the Court concluded that the New York statute infringed the Russian Orthodox Church's protected freedoms over core matters of church government:

> By fiat it displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment.

Kedroff, 344 U.S. at 119.

The unconstitutionality of SB 586 is even more readily apparent from the decisions rendered by federal trial and appellate courts in *Goodson v. Northside Bible Church*, 261 F. Supp. 99 (S. D. Ala. 1966), *aff'd*, 387 F. 2d 534 (5th Cir. 1967), which invalidated an Alabama statute that in similar fashion effectively nullified the legal efficacy of the Methodist "trust clause." (Copies of these decisions are attached). The Alabama statute, known as the Dumas Act and enacted in 1959, set forth a right of a local church congregation "to sever its connection with [its] parent church and retain ownership of the local church property free and clear of any trust" in the parent church's favor whenever "a 65% majority of [the church's] adult members . . . finds and declares itself to be in disagreement with the . . . laws, discipline, social creeds and jurisdictional system of the parent church with respect to its social standards, practices or policies existing at the time the local church became affiliated or merged with the parent church." Id., 261 F. Supp. at 100. Relying on this statute, a 65% majority Trinity Methodist Church in Mobile declared themselves in disagreement with existing social policies of The Methodist Church; announced their separation from The Methodist Church; reincorporated as the Northside Bible Church; and retained possession of the local church property.

In response, the Presiding Bishop and other officers of the Alabama-West Florida Conference of The Methodist Church filed suit to protect the denomination's beneficial interest the local church property in accordance with the express trust provisions included in the Discipline, not to mention in the local church's own deed. Relying primarily on the Supreme Court's landmark rulings in Kedroff and Watson v. Jones, both the U.S. District Court for the Southern District of Alabama and the U.S. Court of Appeals for the Fifth Circuit wasted no time concluding that the Dumas Act violated the constitutionally protected freedom of The Methodist Church to adopt for itself "a connectional, as opposed to a congregational, structure." Goodson, 261 F. Sup. at 101 (emphasis added). More to the point, the trial and appellate courts recognized that the Methodist "trust clause" serves the "important and necessary" purpose of "safeguarding" a "distinctive feature" of Methodist polity—namely, its insistence upon "an itinerant ministry," in which "ministers are assigned to churches by the officials of the parent body rather than by act of the local congregation." Id. at 102.

The terms of Senate Bill 586 clearly share the same flaw that doomed Alabama's Dumas Act. It terminates the legal efficacy, in Maryland at any rate, of trust provisions that have performed a vital function in Methodist church governance from the denomination's founding. In fact, if anything, the terms of Senate Bill 586 make it easier for the members of a local United Methodist church in Maryland to nullify those trust provisions. Under the proposed new version of § 5-326, the local church's "disaffiliation" need not be approved by the vote of a super majority of the church's membership; a bare majority will suffice. Nor will Maryland congregations be obliged to demonstrate the existence of any disagreement with the denomination's social policies or other principles. From all that appears, a bare majority can vote to obtain a state-approved release from its trust obligations for any reason, or for no reason at all.

Finally, the likelihood that Senate Bill 586 will be invalidated on First Amendment grounds is enhanced by the fact that it selectively allows trusts in favor of The United Methodist Church to be unilaterally terminated by that denomination's local churches, while leaving intact Maryland Code provisions that will continue to bind all Maryland-based congregations affiliated with the Episcopal Church and the Presbyterian Church to trust obligations imposed in the constitutions and canons of those denominations. Just as the Code includes provisions that relate solely to Methodist churches, it also includes provisions that relate specifically to Episcopal and Presbyterian churches, and that demand compliance with trusts in favor of those denominations.

CONCLUSION

For all of the foregoing reasons, and for the reasons outlined in my prior testimony, I urge the House Economic Matters Committee to issue an unfavorable report on Senate Bill 586.

Northside Bible Church v. Goodson

Decision Date:	07 December 1967
Docket Number:	No. 24421., 24421.
Citation:	387 F.2d 534
Parties:	NORTHSIDE BIBLE CHURCH et al., Appellants, v. W. Kenneth GOODSON et al., Appellees.
Court:	U.S. Court of Appeals — Fifth Circuit

Id. vLex Fastcase: VLEX-887528116

Link: https://fastcase.vlex.com/vid/northside-bible-church-v-887528116

387 F.2d 534 (1967)

NORTHSIDE BIBLE CHURCH et al., Appellants, v. W. Kenneth GOODSON et al., Appellees.

No. 24421.

United States Court of Appeals Fifth Circuit.

December 7, 1967.[*535]

Pierre Pelham, Mobile, Ala., for appellants.

Albert W. Copeland, Montgomery, Ala., Harry H. Riddick, Mobile, Ala., Alto V. Lee, III, Dothan, Ala., for appellees, Hamilton, Denniston, Butler & Riddick, Mobile, Ala., Lee & McInish, Dothan, Ala., Hobbs, Copeland, Franco, Riggs & Screws, Montgomery, Ala., of counsel.

Before RIVES, GOLDBERG and AINSWORTH, Circuit Judges.

RIVES, Circuit Judge:

This appeal presents the question of the constitutionality of an Alabama statute which would authorize a majority of a local church organization to withdraw local church property from the use and control of the parent church organization. The court below, in an able opinion, held the statute unconstitutional on the ground that it was contrary to the First and Fourteenth Amendments to the Constitution.

The Dumas Act, passed by the Alabama Legislature in 1959,1 sets forth a right of a sixty-five percent majority group of a local church congregation to "prevent diversion of church property to unintended use." The statute authorizes the local group to determine the existence of a change of social policies within the parent church and to withdraw local church property from the use and control of the parent. Provision is made for a judicial determination of the facts relative to the alleged changes in social policy. The statute purports to protect any local property trusteeship2 from conversion to uses other than those appropriate to the parent organization's social policies in effect at the time of the creation of the trust.3

Trinity Methodist Church was organized in Mobile County, Alabama, sometime prior to 1953. In April of 1953, local land was conveyed to "Morris Keith, Robert Orem, and Mrs. Emma Walters, Trustees of the Trinity Methodist Church, an unincorporated Church, and The Methodist Church." The deed provided that the property was conveyed to said grantees, their successors in office and assigns, "* * * in trust for the use and benefit of said Trinity Methodist Church," and further

> "* * * that said premises shall be used, kept and maintained as a place of divine worship of The Methodist ministry and members of The Methodist Church; subject to the Discipline, usage and ministerial appointments of said church as from time to time authorized and declared by the General Conference and by the Annual Conference within whose bounds the said premises are situated. This provision is solely for the benefit of **[*536]** the grantee, and the grantors reserve no rights or interest in said premises except as are expressly reserved by the provisions of this deed."

This trust clause conforms to the practice and custom established by the Discipline of The Methodist Church.4

In June of 1965, more than a sixty-five percent majority of Trinity Methodist Church declared themselves in disagreement with existing social policies of The Methodist Church. Declaring that these policies had changed since the time of the execution of their local property deed of trust,5 this majority announced themselves separate from The Methodist Church. They incorporated as the Northside Bible Church and retained possession of the local church property, claiming to own title to that property. As required by the Dumas Act, the withdrawing group gave notice to the parent organization, The Methodist Church. There is no showing that an evidentiary hearing was held in a state court, as allowed by the Act.

In November 1965, suit against the withdrawing group was brought in the United States District Court for the Southern District of Alabama by W. Kenneth Goodson, Presiding Bishop of the Alabama-West Florida Conference of The Methodist Church, joined by Powers McLeod, District Superintendent of the Mobile District of that Conference, and the Board of Trustees of the Alabama-West Florida Conference. These plaintiffs asserted status individually and as representatives of the membership of The Methodist Church; they asked the court to declare the Dumas Act unconstitutional and to enjoin defendants from denying plaintiffs the right to possession of the real estate. It was subsequently stipulated that at no time had defendants complied with the requirements of the laws of The Methodist Church as they would apply to such a situation.6

Defendants' answer denied the claim of The Methodist Church to the property. They made several motions to stay the proceedings in the court below, on the ground that plaintiffs had already begun a similar action in a state court against another withdrawing group, wherein the issues were the same as in this action. Defendants argued that the pendency of the state suit should cause the federal court to stay its proceedings until the state court determined the matters of interpretation, application and constitutionality of the Dumas Act. These motions to stay were all denied.7

Originally, a three-judge court was convened in this case. That court dissolved itself on the determination that no injunctive relief was sought against **[*537]** an officer of the state, as required for a proceeding under 28 U.S.C. § 2281 et seq.

In its opinion of November 29, 1966, the district court found that if the law of The Methodist Church were applied to the dispute, plaintiffs

would be entitled to the local church property. The Dumas Act was held unconstitutional on the ground that it intruded into the internal affairs of The Methodist Church, in violation of the First Amendment. The district court further held that the Dumas Act interfered with beneficial property interests accruing to The Methodist Church through the trust clause, and thus was in violation of the due process clause of the Fourteenth Amendment. Defendants appealed.

The abstention argument raised as a result of the denial of the motions to stay the federal court proceeding has no real merit. The policy announced by Railroad Commission of Texas v. Pullman Co., 1941, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971, calls for a federal court to avoid settling a constitutional question where a state court may make a determination of a state question dispositive of the case. Application of the *Pullman* doctrine is appropriate where there is a need for state court interpretation of a state statute,8 or where a state court determination might be dispositive without reaching the constitutional issue.9 Neither of these considerations is present here. The Alabama statute is plain in its meaning. There appears to be no ground on which a state court disposition could be made without reaching the question of the constitutionality of the Dumas Act.10 In another First Amendment context, where a complaint questioned the validity of a state statute justifiably attacked on its face as an abridgment of free expression, the abstention doctrine was held inappropriate. Dombrowski v. Pfister, 1965, 380 U.S. 479, 489-490, 85 S.Ct. 1116, 14 L.Ed.2d 22. Here, where there is no necessity for state court interpretation of a statute clear on its face and where there is no opportunity for the avoidance of the matter of the constitutionality of the statute, the district court clearly was correct in refusing to stay the proceedings.11

The First Amendment, through the Fourteenth Amendment, "commands that a state `shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" Everson v. Board of Education, etc., 1947, 330 U.S. 1, 8, 67 S.Ct. 504, 508, 91 L.Ed. 711. See Cantwell v. Connecticut, 1940, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213.

> "The `establishment of religion\' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another * *. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa." 330 U.S. at 15, 67 S.Ct. at 511.

State and federal courts alike are obliged to uphold the laws and rules of church governing bodies against dissident factions. Watson v. Jones, 1871, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666. Judicial tribunals, as arms of the government, must avoid interference with established church policies and government.

A New York statute was held unconstitutional when it was found to establish a preference for one church administration over another. Kedroff v. St. Nicholas Cathedral etc., 1953, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120. Such a preference was said to be an intrusion into the internal affairs of the church. On **[*538]** this point we quote from the court below:

> "The Dumas Act operates only on protestant denominations of Christian faith. Pretermitting whether this classification is in and of itself violative of constitutionally equal protection, the court is persuaded that the effect of the Dumas Act is to engraft upon a significant segment of American protestantism a legislative scheme of property ownership in derogation of the ecclesiastical systems evolved by several protestant denominations. For example, in Presbyterian, Episcopalian, and Lutheran churches there are connectional property features similar to those within the Methodist Church. The Dumas Act does not operate on purely congregational churches such as the Southern Baptists. It does, however, create a legislative body of a 65% majority of adult members for local churches within a connectional structure. It grants to this legislative body the right, power and authority to change established systems of church ownership without regard to the ecclesiastical law of the denomination. The warning of Madison becomes fact if the legislature is permitted to write into the ecclesiastical law of connectional denominations a control of local church property by a 65% majority. For what is accomplished by the Dumas Act is a `particular sect of Christians\', at least as applied to protestants, in which local property control is vested in a majority of not more than 65% of the local congregation. The establishment of such a class or sect is constitutionally prohibited."

Defendants have attempted to save the Dumas Act by the argument that it operates merely to give effect to the original intent of the deed of trust. Such intent, it is suggested, is to be inferred from the social policies of The Methodist Church in effect at the time of the creation of the trust. The trust clause itself rebuts this argument, for it clearly anticipated the probability of changing attitudes. The fact that the Dumas Act itself contained an example of just such a trust clause in no way assists the *cypres* argument urged by defendants.12 A similar argument was rejected in Kedroff v. St. Nicholas Cathedral, etc., 344 U.S. at 119, 73 S.Ct. 143, 97 L.Ed. 120.

Defendants have urged further that the court should recognize that the Dumas Act operates with respect to "social policies" and not ecclesiastical matters. We make no effort to find any distinction between these two categories, if any does exist. It is sufficient to say that "social policies" are not within the range of non-ecclesiastical matters exemplified by such cases as Williams v. Jones, 1952, 258 Ala. 59, 61 So.2d 101, and Hundley v. Collins, 1902, 131 Ala. 234, 32 So. 575.

The organization of The Methodist Church places the Dumas Act, as applied to this particular case, in a particularly untenable position. The Methodist Church operates through a contemporary version of an itinerant ministry. Ministers are assigned and re-assigned from church to church and from time to time. Thus the parent organization, along with its constituent echelons, has a peculiar interest in assuring the availability and cooperation of a local group which it has brought into being. A law such as the Dumas Act brazenly intrudes upon this very basic and traditional practice of The Methodist Church, and supersedes the processes available within the church structure for the settlement of disputes. We hold the Dumas Act, Code of Alabama, Title 58, §§ 104-113, unconstitutional under the First Amendment made applicable to the State by the Fourteenth Amendment.

It is not necessary for us to rule on the contentions that it also denies the equal protection of the law and deprives persons of property without due process of law. The judgment is

Affirmed.

1 Code of Alabama, Tit. 58, §§ 104-113.

2 Sec. 104(e) sets forth the type trust clause with which the statute is concerned:

"In trust, that said premises shall be used, kept and maintained as a place of divine worship of the parent church, or as a place of residence for the use and occupancy of ministers of the parent church, subject to the discipline, usage and ministerial appointments of said church as from time to time authorized and declared by the law-making bodies of the parent church."

3 Code of Alabama, Tit. 58, § 105.

4 The 1964 Discipline suggests the use of the following trust clause:

"In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the Methodist ministry and members of The Methodist Church; subject to the Discipline, usage, and ministerial appointments of said church as from time to time authorized and declared by the General Conference and by the Annual Conference within whose bounds the said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in said premises."

5 Relevant portions of the Discipline of The Methodist Church, from the year 1952 and from the year 1964, were stipulated and made a part of the record by the parties. The 1964 provisions relative to social security, medicare, criminal rehabilitation, and racial discrimination are much more specific and somewhat more liberal than the 1952 version. The 1964 Discipline contained wide-ranging expressions of opinion on foreign policy, world economic development, and immigration.

6 The stipulation, entered into by all parties, declared that various echelons of the church government had jurisdiction over such property disputes and withdrawals. Defendants asserted, however, that the Dumas Act modified such jurisdiction.

7 At the time of the final ruling on these motions to stay, in the district court's opinion of November 29, 1966, the state court litigation was on appeal to the Supreme Court of Alabama from a judgment that the Dumas Act is constitutional. There the case has remained.

8 312 U.S. at 499-500, 61 S.Ct. 643, 85 L.Ed. 971.

9 Id. at 501.

10 See n. 7, supra.

11 We are confirmed in this ruling by Zwickler v. Koota, 389 U.S. 241, 88 S. Ct. 391, 19 L.Ed.2d 444, after this opinion was written but two days before it was released.

12 See n. 2, supra.

Goodson v. Northside Bible Church

Decision Date:	18 November 1966
Docket Number:	Civ. A. No. 3926-65.
Citation:	261 F. Supp. 99
Parties:	W. Kenneth GOODSON, as Presiding Bishop of the Alabama-West Florida Conference of the Methodist Church, Powers McLeod, as District Superintendent of the Mobile District of the Alabama-West Florida Conference of the Methodist Church, Board of Trustees of the Alabama-West Florida Conference of the Methodist Church, a corporation, Plaintiffs, v. NORTHSIDE BIBLE CHURCH, a corporation, E. C. Persons, Stanley B. Daugherty and Alvin W. Blount, as trustees of Northside Bible Church, Defendants.
Court:	U.S. District Court — Southern District of Alabama

Id. vLex Fastcase: VLEX-892009057

Link: https://fastcase.vlex.com/vid/goodson-v-northside-bible-892009057

261 F. Supp. 99

W. Kenneth GOODSON, as Presiding Bishop of the Alabama-West Florida Conference of the Methodist Church, Powers McLeod, as District Superintendent of the Mobile District of the Alabama-West Florida Conference of the Methodist Church, Board of Trustees of the Alabama-West Florida Conference of the Methodist Church, a corporation, Plaintiffs, v. NORTHSIDE BIBLE CHURCH, a corporation, E. C. Persons, Stanley B. Daugherty and Alvin W. Blount, as trustees of Northside Bible Church, Defendants.

Civ. A. No. 3926-65.

United States District Court S. D. Alabama, S. D.

November 18, 1966.[*100]

Harry H. Riddick, Hamilton, Denniston, Butler & Riddick, Mobile, Ala., Albert W. Copeland, Hobbs, Copeland, Franco, Riggs & Screws, Montgomery, Ala., for plaintiffs.

Pierre Pelham, Mobile, Ala., for defendants.

OPINION AND JUDGMENT

DANIEL HOLCOMBE THOMAS, Chief Judge.

By *per curiam* opinion and order entered in this cause on the *18th* day of November 1966, the three-judge-court convened herein determined that the case was not appropriate for a three-judge-court, but was one to be determined by a single district judge, since no injunctive relief was sought against any officer of the State of Alabama, as required for proceeding under Section 2281 et seq., of Title 28, United States Code. Accordingly, the three-judge-court, originally convened on the prayer of the plaintiffs, was dissolved.

And it appearing to the court that the United States District Court for the Southern District of Alabama has jurisdiction of the persons and issues involved, and the cause having been submitted to the court on the pleadings and Stipulation of Facts filed by the parties, the court now finds and concludes as follows:

This is in essence a suit for declaratory judgment and injunctive relief against the defendants who presently are in possession of certain church property to which they claim ownership under the provisions of a statute of the State of Alabama ("Protection of Certain Religious, Charitable and Educational Trusts," Title 58, Secs. 104-113, Code of Alabama.) Plaintiffs allege that said statute is contrary to the provisions of the First and Fourteenth Amendments to the Constitution of the United States, and invoke the jurisdiction of this court under the provisions of Title 28, United States Code, Sec. 1331. The requisite jurisdictional amount has been stipulated to, but not the presence of a federal question.

The plaintiffs are representatives of The Methodist Church and seek to have the court declare Title 58, Sec. 104-113, Code of Alabama, unconstitutional and inapplicable to the parties herein. The Alabama act in question, commonly known as the "Dumas Act", was passed by the Alabama legislature in 1959, and provides in substance that where a 65% majority of adult members of a local church finds and declares itself to be in disagreement the the "* * * laws, discipline, social creeds and jurisdictional system of the parent church with respect to its social standards, practices or policies existing at the time the local church became affiliated or merged with the parent church * * *", the majority may sever its connection with the parent church and retain the possession and ownership of the local church property free and clear of any trust such as that set forth in the deed to the Trinity Methodist Church, the defendants' predecessor in title.

The defendants have taken the position that this court should stay its proceedings pending the outcome of First Methodist Church of Union Springs, Alabama, v. Scott, (Circuit Court of Bullock County, Alabama, In Equity No. 4638) wherein the Dumas Act has been challenged. This litigation is currently on appeal before the Supreme Court of Alabama and no decision has been announced. The defendants rely upon the *Pullman* doctrine (Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). They contend that in cases where state action is being challenged in federal court as contrary to the federal constitution, and questions of state law may be dispositive of the case, the federal court should abstain until the questions of state law have been adjudicated by the state court. **[*101]** However, the complaint in the *Pullman* case, supra, sought to enjoin the enforcement of state action claiming that there was a denial of rights under the United States Constitution *and* claiming also that, under Texas law, there was no authority for such action. The case at bar is readily distinguishable from the *Pullman* case, as the complaint herein makes no claim that the Dumas Act is contrary to the law of the State of Alabama and this court is not called upon to make any interpretation of the Alabama law. For this reason, the court refuses to abstain from reaching the federal questions and denies defendants' motion for a stay of proceedings in this court.

The Methodist Church is a major protestant denomination with a connectional, as opposed to a congregational, structure. The Alabama courts have taken judicial knowledge of the denomination's plan of church government. Dunn v. Ellisor, 225 Ala. 15, 141 So. 700; Malone v. La Croix, 144 Ala. 648, 41 So. 724. This connectional structure is summarized in the complaint and admitted by the defendants.

"The Methodist Church was at the time of the aforesaid conveyance and at all times thereafter has been and is a co

This provision is solely for the benefit of the grantee, and the grantors reserve no rights or interest in said premises

Kedroff v. St Nicholas Cathedral of Russian Orthodox Church In North America

Decision Date:	24 November 1952
Docket Number:	No. 3, 3
Citation:	97 L.Ed. 120, 73 S.Ct. 143, 344 U.S. 94
Parties:	KEDROFF et al. v. ST. NICHOLAS CATHEDRAL OF RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA. Re
Court:	U.S. Supreme Court

344 U.S. 94

73 S.Ct. 143

97 L.Ed. 120

KEDROFF et al.

v. ST. NICHOLAS CATHEDRAL OF RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA.

No. 3.

Reargued Oct. 14, 1952.

Decided Nov. 24, 1952.

[*95] Mr. Philip Adler, New York City, for appellants.

Mr. Ralph Montgomery Arkush, New York City, for appellee.

Mr. Justice REED delivered the opinion of the Court.

The right to the use and occupancy of a church in the city of New York is in dispute.

The right to such use is claimed by appellee, a corporation created in 1925 by an act of the Legislature of New York, Laws of New York 1925, c. 463, for the purpose of acquiring a cathedral for the Russian Orthodox Church in North America as a central place of worship and residence of the ruling archbishop 'in accordance with the doctrine, discipline and worship of the Holy Apostolic Catholic Church of Eastern Confession as taught by the holy scriptures, holy tradition, seven ecumenical councils and holy fathers of that church.'

The corporate right is sought to be enforced so that the head of the American churches, religiously affiliated with the Russian Orthodox Church, may occupy the **[*96]** Cathedral. At the present time that head is the Metropolitan of All America and Canada, the Archbishop of New York, Leonty, who like his predecessors was elected to his ecclesiastical office by a sobor of the American churches.[1]

That claimed right of the corporation to use and occupancy for the archbishop chosen by the American churches is opposed by appellants who are in possession. Benjamin Fedchenkoff bases his right on an appointment in 1934 by the Supreme Church Authority of the Russian Orthodox Church, to wit, the Patriarch locum tenens of Moscow and all Russia and its Holy Synod, as Archbishop of the Archdiocese of North America and the Aleutian Islands. The other defendant-appellant is a priest of the Russian Orthodox Church, also acknowledging the spiritual and administrative control of the Moscow hierarchy.

Determination of the right to use and occupy Saint Nicholas depends upon whether the appointment of Ben- **[*97]** jamin by the Patriarch or the election of the Archbishop for North America by the convention of the American churches validly selects the ruling hierarch for the American churches. The Court of Appeals of New York, reversing the lower court, determined that the prelate appointed by the Moscow ecclesiastical authorities was not entitled to the Cathedral and directed the entry of a judgment that appellee corporation be reinvested with the possession and administration of the temporalities of St. Nicholas Cathedral. St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 302 N.Y. 1, 33, 96 N.E.2d 56, 74. This determination was made on the authority of Article 5—C of the Religious Corporations Law of New York, 302 N.Y. at page 24 et seq., 96 N.E.2d at page 68, against appellants' contention that this New York statute, as construed, violated the Fourteenth Amendment to the Constitution of the United States.

Because of the constitutional questions thus generally involved, we noted probable jurisdiction, and, after argument and submission of the case last term, ordered reargument and requested counsel to include a discussion of whether the judgment might be sustained on state grounds. 343 U.S. 972, 72 S.Ct. 1069. Both parties concluded that it could not, and the unequivocal remittitur of the New York Court of Appeals, 302 N.Y. 689, 98 N.E.2d 485, specifically stating the constitutionality of the statute as the necessary ground for decision, compels this view and precludes any doubt as to the propriety of our determination of the constitutional issue on the merits. Grayson v. Harris, 267 U.S. 352, 45 S.Ct. 317, 69 L.Ed. 652; State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S.Ct. 443, 82 L.Ed. 685. The case now has been reargued and submitted.

Article 5—C was added to the Religious Corporations Law of New York in 1945 and provided both for the incorporation and administration of Russian Orthodox churches. Clarifying amendments were added in 1948. **[*98]** The purpose of the article was to bring all the New York churches, formerly subject to the administrative jurisdiction of the Most Sacred Governing Synod in Moscow or the Patriarch of Moscow, into an administratively autonomous metropolitan district. That district was North American in area, created slowly down the Pacific Coast and later with the Slavic immigration to our eastern cities, particularly to Detroit, Cleveland, Chicago, Pittsburgh and New York. The character of the administrative unit changed with the years as is indicated by the changes in its name. See note 2. In 1904 when a diocese of North America was created its first archbishop, Tikhon, shortly thereafter established himself in his seat at Saint Nicholas Cathedral. His appointment came from the Holy Synod of Russia as did those of his successor

d pursuant to resolutions adopted at a sobor held at Detro it in 1924.[2] This declared autonomy was made effective b y a further legislative requirement that all the churches for merly administratively subject to the Moscow synod and p atri- **[*99]** archate should for the future be governed by th e ecclesiastical body and hierarchy of the American metro politan district.[3] The foregoing analysis follows the interpr etation of this article by the Court of Appeals of New York, an interpretation binding upon us.[4] **[*100]** Article 5—C is challenged as invalid under the constitutional prohibition against interference with the exercise of religion.5 The ap pellants' contention, of course, is based on the theory that the principles of the First Amendment are made applicabl e to the states by the Fourteenth.6 See Stokes, Church an d State in the United States (1950), vol. 1, c. VIII.

The Russian Orthodox Church is an autocephalous mem ber of the Eastern Orthodox Greek Catholic Church. It spr ang from the Church of Constantinople in the Tenth Centu ry. The schism of 1054 A.D. split the Universal Church int o those of the East and the West. Gradually self-governm ent was assumed by the Russian Church until in the Sixte enth Century its autonomy was recognized and a Patriarc h of Moscow appeared. Fortescue, Orthodox Eastern Chu rch, c. V. For the next one hun- **[*101]** dred years the deve lopment of the church kept pace with the growth of power of the Czars but it increasingly became a part of the civil g overnment—a state church. Throughout that period it also remained an hierarchical church with a Patriarch at its he ad, governed by the conventions or sobors called by him. However, from the time of Peter the Great until 1917 no so bor was held. No patriarch ruled or was chosen. During th at time the church was governed by a Holy Synod, a grou p of ecclesiastics with a Chief Procurator representative of the government as a member.

Late in the Eighteenth Century the Russian Church enter ed the missionary field in the Aleutian Islands and Alaska. From there churches spread

The Russian upheaval caused repercussions in the North American diocese. That Diocese at the time of the Soviet Revolution recognized the spiritual and ad- **[*103]** ministr ative control of Moscow. White Russians, both lay and cle rical, found asylum in America from the revolutionary confl icts, strengthening the feeling of abhorrence of the secula r attitude of the new Russian Government. The church me mbers already here, immigrants and nativeborn, while ha bituated to look to Moscow for religious direction, were ac customed to our theory of separation between church and state. The Russian turmoil, the restraints on religious activ ites and the evolution of a new ecclesiastical hierarchy in the form of the 'Living Church,' deemed noncanonical or s chismatic by most churchmen, made very difficult Russian administration of the American diocese. Furthermore, Patr iarch Tikhon, on November 20, 1920, issued Decision No. 362 relating to church administration for troublesome time s. This granted a large measure of autonomy, when the R usssian ruling authority was unable to function, subject to 'confirmation later to the Central Church Authority when it is reestablished.' Naturally the growing number of Americ an-born members of the Russian Church did not cling to a

s in order Platon and Evdokim. Under those appointments the successive archbishops occupied the Cathedral and r esidence of Saint Nicholas under the administrative autho rity of the Holy Synod.

In 1917 Archbishop Evdokim returned to Russia permane ntly. Early that year an All Russian Sobor was held, the fir st since Peter the Great. It occurred during the interlude of political freedom following the fall of the Czar. A patriarch was elected and installed—Tikhon who had been the first American Archbishp. Uncertainties as to the succession t o and administration of the American archbishopric made their appearance following this sobor and were largely in duced **[*102]** by the almost contemporaneous political dis turbances which culminated swiftly in the Bolshevik Revol ution of 1917. The Russian Orthodox Church was drawn i nto this maelstrom. After a few years the Patriarch was im prisoned. There were suggestions of his counter-revolutio nary activity. Church power was transferred, partly throug h a sobor considered by many as non-canonical to a Supr eme Church Council. The declared reforms were said to h ave resulted in a 'Living Church' or sometimes in a 'Renov ated Church.' Circumstances and pressures changed. Pat riarch Tikhon was released from prison and died in 1925. He named three bishops as locum tenens for the patriarc hal throne. It was one of these, Sergius, who in 1933 app ointed the appellant Benjamin as Archbishop. The Churc h was registered as a religious organization under Soviet law in 1927. Thereafter the Russian Church and the Russ ian State approached if not a reconciliation at least an adj ustment which eventuated by 1943 in the election of Sergi us, one of the bishops named as locum tenens by Tikhon, to the Patriarchate. The Living or Renovated Church, whe ther deemed a reformed, a schismatic or a new church, a pparently withered away. After Sergius' death a new patri arch of the Russian Orthodox Church, Alexi, was chosen Patriarch in 1945 at Moscow at a sobor recognized by all parties to this litigation as a true sobor held in accordance with the church canons.7

with a request for autonomy and a few days later received from the Patriarch the Ukase * * *.' [*105]

There came to the Russian Church in America this Ukase of the Moscow Patriarchy of February 14 or 16, 1945, cov ering Moscow's requirements for reunion of the American Orthodox Church with the Russian. It required for reunion that the Russian Church in America hold promptly an 'all American Orthodox Church Sobor'; that it express the deci sion of the dioceses to reunite with the Russian Mother C hurch, declare the agreement of the American Orthodox C hurch to abstain 'from political activities against the U.S.S. R.' and so direct its parishes, and elect a Metropolitan sub ject to confirmation by the Moscow Patriarchy. The decree said, 'In view of the distance of the American Metropolitan District from the Russian Mother Church * * * the Metropol itan-Exarch * * * may be given some extended powers by the Moscow Patriarchy * * *.'

The American congregations speaking through their Clev eland Sobor of 1946 refused the proffered arrangement a nd resolved in part:

hierarchy identified with their country of remote origin with the same national feeling that moved their immigrant anc estors. These facts and forces generated in America a se paratist movement.

That movember brought about the arrangemens at the De troit Sobor of 1924 for a temporary American administratio n of the church on account of the disturbances in Russia.8 This was followed by the declarations of autonomy of the successive sobors since that date, a spate of **[*104]** litigati on concerning control of the various churches and occup ancy of ecclesiastical positions,9 the New York legislation (known as Article 5-C, notes 2 and 3, supra), and this cont roversy.

Delegates from the North American Diocese intended to b e represented at an admittedly canonical Sobor of the Ru ssian Orthodox Church held in 1945 at Moscow. They did not arrive in time on account of delays, responsibility for w hich has not been fixed. The following stipulation appears as to their later actions while at Moscow:

'It is stipulated that Bishop Alexi and Father Dzvonchik, re presenting the local group of American Churches under B ishop Theophilus, appeared before the Patriarch and the members of his Synod in Moscow, presented a written rep ort on the condition of the American Church

'That any administrative recognition of the Synod of the R ussian Orthodox Church Abroad is hereby terminated, ret aining, however, out spiritual and brotherly relations with all parts of the Russian Orthodox Church abroad * * *.'

This ended the efforts to compose the differences betwee n the Mother Church and its American offspring, and this li tigation and the enactment of Article 5—C of the Religious Corporations Law of New York followed. We understand t he above factual summary corresponds substantially with the factual basis for determination formulated by the Court of Appeals of New York. From those circumstances it see ms clear that the Russian Orthodox Church was, until the Russian Revolution, an hierarchical church with unquesti oned paramount jurisdiction in the governing body in Rus sia over the American Metropolitanate. Nothing indicates t hat either the Sacred Synod or the succeeding Patriarchs **[*106]** relinquished that authority or recognized the auton omy of the American church. The Court of Appeals decisi on proceeds, we understand, upon the same assumption. 302 N.Y. at pages 5, 23, 24, 96 N.E.2d at pages 57, 68, 6 9. That court did consider 'whether there exists in Moscow at the present time a true central organization of the Russi an Orthodox Church capable of functioning as the head of a free international religious body.' It concluded that this a spect of the controversy had not been sufficiently develop ed to justify a judgment upon that ground. 302 N.Y. at pag es 22—24, 96 N.E.2d at pages 67—69.

The Religious Corporations Law.—The New York Court o f Appeals depended for its judgment, refusing recognition to Archbishop Benjamin, the appointee of the Moscow Hi erarchy of the Russian Orthodox Church, upon Article 5-C of the Religious Corporations Law, quoted and analyzed at notes 2 and 3, supra.10 Certainly a legislature **[*107]** is free to act upon such information as it may have as to the necessity for legislation. But an enactment by a legislatur e cannot validate action which the Constitution prohibits, and we think that the statute here in question passes the c onstitutional limits. We conclude that Article 5—C underto ok by its terms to transfer the control of the New York chur ches of the Russian Orthodox religion from the central go verning hierarchy of the Russian Orthodox Church, the Pa triarch of Moscow and the Holy Synod, to the governing a uthorities of the Russian Church in America, a church org anization limited to the diocese of North America and the Aleutian Islands. This transfer takes place by virtue of the statute. Such a law violates the Fourteenth Amendment. It prohibits in this country the free exercise of religion. Legis lation that regulates church administration, the operation of the churches, the appointment of clergy, by requiring co nformity to church statutes 'adopted at a general conven- **[*108]** tion (sobor) held in the City of New York on or about or between October fifth to eighth, nineteen hundred thirty -seven, and any amendments thereto,' note 3, supra, proh ibits the free exercise of religion. Although this statute req uires the New York churches to 'in all other respects confo rm to, maintain and follow the faith, doctrine, ritual, comm union, discipline, canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church),' their conformity is by legislative fiat and subject t o legislative will. Should the state assert power to change belief in such conditions justified the State in enacting a la w to free the American group from infiltration of such athei stic or subversive influences.13

This legislation, Art. 5—C, in the view of the Court of Appe als, gave the use of the churches to the Russian Church i n America on the theory that this church would most faithf ully carry out the purposes of the religious trust.14 Thus d angers of political use of church pulpits would be minimiz ed. Legislative power to punish subversive action cannot be doubted. If such action should be actually attempted b y a cleric, neither his robe nor his pulpit would be a defen se. But in this case no problem **[*110]** of punishment for th e violation of law arises. There is no charge of subversive or hostile action by any ecclesiastic Here there is a transf er by statute of control over churches. This violates our rul e of separation between church and state. That conclusio n results from the purpose, meaning and effect of the New York legislation stated above, considered in the light of th e history and decisions considered below.

Hierarchical churches may be defined as those organized as a body with other churches having similar faith and do ctrine with a common ruling convocation or ecclesiastical head. In Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666, the y are spoken of in like terms.15 That opinion has been giv en consideration in subsequent church litigation—state a nd national.16 The opinion itself, however, did not turn on either the establishment or the prohibition of the free exer cise of religion. It was a church controversy in the Third or Walnut Street Presbyterian Church of Louisville, Kentucky , arising out of the slavery conflict and was filled with the a crimony of that period. It was decided here at the 1871 Te rm. 'The government of the (Presbyterian) church is overri

the statute requirng conformity to ancient faith and doctrin e to one establishing a different doctrine, the invalidity wo uld be unmistakable.

Although § 5 of the Religious Corporation Law11 had lon g controlled religious corporations, the Court of Appeals h eld that its rule was not based on any constitutional requir ement or prohibition.12 Since certain events of which the Court took judicial notice indicated to it that the Russian G overnment exercised control over the cen- [*109] tral chur ch authorities and that the American church acted to prote ct its pulpits and faith from such influences, the Court of A ppeals felt that the Legislature's reasonable

In May of 1865 the General Assembly, the highest judicat ory of the church, made a declaration of loyalty to the Fed eral Government denouncing slavery, and directed that n ew members with contrary views should not be received. The Louisville Presbytery, the immediate superior of the Walnut Street Church, promptly issued a Declaration and Testimony, refusing obedience and calling for resistance t o the alleged usurpation of authority. The Louisville Presb ytery divided as did the Walnut Street Church and the pro slavery group obtained admission into the Presbyterian C hurch of the Confederate States. In June 1867 the Presbyt erian General Assembly **[*112]** for the United States decl ared the Presbytery and Synod recognized by the proslav ery party were 'in no sense a true and lawful Synod and P resbytery in connection with and under the care and auth ority of the General Assembly of the Presbyterian Church i n the United States of America.' They were "permanently excluded from connection with or representation in the As sembly.' By the same resolution the Synod and Presbyter y adhered to by those whom (the proslavery party) oppos ed were declared to be the true and lawful Presbytery of L ouisville, and Synod of Kentucky.' Id., 13 Wall. at page 69 2, 20 L.Ed. 666.

Litigation started in 1866 with a suit in the state court by c ertain of the antislavery group to have declared their right to act as duly elected additional elders 'in the manageme nt of church property for purposes of religious worship.' Id. , 13 Wall. at page 685, 20 L.Ed. 666. As the Court of Appe als of Kentucky thought that certain acts of the Louisville P resbytery and the General Assembly of the United States, in pronouncing the additional elders duly elected, were v oid as beyond their functions, id., 13 Wall. at page 693, 20 L.Ed. 666,18 it refused the plea of the antislavery group a nd left the proslavery elders and trustees in control of the Walnut Street Church.

Thereupon a new suit, Watson v. Jones, was begun by all eged members of the church to secure the use of the Wal nut Street Church for the antislavery group. This suit was t o decide not the validity of an election of elders [*113] fou ght out in Watson v. Avery, supra, but which one of two bo dies should be recognized as entitled to the use of the Wa lnut Street Presbyterian Church. It was determined that pl aintiffs had a beneficial interest in the church

rm. 'The government of the (Presbyterian) church is exerci sed by and through an ascending series of 'judicatories', k nown as Church Sessions, Presby- **[*111]** teries, Synods and a General Assembly.' Id., 13 Wall. at page 681, 20 L. Ed. 666. The opinion of this Court assumed without questi on that the Louisville church, its property and its officers w ere originally and up to the beginning of the disagreemen ts subjected to the operation of the laws of the General As sembly of the Presbyterian Church. Id., 13 Wall. at page 6 83, 20 L.Ed. 666. The actual possession of the church pro perty was in trustees; its operation or use controlled by th e Session composed of elders.17 Both were groups elect ed at intervals by the members.

property and therefore a standing to sue for its proper use , if they were members. Id., 13 Wall. at pages 697, 714, 20 L.Ed. 666. A schism was recognized. Id., 13 Wall. at page 717, 20 L.Ed. 666. It was held:

'The trustees obviously hold possession for the use of the persons who by the constitution, usages, and laws of the Presbyterian body, are entitled to that use.' Id., 13 Wall. at page 720, 20 L.Ed. 666.

They were required to recognize 'the true uses of the trust. ' Id., 13 Wall. at page 722, 20 L.Ed. 666. Then turning to th e consideration of an hierarchical church, as defined in n ote 15, supra, and, as it found the Presbyterian church to be, this Court said:

'In this class of cases we think the rule of action which sho uld govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judi cial authority is, that, whenever the questions of discipline , or of faith, or ecclesiastical rule, custom, or law have bee n decided by the highest of these church judicatories to w hich the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.' Id., 13 Wall. at p age 727, 20 L.Ed. 666.

As the General Assembly of the Church had recognized t he antislavery group 'as the regular and lawful Walnut Str eet Church and officers,' id., 13 Wall. at page 694, 20 L.Ed . 666, newly elected, and the trial court had found complai nants members of that group, and had entered a decree a djudging that this group's duly chosen and elected pastor, ruling elders **[*114]** and trustees 'respectively entitled to e xercise whatever authority in the said church, or over its m embers or property, rightfully belonged to pastor, elders, a nd trustees, respectively, in churches in connection with 'T he Presbyterian Church in the United States of America,' Old School, and according to the regulations and usages of that church,' id., 13 Wall. at page 698, 20 L.Ed. 666, this Court affirmed the decree.

In affirming, the Court recognized the contrariety of views between jurists as to civil jurisdiction over church adjudic ations having an effect upon property or its uses, when th e civil courts determine the church judicatory has violated the church's organic law.19 Its ruling is summed up in the se words:

'In this country the full and free right to entertain any religi ous belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe person al rights, is conceded to all. The law knows no heresy, an d is committed to the support of no dogma, the establishm ent of no sect. The right to organize voluntary religious as sociations to assist in the expression and dissemination o f any religious doctrine, and to create tribunals for the deci sion of controverted questions of faith within the associati on, and for the ecclesiastical government of all the individ ual members, congregations, and officers within the gene ral association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this gover nment, and are bound to submit to it. But it would be a vai n consent and would lead to the total subversion of such r eligious bodies, if any one aggrieved by one of their decis ions could appeal to the secular **[*115]** courts and have th em reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of q uestions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizanc e, subject only to such appeals as the organism itself prov ides for.' Id., 13 Wall. at pages 728 729, 20 L.Ed. 666.

This is applicable to 'questions of discipline, or of faith, or of ecclesiastical rule, custom, or law,' id., 13 Wall. at page 727, 20 L.Ed. 666. 20 This controversy concerning the rig ht to use St. Nicholas Cathedral is strictly a matter of eccle siastical government, the power of the Supreme Church A uthority of the Russian Orthodox Church to appoint the rul ing hierarch of the archdiocese of North America. No one disputes that such power did lie in that Authority prior to th e Russian Revolution.

Watson v. Jones, although it contains a reference to the re lations of church and state under our system of laws,21 w as decided without depending upon prohibition of state in terference with the free exercise of religion. It was decide d in 1872, before judicial recognition of the coercive powe r of the Fourteenth Amendment to protect the limitations of the First Amendment against state action. It long antedate d the 1938 decisions of Erie R. [*116] Co. v. Tompkins an d Ruhlin v. New York Life Ins. Co., 304 U.S. 64, 58 S.Ct. 8 17, 82 L.Ed. 1188 and 304 U.S. 202, 58 S.Ct. 860, 82 L.E d. 1290, and, therefore, even though federal jurisdiction in the case depended solely on diversity, the holding was b ased on general law rather than Kentucky law.22 The opi nion radiates, however, a spirit of freedom for religious organizations, an independence fro m secular control or manipulation, in short, power to decid e for themselves, free from state interference, matters of c hurch government as well as those of faith and doctrine. F reedom to select the clergy, where no improper methods of choice are proven,23 we think, must now be said to hav e federal constitutional protection as a part of the free exe rcise of religion against state interference. [*117]

Legislative Power.—The Court of Appeals of New York re cognized, generally, the soundness of the philosophy of e cclesiastical control of church administration and polity bu t concluded that the exercise of that control was not free fr om legislative interference.24 That Court presented forcef ully the argument supporting legislative power to act on it s own knowledge of 'the Soviet attitude toward things relig ious.' 302 N.Y. pages 32—33, 96 N.E.2d at page 74. It wa s said:

'The Legislature realized that the North American church, in order to be free of Soviet interference in its affairs, had declared its temporary administrative autonomy in 1924, pursuant to the ukase of 1920, while retaining full spiritual communion with the patriarchate, and that there was a re al danger that those properties and temporalities long enj oyed and used by the Russian Orthodox Church worship pers in this State would be taken from them by the repres entatives of the patriarchate.' 302 N.Y. at page 33, 96 N.E. 2d at page 74.

It was thought that American Communications Ass'n v. Do uds, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed. 925, supported t he thesis that where there is some specific evil, found as a fact 'some infringement upon traditional liberties was jus tifiable' to effect a cure. 302 N.Y., at page 31, 96 N.E.2d at page 73. On that reasoning it was thought permissible, in view 'of the changed situation of the patriarchate in Russi a', to replace it with the Russian Church in America as the ruling authority over the administration of the church. The legal basis for this legislative substitution was found in the theory that the Russian Church in America 'was the truste e which 'may be relied upon to carry out more **[*118]** effec tively and faithfully the purposes of this religious trust (Car rier v. Carrier, 226 N.Y. 114, 123 N.e. 135)". Id., 302 N.Y. at page 30, 96 N.E.2d at page 72. Mindful of the authority of the Court of Appeals in its interpretation of the powers o f its own legislature and with respect for its standing and a bility, we do not agree with its statement as to legislative p ower over religious organizations.

In our view the Douds case may not be interpreted to vali date New York's Article 5—C. That case involved the valid ity of § 9(h) of the National Labor Relations Act as amend ed, 61 Stat. 136, 146, 29 U.S.C. § 159(h), 29 U.S.C.A. § 1 59(h). That section forbade the N.L.R.B. from acting at the suggestion of a labor organization unless affidavits of its o fficers were filed denying affiliation with subversive organi zations or belief in the overthrow of this Government by fo rce or other unconstitutional means. We upheld the enact ment as a proper exercise of the power to protect commer ce from the evil of disreption from strikes so politically insp ired. In so doing we said, 'legitimate attempts to protect th intrudes for the benefit of one segment of a church the po wer of the state into the forbidden area of religious freedo m contrary to the principles of the First Amendment. Such prohibition differs from the restriction of a right to deal with Government allowed in Douds, in that the Union in the Do uds case had no such constitutionally protected right. Ne w York's Article 5—C directly prohibits the free exercise of an ecclesiastical right, the Church's choice of its hierarchy .

We do not think that New York's legislative application of a cy-pres doctrine to this trust avoids the constitutional rul

e public, not from the remote possible effects of noxious id eologies, but from present excesses of direct, active cond uct are not presumptively bad because they interfere with and, in some of its manifestations, restrain the exercise of First Amendment rights.' Id., 339 U.S. at page 399, 70 S.Ct . at page 684. And added, 'But insofar as the problem is o ne of drawing inferences concerning the need for regulati on of particular forms of conduct from conflicting evidence , this Court is in no position to substitute its judgment as to the necessity or desirability of the statute for that of Congr ess.' Id., 339 U.S. at page 400, 70 S.Ct. at page 685. It is a n exaggeration to say that those sound statements point t o a legislative power to take away from a church's governi ng body and its duly ordained representative the possessi on and use of a building held in trust for the purposes for which it is being employed because of an apprehension, even though reason- **[*119]** able, that it may be employed for improper purposes. In Douds we saw nothing that was aimed at the free expression of views. Unions could have officers with such affiliations and political purposes as the y might choose but the Government was not compelled to allow those officers an opportunity to disrupt commerce fo r their own political ends. We looked upon the affidavit req uirement as an assurance that disruptive forces would not utilize a government agency to accomplish their purposes . Id., 339 U.S. at page 403, 70 S.Ct. at page 686.

In upholding the validity of Article 5—C, the New York Co urt of Appeals apparently assumes Article 5—C does noth ing more than permit the trustees of the Cathedral to use it for services consistent with the desires of the members of the Russian Church in America. Its reach goes far beyond that point. By fiat it displaces one church administrator wit h another. It passes the control of matters strictly ecclesias tical from one church authority to another. It thus

Ours is a government which by the 'law of its being' allows no statute, state or national, that prohibits the free exercis e of religion. There are occasions when civil courts must d raw lines between the responsibilities of church and state for the disposition or use of property.25 Even in those cas es when the property right follows as an incident from dec isions of the church custom or law on ecclesiastical **[*121]** issues, the church rule controls.26 This under our Constit ution necessarily follows in order that there may be free e xercise of religion.

The decree of the Court of Appeals of New York must be r eversed, and the case remanded to that court for such furt her action as it deems proper and not in contravention of t his opinion. It is so ordered.

Reversed and remanded.

Mr. Justice FRANKFURTER, concurring.

Let me put to one side the question whether in our day a l egislature could, consistently with due process, displace t he judicial process and decide a particular controversy aff ecting property so as to decree that A not B owns it or is e ntitled to its possession. Obviously a legislature would not

e against prohibition of the free exercise of religion. Late Corporation of Church of Jesus Christ of Latter-Day Saint s v. United States, 136 U.S. 1, 10 S.Ct. 792, 34 L.Ed. 478, relied upon by the appellee, does not support its argumen t. There the Church of Jesus Christ of Latter Day Saints ha d been incorporated as a religious corporation by the Stat e of Deseret, with subsequent confirmation by the Territor y of Utah. Its property was held **[*120]** for religious and ch aritable purposes. That charter was revoked by Congress and some of the property of the church was escheated to t he United States for the use of the common schools of Uta h. This Court upheld the revocation of the charter, relying on the reserved power of the Congress over the acts of ter ritories, 136 U.S. at pages 45—46, 10 S.Ct. at pages 803 —804. The seizure of the property was bottomed on the g eneral rule that where a charitable corporation is dissolve d for unlawful practices, id., 136 U.S. at pages 49—50, 10 S.Ct. at page 805, the sovereign takes and distributes the property according to the cy-pres doctrine to objects of ch arity and usefulness, e.g., schools. Id., 136 U.S. at pages 47, 50—51, 10 S.Ct. at pages 804, 805—806. A failure of t he charitable purpose could have the same effect. Id., 136 U.S. at page 59, 10 S.Ct. at page 808. None of these elem ents exist to support the validity of the New York statute p utting the Russian Orthodox churches of New York under the administration of the Russian Church in America. See notes 2 and 3, supra.

The record before us shows no schism over faith or doctri ne between the Russian Church in America and the Russ ian Orthodox Church. It shows administrative control of th e North American Diocese by the Supreme Church Autho rity of the Russian Orthodox Church, including the appoint ment of the ruling hierarch in North America from the foun dation of the diocese until the Russian Revolution. We fin d nothing that indicates a relinquishment of this power by the Russian Orthodox Church.

merely one aspect of the duty of courts to enforce the right s of members in an association, temporal or religious, acc ording to the laws of that association. See Gonzalez v. Ro man Catholic Archbishop of Manila, 280 U.S. 1, 16—17, 5 0 S.Ct. 5, 7—8, 74 L.Ed. 131.

Legislatures have no such obligation to adjudicate and n o such power. Assuredly they have none to settle conflicts of religious authority and none to define religious obedien ce. These aspects of spiritual differences constitute the he art of this controversy. The New York legislature decreed t hat one party to the dispute and not the other should contr ol the common center of devotion. In doing so the legislat ure effectively authorized one party to give religious direct ion not only to its adherents but also to its opponents. See St. Nicholas Cathedral of Russian Orthodox Church in No rth America v. Kedroff, 302 N.Y. 1, 24—29, 96 N.E.2d 56, 68—72.

The arguments by which New York seeks to justify this inr oad into the realm of faith are echoes of past attempts at s ecular intervention in religious conflicts. It is said that an i mpressive majority both of the laity and of the priesthood of the old local church now adhere to the party whose can didate New York enthroned, as it were, as Archbishop. Be

have that power merely because the property belongs to a church.

In any event, this proceeding rests on a claim which cannot be determined without intervention by the State in a religious conflict. St. Nicholas Cathedral is not just a piece of real estate. It is no more that than is St. Patrick's Cathedral or the Cathedral of St. John the Divine. A cathedral is the seat and center of ecclesiastical authority. St. Nicholas Cathedral is an archiepiscopal see of one of the great religious organizations. What is at stake here is the power to exercise religious authority. That is the essence of this controversy. It is that even though the religious authority becomes manifest and is exerted through authority over the Cathedral as the outward symbol of a religious faith. **[*122]**

The judiciary has heeded, naturally enough, the menace to a society like ours of attempting to settle such religious struggles by state action. And so, when courts are called upon to adjudicate disputes which, though generated by conflicts of faith, may fairly be isolated as controversies over property and therefore within judicial competence, the authority of courts is in strict subordination to the ecclesiastical law of a particular church prior to a schism. Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666. This very limited right of resort to courts for determination of claims, civil in their nature, between rival parties among the communicants of a religious faith is

Memory is short but it cannot be forgotten that in the State of New York there was strong feeling against the Tsarist regime at a time when the Russian Church was governed by a Procurator of the Tsar. And when Mussolini exacted the Lateran Agreement, argument was not wanting by those friendly to her claims that the Church of Rome was subjecting herself to political authority.[1] The fear, perhaps not wholly groundless, that the loyalty of its citizens might be diluted by their adherence to a **[*124]** church entangled in antagonistic political interests, reappears in history as the ground for interference by civil government with religious attachments.[2] Such fear readily leads to persecution of religious beliefs deemed dangerous to ruling political authority. It was on this basis, after all, that Bismarck sought to detach German Catholics from Rome by a series of laws not too different in purport from that before us today.[3] The long, unedifying history of the contest between the secular state and the church is replete with instances of attempts by civil gov- **[*125]** ernment to exert pressure upon religious authority. Religious leaders have often made gestures of accommodation to such pressures. History also indicates that the vitality of great world religions survived such efforts. In any event, under our Constitution it is not open to the governments of this Union to reinforce the loyalty of their citizens by deciding who is the true exponent of their religion.

Finally, we are told that the present Moscow Patriarchate is not the true superior church of the American communicants. The vicissitudes of war and revolution which have beset the Moscow Patriarchate since 1917 are said to have resulted in a discontinuity which divests the present Patriarch of his authority over the American church. Both parties to the present controversy agree that the present Patriarc

that as it may, it is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of heads. **[*123]** Our Constitution does assure that anyone is free to worship according to his conscience. A legislature is not free to vest in a schismatic head the means of acting under the authority of his old church, by affording him the religious power which the use and occupancy of St. Nicholas Cathedral make possible.

Again, it is argued that New York may protect itself from dangers attributed to submission by the mother church in Moscow to political authority To reject this claim one does not have to indulge in the tendency of lawyers to carry arguments to the extreme of empty formal logic. Scattered throughout the country there are religious bodies with ties to various countries of a world in tension—tension due in part to shifting political affiliation and orientation. The consideration which permeates the court's opinion below would give each State the right to assess the circumstances in the foreign political entanglements of its religious bodies that make for danger to the State, and the power, resting on plausible legislative findings, to divest such bodies of spiritual authority and of the temporal property which symbolizes it.

Mr. Justice BLACK agrees with this opinion on the basis of his view that the Fourteenth Amendment makes the First Amendment applicable to the States.

Mr. Justice DOUGLAS, while concurring in the opinion of the Court, also joins this opinion.

Mr. Justice JACKSON, dissenting.

New York courts have decided an ordinary ejectment action involving possession of New York real estate in favor of the plaintiff, a corporation organized under the Religious Corporations Law of New York under the name 'Saint Nicholas Cathedral of the Russian Orthodox Church in North America.' Admittedly, it holds, and since 1925 has held, legal title to the Cathedral property. The New York Court of Appeals decided that it also has the legal right to its possession and control.

The appellant Benjamin's defense against this owner's demand for possession and the basis of his claimed right to enjoy possession of property he admittedly does not own is set forth in his answer to the ejectment suit in these words: 'Said premises pursuant to the above rules of the Russian Orthodox Church are held in trust for the benefit of the accredited Archbishop of said Archdiocese, to be possessed, occupied and used by said Archbishop as his residence, as a place for holding religious services, and other purposes related to his office and as the seat and headquarters for the administration, by him, of the affairs of the Archdiocese both temporal and spiritual.' And, says the appellant Benjamin, he is that Archbishop. These allegations are denied, and they define the issues as tendered to the state courts. **[*127]**

I greatly oversimplify the history of this controversy to indic

h is the legitimately chosen holder of his office, and the ac count of the proceedings and pronouncements of the Am erican schismatic group so indicate. Even were there dou bt about this it is hard to see by what warrant the New Yor k Legislature is free to substitute its own judgment as to th e validity of Patriarch Alexy's claim and to disregard ackn owledgment of the present Patriarch by his co-equals in t he Eastern Confession, the Patriarchs of Constantinople, Alexandria, Antioch, and Jerusalem, and by religious lead ers throughout the world, including the present Archbisho p of York.[4] [*126] These considerations undermine the val idity of the New York legislation in that it enters the domai n of religious control barred to the States by the Fourteent h Amendment.

If the Fourteenth Amendment is to be interpreted to leave anything to the courts of a state to decide without our inter ference, I should suppose it would be claims to ownership or possession of real estate within its borders and the vexi ng technical questions pertaining to the creation, interpret ation, termination, and enforcement of uses and trusts, ev en though they are for religious and charitable purposes. This controversy, I believe, is a matter for settlement by st ate law and not within the proper province of this Court.

I.

As I read the prevailing opinions, the Court assumes that some transfer of control has been accomplished by legisl ation which results in a denial of due process. This, **[*128]** of course, would raise a question of deprivation of propert y, not of liberty, while only the latter issue is raised by the parties. And it could be sustained only by a finding by us t hat the legislation worked a transfer rather than a confirm ation of property rights. The Court of Appeals seems to ha ve regarded the statute merely as a legislative reaffirmatio n of principle the Court would find to be controlling in its a bsence.

But this Court apparently thinks that by mere enactment of the statute the legislature invaded a field of action reserve d to the judiciary. However desirable we may think a rigid separation of powers to be (and I, for one, think it is basic i n the Federal Government), I do not think the Fourteenth Amendment undertakes to control distribution of powers within the states. At all events, I do not think we are warra nted in holding that New York may not enact this legislatio n in question, which is in form and in substance an amen dment of its Religious Corporations Law.

Nothing in New York law required this denomination to in corporate its Cathedral. The Religious Corporations Law of the State expressly recognizes unincorporated churche s (§ 2) and undertakes no regulation of them or their affair s. But this denomination wanted the advantages of a corp orate charter for its Cathedral, to obtain immunity from per sonal liability and other benefits. This statute does not inte rfere with religious freedom but furthers it. If they elect to c

I greatly oversimplify the history of this controversy to indic ate its nature rather than to prove its merits. This Cathedra l was incorporated and built in the era of the Czar, under t he regime of a state-ridden church in a church-ridden stat e. The Bolshevik did not free the church from the grip of st ate from the grip of the church, but it did nto free the churc h from the grip of the state. It only brought to the top a new master for a captive and submissive ecclesiastical establi shment. By 1945, the Moscow patriarchy had been reform ed and manned under the Soviet regime and it sought to r e-establish in other countries its prerevolutionary control of church property and its sway over the minds of the relig ious. As the Court's opinion points out, it demanded of the Russian Church in America, among other things, that it ab stain 'from political activities against the U.S.S.R.' The Am erican Cathedral group, along with others, refused submi ssion to the representative of the Moscow Patriarch, who m it regarded as an arm of the Soviet Government. Thus, we have an ostensible religious schism with decided polit ical overtones.

As a consequence of this Court's decision in Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 4 L.Ed. 6 29, the Constitution of **[*129]** New York since 1846 has a uthorized the legislature to create corporations by general laws and special acts, subject, however, to a reservation t hat all such acts 'may be altered from time to time or repe aled.' New York Const., Art. X, § 1. That condition become s a part of every corporate charter subsequently granted b y New York. Lord v. Equitable Life Assurance Society of U nited States, 194 N.Y. 212, 87 N.E. 443, 22 L.R.A.,N.S., 42 0; People ex rel. Cooper Union for Advancement of Scien ce & Art v. Gass, 190 N.Y. 323, 83 N.E. 64; Pratt Institute v. City of New York, 183 N.Y. 151, 75 N.E. 1119.

What has been done here, as I see it, is to exercise this re served power which permits the State to alter corporate c ontrols in response to the lessons of experience. Of cours e, the power is not unlimited and could be so exercised a s to deprive one of property without due process of law. B ut, I do not think we can say that a legislative application o f a principle so well established in our common law as the cy-pres doctrine is beyond the powers reserved by the Ne w York Constitution.

II.

The Court holds, however, that the State cannot exercise i ts reserved power to control this property without invading religious freedom, because it is a Cathedral and devoted t o religious uses. I forbear discussion of the extent to whic h restraints imposed upon Congress by the First Amendm ent are transferred against the State by the Fourteenth Am endment beyond saying that I consider that the same diffe rences which apply to freedom of speech and press, see dissenting opinion in Beauharnais v. Illinois, 343 U.S. 250 , 287, 72 S.Ct. 725, 746, are applicable to questions of fre edom of religion and of separation of church and state.

It is important to observe what New York has not done in t his case. It has not held that Benjamin may not act as Arc hbishop or be revered as such by all who will follow him. I t has not held that he may not have a Cathedral. **[*130]** In deed, I think New York would agree that no one is more in

ome under it, the statute makes separate provision for eac h of many denominations with corporate controls appropri ate to its own ecclesiastical order. When it sought the privi lege of incorporation under the New York law applicable t o its denomination, it seems to me that this Cathedral and all connected with its temporal affairs were submitted to N ew York law.

The fact that property is dedicated to a religious use cann ot, in my opinion, justify the Court in sublimating an issue over property rights into one of deprivation of religious lib erty which alone would bring in the religious guaranties of the First Amendment. I assume no one would pretend that the State cannot decide a claim of trespass, larceny, conv ersion, bailment or contract, where the property involved i s that of a religious corporation or is put to religious use, without invading the principle of religious liberty.

Of course, possession of the property will help either side that obtains it to maintain its prestige and to continue or e xtend its sway over the minds and souls of the devout. So would possession of a bank account, an income-producin g office building, or any other valuable property. But if bot h claimants are religious corporations or personalities, ca n not the State decide the issues that arise over ownershi p and possession without invading the religious freedom of one or the other of the parties?

Thus, if the American group, which owns the title to the Ca thedral, had by force barred Benjamin from entering it phy sically, would the Court say it was an interference with reli gious freedom to entertain and decide his ejectment actio n? If state courts are to decide such controversies at all in stead of leaving them to be settled by a show of force, is it constitutional to decide for only **[*131]** one side of the con troversy and unconstitutional to decide for the other? In eit her case, the religious freedom of one side or the other is impaired if the temporal goods they need are withheld or t aken from them.

As I have earlier pointed out, the Soviet Ecclesiast's claim, denial of which is said to be constitutional error, is not that this New York property is impressed with a trust by virtue of New York law. The claim is that it is impressed with a tr ust by virtue of the rules of the Russian Orthodox Church. This Court so holds.

I shall not undertake to wallow through the complex, obsc ure and fragmentary details of secular and ecclesiastical history, theology, and canon law in which this case is smo thered. To me, whatever the canon law is found to be and whoever is the rightful head of the Moscow patriarchate, I do not think New York law must yield to the authority of a f oreign and unfriendly state masquerading as a spiritual in stitution. See 'The Soviet Propaganda Program,' Staff Stu dy No. 3, Subcommittee on Overseas Information Progra ms of the United States, 82d Cong., 2d Sess.

need of spiritual guidance than the Soviet faction. It has o nly held that this cleric may not have a particular Cathedr al which, under New York law, belongs to others. It has no t interfered with his or anyone's exercise of his religion. N ew York has not outlawed the Soviet-controlled sect nor f orbidden it to exercise its authority or teach its dogma in a ny place whatsoever except on this piece of property own ed and rightfully possessed by the Cathedral Corporation.

I have supposed that a State of this Union was entirely fre e to make its own law, independently of any foreign-made law, except as the Full Faith and Credit Clause of the Con stitution might require deference to the law of a sister stat e or the Supremacy Clause require submission to federal law. I do not see how one can spell out of the principles of separation of church and state a doctrine that a state sub mit property rights to settlement by canon law. If there is a ny relevant inference to be drawn, I should think it would be to the contrary, though I see no obstacle to the state all owing ecclesiastical law to govern in such a situation if it s ees fit. I should infer that from the trend of such decisions as Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188; Klaxon Co. v. Stentor Electric Mfg. Co., 313 U. S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477; Griffin v. McCoach, 313 U.S. 498, 61 S.Ct. 1023, 85 L.Ed. 1481. **[*132]**

The only ground pressed upon this appeal is that the judg ment below violates the religious freedom guaranteed by the Fourteenth Amendment. I find this contention so insub stantial that I would dismiss the appeal. Whether New Yor k has arrived at the correct solution of this question is a m atter on which its own judges have disagreed. But they ha ve disagreed within the area which is committed to them f or agreement or disagreement and I find nothing which w arrants our invading their jurisdiction.

[1.] A sobor is a convention of bishops, clergymen and lay men with superior powers, with the assistance of which th e church officials rule their dioceses or districts.

There is no problem of title. It is in the appellee corporatio n. The issue is the right of use. St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 30 2 N.Y. 1, 20, 96 N.E.2d 56, 66.

The deed to the Cathedral Corporation required the grant ee to hold the property in accordance with the terms of the Act of 1925, set out at the opening of this opinion. As said by the Court of Appeals, 302 N.Y. at page 20, 96 N.E.2d a t page 66:

'Plaintiff does not dispute this trust theory, but on the contr ary relies upon it. Plaintiff has endeavored to prove that th e beneficial use of the property today rightfully belongs to the Russian church in America, Religious Corporations L aw, § 105, which was forced to declare its administrative autonomy at the Detroit sobor of 1924 in order to preserve and adhere to those principles and practices fundamental to the Russian Orthodox faith, free from the influence of a n atheistic and antireligious foreign civil government.'

See also Religious Corporations Law, McKinney's Consol .Laws, c. 51, § 5.

'The 'Russian Church in America', as that term is used any where in this article, refers to that group of churches, cath edrals, chapels, congregations, societies, parishes, comm ittees and other religious organizations of the Eastern Co nfession (Eastern Orthodox or Greek Catholic Church) wh ich were known as (a) Russian American Mission of the R ussian Orthodox Church from in or about seventeen hund red ninety-three to in or about eighteen hundred seventy; (b) Diocese of Alaska and the Aleutian Islands of the Rus sian Orthodox Church from in or about eighteen hundred seventy to or in or about nineteen hundred four; (c) Dioce se of North America and the Aleutian Islands (or Alaska) o f the Russian Orthodox Church from in or about nineteen hundred four to in or about nineteen hundred twenty-four; and (d) Russian Orthodox Greek Catholic Church of North America since in or about nineteen hundred twenty-four; and were subject to the administrative jurisdiction of the M ost Sacred Governing Synod in Moscow until in or about nineteen hundred seventeen, later the Patria(r)chate of M oscow, but now constitute an administratively autonomou s metropolitan district created pursuant to resolutions ado pted at a general convention (sobor) of said district held a t Detroit, Michigan, on or about or between April second t o fourth, nineteen hundred twenty-four.

'A 'Russian Orthodox Church', as that term is used anywh ere in this article, is a church, cathedral, chap(t)el, congre gation, society, parish, committee or other religious organi zation founded and established for the purpose and with t he intent of adhering to, and being subject to the administ rative jurisdiction of said mission, diocese or autonomous metropolitan district hereinabove defined as the Russian Church in America.'

[3.] Id., § 107:

'1. Every Russian Orthodox church in this state, whether i ncorporated before or after the creation of said autonomo us metropolitan district, and whether incorporated or reinc orporated pursuant to this article or any other article of the religious corporations law, or any general or private law, s hall recognize and be and remain subject to the jurisdictio n and authority of the general convention (sobor), metrop olitan archbishop or other primate or hierarch, the council of bishops, the metropolitan council and other governing bodies and authorities of the Russian Church in America, pursuant to the statutes for the government thereof adopte d at a general convention (sobor) held in the city of New Y ork on or about or between October fifth to eighth, ninetee n hundred

[6] Hamilton v. Regents of University of California, 293 U.S. 245, 262, 55 S.Ct. 197, 204, 79 L.Ed. 343; Cantwell v. Stat e of Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213; Everson v. Board of Education of Ewing Tp., 3 30 U.S. 1, 14—15, 67 S.Ct. 504, 510, 511, 91 L.Ed. 711; P eople of State of Illinois ex rel. McCollum v. Board of Educ ation of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 210—211, 68 S.Ct. 461, 464, 465, 92 L.Ed. 648;

[2.] 50 McKinney's N.Y.Laws § 105:

thirty-seven, and any amendments thereto and any other statutes or rules heretofore or hereafter adopted by a gen eral convention (sobor) of the Russian Church in America and shall in all other respects conform to, maintain and fol low the faith, doctrine, ritual, communion, discipline, cano n law, traditions and usages of the Eastern Confession (E astern Orthodox or Greek Catholic Church).

'3. The trustees of every Russian Orthodox church shall h ave the custody and control of all temporalities and prope rty, real and personal, belonging to such church and of th e revenues therefrom and shall administer the same in ac cordance with the by-laws of such church, the normal stat utes for parishes of the Russian Church in America appro ved at a general convention (sobor) thereof held at Clevel and, Ohio, on or about or between November twentieth or twenty-third, nineteen hundred thirty-four, and any amend ments thereto and all other rules, statutes, regulations an d usages of the Russian Church in America.'

[4.] Hebert v. State of Louisiana, 272 U.S. 312, 317, 47 S.Ct . 103, 104, 71 L.Ed. 270; Winters v. New York, 333 U.S. 5 07, 514, 68 S.Ct. 665, 669, 92 L.Ed. 840.

The court expressed its conclusion in reversing the judgm ent of the Appellate Division of the Supreme Court, St. Nic holas Cathedral of Russian Orthodox Church in North Am erica v. Kedroff, 276 App.Div. 309, 94 N.Y.S.2d 453, whic h had affirmed the Trial Term. 192 Misc. 327, 77 N.Y.S.2d 333. The Court of Appeals held:

'The only construction which gives meaning to all the lang uage in sections 105 and 107 is that the statute was inten ded to apply to those Russian Orthodox churches founde d and established before 1924 for the purpose of adherin g and being subject to the North American Mission or Nort h American Diocese, and to those Russian Orthodox chur ches founded and established after 1924 for the purpose of adhering and being subject to the autonomous metrop olitan district. The majority in the Appellate Division furthe r intimated that to read the statute literally would result in an interference in ecclesiastical concerns not within the c ompetency of the Legislature. The latter suggestion is the only one which requires discussion, for, as already indicat ed, the intent of the Legislature (as distinguished from its competency) is unmistakable.' 302 N.Y. at page 29, 96 N. E.2d at page 71.

[5] First Amendment to the Constitution:

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *.'

/a>; Id., 283 N.Y. 781, 28 N.E.2d 417.

[10] The Court said, 302 N.Y. 1, 96 N.E.2d 56:

'The Legislature has made a determination that the 'Russi an Church of America' was the one which, to use our wor ds in 249 N.Y. at pages 77—78, 162 N.E. at page 589, wa s the trustee which 'may be relied upon to carry out more

Zorach v. Clauson, 343 U.S. 306, 310, 72 S.Ct. 679, 682.

7 Fortescue, supra (1916); Brian-Chaninov, The Russian Church (1931), c. VIII; Zemnov, The Russians and Their C hurch (1945); French, The Eastern Orthodox Church (195 1), c. VII;Danzas, The Russian Church (1936); Anderson, People, Church and State in Modern Russia (1944), pp. 1 21—140; Bolshakoff, Foreign Missions of the Russian Ort hdox Church (1943), c. IV.

8 The attitude of the Russian Church in America will be m ade sufficiently plain by these extracts from their records o f action taken at the Detroit Sobor, 1924:

'Point 1. Temporarily, until the convocation of the All Russi an Sobor further indicated in Point 5, to declare the Russi an Orthodox Diocese in America a self-governed Church so that it be governed by its own elected Archbishop by m eans of a Sobor of Bishops, a Council composed of those elected from the clergy and laity, and periodic Sobors of t he entire American Church.

'Point 5. To leave the final regulation of questions arising f rom the relationship of the Russian and the American Ch urches to a future Sobor of the Russian Orthodox Church which will be legally convoked, legally elected, will sit wit h the participation of representatives of the American Chu rch under conditions of political freedom, guaranteeing th e fullness and authority of its decisions for the entire Chur ch, and will be recognized by the entire Oecumenical Orth odox Church as a true Sobor of the Russian Orthodox Ch urch.'

9 Nemolovsky v. Rykhloff, 187 App.Div. 290, 175 N.Y.S. 6 17; Kedrovsky v. Archbishop and Consistory of Russian O rthodox Greek Catholic Church, 195 App.Div. 127, 186 N. Y.S. 346; Kedrovsky v. Rojdesvensky, 214 App.Div. 483, 212 N.Y.S. 273; Id., 242 N.Y. 547, 152 N.E. 421; Kedrovsk y v. Archbishop and Consistory of Russian Orthodox Gree k Catholic Church, 218 App.Div. 121, 217 N.Y.S. 873; Id., 218 App.Div. 124, 217 N.Y.S. 875; Id., 220 App.Div. 750, 222 N.Y.S. 831; Id., 249 N.Y. 75, 162 N.E. 588; Id., 249 N. Y. 516, 164 N.E. 566; Nikulnikoff v. Archbishop and Consi story of Russian Orthodox Greek Catholic Church, 142 Mi sc. 894, 255 N.Y.S. 653; Waipa v. Kushwara, 259 App.Div . 843, 20 N.Y.S.2d 174

11 'The trustees of every religious corporation shall have t he custody and control of all the temporalities and propert y, real and personal, belonging to the corporation and of t he revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the co rporation and of the ecclesiastical governing body, if any, to which the corporation is subject, * * *.'

12 302 N.Y. at page 30, 96 N.E.2d at page 72:

'As a broad guide this rule undoubtedly has worked well, but it is by no means a constitutional doctrine not subject t o change or modification by the same Legislature which a nnounced it, in cases where literal enforcement would be unreasonable and opposed to the public interest. The Le gislature, in the exercise of its extensive and acknowledg ed power to act for the common welfare, may find as a fact effectively and faithfully the purposes of this religious trust (Carrier v. Carrier, 226 N.Y. 114, 123 N.E. 135)' by reason of the changed situation of the patriarchate in Russia.' 30 2 N.Y. at page 30, 96 N.E.2d at page 72.

'The courts have always recognized that it is the province of the Legislature to make the underlying findings of fact which give meaning and substance to its ultimate directiv es. The courts have traditionally refused to consider the w isdom or technical validity of such findings of fact, ifthere b e some reasonable basis upon which they may rest.' 302 N.Y. at page 31, 96 N.E.2d at page 72.

'The Legislature of the State of New York, like the Congre ss, must be deemed to have investigated the whole probl em carefully before it acted. The Legislature knew that the central authorities of the Russian Orthodox Church in Rus sia had been suppressed after the 1917 revolution, and th at the partriarchate was later resurrected by the Russian Government. The Legislature, like Congress, knew the ch aracter and method of operation of international communi sm and the Soviet attitude toward things religious. The Le gislature was aware of the contemporary views of qualifie d observers who have visited Russia and who have had a n opportunity to observe the present status of the patriarc hate in the Soviet system. The Legislature realized that th e North American church, in order to be free of Soviet inte rference in its affairs, had declared its temporary administr ative autonomy in 1924, pursuant to the ukase of 1920, w hile retaining full spiritual communion with the patriarchat e, and that there was a real danger that those properties a nd temporalities long enjoyed and used by the Russian O rthodox Church worshippers in this State would be taken f rom them by the representatives of the patriarchate. On th e basis of these facts, and the facts stated (supra) and no doubt other facts we know not of, our Legislature conclud ed that the Moscow Patriarchate was no longer capable o f functioning as a true religious body, but had become a to ol of the Soviet Government primarily designed to implem ent its foreign policy. Whether we, as judges, would have reached the same conclusion is immaterial. It is sufficient t hat the Legislature reached it, after full consideration of all the facts.' 302 N.Y. at pages 32—33, 96 N.E.2d at page 7 3.

and in all of its satellite states. * * *" Id., 302 N.Y. at page 2 3, 96 N.E.2d at page 68.

14 See note 10, supra.

15 'The third is where the religious congregation or eccles iastical body holding the property is but a subordinate me mber of some general church organization in which there are superior ecclesiastical tribunals with a general and ult imate power of control more or less complete, in some su preme judicatory over the whole membership of that gene ral organization.' 13 Wall. 679, 722—723, 20 L.Ed. 666.

16 Zollman, American Church Law (1933), c. 9. E.g., She pard v. Barkley, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939; Ba rkley v. Hayes, D.C., 208 F. 319, 326; McGinnis v. Watson, 41 Pa. 9; State of Missouri ex rel. Watson v. Farris, 45 Mo.

that a situation has arisen of such novelty and uniquenes s that existing law is incapable of performing its avowed f unction—the preservation of religious temporalities for the use of their original and accustomed beneficiaries. If the L egislature find as a fact that, because of drastically chang ed circumstances, the accustomed beneficiaries of religio us properties are thus threatened with their loss, and if the re be a basis for such finding, we perceive no constitution al objection to a legislative attempt to trace and identify, a s of today, the authentic group entitled to the administratio n of such properties.'

13 302 N.Y. at page 13, 96 N.E.2d at page 62:

'The control of all phases of Russian life by the Governme nt was not as apparent in 1924 as it is a quarter of a centu ry later and on the surface, at least, the case appeared to be a proper one for the application of the rule that in an ec clesiastical dispute involving a denominational church, th e decision of the highest church judicatories will be accep ted as final and conclusive by the civil courts, Trustees of Presbytery of N(ew) Y(ork) v. Westminster Presbyterian C hurch, 222 N.Y. 305, 315, 118 N.E. 800, 802; Watson v. J ones, 13 Wall. 679, 724—727, 20 L.Ed. 666, Religious Co rporations Law, §§ 4, 5.'

'* * * we feel we must accept the historical statements cont ained in the dissenting opinion of Mr. Justice Van Voorhis , below: '* * * In recent public pronouncements the State D epartment, and our representatives in the United Nations, have frequently recognized and denounced the suppressi on of human rights and basic liberties in religion as well a s in other aspects of life, existing in Soviet Russia

20 The decision has encountered vivid and strong criticis m for the breadth of its statement that where 'a subject-ma tter of dispute, strictly and purely ecclesiastical in its chara cter,' is decided, the civil court may not examine the concl usion to see whether the decision exceeds the powers of t he judicatory. Id., 13 Wall. at page 733, 20 L.Ed. 666. See Zollman, American Church Law (1933), c. 9, p. 291. The c riticism does not go so far, however, as to condemn the n onreviewability of questions of faith, religious doctrine an d ecclesiastical government, Watson v. Jones, 13 Wall. at pages 729, 732, 20 L.Ed. 666, when within the 'express or implied stipulations of the agreement of membership.' Zoll man, supra, §§ 310, 311, 315, 340.

21 Id., 13 Wall. at page 727, 20 L.Ed. 666. See, 344 U.S. 113, 73 S.Ct. 153, supra.

22 Barkley v. Hayes, D.C., 208 F. 319, 334; Sherard v. Wa lton, D.C., 206 F. 562, 564; Helm v. Zarecor, D.C., 213 F. 6 48, 657.

23 Gonzalez v. Roman Catholic Archbishop of Manila, 28 0 U.S. 1, 16—17, 50 S.Ct. 5, 7, 74 L.Ed. 131:

183, 197—198; First English Lutheran Church v. Evangeli cal Lutheran Synod of Kansas and Adjacent States, 10 Ci r., 135 F.2d 701. Cf. Gibson v. Armstrong, 7 B. Mon., Ky., 4 81; German Reformed Church v. Commonwealth ex rel. S eibert, 3 Pa. 282.

17 'One or two propositions which seem to admit of no co ntroversy are proper to be noticed in this connection. 1. B oth by the act of the Kentucky legislature creating the trust ees of the church a body corporate, and by the acknowled ged rules of the Presbyterian Church, the trustees were th e mere nominal title holders and custodians of the church property, and other trustees were, or could be elected by t he congregation, to supply their places once in every two years. 2. That in the use of the property for all religious ser vices or ecclesiastical purposes, the trustees were under t he control of the church session. 3. That by the constitutio n of all Presbyterian churches, the session, which is the g overning body in each, is composed of the ruling elders a nd pastor, and in all business of the session the majority o f its members govern, the number of elders for each congr egation being variable.' Id., 13 Wall. at page 720, 20 L.Ed. 666.

18 Watson v. Avery, 2 Bush, Ky., 332, 347, et seq.

'But we hold that the assembly, like other courts, is limited in its authority by the law under which it acts; and when ri ghts of property, which are secured to congregations and individuals by the organic law of the church, are violated by unconstitutional acts of the higher (church) courts, the parties thus aggrieved are entitled to relief in the civil cour ts, as in ordinary cases of injury resulting from the violatio n of a contract, or the fundamental law of a voluntary asso ciation.' Id., 2 Bush at page 349.

19 Compare Watson v. Avery, note 27, supra, at page 349 of 2 Bush, with Watson v. Jones, supra, 13 Wall. at page 7 32 et seq., 20 L.Ed. 666.

25 Ponce v. Roman Catholic Apostolic Church in Porto Ri co, 210 U.S. 296, 322, 28 S.Ct. 737, 747, 52 L.Ed. 1068.

26 Watson v. Jones, supra; Barkley v. Hayes, D.C., 208 F. 319, 327, affirmed on appeal, Duvall v. Synod of Kansas of Presbyterian Church, 8 Cir., 222 F. 669; Shepard v. Bar kley, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939.

1. The Encyclopedia Britannica recounts that under the ag reement between the Papal See and Mussolini, 'The supr emacy of the state was recognized by compelling bishops and archbishops to swear loyalty to the government.' Enc yclopedia Britannica: 'Anticlericalism,' 62, 62A (1948 ed.).

2. Such apprehension, at least in part, seems to have und erlain two important religious controversies in a nation as devoted to freedom as Great Britain and as recently as a c entury ago. Both the dispute giving rise to the Free Churc h of Scotland Appeals and the brief but vigorous anti-Cath olic outburst of 1850 are not unfairly attributable to a claim by the State of comprehensive loyalty, undeflected by the competing claims of religious faith. See Laski, The Proble m of Sovereignty, 27—68, 121 210. See also Buchanan,

'Because the appointment is a cononical act, it is the funct ion of the church authorities to determine what the essenti al qualifications of a chaplain are and whether the candid ate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil ri ghts, are accepted in litigation before the secular courts a s conclusive, because the parties in interest made them s o by contract or otherwise. Under like circumstances, effe ct is given in the courts to the determinations of the judicat ory bodies established by clubs and civil associations.'

See Brundage v. Deardorf, C.C., 55 F. 839, where Taft, Ci rcuit Judge, in overruling a demurrer, stated: 'Even if the s upreme judicatory has the right to construe the limitations of its own power, and the civil courts may not interfere wit h such a construction, and must take it as conclusive, we do not understand the supreme court, in Watson v. Jones, to hold that an open and avowed defiance of the original compact, and an express violation of it, will be taken as a decision of the supreme judicatory which is binding on th e civil courts.' 55 F. at page 847.

Later the case was considered on appeal by the Circuit C ourt of Appeals; Lurton, Circuit Judge, writing, thought that the facts proven showed conclusively that Watson v. Jone s did control. 92 F. 214, 230.

24 St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 302 N.Y. 1, 30, 96 N.E.2d 56, 72 , Note 12, supra.

4. See Garbett, In an Age of Revolution, 207—213; Niemo ller, Why I Went to Moscow, The Christian Century, March 19, 1952, p. 338.

The Ten Years' Conflict (Edinburgh 1849); Free Church of Scotland v. Overtown, (1904) A.C. 515; Free Church of Sc otland Appeals (Orr. ed., Edinburgh, 1904).

3. Reichs-Gesetzblatt, 1871, p. 442; Reichs-Gesetzblatt, 1 872, p. 253; Reichs-Gesetzblatt, 1874, p. 43; Reichs-Ges etzblatt, 1876, p. 28; 5 Gesetz-Sammlung fur die Koniglic h Preussischen Staaten, 154, 221, 223, 225, 228, 337, 34 2; 6 id., at 30, 38, 40, 75, 170; 7 id., at 291. These laws ha ve been thus summarized: 'The Falk Laws are an attempt to insist on the universal paramountcy of German influenc es. The expulsion of the Jesuits removed an order which he (Bismarck) believed to be concerned with the promotio n of Polish interests. The refusal of bishoprics to any save a German who has followed a course of study approved b y the government has a clear purport * * * of purging the C atholic episcopate of men not likely to be in sympathy with German ideals. * * * The twenty-fourth article went even fu rther and gave the State the right of interference with eccl esiastical functions where it deemed them improperly perf ormed. * * * The law of the twentieth of May, 1874, virtuall y handed over the control of vacant bishoprics to the State . * * * Catholic Churches on Prussian soil were handed ov er to the old Catholics (those refusing to adhere to the ne wly-promulgated dogma of papal infallibility) in such paris hes as those in which the majority consisted of their symp athisers, for certain hours of the day * * *.' Laski, op. cit. su pra, note 2, at 256—258. Bismarck's Culturkampf, of whic h these laws were a part, is fully discussed in Goyau, Bis marck et l'Eglise. A full text of the laws may be found in th e appendix to that work.

nnectional church, governed by representative bodies, wit h an episcopacy whose powers and duties are constitutio nally defined. It has an itinerant ministry in that its minister s are assigned by officials of The Methodist Church and a re not called by local societies or subject to the control or discipline of local societies. The basic representative bod y of The Methodist Church is the Annual Conference mad e up of ministerial and lay delegates from local societies i n each area embraced within an Annual Conference. An Annual Conference is divided for purposes of administrati on into Districts. The administration of a District is entruste d to a District Superintendent. The General Conference of The Methodist Church, made up of delegates from each A nnual Conference of the Church, is the highest legislative body of the Church, determining the ecclesiastical and te mporal policies of the Church. The Judicial Council is the highest judicatory body of the Church, deciding appeals t aken on legal issues raised within the Church. The Discip line of The Methodist Church is the book of law of the Chu rch containing the Articles of Religion, the Constitution, th e rules of the church concerning the moral conduct of its members, and the legislation of the various General Conf erences defining the form of government, the duties, pow ers and privileges of the members, ministers and various bodies of the Church, including the law of the Church with reference to the acquisition, conveyancing and alienation of real estate. The basic representative body of each local society of the Church is the Quarterly Conference which is composed of those members, and vested with the powers and privileges as defined in the Discipline."

Sometime prior to 1953, Trinity Methodist Church was org anized in Mobile County, Alabama, as a local society of T he Methodist Church. In April of 1953, lands in Mobile Co unty were conveyed to three named trustees of the local s ociety by a deed in which the trust was declared:

"* * * that said premises shall be used, kept and maintaine d as a place of divine worship of The Methodist Ministry a nd members of The Methodist Church; subject to the Disci pline, usage and ministerial appointments of said church as from time to time authorized and declared by the Gene ral Conference and by the Annual Conference within who se bounds the said premises are situated

except as are expressly reserved by the provisions of this deed."

The trust clause of the Trinity deed is in conformity to the p rovisions set forth in the body of law of The Methodist Chu rch relating to its real estate. This **[*102]** body of law is co ntained in the Discipline of The Methodist Church.

The members of Trinity, finding themselves in basic disag reement with certain social policies of the parent denomin ation, and acting under the provisions of the Dumas Act, h ave separated themselves from the parent denomination and claim the right of ownership of the real estate convey ed by the Trinity deed.

No question here exists as to the compliance by the local congregation with the procedural steps set forth in the Du mas Act. After declaring itself to be in basic disagreement with policies of the parent church, more than the statutory majority of 65% of the local congregation duly separated i tself from membership in The Methodist Church. The defe ndants are the representatives of the withdrawing membe rs of Trinity; and the defendants and the class they repres ent are in possession of the church property, claiming to o wn the same pursuant to the authority of the Dumas Act.

The plaintiffs attack the constitutionality of the Dumas Act and assert that the Act is offensive to the First and Fourtee nth Amendments of the Constitution of the United States, t he First Amendment being made applicable to the states under the Fourteenth, Hamilton v. Regents of the Universi ty of California, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343; People of State of Illinois ex rel. McCollum v. Board of Ed ucation, etc., 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649.

As early as Watson v. Jones, 80 U.S. 679, 13 Wall. 679, 2 0 L.Ed. 666 (1871), the Supreme Court applied the law of the denomination to a property dispute between factions of a local, connectional church which split over the slaver y issue. Watson v. Jones became a landmark decision an d has been accepted throughout all American jurisdiction s as committing the judiciary to apply the law of the deno mination to controversies arising within such denominatio n. It is clear that if the law of The Methodist Church is appli ed to the present dispute, the plaintiffs, as representatives of The Methodist Church, would be entitled to the local ch urch property. Turbeville v. Morris, 203 S.C. 287, 26 S.E.2 d 821.

The trust clause in the Trinity deed is part of the doctrinal heritage and history of The Methodist Church. This means of local church ownership is older than Methodism as a s eparate denomination. "Such a form of trust deed and ow nership of church property, safeguarding the rights of the conference which has jurisdiction over the individual con gregations, is important and necessary under the Methodi st polity, with its distinctive feature of an itinerant ministry." Turbeville v. Morris, supra. The Methodist polity of an itine rant ministry, like the Methodist trust clause, antedates the organization of the Methodist Church as a separate deno mination. Under this system, ministers are assigned to ch urches by the officials of the parent body rather than by ac t of the local congregation. The ministers are thus subject

protected freedom to provide for the method of the selecti on and assignment of its clergy so long as no improper m ethods of choice are used. One of the methods selected b y it is the trust clause. To allow the trust clause to be overri dden by a legislatively defined majority is to defeat that co nstitutional right.

The court finds no significance in the size of the majority o f the local congregation which wishes to separate from th e parent denomination. For, as stated by Justice Frankfurt er, in his concurring opinion in Kedroff v. St. Nicholas Cat hedral, supra, "* * * it is not a function of civil government under our constitutional system to assure rule to any religi ous body by a counting of heads." 344 U.S. at 122, 73 S.C

to the control of the parent rather than the local body. By v esting in a 65% majority of the local congregation the pow er to abrogate the Methodist trust clause, the Dumas Act e ffectively impairs or destroys the itinerant ministry feature of the Methodist Church. Under the First Amendment, the states are not permitted to so intrude on the internal affair s of a religious order. The court is not required, or constitu tionally authorized, to pass on the wisdom of the Methodis t structure and polity. The court is bound by the Constitutio n to protect it.

"Freedom to select the clergy, where no improper method s of choice are proven, we think, must now be said to hav e federal constitutional protection as a part of the free exe rcise of religion against state interference." Kedroff v. St. N icholas Cathedral, 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L.Ed. 120. The *Kedroff* case arose from an act of the New York legislature creating an administratively autonomous district of the Russian Orthodox Church, and transferring t o it control over American churches which had formerly b een subject to the supervision of the Patriarch of Moscow. **[*103]** The New York statute resulted from the political do mination of American congregations by the Soviet church authorities. The Supreme Court held the New York statute unconstitutional as being violative of the First Amendment . Subsequently, in Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 80 S.Ct. 1037, 4 L. Ed.2d 1140, the Supreme C ourt held that New York could not effect the transfer of the church property through the judicial application of cy pres or equitable approximation.

The Methodist Church has a constitutionally

t. at 158.

Quite apart from the legislative invasion of the Dumas Act into the constitutionally safeguarded freedom of selection of clergy declared in *Kedroff,* the court concludes that the Dumas Act violates what Jefferson termed the "wall of sep aration between Church and State" on other grounds. No constitutional principle is more firmly imbedded in our heri tage than this separation. It is a fundamental to our liberty. James Madison explained its value in his "Memorial and Remonstrance Against Religious Assessments" (II Madis on, 183-191) when he argued: "Who does not see that the same authority which can establish Christianity, in exclusi on of all other Religions, may establish with same ease a ny particular sect of Christians, in exclusion of all other Se cts?"

Protestant Christianity in this country has produced a vari ety of church structures and governments, creeds and doc trines. Under the protections of the First Amendment, thes e many expressions of individual religious concepts have evolved an equally varied system of property ownership a nd control. From the corporation sole to the purely congre gational type of church organization, Americans have bee n free to exercise their religion without infringement by sta te authorities. This plurality of religious expression was re cognized in Watson v. Jones, supra, where the Supreme Court declared:

"The law knows no heresy, and is committed to the suppo rt of no dogma, the establishment of no sect. The right to o rganize voluntary religious associations to assist in the ex pression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questio ns of faith within the association, and for the ecclesiastical government of all the individual members, congregations and officers within the general association, is unquestion ed."

The Dumas Act operates only on protestant denomination s of Christian faith. Pretermitting whether this classificatio n is in and of itself violative of constitutionally equal protec tion, the court is persuaded that the effect of the Dumas A ct is to engraft upon a significant segment of American pro testantism a legislative scheme of property ownership in d erogation of the ecclesiastical systems evolved by several protestant denominations. For example, in Presbyterian, Episcopalian, and Lutheran churches there are connectio nal property features similar to those within the Methodist Church. The Dumas Act does not operate on purely congr egational churches such as the Southern Baptists. It does, however, create a legislative body of a 65% majority of ad ult members for local churches within a connectional struc ture. It grants to this legislative body the right, power and authority to change established systems of church **[*104]** ownership without regard to the ecclesiastical law of the d enomination. The warning of Madison becomes fact if the legislature is permitted to write into the ecclesiastical law of connectional denominations a control of local church pr operty by a 65% majority. For what is accomplished by th e Dumas Act is a "particular sect of Christians", at least as applied to protestants, in which local property control is ve sted in a majority of not more than 65% of the local congr

or prefer one religion over another." 330 U.S. at 15, 67 S. Ct. at 511. The principle was restated in School District of Abbington v. Schempp, supra, where Justice Clark for the majority quotes with approval from the unpublished opini on of an Ohio case: "The government is neutral, and, whil e protecting all, it prefers none, and it disparages none." 3 74 U.S. at 215, 83 S.Ct. at 1567.

By the passage of the Dumas Act, Alabama has expresse d a preference to and aided those who profess a belief in a congregational structured church. This it cannot do.

In Everson v. Board of Education, supra, the majority opini on declares:

"The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." 330 U.S. at 1 8, 67 S.Ct. at 513.

This court holds that by the Dumas Act, Alabama has brea ched it here.

Finally, the court notes that the deed before it was deliver ed prior to the passage of the Dumas Act. The trust clause

egation. The establishment of such a class or sect is const itutionally prohibited.

The Supreme Court has interpreted the First Amendment as prohibiting a state from requiring an affirmation of a bel ief in God by an applicant for a commission as a notary pu blic, Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L. Ed.2d 982; from requiring the reading of the Bible or the r ecitation of the Lord's Prayer in public schools, School Dis trict of Abbington v. Schempp, 374 U.S. 203, 83 S.Ct. 156 0, 10 L.Ed.2d 844; from requiring the recitation of a nonde nominational prayer in public schools, Engel v. Vitale, 37 0 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601; from permitting compulsory religious teaching in public schools even whe re students were given a choice of instructions, People of State of Illinois ex rel. McCollum v. Board of Education, 33 3 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649; and from denying unemployment compensation to a Seventh Day Adventist who refused to work on Saturday, Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965. The concern of J efferson and Madison has found expression in Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 71 1, when the majority opinion declared: "Neither a state no r the Federal government can set up a church. Neither ca n pass laws which aid one religion, aid all religions

requires that the trustees hold the property "* * * as a plac e of divine worship of The Methodist ministry and member s of the Methodist Church" * * *. Without defining the real property interests in the Trinity property of the more than 3 00,000 Methodists within Alabama, it is apparent that suc h interests would be terminated by the Dumas Act proced ure of the local congregation. Under the Dumas Act, the p roperty rights created by deed in 1953 are retroactively di vested from all persons other than the 65% majority of the local congregation. The destruction of the property interes ts of other Methodists in the Trinity property is, under the Dumas Act, effectuated without notice and without any rig ht to be heard. To give effect to such a retroactive divestitu re would be contrary to the Due Process provisions of the Fourteenth Amendment.

In accordance with the foregoing opinion, it is

Ordered, adjudged and decreed that:

1. Defendants motion to stay be and the same hereby is o verruled. **[*105]**

2. The Dumas Act (Title 58, Sec. 104 through 113, Code o f Alabama) is inapplicable to the parties hereto as to the r eal estate described in the plaintiffs' complaint because th e application of said Dumas Act would be violative of the Fourteenth Amendment to the Constitution of the United S tates.

3. The defendants are hereby enjoined from interfering wi th or denying to plaintiffs the right to possession of the rea l estate described in the complaint, the description of whic h is stipulated to between the parties and is as follows:

Commencing at the Northwest corner of Section Thirty-thr ee, Township Three South, Range One West, thence run South One Degree Thirty-four minutes East Three and Six -tenths feet to a point on a fence; thence continue South O ne Degree Thirty-four minutes East Eighty-four and Six-te nths feet to the North line of Turner Road; thence along th e North line of said road run South Seventy-one degrees Fifty minutes East Six Hundred Twenty-three and Five-ten ths feet for the point of beginning; said point is marked by an iron pipe; thence run North Eight Degrees Twenty-nine minutes East Two Hundred Ninety-three and Three-tenths feet to a point marked by an iron pipe; thence run South E ighty-nine Degrees no minutes West One Hundred Thirty-eight and Thirty-five Hundredths feet to a point; thence ru n Southwardly Two Hundred Forty-three and Seventy-one Hundredths feet, more or less, to a point on the North line of Turner Road, which point is One Hundred Eighty feet West of the beginning corner; thence run South Seve nty-one degrees Fifty minutes East along the North line of Turner Road, One Hundred Eighty feet to the point of begi nning, being Lots Eight, Nine and Ten of COHEN'S SUBD IVISION, in Prichard, Alabama, as per plat of William R. Ir by, dated April 14th, 1953, and filed for record on April 17t h, 1953, in the Probate Records of Mobile County, Alaba ma.

And defendants are ordered to deliver said real estate of Trinity Methodist Church, owned by said Church and The Methodist Church on June 1, 1965, to plaintiffs within thirt y days of this order.

4. Costs incurred are taxed against defendants, for which let execution issue.

EXHIBIT A

Baltimore-Washington Conference
The United Methodist Church

THOMAS E. STARNES
CONFERENCE CHANCELLOR
WWW.BWCUMC.ORG
TEL. (202) 630-9948
EMAIL TOMSTARNES@STARNESPLLC.COM

Testimony of Thomas E. Starnes, Chancellor
The Baltimore-Washington Conference of The United Methodist Church
Re: House Bill 1182 (Unfavorable)

My name is Thomas Starnes. I serve as Chancellor of the Baltimore-Washington Conference of The United Methodist Church ("Conference"), which oversees the ministry of more than 600 local United Methodist churches that conduct ministry in Maryland, the District of Columbia, and the eastern panhandle of West Virginia. On behalf of the Conference, I submit this written testimony in opposition to House Bill 1182, which (along with the cross filed Senate Bill 586) seeks to repeal §§ 5-326 and 5-327 of the Corporations and Associations Article, provisions that accommodate the longstanding principle of United Methodist Church governance that all local United Methodist churches hold their property in trust for the benefit of the denomination as a whole and subject to the terms of *The Book of Discipline of The United Methodist Church* ("*Discipline*").

This year's session is the fourth session of the Legislature in the last 15 years in which a bill has been introduced to repeal the Methodist "trust clause" provisions in the Maryland Code. The first of those took place in 2010, when the Senate passed a bill to repeal those sections, but the House of Delegates declined to adopt it. The most recent effort to repeal §§ 5-326 and 5-327 took place just last year, when House Bill 1382—an exact replica of the pending HB 1182—received an unfavorable report from the Subcommittee on Banking, Consumer Protection, and Commercial Law.

As outlined below, there are no new circumstances or facts that now justify passage of a bill the Maryland Legislature has wisely declined to adopt on three prior occasions, including just last year. On the contrary, every factor that counseled against repealing HB 1382 during the 2024 Regular Session remains in place. Most importantly:

The Methodist Trust Provisions are Constitutional

1. It remains the case that §§ 5-326 and 5-327 serve the perfectly constitutional purpose of accommodating the longstanding, doctrinally rooted principle of United Methodist church governance that all local United Methodist congregations hold their property in trust for the mission and ministry of the denomination as a whole.

2. In the wake of the 2010 effort to repeal those provisions, Counsel to the General Assembly undertook a careful review of the United Methodist-specific code provisions and upheld their constitutionality, reasoning (a) that the statute recognizes the free exercise right of The United

Methodist Church "to organize in a manner of its choosing,"[1] and (b) that it "does not force a church to transfer control over its property to another church," but "merely requires that a church which chooses to affiliate with the United Methodist Church abide by the rules of the United Methodist Church regarding the control of church property."[2]

3. As Counsel to the General Assembly has further explained, "Maryland is not the only state that has a religious corporations law that contains provisions specific to certain denominations."[3] Rather, "[f]our teen other states have provisions that govern the incorporation of specific denominations or govern the holding of property by specific denominations," and "nine [such] states have provisions that apply to the Methodist Church" in particular.[4]

The Maryland Code Provides Essentially Identical Protection to Trust Requirements Imposed by The Episcopal Church and The Presbyterian Church

4. There is nothing unusual, let alone arbitrary or oppressive, about the United Methodist practice of requiring local congregations to hold their property in trust for the benefit of the denomination as a whole. The same rule applies in many Christian denominations, including The Episcopal Church and The Presbyterian Church.

5. Moreover, and most significantly, just as §§ 5-326 and 5-327 reinforce the United Methodist principle that its local churches hold their property in trust for the benefit of the mission and ministry of The United Methodist Church as a whole, the Maryland Code provisions that relate specifically to Presbyterian and Episcopal congregations both likewise operate to make the trust obligations imposed in those denominations' constitutions enforceable against their local congregations as a matter of Maryland statutory law. Specifically:

a. Presbyterian Congregations:

i. The Maryland Code provides that local Presbyterian churches "may be incorporated only in conformity with the constitution of the United Presbyterian Church in the United States of America." Md. Code, Corp. & Ass'ns § 5-330.

ii. In turn, the Constitution of the Presbyterian Church provides, "All property held by or for a particular church, . . . whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)." The Constitution of the Presbyterian Church (U.S.A.), Part II (Book of Order 2023-2025), G-4.0203, at 64.

---

[1] *See Letter to the Hon. Dionna M. Stifler from Assistant Attorney General Dan Friedman, Counsel to the General Assembly* (July 20, 2010) (Ex. A hereto) at 3 (citing *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94, 107-08 (1952)).

[2] Ex. A at 3-4.

[3] Id. at 4-

[4] Id. at 5.

b. Episcopal Congregations:

i. The Maryland Code provisions governing local Episcopal churches provides that they are "subject at all times to (1) The organization, government, and discipline of the Protestant Episcopal Church in the United States of America; and (2) The constitution and canons of that church and of the convention of the Protestant Episcopal Church in the Diocese of [Maryland, Easton, or Washington, as the case may be]." Md. Code, Corp. & Ass'ns § 5-334(b) (Diocese of Maryland); *Id*. § 5-338(b) (Diocese of Easton); *Id*. § 5-342(b) (Diocese of Washington).

ii. In turn, the Canons of the Episcopal Church provide, "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located." The Constitution and Canons of The Episcopal Church, Title I, Canon 7, § 4 (2022).

It Would Violate the Free Exercise and Establishment Clauses of the First Amendment to Repeal the Code Provisions Relating to United Methodist Trusts, While Leaving Intact the Code Provisions that Make Episcopal and Presbyterian Trusts Statutorily Enforceable

6. Senate Bill 586 takes no issue with the Maryland Code provisions that make trust obligations imposed on Episcopal and Presbyterian churches statutorily enforceable. Rather, that bill—like its predecessors in three prior sessions—targets for repeal only those provisions that relate to United Methodist congregations that conduct ministry in Maryland. Such selective, discriminatory targeting of a single denomination's rules is itself forbidden by the First Amendment. Longstanding precedent of the U.S. Supreme Court holds that the "clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another," *Larson v. Valente*, 456 US 228, 244 (1982), and that the "constitutional prohibition of denominational preferences is [also] inextricably connected with the continuing vitality of the Free Exercise Clause." Id. at 245.

The Code Provisions that Senate Bill 586 Seeks to Repeal are Directly at Issue in Litigation That is Currently Pending Before the Appellate Court of Maryland

7. As reflected in the Amended Complaint appended hereto as Exhibit B, thirty-eight local United Methodist churches sued the Conference, its Bishop, and its Board of Trustees in the Circuit Court for Anne Arundel Conty in March 2023.

8. The crux of that lawsuit is the plaintiff churches' request for a declaratory judgment that they may "disaffiliate" from The United Methodist Church, and retain their property free and clear of the denomination's beneficial interest, notwithstanding the express trust provisions set forth in the Maryland Code, the *Discipline*, and in many cases in the congregation's own deeds or articles of incorporation. *See Amended Complaint* (Ex. B), ¶¶ 1-3 (summarizing plaintiffs' claims); *Id*., ¶¶ 78-79 (making explicit reference to *Md. Code Corps & Ass'ns* §§ 5-326 and 5-327, the trust provisions that HB 1182 seeks to repeal).

9. In an Order dated October 11, 2024, the Circuit Court for Anne Arundel County granted summary judgment to the Conference, Bishop Easterling, and the Conference's Board of Trustees,

dismissing all of the plaintiffs' claims. *See Order of Judge Michael Malone* (Oct. 11, 2024) (Exhibit C).

10. The above-mentioned lawsuit, however, has ***not*** concluded. Rather, the plaintiff churches have appealed the Circuit Court's decision to the Appellate Court of Maryland, where the appeal is now pending. As reflected in the attached Scheduling Order the Appellate Court issued earlier this week, the deadline for the plaintiff congregations to file their opening appellate brief is March 31, 2025, and the Conference's opposing brief is not due to be filed until 30 days later. *See Scheduling Order* (Feb. 19, 2025) (Exhibit D). Thus, the pending appeal in the Appellate Court of Maryland—let alone any subsequent petition to the Maryland Supreme Court—will remain pending until well after this legislative session closes.

11. The principal advocates for the passage of House Bill 1182 are members of the local churches that are plaintiffs in this currently pending lawsuit, in which the trust provisions that HB 1182 seeks to repeal are at issue.

EXHIBIT A

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

July 20, 2010

The Honorable Donna M. Stifler
Maryland House of Delegates
326C House Office Building
Annapolis, Maryland 21401

Re: Constitutionality of Part III of Subtitle 3 of Title 5 of the Corporations and Associations Article of the Maryland Code.

Dear Delegate Stifler:

You have requested legal advice on the constitutionality of Part III of Subtitle 3 of Title 5 of the Corporations and Associations ("CA") Article of the Maryland Code. As you know, Subtitle 3 deals with religious corporations generally, and Part III deals specifically with incorporation as a member of the United Methodist Church. Part III requires that local United Methodist churches incorporate in conformity with the discipline of the United Methodist Church, CA § 5-322, and hold their property in trust for the parent church, CA § 5-326, even where there is no trust clause in the deed to the property, CA § 5-327. Part III also contains an exemption to the trust provision but only for the Evangelical United Brethren Church. CA § 5-328.[1]

During the 2010 Session of the Maryland General Assembly, Senator Alex X. Mooney introduced legislation, SB 1091, that would have granted a similar exemption to the Sunnyside United Methodist Church ("Sunnyside") in Frederick, Maryland, thus allowing it to retain ownership of its assets upon withdrawing from the United Methodist Church. I wrote a letter to the Honorable Brian Frosh, Chair of the Senate Judicial Proceedings Committee, expressing concerns that the bill, as originally drafted, would violate the separation of powers and the state constitutional prohibition on special laws. *Letter to the Honorable Brian Frosh from Assistant Attorney General Dan Friedman* (Mar. 30, 2010). I also gave my opinion that, because courts have held that they may resolve church property disputes based on neutral statutes without violating the religious

[1] The exemption allowed the Evangelical United Brethren Church to retain title to its property after withdrawing from the West Virginia United Methodist Conference.

104 LEGISLATIVE SERVICES BUILDING · 90 STATE CIRCLE · ANNAPOLIS, MARYLAND 21401-1991
410-946-5600 · 301-970-5600 · *Fax* 410-946-5601 · TTY 410-946-5401 · 301-970-5401

EXHIBIT A

freedoms guaranteed by Article 36 of the Maryland Declaration of Rights and the First Amendment to the U.S. Constitution, the legislature must be permitted to adopt such neutral statutes without violating these freedoms either. *Id.* Senate Bill 1091 was subsequently amended to simply repeal CA §§ 5-326 to 5-328, which require all local churches affiliated with the United Methodist Church to hold their assets in trust for the parent church. I gave my opinion that this amendment cured the constitutional defects in the original bill. *Letter to the Honorable C. Anthony Muse from Assistant Attorney General Dan Friedman* (Apr. 2, 2010). The amended bill passed the Senate on April 6, 2010; however, the House of Delegates failed to adopt it.

You have now asked me whether the existing law, Part III of Subtitle 3 of Title 5 of the Corporations and Associations Article ("Part III") violates either Article 36 of the Maryland Declaration of Rights or the First Amendment to the United States Constitution. Your request allows me the opportunity to reconsider the advice that I gave to Senator Frosh regarding SB 1091. While my conclusions have not changed, the rationale behind them has broadened.

Your inquiry contains two separate issues: (1) whether the statute infringes upon the free exercise rights of Sunnyside or the United Methodist Church, thereby violating the Free Exercise Clause and (2) whether the statute violates the Establishment Clause. It is my opinion that the statute in question violates neither. Part III does not violate the free exercise rights of either church because it does not interfere with the ability of Sunnyside or the United Methodist Church to organize as they choose. The statute also does not violate the Establishment Clause because it has a secular purpose, its principal effect is not to advance or inhibit religion, and it does not lead to excessive entanglement between the government and religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). I explain these conclusions below.

I. The Free Exercise Clause

The first issue that your inquiry raises is whether Part III infringes upon the free exercise rights of Sunnyside or the United Methodist Church in violation of the Free Exercise Clause. The free exercise of religion is guaranteed by both Article 36 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution. Although Article 36 and the First Amendment are not identical in their terms, they both guarantee the free exercise of religion and prohibit the establishment of religion. *Levitsky v. Levitsky*, 231 Md. 388, 397 (1963) (stating that that the provisions of Article 36 of the Declaration of Rights are "unexceptionable" under the First and Fourteenth Amendments). Therefore, the following analysis regarding the

constitutionality of Part III under the First and Fourteenth Amendments applies equally to the statute's compliance with Article 36 of the Declaration of Rights.

It is my opinion that Part III complies with the Free Exercise Clause because it does not regulate religious beliefs, and it does not interfere with the ability of a church to organize as it chooses. In prior cases interpreting the Free Exercise Clause, the United States Supreme Court has stated that the First Amendment treats the regulation of beliefs and actions differently. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940); *see also Craig v. State*, 220 Md. 590, 599 (1959). While the First Amendment provides an absolute bar against the regulation of religious beliefs, it does allow for some regulation of actions based on religious belief. *Compare Reynolds v. United States*, 98 U.S. 145 (1878) (holding that a religious belief exhorting men to practice polygamy does not exempt Mormons from the application of a law making bigamy a crime) *with West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (holding that a state law compelling children, including Jehovah's Witnesses, to salute the flag at school violated the free exercise clause). In disputes over church property, the First Amendment's ban on regulating religious beliefs prohibits courts from deciding such disputes by interpreting religious doctrine. *Jones v. Wolf*, 443 U.S. 595, 602 (1979). However, where a court can apply neutral principles of law in deciding church property disputes, to do so does not violate the free exercise clause of the First Amendment because these decisions apply to the actions of the parties not their religious beliefs. *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969); *From the Heart v. A.M.E. Zion Church*, 370 Md. 152, 179 (2002).

Because courts can decide disputes over religious property without violating the Free Exercise Clause, so long as they rely on neutral principles of law, state legislatures, by implication, can enact neutral laws concerning religious property. Therefore, if Part III constitutes a neutral law, its enactment should not violate the Free Exercise Clause. For laws governing the incorporation of religious organizations, a court will evaluate their neutrality on the basis of whether they interfere with the ability of the church to organize in a manner of its choosing. *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94, 107-08 (1952). In *Kedroff*, the Court held that Article 5-C of New York's Religious Corporations Law, which, in effect, required the Russian Orthodox Church to transfer control over churches affiliated with it to the governing authorities of the Russian Church in America, was unconstitutional because it interfered with the church's organizational autonomy. *Id.* Here, Part III differs significantly from the statute in *Kedroff* because Maryland's statute does not force a church to transfer control over its property to another church; it merely requires that a church which chooses to affiliate with the United Methodist Church abide by the rules of

the United Methodist Church regarding the control of church property. CA § 5-322; *see The Maryland and Virginia Eldership of the Churches of God v. The Church of God at Sharpsburg*, 254 Md. 162 (1969) (stating that the Act of 1802, which led to the current Religious Corporations Law, was not intended to interfere with the doctrines or discipline of any religious body, but it left religious corporations free to agree with the general church on a specific organizational structure).

As stated above, Subtitle 3 regulates the incorporation of religious organizations. It contains a general provision, Part I, followed by five denomination-specific provisions, Parts II through VI. Part I allows all churches to incorporate independently and retain control over their property. CA § 5-306. Parts II through VI, the denomination-specific provisions, are tailored to more closely follow the internal rules of the general church. *See e.g.* CA § 5-322. One such internal rule for the United Methodist Church is that all local churches must hold their property in trust for the general church. The United Methodist Book of Discipline § 2501 ("title to all properties held ... by a local church ... shall be held in trust for the United Methodist Church and subject to the provisions of its *Discipline*"). Therefore, when Sunnyside chose to incorporate in Maryland, it had the option of incorporating as an independent church under Part I, which would have allowed it to retain control over its property, or it could incorporate as a member of the United Methodist Church under Part III, which would require it to follow the rules of the United Methodist Church with respect to ownership and control of church property. However, once Sunnyside to incorporated under Part III, it in effect entered into an agreement with the United Methodist Church to hold its property in trust for the general church. Because, to the best of our current understanding, Sunnyside entered into this agreement by its own choosing, Maryland's law requiring that Sunnyside abide by its agreement does not limit Sunnyside's ability to organize as it chooses, and therefore, it does not violate the Free Exercise Clause.[2]

Maryland is not the only state that has a religious corporations law that contains provisions specific to certain denominations. Indeed, most states have statutes that govern the incorporation of religious organizations. Among these, some states require religious organizations to incorporate as a non-profit corporation organized for a religious purpose[3] while other states have general religious corporations statutes[4] and still others

---

[2] I understand that there is currently pending litigation concerning whether Sunnyside's entry into this agreement was volitional. My comments are not intended to express views about the proper resolution of that litigation.

[3] *See, e.g.*, Cal. Corp. Code §§9110-9690; Ill. Ann. Stat. ch. 805, para. 105/103.05.

[4] *See, e.g.*, Ala. Code §10-4-20 (1987); Colo. Rev. Stat. §7-50-101 (1990).

provide for specific denominations.[5] Maryland is among this third group of states. Fourteen other states have provisions that govern the incorporation of specific denominations or govern the holding of property by specific denominations,[6] but only nine states have provisions that apply to the Methodist Church.[7] Even among these nine states, the regulations vary considerably, with some requiring the local church to hold its property in trust for the general church,[8] others only requiring the trustees of the local church to follow the rules of the general church with respect to the use of its property,[9] and still others providing that the property of abandoned local churches will vest in the general church.[10] Although all of these provisions involve the State in the organization of religious groups, only Maryland's statute has been challenged on First Amendment grounds. *See The Maryland and Virginia Eldership of the Churches of God v. The Church of God at Sharpsburg*, 254 Md. 162 (1969) ("*Eldership II*"); *Smith v. The Church of God at Locust Valley Bethel of Frederick County, Maryland*, 326 F.Supp. 6 (D. Md. 1971). That no other state with a denomination-specific religious incorporation statute has had to decide a challenge under the First Amendment suggests that these statutes enjoy general acceptance as being constitutional.

In *The Maryland and Virginia Eldership of the Churches of God v. The Church of God at Sharpsburg*, 249 Md. 650 (1968) ("*Eldership I*") (*vacated for further consideration*, 393 U.S. 528 (1969) *in light of Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969), and *reaffirmed* by the Court of Appeals in *Eldership II*, 254 Md. 162

---

5 Md. Code Ann., Corps. & Ass'ns §§5-314-5-338; Conn. Gen. Stat. Ann. §33-264.

6 Ill. Ann. Stat. ch. 805, para. 110/50; La. Rev. Stat. Ann. §§ 12:481-12:483; Minn. Stat. Ann. §§315.17-.19; N.H. Rev. Stat. Ann. §§292:15-:17; N.Y. Relig. Corp. Law, art. 3 to 20; Del. Code Ann. Tit. 27, §§17-1711-13c, 17-1716a-16c, 17-1732-33, 17-1753-55; Mass. Gen. Laws Ann. Ch. 67, §§39-61; Me. Rev. Stat. Ann. Tit. 13, §2982; Vt. Stat. Ann. Tit. 27, §§781-944; Wis. Stat. Ann. §§187.01-.19; Mich. Stat. Ann. §§21.1691-.2021; Conn. Gen. Stat. Ann. §§33-277-78; N.J. Stat. Ann. §§16:5-1 to 27.

7 Wis. Stat. Ann. §187.15; N.Y. Relig. Corp. Law, art. 17 §§320-335; Mass. Gen. Laws Ann. Ch. 68, §6; Me. Rev. Stat. Ann. Tit. 13, §2982; Vt. Stat. Ann. Tit. 27, §§861-866; Mich. Stat. Ann. §§458.21-.33; N.J. Stat. Ann. §§10A-1 to 5; Conn. Gen. Stat. Ann. §§33-268-76.

8 Md. Code Ann., Corps. & Ass'ns §§5-314-5-338; Conn. Gen. Stat. Ann. §§33-268-76.

9 Me. Rev. Stat. Ann. Tit. 13, §2982; Mich. Stat. Ann. §§21.1691-.2021.

10 Vt. Stat. Ann. Tit. 27, §§861-866; N.J. Stat. Ann. §§10A-1 to 5; Wis. Stat. Ann. §187.15.

(1969)), the Maryland Court of Appeals was faced with a challenge to Part I of the Corporations and Associations Article on the grounds that it violated the First and Fourteenth Amendments. There, the Church of God sought control over a local church's property after the local church chose to withdraw from the organization. *Id.* at 655-56. The general church had not contributed any money towards the purchase of the disputed property, nor did it require in its constitution that local churches hold their property in trust for the general church. *Id.* at 654. After considering the organizational structure of the Church of God and its relationship with its local churches, the Court held that Part I vested ownership of the land in the local church. *Id.* at 664-66.

In *Eldership II*, the Court considered whether Part I violated the First Amendment. The Court noted that the original Act of 1802, a predecessor of the current religious corporations law, contained a provision which stated "[n]othing therein contained shall be construed...to alter or change the religious constitution or government of any church, congregation or society..." *Eldership II*, 254 Md. at 174. The Court interpreted this provision to mean that the statute was not intended to require a religious organization to adopt a specific organizational structure to incorporate under the law. Although the Court explicitly did not rule on the constitutionality of the denomination-specific sections of Maryland's Religious Corporation Law, *id.* at 168, the Court did state that local and general churches are free to establish the organizational structure between them by contract. *Id.* at 174. Therefore, where a church chooses to place limitations on its ability to organize, those limitations are constitutional.

Three years later, the U.S. District Court of Maryland decided a similar challenge in *Smith v. The Church of God at Locust Valley Bethel of Frederick County, Maryland*, 326 F.Supp. 6 (D. Md. 1971) ("*Smith*"). In this case, the court determined that the Maryland General Religious Corporations Law does not violate the First Amendment, in part, because it "leaves the distribution of control over local church property entirely to the voluntary arrangements entered into by and within each denomination." *Id.* at 13. There, the members of two churches belonging to the Church of God voted to withdraw from the general church. *Id.* at 8. Upon their withdrawal, the Church of God sought to control the property of the local churches. *Id.* The dispute focused on whether the local church retained the right to control its property upon its withdrawal from The Church of God. *Id.* Relying heavily on the decision of the Court of Appeals in *Eldership II*, the court determined that the local church retained control over its property upon withdrawing from the Church of God because the parties had not explicitly or implicitly provided for the general church to exert control over the local church's property. *Id.* at 9. The court also held that Maryland's General Religious Corporations Law does not violate the First Amendment because it does not interfere with the relationship between the

general and local churches but instead allows those churches to determine the nature of their relationship. *Id.* at 12-13.

Because Part III does not impose a specific type of relationship on the local churches that choose to incorporate under it, but instead mirrors the relationship required by the general church, it is my opinion that Part III would survive a challenge under the Free Exercise Clause.

II. The Establishment Clause

Part III of Subtitle 3 of Title 5 of Maryland's Corporations and Associations Article does not violate the Establishment Clause because it survives the test set out in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). In that seminal case, the U.S. Supreme Court established a three-part test to determine when a particular statute violates the Establishment Clause.[11] *Id.* at 612-13. Under this test, the court first determines if the statute has a secular purpose. *Id.* Second, it determines if the principal or primary effect of the statute is to advance or inhibit religion. *Id.* Third, it determines if the statute leads to excessive entanglement of the government with religion. *Id.* Regarding this third prong, the Court further laid out three factors that determine whether a particular

---

[11] The Court later modified the *Lemon* test in *Agostini v. Felton*, 521 U.S. 203 (1997); however, these modifications do not affect my analysis of Maryland's religious corporations law. Specifically, in *Agostini*, the Court held that its prior decisions had resulted in a change in the criteria that the Court uses to determine whether aid to religious schools has the effect of advancing religion. *Id.* at 223. In reaching this conclusion, the Court rejected the presumption that placing public employees in parochial schools would result in state-sponsored indoctrination or constitute a symbolic union between the government and religion. *Id.* Because Maryland's religious corporations law does not require the State to place public employees at churches that choose to incorporate under the law, the Court's rejection of this presumption has no affect on my analysis. In *Agostini*, the Court also held that the Establishment Clause does not prohibit the State from giving aid to religious organizations where "the aid is allocated on the basis of neutral, secular criteria," because using secular criteria removes the incentive to change religious views in order to benefit from the state sponsored program. *Id.* at 231. Because Maryland's religious corporations law does not provide financial assistance to religious organizations, there is no reason to believe that the law would influence a church to adopt one set of religious beliefs over another. Finally, although the *Agostini* Court subsumed the entanglement prong of the *Lemon* test within the effects test of the second prong, Maryland's religious corporations law survives the entanglement prong under both *Agostini* and *Lemon* because it does not have as an effect the involvement of the State in significant oversight of religious organizations.

statute leads to excessive entanglement: (1) the character and purpose of the benefitted institution, (2) the nature of the aid that the state is providing to the institution, and (3) the resulting relationship between the government and the religion. *Id.* at 615. Where these factors lead to significant involvement of the State in religious affairs, the statute is unconstitutional.

Part III passes the three-pronged *Lemon* test. The statute satisfies the first prong because its purpose is to regulate the ownership of property by religious organizations, not to regulate religious belief. In *Presbyterian Church v. Hull Church*, 393 U.S. 440, 445 (1969), the Court stated that "the State has a legitimate interest in resolving property disputes." Moreover, the Court held that where civil courts applied neutral principles of law to decide church property disputes, they did not violate the First Amendment. *Id.* at 449. Here, Part III regulates the ownership of property by religious organizations that choose to affiliate with the United Methodist Church. Because this section mirrors the requirements of the United Methodist Church, Part III does not require that the state become involved in deciding religious doctrine nor does it seek to grant financial support to one group over another; it simply seeks to codify the agreement between the local church and the general church. As a result, it satisfies the first prong of the *Lemon* test.

Part III satisfies the second prong of the *Lemon* test because it does not have as its principal or primary effect the advancement or inhibition of religion. Nothing in Part III makes it any easier or more difficult for the United Methodist Church to organize as it chooses. *Cf. Eldership II*, 254 Md. at 174. Because the section specific to the United Methodist Church simply follows the internal structure of the church, it does not grant the United Methodist Church any rights beyond what it would have under the general provision of the statute. Moreover, because the Religious Corporations Law applies generally to all religious organizations and the denomination-specific sections follow the structure of those denominations, the law does not advance or inhibit any particular denomination over the others.

Finally, Part III satisfies the third prong of the *Lemon* test. Although it aids the United Methodist Church by codifying the Church's requirement that local churches hold their property in trust for the general church, the resulting relationship does not involve substantial interaction between the government and the United Methodist Church, thus causing no excessive entanglement with religion. Here, like in *Lemon*, the state is providing a benefit to a religious organization. However, unlike in *Lemon*, that benefit is not financial and it does not require substantial oversight of religious activity. The only benefit that Sunnyside and the United Methodist Church receive through Part III is the ability to create a legal personality as a member of the United Methodist Church. Once a

religious organization incorporates under Part III, the government is not required to become involved in religious activities or conduct oversight of church decisions. Therefore, because Part III does not involve financial support of religious organizations nor does it require substantial government involvement in religious activity, the statute does not result in excessive entanglement. Because Part III passes all three parts of the *Lemon* test, it does not violate the Establishment Clause. For all of the above reasons, it is my view that Part III is constitutional.

Very truly yours,

Dan Friedman
Counsel to the General Assembly

cc: The Honorable Brian E. Frosh
The Honorable C. Anthony Muse

EXHIBIT B

IN THE CIRCUIT COURT OF MARYLAND
FOR ANNE ARUNDEL COUNTY

The Methodist Church of Cape St. Claire 855 Chestnut Tree Dr. Annapolis, MD 21409-5114	*	Case No. C-02-CV-23-000500
Trinity United Methodist Church, Annapolis 1300 West Street Annapolis, MD 21401-3612	*	
Wesley Chapel United Methodist Church of Lothian, MD 1010 Wrighton Rd. Lothian, MD 20711-9735	*	**JURY TRIAL DEMANDED**
Mt. Zion United Methodist Church of Lothian, Inc. 122 Bayard Rd. Lothian, MD 20711-9611	*	
Asbury United Methodist Church 110 W. North St. Charlestown, WV 25414	*	
Bedington United Methodist Church 580 Bedington Rd. Martinsburg, WV 25404-6514	*	

EXHIBIT C

Bentley Springs United Methodist Church *
419 Bentley Rd. *
Parkton, MD 21120-9092 *
*

Bethesda United Methodist Church *
of Browningsville, Montgomery County *
Maryland *
11901 Bethesda Church Rd. *
Damascus, MD 20872-1540 *
*

Bixlers United Methodist Church *
3372 Bixler Church Rd. *
Westminster, MD 21158-2302 *
*

Cabin John United Methodist Church *
7703 Macarthur Blvd. *
Cabin John, MD 20818-1702 *
*

Calvary United Methodist Church *
220 W. Burke St. *
Martinsburg, WB 25401-3322 *
*

Cedar Grove United Methodist Church *
2015 Mt. Carmel Rd. *
Parkton, MD 21120-9792 *
*

Chestnut Hill United Methodist Church *
1523 Hostler Rd. *

Harpers Ferry, WV 25425-7155 *
*
Clarks Chapel United Methodist Church *
2001 Kalmia Road *
Bel Air, MD 21015-1017 *
*
Darkesville United Methodist Church *
6705 Winchester Ave. *
Inwood, WV 25428 *
*
Dorsey Emmanuel United Methodist Church *
6951 Dorsey Rd. *
Elkridge, MD 21075-6210 *
*
First United Methodist Church of Laurel *
Maryland, Inc. *
424 Main St. *
Laurel, MD 20707-4116 *
*
Flint Hill United Methodist Church *
2732 Park Mills Rd. *
Adamstown, MD 21710-9103 *
*
Flintstone United Methodist Church, Inc. *
21613 Old National Pike *
Flintstone, MD 21530 *
*
Ganotown United Methodist Church *

1018 Winchester Ave. *
Martinsburg, WV 25401-1650 *
*

Grace United Methodist Church *
4618 Black Rock Rd. *
Upperco, MD 21155-9545 *
*

Greensburg United Methodist Church *
2203 Greensburg Rd. *
Martinsburg, WV 25404-0364 *
*

Ijamsville United Methodist Church, Inc. *
4746 Mussetter Rd. *
Ijamsville, MD 21754-9627 *
*

Inwood United Methodist Church *
62 True Apple Way *
Inwood, WV 25428 *
*

Libertytown United Methodist Church *
12024 Main St. *
Libertytown, MD 21762 *
*

Melvin Methodist Church of Cumberland, *
Maryland *
100 Reynolds St. *
Cumberland, MD 21502 *
*

Michaels United Methodist Church *
884 Michaels Chapel Road *
Hedgesville, WV 25427 *
*

Middleway United Methodist Church *
7435 Queen St. *
Kearneysville, WV 25430 *
*

Millers United Methodist Church *
3435 Warehime Rd. *
Manchester, MD 21102-2017 *
*

Mt. Hermon United Methodist Church *
13200 Williams Rd., SE *
Cumberland, MD 21502 *
*

Nichols Bethel United Methodist Church *
1239 Murray Rd. *
Martinsburg, WV 25405-5854 *
*

Pikeside United Methodist Church *
25 Paynes Ford Rd. *
Martinsburg, WV 25405-5854 *
*

Rock Run United Methodist Church *
4102 Rock Run Rd. *
Havre De Grace, MD 21078-1215 *
*

Shiloh United Methodist Church *
3100 Shiloh Rd. *
Hampstead, MD 21074-1625 *
*
Stablers Methodist Church *
1233 Stablers Church Rd. *
Parkton, MD 21120 *
*
Trinity-Asbury United Methodist Church *
106 Wilkes St. *
Berkeley Springs, WV 25411-1557 *
*
Waters Memorial Methodist Church *
5400 Mackall Road *
St. Leonard, MD 20685-2307 *
*
Wesley Chapel Methodist Church *
7745 Waterloo Rd. *
Jessup, MD 20794-9793 *
*
Wesley Chapel United Methodist Church *
165 Pious Ridge Rd *
Berkeley Springs, WV 25411-4837 *
*
Plaintiffs, *
*
*
v. *
*

EXHIBIT C

The Baltimore Washington Conference of the United Methodist Church 11711 E. Market Place Fulton, MD 20759 *Defendant and Nominal Defendant*	*
And	*
The Board of Trustees of the Baltimore Washington Conference of the United Methodist Church, and LaTrelle Easterling, in her capacity as Bishop of the Baltimore Washington Conference of the United Methodist Church 11711 E. Market Place Fulton, MD 20759 *Defendants.*	*

FIRST AMENDED COMPLAINT

Plaintiffs, each church entity set forth in the caption above ("Plaintiff Churches") submit this Amended Complaint, including a verified claim to quiet title by Plaintiff The Methodist Church of Cape St. Claire, and allege and state as follows:

INTRODUCTION

1. Plaintiff Churches wish to disaffiliate from the United Methodist Church ("UMC") to pursue their deeply held religious beliefs. Defendants want to force Plaintiff

EXHIBIT C

Churches to stay affiliated with the UMC and violate those beliefs by holding their church buildings and property hostage. Defendants claim Plaintiff Churches' property is encumbered by an irrevocable trust for the benefit of the UMC and the only way for Plaintiff Churches to disaffiliate without surrendering the buildings and property that are central to their congregations is by the permission of the UMC and payment of a financial ransom.

2. This position is inconsistent with the decades-long pattern and practice of the UMC to allow local churches to disaffiliate and retain their church property without paying a ransom. What is more, it reflects a substantial material change in circumstances that was not anticipated by either Plaintiff Churches or Defendants at the time Plaintiff Churches affiliated with the UMC. Continued enforcement of the alleged trust as a mechanism to penalize Plaintiff Churches for disaffiliating is unlawful and contrary to the intent of the parties and the Gospel mission of each church.

3. Plaintiff Churches bring this action to (1) seek relief from the uncertainty, insecurity, and controversy arising from Defendants' refusal to allow them to disaffiliate from the UMC and retain their property, (2) reform or terminate the trust to conform to their original intent, and (3) most importantly, protect their freedom to worship as they see fit. Indeed, like all Marylanders, the thousands of members of Plaintiff Churches believe "[T]hat as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty. . ." Maryland Decl. Rights Art. 36. Further, "no person. . . .shall infringe the laws of morality, or injure others in their natural, civil or religious rights." *Id.*

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff The Methodist Church of Cape St. Claire is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 855 Chestnut Tree Drive, Annapolis, MD 21409.

5. Plaintiff, Asbury United Methodist Church, is a church organization with its principal office at 110 W. North St., Charlestown, WV 25414-1524.

6. Plaintiff, Bedington United Methodist Church, is a church organization with its principal office at 580 Bedington Rd, Martinsburg, WV, 25404-6514.

7. Plaintiff, Bentley Springs United Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 419 Bentley Rd, Parkton, MD, 21120-9092.

8. Plaintiff, Bethesda United Methodist Church of Browningsville, Montgomery County Maryland is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 11901 Bethesda Church Rd, Damascus, MD, 20872-1540.

9. Plaintiff, Bixlers United Methodist Church, is a church organization with its principal office at 3372 Bixler Church Rd, Westminster, MD, 21158-2302.

10. Plaintiff, Cabin John United Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 7703 Macarthur Blvd, Cabin John, MD, 20818-1702.

11. Plaintiff, Calvary United Methodist Church, is a church organization with its principal office at 220 W Burke St., Martinsburg, WV, 25401-3322.

12. Plaintiff, Cedar Grove United Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 2015 Mt. Carmel Rd., Parkton, MD, 21120-9792.

13. Plaintiff, Chestnut Hill United Methodist Church, is a church organization with its principal office at 1523 Hostler Rd., Harpers Ferry, WV, 25425-7155.

14. Plaintiff, Clarks Chapel United Methodist Church, is a church organization with its principal office at 2001 Kalmia Road, Bel Air, MD 21015-1017.

15. Plaintiff, Darkesville United Methodist Church, is a church organization with its principal office at 6705 Winchester Ave, Inwood, WV, 25428.

16. Plaintiff, Dorsey Emmanuel United Methodist Church, is a church organization with its principal office at 6951 Dorsey Road, Elkridge, MD 21075-6210.

17. Plaintiff, First United Methodist Church of Laurel, Maryland, Inc., is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 424 Main St, Laurel, MD, 20707-4116.

18. Plaintiff, Flint Hill United Methodist Church, is a church organization with its principal office at 2732 Park Mills Rd, Adamstown, MD, 21710-9103.

19. Plaintiff, Flintstone United Methodist Church, Inc., is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 21613 Old National Pike, Flintstone, MD, 21530.

20. Plaintiff, Ganotown United Methodist Church, is a church organization with its principal office at 1018 Winchester Ave, Martinsburg, WV, 25401-1650.

21. Plaintiff, Grace United Methodist Church, is a church organization with its principal office at 4618 Black Rock Rd, Upperco, MD, 21155-9545.

22. Plaintiff, Greensburg United Methodist Church, is a church organization with its principal office at 2203 Greensburg Rd., Martinsburg, WV 25404-0364.

23. Plaintiff, Ijamsville United Methodist Church, Inc., is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 4746 Mussetter Rd, Ijamsville, MD, 21754-9627.

24. Plaintiff, Inwood United Methodist Church, is a church organization with its principal office at 62 True Apple Way, Inwood, WV, 25428.

25. Plaintiff, Libertytown United Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 12024 Main St., Libertytown, MD, 21762.

26. Plaintiff, Melvin Methodist Church of Cumberland, Maryland, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 100 Reynolds St., Cumberland, MD, 21502-2526.

27. Plaintiff, Michaels United Methodist Church, is a church organization with its principal office at 884 Michaels Chapel Road, Hedgesville, WV 25427.

28. Plaintiff, Middleway United Methodist Church, is a church organization with its principal or registered office at, 7435 Queen St, Kearneysville, WV, 25430.

29. Plaintiff, Millers United Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 3435 Warehime Rd, Manchester, MD, 21102-2017

30. Plaintiff, Mt. Hermon United Methodist Church, is a church organization with its principal office at 13200 Williams Road SE, Cumberland, MD, 21502.

31. Plaintiff, Mt. Zion United Methodist Church of Lothian, Inc., is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at, 122 Bayard Rd, Lothian, MD, 20711-9601.

32. Plaintiff, Nichols Bethel United Methodist Church, is a church organization located at 1239 Murray Road, Odenton, MD 21113-1603.

33. Plaintiff, Pikeside United Methodist Church, is a church organization with its principal office at 25 Paynes Ford Rd, Martinsburg, WV, 25405-5854.

34. Plaintiff, Rock Run United Methodist Church, is a church organization with its principal office at 4102 Rock Run Rd, Havre De Grace, MD, 21078-1215.

35. Plaintiff, Shiloh United Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 3100 Shiloh Rd, Hampstead, MD, 21074-1625.

36. Plaintiff, Stablers Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 1233 Stablers Church Rd, Parkton, MD, 21120.

37. Plaintiff, Trinity United Methodist Church, Annapolis, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 1300 West Street, Annapolis, MD, 21401-3612.

38. Plaintiff, Trinity-Asbury United Methodist Church, is a church organization with its principal office at 106 Wilkes St, Berkeley Springs, WV, 25411-1557.

39. Plaintiff, Waters Memorial Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 5400 Mackall Rd., St. Leonard, MD, 20685-2307.

40. Plaintiff, Wesley Chapel Methodist Church, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 7745 Waterloo Road, Jessup, MD, 20794-9793.

41. Plaintiff, Wesley Chapel United Methodist Church, is a church organization with its principal office at 165 Pious Ridge Rd, Berkeley Springs, WV, 25411-4837.

42. Plaintiff, Wesley Chapel United Methodist Church of Lothian, Maryland, is a Maryland non-profit corporation located, conducting operations, and with its principal or registered office at 1010 Wrighton Rd., Lothian, MD, 20711-9735.

43. Plaintiffs, collectively, are referred to herein as "Plaintiff Churches."

44. The United Methodist Church ("The UMC") is an unincorporated denomination founded in 1968 in Dallas, Texas, by the union of the Methodist Church and the Evangelical United Brethren Church.

45. The UMC is unincorporated and incapable of holding property.

46. The UMC is not named as a Defendant herein because it is not a legal entity that can sue or be sued.

47. The UMC does not own any of Plaintiff Churches' property.

48. Plaintiff Churches are local churches affiliated with the UMC through their annual conference, Defendant, the Baltimore Washington Conference of the United Methodist Church.

49. The UMC is not a hierarchal religious organization but rather a covenant-based organization where the church and the Defendant are in an ecclesiastical covenant-based relationship.

50. The Plaintiff Churches have been paying annual apportionments to Defendants for decades, totaling in millions of dollars.

51. Defendant, the Baltimore Washington Conference of the United Methodist Church (the "Conference"), is a corporation organized under the laws of the State of Maryland, with a principal office at 11711 E. Market Place, Fulton, MD 20759.

52. Defendant Board of Trustees of the Baltimore Washington Conference of the United Methodist Church ("Board") has the authority to settle litigation, remove churches from their denomination, and release property and assets on behalf of the Conference.

53. Defendant Board owes the Conference a statutorily imposed fiduciary duty.

54. Defendant Bishop LaTrelle Easterling, in her official capacity as Bishop of the Baltimore Washington Conference of the United Methodist Church, presides over Conference Defendant and has a place of business at 11711 E. Market Place, Fulton, MD 20759.

55. All Plaintiff Churches are properly and legally constituted and in existence and have the authority and capacity to sue and be sued.

56. All conditions precedent to bringing this suit, if any, have been satisfied or otherwise occurred.

57. This matter is a money and real property dispute between Plaintiff Churches and Defendants.

58. This Court has subject matter jurisdiction over this action pursuant to Md. Code Ann. Cts. & Jud Proc. §§ 1-501, 3-403, 3-406, 3-407, 3-408, and 3-409.

59. This Court has personal jurisdiction over the Defendants pursuant to, *inter alia*, Md. Code Ann., Courts & Jud. Proc. § 6-102, because they are residents of the State of Maryland and organized under the laws of Maryland.

60. Venue is proper in this Court pursuant to Md. Code Ann., Courts & Jud. Proc. § 6-201 and §6-202(7) because part of the subject trust property is in Anne Arundel County and Plaintiff Churches The Methodist Church of Cape St. Claire, Trinity United Methodist Church, Annapolis, Mt. Zion United Methodist Church of Lothian, Inc., and Wesley Chapel United Methodist Church are residents of said County.

61. Jurisdiction and Venue are also appropriate in the Circuit Court for Anne Arundel County pursuant to Md. Code Ann., Real Property §14-108.

62. The supposed trusts which allegedly encumber the religious liberty and real property of Trinity United Methodist Church, Mt. Zion United Methodist Church, Wesley Chapel United Methodist Church of Lothian, Maryland, and Cape St. Claire United Methodist Church are administered in Anne Arundel County.

FACTS

63. Plaintiff Churches are local churches spread throughout Maryland and West Virginia.

64. The UMC purports to govern itself pursuant to a document titled the Book

of Discipline of The United Methodist Church (2016) (the "Discipline").

65. The Discipline is the connectional covenant to which all persons or entities within the UMC agree to be bound. Defendants are subject to the terms of the connectional covenant.

66. The Discipline constitutes the terms of the shared contract entered by all individuals and entities associated with the UMC. Defendants are subject to the terms of this shared contract.

67. The General Conference is the only body within the UMC with the authority to pass legislation binding the entire UMC. No other body within the UMC has law-making authority, and no entity, body, or person other than the General Conference can either amend the Discipline or negate any portion of the Discipline. This exclusive authority has been repeatedly affirmed by the UMC Judicial Council and is not a matter in dispute.

68. All UMC sub-divisions, clergy, agents, lay members, and local churches covenant to abide by the will of the body as determined by the General Conference. All Defendants herein are bound by this covenant.

69. Baltimore-Washington Conference developed a standard set of terms for disaffiliation per the rubric presented in the Discipline Paragraph 2553. Though Paragraph 2553 was adopted by the General Conference of the United Methodist Church in February 2019, Baltimore-Washington Conference did not finalize those terms for its use until the Annual Conference session held in May-June 2021. Those terms included onerous and punitive payments for real property not listed in nor required by Paragraph

2553 (specifically 50% of the current county tax assessor's value for the county in which the church is located). Neither are those terms being required by numerous other Annual Conferences within the United Methodist Church, including for a certain significant number of churches in the State of Maryland in the Peninsula-Delaware Conference, over which Bishop Latrelle Easterling also presides.

70. The Plaintiff Churches have paid for their properties. The Plaintiff Churches have maintained their properties, parsonages, cemeteries and ministry facilities.

71. The Plaintiff Churches have paid for their ministers and all of their benefits.

72. In addition to paying all of their costs and expenses to operate their local churches for the benefit of their local communities, the Plaintiff Churches have voluntarily donated back to the Conference to help fund their institutional infrastructure as a charitable donation with no services being rendered by the Conference in exchange for the financial support.

73. Plaintiff Churches want to amicably disaffiliate from the UMC and Defendants to pursue their deeply held religious beliefs.

74. Paragraphs 2553 and 2549 of the Discipline provide clear and non-doctrinal principles of decision, not involving any religious or ecclesiastical questions, which the secular courts of Maryland may and indeed must apply to protect the interests of the Plaintiff Churches. Though there are significant theological reasons behind any church's decision to disaffiliate, the Court need not delve into those as Paragraphs 2553 and 2549

are neutral principles of law that can be determined by this court without offending the First Amendment.

75. Plaintiff Churches have all made requests for and received required terms for disaffiliation from the Baltimore-Washington Conference per Paragraph 2553, which include onerous and punitive financial payments which the Baltimore-Washington Conference is aware that Plaintiff Churches cannot feasibly provide.

76. In April 2022, certain members of the Baltimore-Washington Conference met with Bishop Latrelle Easterling on behalf of the Plaintiff Churches to discuss the terms of disaffiliation from the Baltimore-Washington Conference, requesting either use of Paragraph 2548.2 or modifications to the Standard Paragraph 2553 disaffiliation agreement which the Conference had developed. Bishop Easterling stated that the terms of the disaffiliation agreement had been created by the Conference Board of Trustees and that she had no authority to modify or remove them. Bishop Easterling also stated that she would refuse any use of Paragraph 2548.2 under any circumstances, noting that the Paragraph was not appropriate for use under current circumstances. She referred those representatives directly to the Conference Board of Trustees for discussions in which she also said that she would participate but noted that she would neither endorse the requests of the representatives nor facilitate the meeting.

77. In May 2022, certain members of the Baltimore-Washington Conference met with the Baltimore-Washington Conference Board of Trustees on behalf of the Plaintiff Churches to discuss the terms of the Standard Paragraph 2553 disaffiliation agreement which the Conference had developed, including the onerous property payment requirements. The Conference Board of Trustees refused to modify or eliminate the

payments. The Conference Board of Trustees justified their requirement of the payments as a "fair and gracious" requirement, noting that they could have required payment for 100% of the property value, but instead required only 50% of the assessed value. The Conference Board of Trustees provided no rationale for their determination that 50% of the assessed value was an appropriate amount to require of disaffiliating churches and refused to provide any rationale other than the above justification.

78. The Maryland Code Ann. Corps. & Ass'ns § 5-326 provides, among other things, that "[a]ll assets owned by any Methodist Church, including any former Methodist Episcopal Church,... whether incorporated, unincorporated, or abandoned:

> (1) *Shall* be held by the *trustees* of the Church *in trust* for the United Methodist Church; and
>
> (2) Are subject to the discipline, usage, and ministerial appointments of the United Methodist Church, as from time to time authorized and declared by the general conference of that church."

79. Both the Maryland Code and the Discipline further provide that a local church's duty to hold its property in trust for the entire denomination applies even when deeds to the property in question contain no trust clause in the denomination's favor, provided only that one of the following three conditions is satisfied: (1) the property was conveyed to the trustees of the local church; (2) the local church had accepted the pastors appointed by a United Methodist bishop, or (3) the local church used the name, customs, and polity of The United Methodist Church or any predecessor to The United Methodist Church in such a way as to be known in the community as part of the denomination. See Md. Code Ann. Corps & Ass'ns § 5-327; Discipline ¶ 2503.6.

80. A local church's charter "must be considered when there is a question raised as to the adequacy of the proof that the parent church has acted, consistent with its form of church government, to maintain ownership or control over local church property." *Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of African Methodist Episcopal Church Inc.*, 348 Md. 299, 326 n. 14 (1997). In other words, "[t]he office of the charter ..., ordinarily, is to provide evidence of the local church's consent to be bound by the parent church's polity." *Id.*

81. The UMC and Defendants have historically acknowledged multiple pathways under the Discipline for local churches in this situation to disaffiliate without paying a financial ransom for their church property.

82. In their requests, Plaintiff Churches invoked one such pathway - Paragraph 2548.2 of the Book of Discipline. That Paragraph provides, in pertinent part, as follows:

> With the consent of the presiding bishop and of a majority of the district superintendents and of the district board of church location and building and at the request. . . of a meeting of the membership of the local church, . . . the annual conference may instruct and direct the board of trustees of a local church to deed church property to. . . another evangelical denomination under all. . . comity agreement, provided that such agreement shall have been committed to writing and signed and approved by the duly qualified and authorized representatives of both parties concerned.

83. Paragraph 2549 is an example of another pathway local churches have used to disaffiliate. It provides that if the local church is no longer "maintained by its

membership as a place of divine worship of The United Methodist Church," the church may be closed according to a "(4) a plan of transfer of the membership of the local church." This plan has included the setup of a new corporate entity and all properties transferred to this new entity.

84. Paragraphs 2548.2, 2549, and others have been used for decades as pathways for local churches to disaffiliate from the UMC, while retaining their church buildings and property. The repeated use of these paragraphs for that purpose is a custom, pattern, and practice of the UMC and Defendants. Plaintiff Churches relied on these pathways in maintaining their affiliation with the UMC and Defendants.

85. Defendants refused Plaintiff Churches' requests to disaffiliate.

86. In an August 17, 2022 denial letter, Defendants argued that, at the time Plaintiff Churches affiliated with the UMC, they placed their church property in trust for the benefit of the UMC denomination. Defendants further argued that local churches have no right to disaffiliate and cannot leave the UMC to pursue their religious beliefs without permission of the UMC and Defendants and without a release from the denominational trust.

87. Defendants also argued that Paragraph 2548.2 was not a pathway for Plaintiff Churches to disaffiliate. Yet, they acknowledged that the Judicial Council of the United Methodist Church had been petitioned to clarify alleged ambiguity around whether Paragraph 2548.2 remained a pathway to disaffiliate and was in the process of deliberating on that exact question. Defendants also conceded that it was possible that the Judicial Council would ultimately hold that "Paragraph 2548.2 may be used as a method of disaffiliation."

88. On August 23, 2022, after Plaintiff Churches had submitted their requests for disaffiliation, Conference Defendants wrote to Plaintiff Churches and informed them that the Judicial Council had issued a declaratory ruling clarifying that "the use of paragraph 2548.2 as a disaffiliation pathway has been definitively closed."

89. Defendants contend that all of the disaffiliation pathways previously available to local churches are now closed and that only one remains available to Plaintiff Churches, Paragraph 2553, and only until December 2023. After December 2023, Defendants contend, Plaintiff Churches will be barred from disaffiliating, despite the fact that they no longer share the UMC's religious beliefs.

90. Paragraph 2553 did not exist when Plaintiff Churches affiliated with the UMC. In response to a "deep conflict within The United Methodist Church" regarding issues of "conscience," the UMC amended the Discipline in 2019 to add Paragraph 2553. See **Exhibit A**.

91. Disaffiliation under Paragraph 2553 will require Plaintiff Churches to fulfill burdensome and previously non-existent "financial obligations" and other requirements if they want to disaffiliate without surrendering their property.

92. These "financial obligations" are excessive, punitive, and unappealable. They are also completely unnecessary.

93. First, Plaintiff Churches have been paying annual apportionments to the Conference Defendant for decades, totaling millions of dollars.

94. Second, Defendants sell closed or abandoned churches in coordination with the Duke Endowment Grant for the Church Legacy Initiative with monies that are

made available to the Conference for discretionary use.

95. Third, Defendants have discretionary funds that are available for use by the Conference and could be used to fund a portion if not all of the unfunded pension liability that the Defendants claim to exist.

96. Fourth, the "unfunded pension obligations" which Defendants cite as a basis for the financial requirements do not exist as described by the Defendants. Wespath Benefits and Investments, a general agency of the UMC and operator of its pension funds, has more than $29 Billion in assets, an amount more than sufficient to cover pension liabilities for current enrollees for decades to come.

97. To the extent that Defendants are facing an unfunded liability in their conference pension fund, despite the aforementioned substantial assets, the liability is the result of Defendants' grossly negligent financial mismanagement.

98. Upon information and belief, Defendants are inflicting these financial obligations on Plaintiff Churches not because there is a financial need or a legitimate contractual basis, but instead to (1) penalize Plaintiff Churches for disaffiliating, (2) restrict Plaintiff Churches' freedom of religion, and (3) to the extent there are unfunded liabilities in the conference pension fund, compensate for Defendants' grossly negligent mismanagement of that fund.

99. The use of the alleged denominational trust to force unnecessary financial obligations on Plaintiff Churches serves no valid purpose, is unlawful, and is against Maryland public policy. It infringes on Plaintiff Churches' fundamental rights to property and freedom of religion.

100. What is more, Defendants incorrectly claim that Plaintiff Churches have no recourse in the courts of this State because they claim all of their actions are ecclesiastical in nature and thus unreviewable by any Maryland court.

101. In sum, according to Defendants:

a. Plaintiff Churches are trustees, holding their church buildings, land and personal property in an irrevocable trust for the benefit of the UMC and Conference Defendants;

b. The UMC recently closed one of the pathways that had previously been used by local churches to disaffiliate from the UMC without paying "financial obligations";

c. The newly-enacted Paragraph 2553 or Paragraph 2549 are the only practical remaining pathways for Plaintiff Churches to disaffiliate;

d. As a result, Plaintiff Churches can only disaffiliate from the UMC if they either (1) abandon their personal property, church buildings, and land, or (2) obtain the permission of Defendants and pay substantial financial obligations;

e. If Plaintiff Churches do not elect one of these choices by December 2023, they will lose all ability to disaffiliate and retain their church buildings and personal property under Paragraph 2553; and

f. Plaintiff Churches have no recourse in the courts of this State.

102. This cannot be.

103. Regardless of how any particular provision of the Discipline is interpreted, Defendants' conduct confirms that there has been a substantial change - or attempted

change - in how much freedom local churches maintain to disaffiliate, the disaffiliation procedure, and in their relationship with Defendants and the UMC denomination more broadly.

104. At the time Plaintiff Churches affiliated with the UMC and continuing throughout their affiliation, they never intended to permanently subjugate their freedom of religion to the approval of the UMC and Defendants. Nor did Plaintiff Churches intend for their church property to remain encumbered by an irrevocable trust even after their disaffiliation for religious reasons unless they paid a substantial ransom.

105. Plaintiff Churches, who are settlors of the alleged denominational trust, intended to affiliate with the UMC and to use their property in accordance with their affiliation so long as the affiliation was consistent with their deeply held religious beliefs. It was their intent and understanding that the terms of any trust created by the Discipline allowed them to disaffiliate and retain their property in the event that the UMC adopted doctrines, usages, customs, and practices radically and fundamentally opposed to those in existence at the time Plaintiff Churches affiliated with the UMC. To the extent any term of the Discipline limits such disaffiliation, that term was affected by a mistake of fact or law.

106. Plaintiff Churches also intended that they would be the trustee of any trust in which they placed their church property and as such would be able to exercise all authority and powers vested in trustees under Maryland law. To the extent any term of the Discipline allegedly empowers the UMC or Defendants to interfere in the exercise of those powers, that term was affected by a mistake of fact or law and is unlawful.

CLAIM I
(Plaintiffs v. Defendants)
Declaratory Judgment

107. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

108. An actual dispute exists between Plaintiff Churches and Defendants with respect to Plaintiff Churches' authority to own, use, or otherwise convey property deeded, titled, or otherwise owned by Plaintiff Churches.

109. Plaintiff Churches wish to have all uncertainty and insecurity as to the legal and equitable ownership of their church property removed by way of judicial declaration, for which there is a bona fide, actual, present, practical need.

110. Defendants claim that language from Paragraphs 2501 and 2502 of the Book of Discipline creates an irrevocable trust for the benefit of the UMC.

111. Plaintiff Churches are the settlors as to their respective church property.

112. Plaintiff Churches are also the trustees of the trust allegedly created by the Discipline.

113. The language of Paragraph 2502 is inconsistent with the language in Paragraph 2501 in that it does not expressly provide that the trust is irrevocable.

114. In combination with recent material changes to the disaffiliation process, Defendants are using the trust for the purposes of, among other things, blocking Plaintiff Churches from disaffiliating with the UMC, penalizing them for their deeply held religious beliefs, and raising funds to compensate for their gross mismanagement of Defendants' pension fund.

115. These purposes were not contemplated by Plaintiff Churches at the time they affiliated with the UMC and are contrary to their intent when any alleged trust was formed. Moreover, the purposes of the alleged trust have become unlawful, contrary to public policy, and impossible to achieve.

116. Accordingly, absent the Court's intervention in this ongoing, active controversy, Plaintiff Churches will be prevented from disaffiliating from the UMC and will have their property held hostage. The Court's intervention is necessary to enable the free exercise of Plaintiff Churches' constitutional religious and property rights.

117. Accordingly, Plaintiff Churches are entitled to a declaratory judgment from the Court declaring:

a. That the trust has terminated because the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve;

b. That, to the extent the trust has not terminated, it is revocable; and

c. That Plaintiff Churches are entitled to the quiet, exclusive, uninterrupted, and peaceful possession of their respective properties (real and personal) without any interference from Defendants.

CLAIM II
(Plaintiffs v. Defendants)
Judicial Modification of Trust

118. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

119. Plaintiff Churches are the settlors as to their respective church property.

120. Plaintiff Churches are also the trustees of the trust allegedly created by the

Discipline.

121. Under Md. Code Ann., Estates & Trusts, § 14.5-409 a trust terminates when the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

122. Md. Code Ann., Estates & Trusts, § 14.5-411 empowers this Court to modify or terminate a trust when, because of circumstances not anticipated by the settlor, modification or termination will further the purpose of the trust.

123. Md. Code Ann., Estates & Trusts, § 14.5-413 empowers this Court to "reform the terms of a trust, even if unambiguous, to conform the terms to the intention of the settlor if it is proved by clear and convincing evidence that both the intent of the settlor and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement."

124. At the time Plaintiff Churches affiliated with the UMC, it was not their intent that they would be unable to disaffiliate, and retain their church buildings and property, without paying a large sum of money. It was their intent that there would remain a pathway to disaffiliate to pursue their deeply held religious beliefs without having to either abandon their long-held church property or pay a large fine.

125. In that regard, Paragraph 2548.2 is a material provision of the Discipline that Plaintiff Churches relied upon when agreeing to hold their own property in trust for the UMC.

126. The current circumstances were not, and could not have been, anticipated by Plaintiff Churches when they put their property in trust for what was supposed to be

the benefit of a church denomination that shared their beliefs.

127. Maryland Courts have abstained from interfering with disputes among religious corporations that involve strictly doctrinal issues. *From the Heart Church Ministries, Inc. v. Philadelphia-Baltimore Ann. Conf.*, 184 Md. App. 11, 27 (2009). However, Maryland Courts have afforded judicial review in matters involving disputes of the ownership of church property where relief is sought on both secular and doctrinal issues. *Id.*

128. The Defendants intended to block Plaintiff Churches from obtaining judicial review by restricting the pathway of disaffiliation to Paragraph 2553, which is based on religious views concerning sexuality, whereas Paragraphs 2548.2 and 2549 are based on religiously neutral grounds. By affirming that Paragraph 2553 is the sole mechanism for disaffiliation, judicial abstention would impede the Plaintiff Churches' Freedom of Religion under Article 36 of the Maryland Declaration of Rights, and under the First Amendment of the United States Constitution.

129. As a result, the current situation is unconscionable and inequitable, and Plaintiff Churches wish to have their respective trusts terminated, or alternatively, to have themselves clearly established as the trustee of each respective trust with all power to revoke the trust and/or dispose of the property as Maryland law allows.

CLAIM III
(Plaintiffs, Individually and on Behalf of the Conference v. Defendants Board and Bishop Easterling)
Constructive Fraud

130. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

131. Plaintiff Churches paid the Conference millions of dollars in apportionments and also entrusted it with the use of their real and personal property, including real property that, in some cases, had been in their congregations for generations. Plaintiff Churches have also devoted decades of ministerial services in support of the Conference and UMC.

132. The Board has the authority to manage convey, buy, sell, and release property and assets on behalf of the Conference.

133. Bishop Easterling is the Resident Bishop and Principal presiding over the Conference.

134. The Board and Bishop Easterling were in a position of power, authority, and influence over Plaintiff Churches and the Conference.

135. Plaintiff Churches placed special trust and confidence in Defendant Board and Bishop Easterling to manage these resources, and the Conference in general, for the best interest of Plaintiff Churches and the Conference, and in accordance with the long-held characteristic doctrines, usages, customs, and practices of the UMC.

136. Defendant Board and Bishop Easterling owed Plaintiff Churches and the Conference a duty to act in good faith and with due regard to their interests, and a duty to disclose all material facts related to the management of the Conference and its resources.

137. Thus, Defendant Board and Bishop Easterling owed a fiduciary duty to the Conference and Plaintiff Churches.

138. Defendant Board, in particular, owes the Conference a statutorily imposed

fiduciary duty and is accountable to the Conference and Plaintiff Churches for the use and management of the Conference and its property.

139. The Board and Bishop Easterling used their position as fiduciaries to the detriment of Plaintiff Churches and the Conference and to their own benefit, financial and otherwise.

140. Defendants leveraged their alleged control over the denominational trust, and Plaintiff Churches' property, to penalize Plaintiff Churches for their religious beliefs, impede their disaffiliation, and extract a ransom from Plaintiff Churches to unjustly enrich the bank accounts under their control.

141. Defendants have also withheld from Plaintiff Churches material facts related to the use and purpose of the discretionary funds controlled by the Defendants including the management of the conference pension funds.

142. The Board and Bishop Easterling have also made false statements to Plaintiff Churches, including that the conference pension funds have unfunded liabilities, in order to increase the ransom and enrich the bank accounts under their control.

143. In the alternative, to the extent the conference pension fund actually has unfunded liabilities, said liabilities are the result of gross mismanagement.

144. Upon information and belief, Defendants concealed from Plaintiff Churches material facts about that mismanagement.

145. The Board's and Bishop Easterling's actions were in bad faith and constituted willful and wanton misconduct.

146. The Board and Bishop Easterling have benefited from these abuses

because they enabled Board and Bishop Easterling to conceal their gross mismanagement of the Conference and thereby preserve their positions of power.

CLAIM IV
(Plaintiffs, Individually and on Behalf of the Conference v. Defendants Board and Bishop Easterling)
Breach of Fiduciary Duty

147. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

148. Plaintiff Churches paid the Conference millions of dollars in apportionments and also entrusted it with the use of their real and personal property, including real property that, in some cases, had been in their congregations for generations. Plaintiff Churches have also devoted decades of ministerial services in support of the Conference and UMC.

149. The Board Defendant has the authority to manage, convey, buy, sell, and release property and assets on behalf of the Conference.

150. Bishop Easterling is the Resident Bishop and Principal presiding over the Annual Conference.

151. The Board and Bishop Easterling were in a position of power, authority, and influence over Plaintiff Churches and the Conference.

152. Plaintiff Churches and the Conference placed special trust and confidence in Defendant Board and Bishop Easterling to manage these resources, and the Conference in general, for the best interest of Plaintiff Churches and the Conference, and in accordance with the long-held characteristic doctrines, usages, customs and practices of the UMC.

153. Defendant Board and Bishop Easterling owed Plaintiff Churches and the Conference a duty to act in good faith and with due regard to their interests, and a duty to disclose all material facts related to the management of the Conference and its resources.

154. Thus, Defendant Board and Bishop Easterling owed a fiduciary duty to the Conference and Plaintiff Churches.

155. Defendant Board, in particular, owes the Conference a statutorily imposed fiduciary duty and is accountable to the Conference and Plaintiff Churches for the use and management of the Conference and its property.

156. The Board and Bishop Easterling used their position as fiduciaries to the detriment of Plaintiff Churches and the Conference and to their own benefit, financial and otherwise.

157. Defendants leveraged their alleged control over the denominational trust and Plaintiff Churches' property, to penalize Plaintiff Churches for their religious beliefs, impede their disaffiliation, and extract a ransom from Plaintiff Churches to unjustly enrich the bank accounts under their control.

158. Defendants have also withheld from Plaintiff Churches material facts related to the use and purpose of the discretionary funds available to Defendants and the management of the conference pension funds.

159. The Board and Bishop Easterling have also made false statements to Plaintiff Churches, including that the conference pension funds have unfunded liabilities, in order to increase the ransom and enrich the bank accounts under their control.

160. In the alternative, to the extent the conference pension fund actually has unfunded liabilities, said liabilities are the result of gross mismanagement, and upon information and belief, Defendants concealed from Plaintiff Churches material facts about that mismanagement.

161. The Board's and Bishop Easterling's actions were in bad faith and constituted willful and wanton misconduct.

CLAIM V
(Plaintiffs v. Defendants)
Demand for an Accounting

162. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

163. Defendants have also withheld from Plaintiff Churches material facts related to the use and purpose of the discretionary funds controlled by the Defendants including the management of the conference pension funds, as described *supra.*

164. The Board and Bishop Easterling have also made false statements to Plaintiff Churches, including that the conference pension funds have unfunded liabilities, in order to increase the ransom and enrich the bank accounts under their control.

165. In the alternative, to the extent the conference pension fund actually has unfunded liabilities, said liabilities are the result of gross mismanagement.

166. Upon information and belief, Defendants concealed from Plaintiff Churches material facts about that mismanagement.

167. The Board's and Bishop Easterling's actions were in bad faith and constituted willful and wanton misconduct.

168. The Board and Bishop Easterling have benefited from these abuses because they enabled Board and Bishop Easterling to conceal their gross mismanagement of the Conference and thereby preserve their positions of power.

169. Plaintiffs, on behalf of the Conference, are entitled to true and full information of all things affecting the management of the pension funds, and Defendants should be required to provide a full accounting thereof.

170. Plaintiffs have no adequate remedy at law.

CLAIM VI
(Plaintiffs v. Defendants)
Quantum Meruit

171. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

172. Plaintiff Churches have spent decades performing ministerial services for Defendants and UMC. Plaintiff Churches have also used their real and personal property in service of Defendants and the UMC and paid Defendants and the UMC millions of dollars in apportionments.

173. Defendants and UMC voluntarily accepted these services and their benefits.

174. Plaintiff Churches did not intend to gratuitously relinquish title to their real and personal property to the Defendants and UMC, and Defendants and UMC knew Plaintiff Churches did not intend to do so.

175. Defendants will unjustly enrich the bank accounts under their control in the amount of the value of Plaintiff Churches' property if they are allowed to retain

Plaintiff Churches' real and personal property after Plaintiff Churches' disaffiliation.

CLAIM VII
(Plaintiffs v. Defendants)
Unjust Enrichment

176. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

177. Plaintiff Churches have also used their real and personal property in service of Defendants and the UMC and paid Defendants and the UMC millions of dollars in apportionments.

178. If Plaintiff Churches are found to have conveyed their church buildings and other property to Defendants, then Plaintiff Churches have conferred a benefit upon Defendants in the form of Plaintiff Churches' respective church buildings and property.

179. Plaintiff Churches did not confer these benefits gratuitously.

180. Plaintiff Churches did not confer these benefits officiously.

181. Defendants and UMC consciously and voluntarily accepted these benefits.

182. Defendants will be unjustly enriched in the measurable amount of the value of Plaintiff Churches' property if they are allowed to retain Plaintiff Churches' real and personal property after Plaintiff Churches' disaffiliation.

CLAIM VIII
(Plaintiffs v. Defendants)
Promissory Estoppel

183. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

184. Paragraphs 2548.2, 2549, and others have been used for decades as

pathways for local churches to disaffiliate from the UMC while retaining their church buildings and property. The repeated use of these Paragraphs for that purpose is a custom, pattern, and practice of the UMC and Defendants. Plaintiff Churches relied on these pathways in maintaining their affiliation with the UMC and Defendants.

185. Plaintiff Churches reasonably relied on Defendants to honor their word and commitment concerning the pathways of disaffiliation.

186. Plaintiff Churches' reliance on Defendants' commitments concerning the pathways of disaffiliation was justified.

187. Defendants refused Plaintiff Churches' requests to disaffiliate unless they did so under Paragraph 2553, paid previously non-existent "financial obligations" and relinquished their real property.

188. Defendants' refusal to allow Plaintiff Churches to disaffiliate without paying the burdensome and previously non-existent "financial obligations" and surrendering their property was wrongful. Injustice will result if the obligations imposed by the Defendants are enforced.

189. As a result of the Defendants' failure to honor their commitment to the Plaintiff Churches, Plaintiff Churches have suffered damages.

CLAIM IX
(Plaintiffs v. Defendants)
Breach of Contract

190. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

191. The Discipline is a contract entered into by units of the UMC, including

Plaintiff Churches and Defendants, and by their actions and their oaths of ministry or membership, all parties have agreed to be bound by the provisions thereof as alleged hereinabove.

192. Under Maryland law, every contract imposes upon each party a duty of good faith and fair dealing in its promise and enforcement. This implied duty requires both parties to a contract to perform their promises and provide such cooperation as is required for the other party's performance.

193. Defendants have breached the contract, specifically the provisions of Paragraph 2553, the process Defendants themselves established for disaffiliation, and the implied duty of good faith and fair dealing by imposing on the Plaintiff Churches additional onerous and punitive payments for real property not listed in nor required by Paragraph 2553 (specifically 50% of the current county tax assessor's value for the county in which the church is located). Neither are those terms being required by numerous other Annual Conferences within the United Methodist Church, including for a certain significant number of churches in the State of Maryland in the Peninsula-Delaware Conference, over which Bishop Latrelle Easterling also presides.

194. Defendants have also breached the contract by mismanaging the conference pension fund, creating liabilities that they are imposing upon the Plaintiff Churches as a basis for the aforementioned punitive payments for real property neither listed in nor required by Paragraph 2553.

195. As the result of the conduct of the Defendants, Plaintiff Churches have suffered damages, including the deprivation of valuable property rights and other damages.

PRAYER FOR RELIEF AS TO CLAIMS I THROUGH IX

WHEREFORE, Plaintiff Churches pray for relief as to each and/or some of Counts I through IX as follows:

1. Declare that:

   a. Any trust encumbering Plaintiff Churches' property for the benefit of UMC is terminated;

   b. That, to the extent the trust has not terminated, it is revocable; and

   c. That Plaintiff Churches are entitled to the quiet, exclusive, uninterrupted, and peaceful possession of their respective properties (real and personal) without any interference from Defendants.

2. To the extent the trust is not terminated, issue an order modifying any trust encumbering Plaintiff Churches' property for the benefit of UMC to clarify that the trust is revocable and that Plaintiff Churches can exercise authority as Trustees free from any interference by Defendants or the UMC;

3. Issuance of an order requiring the Defendants to provide an accounting as demanded in Claim V, *supra*;

4. An award of pre-judgment and post-judgment interest as permitted by law;

5. An award of attorneys' fees and costs as permitted by law; and

6. Such other and further relief as is just and proper.

CLAIM X
(Plaintiff The Methodist Church of Cape St. Claire v. Defendants)
Quiet Title

196. Plaintiff Churches restate, re-allege, and incorporate by reference the foregoing paragraphs as if the same were set forth herein verbatim.

197. The Methodist Church of Cape St. Claire was organized in 1955 and received its real property from The Methodist Missionary Church and Church Extension Society of the Baltimore Districts pursuant to a deed recorded among the lands of Anne Arundel County Maryland, on August 22, 1956, at Liber 1060, Folio 264, *et seq*.; and from Russell E. West, Jr., and Mary Alice West pursuant to a deed recorded among the lands of Anne Arundel County Maryland, on February 13, 1959, at Liber 1275, Folio 213, *et seq*.; from George H. Woodward and Helen A. Woodward pursuant to a deed recorded among the lands of Anne Arundel County Maryland, on January 7, 1961, at Liber 1450, Folio 512, *et seq*. Additionally, The Methodist Church of Cape St. Claire purchased certain real property from The Secretary of Housing and Urban Development of the United States on April 12, 1999, pursuant to a deed recorded among the lands of Anne Arundel County Maryland at Liber 9272, Folio 151, *et seq*.

198. The real property belonging to The Methodist Church of Cape St. Claire, as described above, is more commonly known as 855 Chestnut Tree Drive, Annapolis, MD 21409.

199. The Methodist Church of Cape St. Claire held title to the majority of the property described in the preceding paragraphs prior to the formation of the UMC.

200. The Methodist Church of Cape St. Claire acquired and maintained its

property without any assistance from Defendants or UMC.

201. Paragraph 2501 of the Discipline provides, in pertinent part, as follows:

> 1. All properties of United Methodist local churches and other United Methodist agencies and institutions are held, in trust, for the benefit of the entire denomination, and ownership and usage of church property is subject to the Discipline.
>
> * * *
>
> The United Methodist Church is organized as a connectional structure, and titles to all real and personal, tangible and intangible property held . . . by a local church or charge, or by an agency or institution of the Church, shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline.
>
> * * *

202. Paragraph 2502 of the Discipline sets forth the following trust language to be incorporated into the deeds to real property owned by the local churches:

> In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the United Methodist ministry and members of The United Methodist Church; subject to the Discipline, usage, and ministerial appointments of said Church as from time to time authorized and declared by the General Conference and by the annual conference within whose bounds the said premises are situated.

(Italics in original.)

203. Defendants assert that this alleged denominational trust grants them control over Plaintiff Churches' real property and that, absent Defendants' approval, such control will continue even after Plaintiff Churches' disaffiliation. This creates a cloud on

the title to Plaintiff Churches' real and personal property, including the real property of The Methodist Church of Cape St. Claire.

204. This cloud on the real property owned by The Methodist Church of Cape St. Claire is invalid because, as set forth above:

a. Any denominational trust has been terminated because the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve;

b. Defendants' use of the denomination trust to penalize The Methodist Church of Cape St. Claire and impede their disaffiliation is inconsistent with The Methodist Church of Cape St. Claire's intent at the time it affiliated with the UMC and allegedly placed its real property in trust;

c. The terms of the denominational trust are ambiguous and were affected by a mistake of fact or law; and

d. There is no trust language contained in the deed to The Methodist Church of Cape St. Claire real property, including the real property described in Paragraph 149, *supra.*

205. As a result of the invalid cloud created by the trust on The Methodist Church of Cape St. Claire's real property, The Methodist Church of Cape St. Claire is entitled to have title to that real property quieted in its name.

PRAYER FOR RELIEF AS TO CLAIM X

WHEREFORE, Plaintiff, The Methodist Church of Cape St. Claire, prays for relief as to Claim X as follows:

1. Declare that:

a. Any trust encumbering Plaintiff's property for the benefit of UMC is terminated;

b. That, to the extent the trust has not terminated, it is revocable; and

c. That Plaintiff is entitled to the quiet, exclusive, uninterrupted, and peaceful possession of its properties (real and personal) without any interference from Defendants.

2. To the extent the trust is not terminated, issue an order modifying any trust encumbering Plaintiff's properties for the benefit of UMC to clarify that the trust is revocable and that Plaintiff can exercise authority as Trustee free from any interference by Defendants or the UMC;

3. An award of pre-judgment and post-judgment interest as permitted by law;

4. An award of attorneys' fees and costs as permitted by law; and

5. Such other and further relief as is just and proper.

VERIFICATION:

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this Claim IX to Quiet Title are true.

Tracie M. Adkins

On Behalf of The Methodist Church of Cape St. Claire

Respectfully Submitted:

By: */s/ Derek A. Hills*
Derek A. Hills, Esq.
The Law Office of Derek A. Hills, LLC
129 N. West St., Suite 1
Easton, MD 21601
Phone: 443-239-4626
dhills@dahlawoffice.com
AIS No.: 1506160146
Attorney for Plaintiffs

And

/s/ David C. Gibbs, III
David C. Gibbs, III
Attorney for Plaintiffs
National Center for Liber & Liberty
13790 Rosevelt Blvd., Suite A
Clearwater, FL 33762
(732) 362-3700
dgibbs@gibbsfirm.com
**Admitted Pro Hac Vice*

JURY TRIAL DEMAND

Plaintiff Churches demand a trial by jury for all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 19, 2023, a copy of the foregoing First Amended Complaint, Comparison Copy, and Exhibt A were was served electronically via MDEC to Anthony Janoski and Brian Coleman *Counsel for Defendants Baltimore Washington Conference of the United Methodist Church and Bishop LaTrelle Easterling,* and by First Class Mail, postage prepaid, to Defendant Board of Trustees of the United Methodist Church, Attn. Sheridan Allmond, 11711 E. Market Pl., Fulton, MD 20759.

/s/ Derek A. Hills

CERTIFICATE OF REDACTION

This submission does not contain restricted information as defined under Maryland Rule 20-201.1.

/s/ Derek A. Hills

EXHIBIT C

THE METHODIST CHURCH OF CAPE ST. CLAIRE, *et al.*	*	**IN THE**
Plaintiffs	*	**CIRCUIT COURT**
vs.	*	**FOR**
THE BALTIMORE WASHINGTON CONFERENCE OF THE UNITED METHODIST CHURCH, *et al.*	*	**ANNE ARUNDEL COUNTY**
Defendants	*	**Case No.: C-02-CV-23-000500**

* * * * * * * * * * * *

ORDER

UPON CONSIDERATION of the Defendants' Amended Motion for Summary Judgment, docketed February 29, 2024, Plaintiffs' Opposition docketed March 14, 2024, Defendants Reply docketed May 20, 2024, and the Notice of Supplemental Authority in Support of Defendants Amended Motion for Summary Judgment docketed July 15, 2024, for the reasons stated in the accompanying Memorandum Opinion, it is, this 11th day of October 2024, by the Circuit Court for Anne Arundel County, Maryland hereby

ORDERED, that the Defendants Amended Motion for Summary Judgment is **GRANTED**. Claims I, III, IV, IX, and X are **DISMISSED**; and it is further

ORDERED, that Claim V is **DISMISSED** pursuant to Plaintiffs stipulations which are accepted and adopted by this Court.

10/11/2024 SMB

October 11, 2024
Date

Judge Michael Malone
Circuit Court for Anne Arundel County

EXHIBIT C

EXHIBIT D

IN THE APPELLATE COURT OF MARYLAND

The Methodist Church of Cape St. Claire, et al,	*	
Appellant	*	No. 1812, September Term 2024
v.	*	ACM-REG-1812-2024
The Baltimore Washington Conference of the United Methodist Church, et al,	*	Circuit Court No. C-02-CV-23-000500
Appellee	*	

* * * * * * * * * * * * *

SCHEDULING ORDER

The Record in the captioned appeal was received on **February 18, 2025.** Pursuant to Maryland Rule 8-521(a)(2) (amended effective August 1, 2020), this appeal will be assigned to a monthly session once the record is complete and the appellee's brief has been filed (or the time for filing the appellee's brief has expired).

A party requesting oral argument must make that request in its opening brief. Md. Rule 8-504(a)(8). A request for oral argument does not guarantee that a case will be set in for oral argument. Ordinarily the Court schedules oral arguments in the first eight business days of the month. If this case is designated for oral argument, the Clerk will send a notice of the month in which it is set. You will then have five business days to notify the Clerk of any date conflicts.

Except in extraordinary circumstances, once a date is selected for argument it will not be changed (see Rule 8-523(a) regarding submission on brief after a case is scheduled for oral argument). For the policy on resolving conflicting case assignments see Md. Rule 16-804. If not scheduled for oral argument, the Clerk will send notice that the appeal will be submitted on the briefs.

Briefs and record extracts must comply with the requirements of Rules 8-112, 8-501, 8-502, 8-503, and 8-504. Rule 20-404 modifies the number of paper briefs that must be filed along with the electronically filed brief. **Note: As of July 1, 2020, all appeals are governed by the MDEC Rules (Rules 20-101 through 20-504).**

It is this 19th day of February, 2025, by the Appellate Court of Maryland,

ORDERED that Appellant's brief and record extract, if a record extract is required by Rule 8-501(a), shall be filed on or before **March 31, 2025**; and it is further

ORDERED that Appellee's brief shall be filed on or before the 30th day after the filing of Appellant's brief.

By direction of the Chief Judge

Rachel Dombrowski

Rachel Dombrowski, Clerk

EXHIBIT D

List of Fonts Approved for Printed or Computer-Generated Filings in the Appellate Courts

Pursuant to Rule 8-112(c) and the Supreme Court's September 27, 2023 Administrative Order, the following fonts are approved for printed or computer-generated filings before the Supreme Court of Maryland and the Appellate Court of Maryland:[1]

Arial Nova

Bookman Old Style

Century Schoolbook

Georgia

Georgia Pro

Helvetica

Lexend

Times New Roman

2/19/2025

/S/
Gregory Hilton
Clerk, Supreme Court of Maryland

/S/
Rachel Dombrowski
Clerk, Appellate Court of Maryland

[1] Pursuant to the Administrative Order, the previously approved fonts may also be used through December 31, 2023. After January 1, 2024, only the fonts listed in this notice may be used.

EXHIBIT D