Baltimore-Washington Conference
The United Methodist Church

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Testimony of Thomas E. Starnes, Chancellor
The Baltimore-Washington Conference of The United Methodist Church
Re: Senate Bill 172

(UNFAVORABLE)

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 558 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 on occasion to the Peninsula-Delaware Conference of The United Methodist Church ("Pen-Del Conference"), over which Bishop Easterling also presides, and which oversees another 289 United Methodist churches located on Maryland's Eastern Shore and in Delaware. Taken together, more than 650 local United Methodist congregations 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.

The primary basis for opposing Senate Bill 172 is that it is an exact, word-for-word replica of Senate Bill 586 that the Senate passed in the 2025 Legislative Session, but that died in the House of Delegates in the wake of the conclusion reached by the Office of the Attorney General on March 26, 2025 that, if enacted, the bill's new proposed § 5-326 of the Corporations and Associations Article would violate the free exercise rights of The United Methodist Church guaranteed by the First Amendment Constitution of the United States and by Article 36 of the Maryland Declaration of Rights.

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[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 their parent denomination's 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).

A true and accurate copy of the Attorney General's Letter of Advice is attached hereto. In addition, I have attached hereto and incorporate by reference written testimony that I submitted last year in opposing SB 586 when it came before the House Economic Matters Committee for a hearing on March 25, 2025. The legal precedent and related factors discussed in that prior written testimony accord with and amplify the conclusions reached in the Attorney General's Letter of Advice, and all of that testimony applied with equal force today.

Accordingly, for all the reasons stated in the Attorney General's Letter of Advice and my prior written testimony, I urge the Senate Judicial Proceedings Committee to issue an unfavorable report on Senate Bill 586.

Office of the Attorney General
Letter of Advice re: SB 586
Dated March 26, 2025

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March 26, 2025

The Honorable Pam Queen
Maryland General Assembly
427 Lowe House Office Building
Annapolis, Maryland 21401
Via email

RE: Senate Bill 586 — Corporations and Associations – Methodist Church Trust Requirement Repeal and Disaffiliation Requirements

Dear Delegate Queen:

You have requested a letter of advice concerning whether Senate Bill 586 ("Corporations and Associations – Methodist Church Trust Requirement Repeal and Disaffiliation Requirements"), as passed by the Senate, would violate free exercise rights guaranteed by the First Amendment to the U.S. Constitution and Article 36 of the Maryland Declaration of Rights.[1] Senate Bill 586 would repeal existing §§ 5-326 – 5-327 of the Corporations and Associations Article ("CA") and allow a local church to disaffiliate from the United Methodist Conference and retain ownership of its property, subject to the local church reimbursing the Conference for certain financial investments made by the Conference. Proposed CA § 5-326. In my view, the new proposed CA § 5-326 presents a significant risk of violating constitutionally guaranteed free exercise rights to the extent it would not allow the United Methodist Church to specify through (or would not permit courts to recognize) other legally enforceable ways how local church property is to be owned and the retention of such property upon a local church's disaffiliation. However, the bill's repeal of §§ 5-326 – 5-327 is likely constitutional.

[1] In a prior letter of advice concerning amendments to Senate Bill 586, which were adopted, I addressed potential issues relating to the Contract Clause, unconstitutional impairment of vested rights, and separation of powers, but did not address First Amendment issues, which are the focus of this letter. *See Letter of Advice to the Honorable C. Anthony Muse from Assistant Attorney General Natalie R. Bilbrough* (March 13, 2025).

The First Amendment and Article 36 prohibit the State from using legislation to interfere with how a church controls its operations, interprets its religious doctrine, or governs itself. As relevant here, "[m]ost importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones v. Wolf*, 443 U.S. 595, 602 (1979). "Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes … 'so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" *Id.* (quoting *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring)). In blessing a "neutral-principles" of law approach to deciding church property disputes, the U.S. Supreme Court explained that

> [u]nder the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. … And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

Jones, 443 U.S. at 606; *see also id.* at 603-04 (stating that "a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members" by "specifying what is to happen to church property in the event of a particular contingency" through appropriate reversionary clauses and trust provisions).

Under the neutral principles of law doctrine, Maryland courts will examine deeds, local church charters, the State statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. *Babcock Mem'l Presbyterian Church v. Presbytery of Baltimore of United Presbyterian Church in U.S.*, 296 Md. 573, 589 (1983). Accordingly, the Maryland Supreme Court has described "three ways in which hierarchical denominations may insure that they maintain control over local church property:

1. requiring the local churches to place reverter clauses in the deeds to its property;

2. providing in their constitutions or other authoritative sources for the reversion of local church property upon the withdrawal by a local congregation, with an implied consent by the local church to the reversion provision;

3. obtaining from the General Assembly an Act providing for that result."

Mt. Olive Afr. Methodist Episcopal Church of Fruitland, Inc. v. Bd. of Incorporators of Afr. Methodist Episcopal Church Inc., 348 Md. 299, 315 (1997); *accord Maryland & Virginia Eldership of Churches of God*, 396 U.S. at 370 (Brennan, J., concurring).

Putting aside other ways the United Methodist Church has specified what is to happen to local church property in the event of disaffiliation, the United Methodist Church's control over local church property has been safeguarded by "obtaining from the General Assembly an Act providing for that result," as contemplated by the Maryland Supreme Court. Specifically, current CA § 5-326 specifies in relevant part that all assets owned by any Methodist Church "[s]hall be held by the trustees of the church in trust for the United Methodist Church." In 2010, this Office gave its view that these provisions did not violate the First Amendment to the United States Constitution. *See Letter of Advice to the Honorable Donna M. Stifler from Counsel to the General Assembly Dan Friedman* (July 20, 2010).

In a situation similar to the one at hand, the United States Court of Appeals for the Fifth Circuit held that an Alabama statute violated the First Amendment where it authorized a 65 percent majority of a local Methodist church 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, notwithstanding the fact that local Methodist churches were held in trust for the use of the parent. *Northside Bible Church v. Goodson*, 387 F.2d 534, 535, 538 (5th Cir. 1967). Recognizing that "State and federal courts alike are obliged to uphold the laws and rules of church governing bodies against dissident factions," the *Goodson* court explained that "[the statute] 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." *Id.* at 537, 538.

The *Goodson* court further noted that the organization of the Methodist Church placed the statute "in a particularly untenable position" because the Methodist Church operates through an itinerant ministry where ministers are assigned and re-assigned from church to church. *Id.* at 538. "Thus the parent organization … has a peculiar interest in assuring the availability and cooperation of a local group which it has brought into being. [The statute] 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." *Id.*; *see also Goodson v. Northside Bible Church*, 261 F. Supp. 99, 103 (S.D. Ala. 1966), *aff'd*, 387 F.2d 534 (5th Cir. 1967) ("The Methodist Church has a constitutionally protected freedom to provide for the method of the selection and assignment of its clergy so long as no improper methods of choice are used. One of the methods selected by it is the trust clause. To allow the trust clause to be overridden by a legislatively defined majority is to defeat that constitutional right.").

Here, Senate Bill 586's proposed new CA § 5-326 would permit local United Methodist churches to retain ownership of local church property upon disaffiliation. To the extent that this provision would apply retroactively or would control property disposition notwithstanding the existence of a trust clause in a deed, conveyance, charter, or articles of incorporation, or any trust obligations imposed by *The Book of Discipline of The United Methodist Church*, it is likely unconstitutional.[2] By legislatively requiring that local churches be allowed to retain ownership of local church real property in certain circumstances, contrary to the United Method Church's established method of local churches holding property in trust for the parent church (as expressed elsewhere, such as in *The Book of Discipline*, deeds, etc.), Senate Bill 586 likely crosses the line from neutral law to impermissible interference with religious exercise. While on its face Senate Bill 586 does not require an impermissible interpretation of church doctrine or ecclesiastical issues, and is thus distinguishable from the Alabama statute and others that have been invalidated,[3] the bill could effectively nullify a hierarchical denomination's own decisions concerning church property ownership, without providing any way for the Methodist Church to otherwise put into effect its own intention. In other words, the new proposed CA § 5-326 is not simply putting into statutory form the church's own specified result of what is to happen to its property in the event of disaffiliation. In addition, as mentioned in *Goodson*, invalidating trust provisions could potentially impact other aspects of the Methodist Church's protected free exercise, such as its use of itinerant clergy. To that end, it is my view that a court would likely find that the new proposed CA § 5-326 violates the Constitution and Article 36 of the Declaration of Rights.

To the contrary, the current CA §§ 5-326 and 5-327 do not infringe upon the free exercise of religion because they follow the property ownership arrangement that the United Methodist Church has already established for itself and exist to provide clarity to the courts through a neutral law. *See Letter of Advice to the Honorable C. Anthony Muse and the Honorable Aisha N. Braveboy from Counsel to the General Assembly Dan Friedman*, at 1 (March 14, 2014) (noting that CA §§ 5-326 –5-327 served to codify a part of the United Methodist Church's code of discipline by which all local church property is held for the benefit of the general conference of the United Methodist Church). Similarly, repealing these statutes would not impact any other methods the United Methodist Church has used to ensure hierarchical control over local church property. *See id.* (advising that neither the adoption nor the repeal of §§ 5-326 and 5-327 would violate free exercise rights). Thus, it is my view that the portions of Senate Bill 586 that repeal current law would likely

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[2] The issue of retroactivity is separately addressed in the attached *Letter of Advice to the Honorable C. Anthony Muse from Assistant Attorney General Natalie R. Bilbrough* (March 13, 2025).

[3] The Alabama statute at issue in *Goodson* authorized the local group to withdraw upon a determination of a *change of social policies* within the parent church and called for a judicial determination of the facts relative to the alleged changes in social policy. *Goodson*, 387 F.2d at 535 (emphasis added). Likewise, a Georgia statute struck down by the U.S. Supreme Court required "the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449-50 (1969). "To reach those questions would require the civil courts to engage in the forbidden process of interpreting and weighing church doctrine." *Id.* at 451.

not be considered unconstitutional as it would not require any particular determination as to church property ownership.[4]

I hope this letter is responsive. Please let me know if you have any further questions.

Sincerely,

Natalie Bilbrough

Natalie R. Bilbrough
Assistant Attorney General

[4] If faced with a claim under the Free Exercise Clause, in addition to evaluating whether repeal of CA §§ 5-326 – 5-327 would burden religious belief or action (which I believe it would not do), a court would also consider whether the law's repeal was motivated by hostility to religion or a particular religion. *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 634-39 (2018); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 n.1 (2022). I can foresee an argument that the current law bestows a religiously neutral "benefit" upon the United Methodist Church, and that by taking away the benefit for only one denomination but not others who have similar "benefits" under State law, the General Assembly has disfavored a single religious community. A plaintiff may try to use this rationale to imply hostility or impermissible discrimination. However, as long as the legislative record reflects religiously neutral and rational reasons for repealing CA §§ 5-326 – 5-327, I see no ultimate merit in this argument.

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NATALIE R. BILBROUGH
Assistant Attorney General

March 13, 2025

The Honorable C. Anthony Muse
Maryland Senate
422 Miller Senate Office Building
Annapolis, Maryland 21401
Via email

RE: Senate Bill 586 — Corporations and Associations – Methodist Church Trust Requirement – Repeal

Dear Senator Muse:

You have requested a letter of advice on the constitutionality of Senate Bill 586 ("Corporations and Associations – Methodist Church Trust Requirement – Repeal") with the addition of a proposed amendment (SB0586/173520/01) that would allow a local church to disaffiliate from the United Methodist Conference ("Conference") and retain ownership of its property, subject to the local church reimbursing the Conference for certain financial investments made by the Conference. The proposed amendment has the potential to raise additional issues relating to the Contract Clause, unconstitutional impairment of vested rights, and separation of powers, to the extent it would apply retroactively. In my view, however, the proposed amendment is not clearly unconstitutional because either (1) it does not apply retroactively (or a court would interpret it so as not to apply retroactively), thus avoiding any impairment of vested rights or contractual obligations, or (2) if a court were to interpret it to apply retroactively, a court might find that the law provides for just compensation to the Conference through the reimbursement requirement. I explain further below.

Because the proposed amendment would require a different result as to the disposition of a disaffiliated local church's property than would have occurred under existing Corporations and Associations Article ("CA"), §§ 5-326 and 5-327 and under existing contracts or agreements between the local church and the Conference, it has the potential to impair contracts in violation

of the Contract Clause,[1] as well as abrogate vested rights in violation of the Maryland Constitution, *if it is applied retroactively*. The Maryland Supreme Court "has consistently taken the position that retroactive legislation, depriving persons or private entities of vested rights, violates the Maryland Constitution, regardless of the reasonableness or 'rational basis' underlying the legislation." *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 625 (2002); *see also Harris v. Whiteley,* 98 Md. 430, 442 (1904) ("[I]t was beyond [the Legislature's] power to divest or impair ... any vested rights of property acquired under previously existing laws."); *Dryfoos v. Hostetter*, 268 Md. 396, 408 (1973) (acknowledging that the Legislature cannot, by statute, "take a property interest from one person and vest it in another").

In the past, former Counsel to the General Assembly Dan Friedman raised the potential of a vested rights issue in connection with prior bills that would have repealed CA §§ 5-326 and 5-327:

> If, in the future, an individual local church seeks to leave the United Methodist Church, and if the parties are unable to arrive at an amicable property settlement, litigation may result. In that litigation, the United Methodist Church would argue that the statutes and the underlying code of discipline give it a vested property right in the local church property. The local church might advance any number of arguments to the contrary, including (l) that they associated with the United Methodist Church or its predecessors before the June 1, 1953 effective date of the law and, thus, that the 1953 law deprived them of their vested property rights and was, thus, unconstitutional as applied to them; and/or (2) that local church's surrender of its rights in its own property was otherwise ineffective. There is no limit to the myriad factual scenarios that might be presented to a court and I cannot predict the outcome. It may be that in certain circumstances, a court finds the statute or the repeal of the statute unconstitutional as applied in a given scenario. Such a possibility is inevitable but does not require us to find that the existing law or the repeal bill is unconstitutional.

Letter of Advice to the Honorable C. Anothony Muse and the Honorable Aisha N. Braveboy from the Counsel to the General Assembly Dan Friedman (March 14, 2014).

Despite the potential constitutional issues, I believe that constitutional issues can be avoided in one of two ways.

First, statutes are presumed to apply only prospectively, unless there is "clear evidence, legally sufficient to rebut that presumption, that the legislature intended for the statute to apply retroactively." *State Ethics Comm'n v. Evans*, 382 Md. 370, 387 (2004). Further, "even if such

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[1] The Contract Clause of the U.S. Constitution prohibits states from passing any law "impairing the Obligation of Contracts." U.S. Const., Art. I, § 10, cl. 1. A law is subject to Contract Clause scrutiny if it would substantially impair an existing contractual relationship. *E.g., McDaniel v. American Honda Fin. Corp.*, 400 Md. 75, 89-90 (2007). However, legislation that substantially impairs an existing contract may still be constitutional if it is reasonable and necessary to serve a legitimate or important public purpose. *E.g., Baltimore Teachers Union v. Mayor & City Council of Baltimore*, 6 F.3d 1012, 1018-19 (4th Cir. 1993).

[legislative] intent is adequately established, a statute will not be permitted to so apply if such an application would impair a vested right." *Id.* The Maryland Supreme Court has also stated that "whenever a statute is susceptible, without doing violence to its express terms, of being understood either prospectively or retrospectively, courts of justice invariably adopt the former construction. A statute ought not to have a retroactive operation unless its words are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature could not be otherwise satisfied; and especially ought this rule to be adhered to where such a construction would alter the pre-existing situation of the parties, or would affect or interfere with their antecedent rights." *Williams v. Johnson*, 30 Md. 500, 507-08 (1869).

This Office has previously assessed a proposal similar to the one here that would have allowed a local church to retain ownership of property on withdrawal from the parent church. Former Counsel Friedman stated that a court would likely "interpret the new law to apply only prospectively and only to property disputes caused by a withdrawal from the parent church" so as to "preserve the vested rights of the parent church in the local assets." *Letter of Advice to the Honorable C. Anothony Muse from the Counsel to the General Assembly Dan Friedman* (April 2, 2010) (assessing amendment to Senate Bill 1091 of 2010). So too, it is my view that a court faced with a potentially unconstitutional abrogation of vested rights or impairment of contract, could interpret the proposed amendment to apply only prospectively, either because there is not clear legislative intent that it should be applied retroactively, or because such application would be unconstitutional.

A prospective interpretation or application would also avoid a potential separation of powers issue. Since the Conference and disaffiliated local churches are currently litigating issues concerning terms of disaffiliation, if the amended bill would require the resolution of issues in the lawsuit in a local church's favor, this would likely be found to violate the separation of powers.[2] *See, e.g.*, *Dorsey's Lessee v. Gary*, 37 Md. 64 (1872) (legislature cannot authorize courts to reopen final judgments); *Miller v. Fiery*, 8 Gill 45 (Md. 1849) (legislature may not adjudicate dispute); *see also Letter of Advice to the Honorable Brian E. Frosh from the Counsel to the General Assembly Dan Friedman* (March 30, 2010). But since the proposed amendment applies to any Methodist church in the State and if it applies prospectively, then the bill would not impose a result on the court in any pending lawsuit.

Second, even if the amended bill, if enacted, were to apply retroactively, it is possible the court would find that an impairment of the Conference's vested property rights is constitutional to the extent a court agreed that the new law provided just compensation to the Conference. Recently, the Maryland Supreme Court affirmed that the "Constitution of Maryland prohibits all legislation that retroactively abrogates vested property rights *without just compensation*, no matter the circumstances." *Roman Cath. Archbishop of Washington v. Doe*, No. 10 SEPT. TERM, 2024, 2025 WL 375996, at *5 (Md. Feb. 3, 2025) (emphasis added). But where just compensation is provided, a taking is permissible under the Constitution. Here, the amended bill would require that the local church "reimburse the [ ] Conference for financial investments made by the [ ]

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[2] *The Methodist Church of Cape St. Claire, et al. v. The Baltimore Washington Conference of the United Methodist Church, et al.*, Case No. C-02-CV-23-000500 (Circuit Ct. for Anne Arundel County, March 13, 2023).

Conference for the acquisition, maintenance, or improvement of real property used by the local church" as determined by an accounting provided by the Conference of all funds it "has contributed for the acquisition, maintenance, and improvement of the real property used by the local church." Proposed CA § 5-326. Whether this reimbursement qualifies as "just compensation" pursuant to Article III, § 40 of the Maryland Constitution would be an issue for the court under the circumstances of a particular case, but in my view, the reimbursement requirement prevents the bill from being facially unconstitutional to the extent it would apply retroactively.

To the extent retroactive application of the proposed amended bill in a particular case would impair other contractual obligations existing between the Conference and a local church, or would impair other vested rights beyond the Conference's right to the real property of the local church, it might be unconstitutional. In particular, analysis under the Contract Clause involves factual determinations and balancing that could vary depending on a church's particular circumstances.[3] However, I do not believe that a potential Contract Clause violation makes the proposed amended bill clearly unconstitutional on its face.

Accordingly, it is my view that the proposed amendment to Senate Bill 586 is not clearly unconstitutional. I hope this letter is responsive. Please let me know if you have any further questions.

Sincerely,

Natalie Bilbrough

Natalie R. Bilbrough
Assistant Attorney General

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[3] The Fourth Circuit uses a multi-factor test to evaluate whether a law substantially impairs a contractual obligation. *See City of Charleston v. Public Serv. Comm'n*, 57 F.3d 385, 392-94 (4th Cir. 1995). If a court finds a substantial impairment, it will then apply the Contract Clause balancing test, which examines whether the change is reasonable and necessary to serve a legitimate or important public purpose. *See Baltimore Teachers Union*, 6 F.3d at 1021-22.

Written Testimony of Thomas E. Starnes to the House Economic Matters Committee Re: Senate Bill 586 2025 Legislative Session

Baltimore-Washington Conference
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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 several

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

ffm. 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 cann ot be determined without intervention by the State in a reli gious 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 Ca thedral is an archiepiscopal see of one of the great religio us organizations. What is at stake here is the power to ex ercise religious authority. That is the essence of this contr oversy. It is that even though the religious authority beco mes manifest and is exerted through authority over the Ca thedral as the outward symbol of a religious faith. **[*122]**

The judiciary has heeded, naturally enough, the menace t o a society like ours of attempting to settle such religious s truggles by state action. And so, when courts are called u pon to adjudicate disputes which, though generated by co nflicts of faith, may fairly be isolated as controversies over property and therefore within judicial competence, the aut hority of courts is in strict subordination to the ecclesiastic al law of a particular church prior to a schism. Watson v. J ones, 13 Wall. 679, 20 L.Ed. 666. This very limited right of resort to courts for determination of claims, civil in their nat ure, between rival parties among the communicants of a r eligious faith is

Memory is short but it cannot be forgotten that in the State of New York there was strong feeling against the Tsarist r egime at a time when the Russian Church was governed by a Procurator of the Tsar. And when Mussolini exacted t he Lateran Agreement, argument was not wanting by thos e friendly to her claims that the Church of Rome was subj ecting 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 rel igious beliefs deemed dangerous to ruling political author ity. It was on this basis, after all, that Bismarck sought to d etach German Catholics from Rome by a series of laws n ot too different in purport from that before us today.[3] The l ong, 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 religio us authority. Religious leaders have often made gestures of accommodation to such pressures. History also indicat es that the vitality of great world religions survived such ef forts. In any event, under our Constitution it is not open to t he governments of this Union to reinforce the loyalty of th eir citizens by deciding who is the true exponent of their r eligion.

Finally, we are told that the present Moscow Patriarchate i s not the true superior church of the American communica nts. The vicissitudes of war and revolution which have be set the Moscow Patriarchate since 1917 are said to have r esulted in a discontinuity which divests the present Patriar ch 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 b ody by a counting of heads. **[*123]** Our Constitution does assure that anyone is free to worship according to his con science. A legislature is not free to vest in a schismatic he ad the means of acting under the authority of his old churc h, 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 d angers attributed to submission by the mother church in M oscow to political authority To reject this claim one does n ot have to indulge in the tendency of lawyers to carry argu ments to the extreme of empty formal logic. Scattered thro ughout the country there are religious bodies with ties to v arious countries of a world in tension—tension due in part to shifting political affiliation and orientation. The consider ation which permeates the court's opinion below would gi ve 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 pl ausible legislative findings, to divest such bodies of spiritu al authority and of the temporal property which symbolize s it.

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

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

Mr. Justice JACKSON, dissenting.

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

The appellant Benjamin's defense against this owner's de mand 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 wor ds: 'Said premises pursuant to the above rules of the Rus sian Orthodox Church are held in trust for the benefit of th e accredited Archbishop of said Archdiocese, to be posse ssed, occupied and used by said Archbishop as his resid ence, as a place for holding religious services, and other purposes related to his office and as the seat and headqu arters for the administration, by him, of the affairs of the Ar chdiocese both temporal and spiritual.' And, says the app ellant Benjamin, he is that Archbishop. These allegations are denied, and they define the issues as tendered to the state courts. **[*127]**

I agree with appreciation of the history of this controversy as 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 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.'

[2.] 50 McKinney's N.Y.Laws § 105:

[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; * * *.'

[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;

/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, The Ten Years' Conflict (Edinburgh 1849); Free Church of

'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.