

**2026 SB0172Testimony For 2026-01-28.pdf**

Uploaded by: Alan Lang

Position: FAV

# Testimony For SB0172

Honorable Senators

Please enter a favorable report for SB0172.

I support

- repealing a requirement that the assets of any Methodist Church be held in trust for the United Methodist Church (UMC) and be subject to the control of the United Methodist Church;
- repealing a certain provision of law providing that the absence of a trust clause in any deed or conveyance executed before a certain date does not exclude certain local churches from certain provisions of law or responsibilities related to the United Methodist Church;
- providing that a local church that disaffiliates from the United Methodist Conference shall retain ownership of its real property, subject to a certain reimbursement requirement;

I believe it is an injustice that UMC conference requires member churches that no longer wish to affiliate with UMC because of doctrinal differences, must pay the conference the market value of the buildings and the land if the congregation wants to continue to use them. If the congregation cannot afford to pay the conference even though the conference did not pay anything towards the construction and maintenance of the buildings, the only other alternatives is to leave and start over, or remain a UMC member.

This bill would remedy this situation, so please enter a favorable report for SB0172.

Alan Lang  
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Legislative District 30B  
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[Alanlang1@verizon.net](mailto:Alanlang1@verizon.net)  
January 26, 2026

# **SB 172 Corporations and Associations Methodist Ch**

Uploaded by: C. Anthony Muse

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Sponsor Testimony**

**SENATE BILL 172- Corporations and Associations - Methodist Churches - Trust  
Requirement Repeal and Disaffiliation**

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee:

I appreciate the opportunity to present testimony in support of **Senate Bill 172**. This legislation as submitted passed the Senate 42-1 last year.

Senate Bill 172 updates Maryland law governing property ownership within Methodist churches to reflect fairness, transparency, and modern realities facing local congregations. Current statute requires that all assets of a Methodist church be held in trust for the United Methodist Church, even when the local congregation acquired, maintained, or improved the property using its own resources and later seeks to disaffiliate.

This bill repeals that mandatory trust requirement and replaces it with a clear, balanced statutory framework.

Under SB 172, a local Methodist church that disaffiliates from the United Methodist Conference may retain ownership of its real property. At the same time, the bill protects the Conference's legitimate financial interests by requiring reimbursement for any documented investments the Conference made toward the acquisition, maintenance, or improvement of that property.

The bill includes important safeguards. Before any reimbursement is required, the United Methodist Conference must provide the disaffiliating church with a full and transparent accounting of its financial contributions. Additionally, a local church may not be required to reimburse the Conference for property investments that were made by the local congregation itself. This ensures that reimbursement obligations are fair, evidence-based, and limited to actual Conference contributions.

Senate Bill 172 also repeals outdated statutory provisions that previously allowed courts to infer a trust relationship even when no trust clause existed in a deed executed before 1953. Removing this language provides clarity, reduces litigation, and aligns statutory law with

modern principles of property ownership. This bill will codify the new provisions within the Corporations and Associations Article.

Importantly, SB 172 does not interfere with matters of faith, doctrine, or internal church governance. It addresses only civil property rights and provides a fair process for resolving ownership when affiliations change.

For these reasons, I respectfully urge the Committee to issue a **favorable report on Senate Bill 172**, as amended.

Thank you for your consideration.

**Statement 2026.pdf**

Uploaded by: CHRIS CAIN

Position: FAV

Written Testimony Monday 1/26/2026

**SB 172 – Methodist Churches**

I Christana Cain of 309 Washington Ave Brooklyn Park MD 21225

Written statement is that I agree with and I am in support of Bill SB 172

Thank you.

Chris Cain

**SB172\_Written\_Testimony\_Chris\_Cavey.pdf**

Uploaded by: CHRISTIAN CAVEY

Position: FAV

## Written Testimony in Support of SB172

Corporations and Associations - Methodist Churches - Trust Requirement Repeal and Disaffiliation

Chairman Smith and Members of the Committee,

For 162 years, our congregation has served the Upperco area of Baltimore County. We built our church with our own resources. Our deeds are in our name alone, with no mention of the Baltimore-Washington Conference. In 1999, we independently funded a \$620,000 expansion with no Conference support.

Now, Maryland law allows the Conference to demand \$630,000 to retain property we solely own and funded, fifteen times our annual budget, or forfeit everything.

I respectfully urge your support for SB172, which replaces this inequitable provision with a fair, transparent framework: ownership follows documented investment.

### What This Bill Is—and What It Is Not

SB172 is a civil property rights bill. It addresses who owns real estate based on who paid for it, nothing more.

It is not about theology, doctrine, or governance. We are not asking the State to referee internal church matters. Our denomination has every right to set its theological direction. We do not challenge that authority, and SB172 does not touch it.

What we challenge is this: a denominational body claiming ownership of property it never funded, based on a statute that overrides deeds and imposes retroactive obligations.

Whether a church leaves due to theology, finances, or realignment is irrelevant. The legal question is: Should Maryland law allow an organization to seize property it didn't pay for?

SB172 says no, using neutral, objective criteria like deeds, receipts, and financial records, equally applied regardless of theology or politics.

### Our Church's Experience: When Institutional Power Overrides Ownership

We have funded, built, and maintained our building for 162 years. The Conference made no capital investment. Our deeds contain no trust language, no denominational claim.

When we expanded in 1999, we requested Conference help and were declined. We completed it ourselves.

Despite limited resources, we've paid apportionments, supported clergy, and maintained our property. When disaffiliation became an option, we were ready to pay our fair share: unpaid apportionments,

clergy salaries, pensions.

What we cannot pay, and should not be asked to, is \$630,000 to retain property the Conference never funded, never built, never maintained.

Now, even disaffiliation has been closed, leaving us no path forward unless the law changes.

#### SB172 Applies Neutral Legal Principles

SB172 aligns with *Jones v. Wolf* (1979), which affirms that civil courts, and legislatures, can resolve church property disputes using neutral principles of law: deeds, financial records, not theology.

SB172 doesn't decide who's right in a church dispute. It ensures ownership follows contribution.

If the Conference contributed financially, it should be reimbursed. If not, it should not claim ownership through hierarchy.

This is how Maryland resolves every other property dispute. SB172 simply applies that same fairness to churches.

#### SB172 Protects All Congregations

This bill offers a fair model for churches statewide: conservative congregations, progressive ones, and those facing hardship or merger.

Property rights aren't ideological. If a congregation funded its property, its theology shouldn't dictate ownership. SB172 ensures universal protection grounded in fairness.

#### Addressing Concerns

This does not interfere with religious freedom. It protects both the denomination's rights and the congregation's rights to depart without forfeiting funded property.

The 1976 law was passed in another era. Updating unfair laws is what legislatures are supposed to do.

Our church was founded in 1862. The trust clause came 114 years later. We never agreed to it.

SB172 brings clarity, not instability. Objective ownership, based on contribution, is the fairest standard.

#### Why This Matters

Flat property-value fees disproportionately harm small, rural churches. Our \$630,000 fee is fifteen times our budget.

These buildings serve entire communities. Empty buildings due to forced forfeiture help no one.

SB172 preserves ministry continuity and reduces litigation by relying on deeds and receipts, not hierarchy.

We support paying pensions. That obligation is distinct from surrendering funded property.

Maryland has the chance to lead with fairness.

Conclusion

SB172 restores fairness. It ensures deeds mean what they say, and that ownership follows investment.

We are not asking for a gift. We are asking to keep what we paid for, and what our deeds show is ours.

Without SB172, Maryland law enables property seizure through hierarchy instead of evidence.

This is not about theology. It is about civil law. And civil law should be fair.

Please support SB172. It is narrow, respectful, essential, and right.

Chris Cavey

4705 Black Rock Rd.

Hampstead, MD 21074

443-465-1002

**SENATE BILL 172 .pdf**

Uploaded by: Curtis White

Position: FAV

## **SENATE BILL 172**

**I Will Brown, Trustee Chair at Clarks Chapel UMC have been very concerned about our church property which was deeded to our ancestors in 1855 by Clark's family. A group of free and enslaved African Americans started the congregations in 1855 to include a gravesite. The church was rebuilt in 1883 and was called Clarks Chapel Church which is now deemed historic. In 2003 the congregation decided to build a brand new church with a full finished basement, commercial kitchen and outside a large pavilion. I expressed this because all ownership was accomplished by our ancestors and present congregation. The Clarks Chapel Church Trustees names are on both deeds and bank loans, no one has helped us pay the mortgage, mortgage insurance, cemetery maintenance, utility bills, building maintenance and all the various state and county inspections that are required.**

**The Baltimore Washington Conference provides pastors to churches but the churches pay their Pastors salary to include paying mission funds required by the Baltimore Washington Conference; we have always paid both! Our church does its own mission work by financially supporting Sickle Cell, Alzheimer's Association, homeless and others. When using a bank lender as an example who chooses a third party to put property in a trust, they will only take over property if the borrower defaults in payment and we have never done that. I feel the idea of the Church Conference owning church properties takes me back to what our ancestors went through by having property they owned stolen from them. We feel Clarks Chapel UMC Trustees and congregation of the church are the true owners of our property.**

**The Baltimore Washington Conference has always expressed that the state lawmakers should stay out of religious affairs but now they are asking the state to side with them on keeping the trust clause law in place. It appears that the Baltimore Washington Conference want it both ways! We hope your committee members can support SB 172 so we can retain all of our properties that we have worked so hard to build and maintain.**

**I feel over a quarter of the United Methodist churches have left the conference because of their greed of trying to take over churches who feel as we do that they are the true owners of their property.**

**Will Brown,**

**Clarks Chapel UMC, Trustee Chair**

# **Testimony of Curtis White.pdf**

Uploaded by: Curtis White

Position: FAV

This is a common-sense bill that must pass.

For years, we have dealt with a Conference that has done nothing but take from churches and hold them hostage under an archaic rule that should have been eliminated long ago. Our church—and many others—has paid enormous amounts of money over the years, with continual increases, yet received nothing in return except the constant threat of losing our church if we chose to leave.

I couldn't begin to calculate how much our church alone has paid compared to what the Conference has actually done to assist us—or any church. You simply cannot claim to be a beneficiary of something you had no part in starting, supporting, building, or maintaining.

I would also like to see the documentation showing the agreement that was supposedly made when churches joined the Conference. No one seems able to produce it, or even explain when or how such an agreement occurred.

Before COVID, the disaffiliation process was simple and straightforward. Instead of continuing the same process, the Conference made changes behind closed doors while churches were not present, making it far more difficult to leave. It's hard not to conclude that this was done deliberately, knowing they would lose a significant number of churches—and a significant amount of money. Changing the rules at the last minute may have protected their bottom line, but it was not the right thing to do.

This entire situation reinforces why so many churches simply fold and why people stop joining. A dark cloud hangs over the process because it feels like a business transaction—not a ministry. The Conference operates like a business, is structured like a business, and behaves like a business—cut-throat when money is at stake. That is why they are fighting so hard and demanding so much from churches that want to leave. To them, it is about money, not people or purpose.

Our church is different. We are one of the oldest—if not the oldest—African American churches in Harford County. We are an officially recognized African American Historical Site. The Conference never even acknowledged the award we received. Once again, it was clear that history, people, and purpose did not matter—only business.

This bill is about fairness. When an organization has done nothing to purchase, help build, maintain, or even visit a church, it should not be able to lay claim to that property. The law that allows this must be revoked.

This is not radical. It is not complicated.

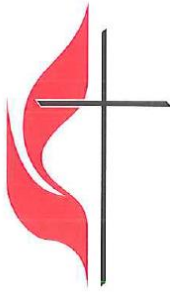
It is simply common sense.

Curtis White

**SB0172.pdf**

Uploaded by: Dale Thomas

Position: FAV



## CAPE ST. CLAIRE UNITED METHODIST CHURCH

855 Chestnut Tree Drive  
Annapolis, Maryland 21409

Phone: (410) 757-4896 Fax: (410) 757-7689 [www.capeumc.org](http://www.capeumc.org)

January 26, 2026

Most honorable and esteemed members of the Judicial Proceedings Committee,

On behalf of the Methodist Church of Cape St. Claire, grace to you and peace from God our Father, the Lord Jesus Christ, and the blessed Holy Spirit.

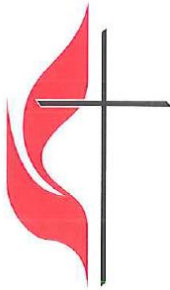
We write you today to encourage you to support SB0172 which seeks to repeal the United Methodist Church's Trust Clause from Maryland law.

We ask you to support SB0172 because we believe that the codification of the United Methodist Church's Trust Clause into Maryland law is unconstitutional. We believe the codification of the United Methodist Church's Trust Clause into Maryland law is unconstitutional because, in violation of both the Establishment Clause of the First Amendment and the long-standing principle of separation of church and state, ***it codifies a religious/theological provision*** (i.e. the United Methodist Church's Trust Clause) ***into secular law*** (i.e. Maryland law).

How do we know that the United Methodist Church's Trust Clause is a religious/theological provision? We know by two ways, namely its origin and its intent/purpose.

As to its origin: ***the source of the United Methodist Church's Trust Clause that has been codified in Maryland law is the United Methodist Church's Book of Discipline which***, along with everything therein, ***is of an intrinsically religious/theological nature*** just as the Baltimore-Washington Annual Conference of the United Methodist Church itself has argued before Maryland courts on numerous occasions and as the Honorable Judge Michael Malone of the Anne Arundel Circuit Court has also recognized and accepted in a summary judgment ruling issued on October 11, 2024 in favor of the Baltimore-Washington Annual Conference of the United Methodist Church (cf. *The Methodist Church of Cape St. Claire, et. al. vs. The Baltimore Washington Conference of the United Methodist Church, et. al.*; Case number: C-02-CV-23-000500). Moreover, if the Baltimore-Washington Annual Conference of the United Methodist Church arguing before the court that courts are barred from even looking at and considering the United Methodist Church's Book of Discipline for the sake of court rulings precisely because the United Methodist Church's Book of Discipline and everything therein is of an intrinsically religious/theological nature ***and*** their insistence to the Maryland legislature that it is appropriate to codify the United Methodist Church's Trust Clause into Maryland law is not an instance of trying to have one's cake and eat it too and speaking out of both sides of the mouth, we simply do not know what is!

As to its purpose/intent: as any student/scholar of Methodism worth their salt will know and acknowledge (including those who represent the Baltimore-Washington Annual Conference of



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the United Methodist Church), *the United Methodist Church's Trust Clause serves an inherently theological purpose*, specifically as a theological enforcement measure.<sup>1</sup> That is, the very purpose of the United Methodist Church's Trust Clause is to ensure that local congregations are preaching, teaching, and practicing in accordance with and not deviating from official United Methodist theology and doctrine. Historically, Methodist Conferences have invoked and carried out the Trust Clause on local congregations in order to take possession of local congregation's properties when they determined local congregations were preaching, teaching, and practicing in a manner inconsistent with United Methodist theology, doctrine, and practice. Given this explicit and inherent theological purpose of the United Methodist Church's Trust Clause, by codifying it into MD law, the state is participating in the United Methodist Church's interest of upholding and enforcing its theological/religious doctrines.<sup>2</sup> We believe that the state getting into the business of upholding and enforcing religious/theological doctrines is an obvious violation of the Establishment Clause of the First Amendment and the long-standing principle of separation of church and state.

These reasons are the same reasons that other well-known organizations in Maryland (e.g. American Civil Liberties Union – Maryland Chapter and Maryland Secular) have also supported past year's efforts to repeal the United Methodist Church's Trust Clause from Maryland law.<sup>3</sup>

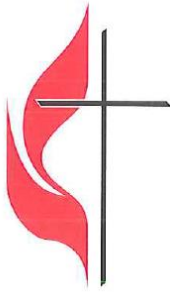
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<sup>1</sup> Do not simply take our word for it. Even the California-Pacific Annual Conference of the United Methodist Church's own Assistant Chancellor for Church Law explicitly states/argues that the Trust Clause serves a theological purpose in a recently published piece with the United Methodist Church's own news agency, UMNews. Cf. Luan-Vu Tran, "Trust Clause Stands as Connectional Cornerstone," n.p. [cited 26 January 2026]. Online: <https://www.umnews.org/en/news/trust-clause-stands-as-connectional-cornerstone>.

<sup>2</sup> Indeed, in his written testimony to the Maryland Senate's Judicial Proceedings Committee last year opposing SB0586, the Baltimore-Washington Annual Conference's own Chancellor Thomas Starnes seemingly recognized that the current law serves a theological purpose and participates in the theological interests of the United Methodist Church. In last year's written testimony on behalf of the Baltimore-Washington Annual Conference of the United Methodist Church opposing SB0586, Starnes wrote that §§ 5-326 and 5-327 "...serve the purpose of accommodating the longstanding, **theologically rooted** principle of United Methodist Church governance..." (emphasis added). Access and view Starnes' 2025 written testimony here: [https://mgaleg.maryland.gov/cmte\\_testimony/2025/jpr/1zQRy5-n9RWLuZd\\_qIEeO-B\\_mdLS9EwUz.pdf](https://mgaleg.maryland.gov/cmte_testimony/2025/jpr/1zQRy5-n9RWLuZd_qIEeO-B_mdLS9EwUz.pdf)

<sup>3</sup> Access and view ACLU-MD's 2025 written testimony here: [https://mgaleg.maryland.gov/cmte\\_testimony/2025/jpr/1thgMKmdYXrHTgWWtfyPNATHgzthcvdoR.pdf](https://mgaleg.maryland.gov/cmte_testimony/2025/jpr/1thgMKmdYXrHTgWWtfyPNATHgzthcvdoR.pdf)

Access and view Maryland Secular's 2024 written testimony here: [https://mgaleg.maryland.gov/cmte\\_testimony/2024/ecm/1-VHUGxU97qla0gqc5sHQfNLk2QVrGmrK.pdf](https://mgaleg.maryland.gov/cmte_testimony/2024/ecm/1-VHUGxU97qla0gqc5sHQfNLk2QVrGmrK.pdf)



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For the reasons we have articulated above, we believe that the United Methodist Church's Trust Clause should be repealed from Maryland law. Accordingly, we hope you will support SB0172, do what you are able to convince your fellow Judicial Proceedings Committee members to support it as well, and, as a committee, give SB0172 a favorable report.

Blessings,

The Administrative Board of the Methodist Church of Cape St. Claire

# Senate Bill 172 - 2026.pdf

Uploaded by: Marlene Diehl

Position: FAV

## **Support for SB 172: Corporations and Associations – Methodist Churches – Trust Requirement Repeal and Disaffiliation**

**Date:** January 26, 2026

**To:** The Honorable William C. Smith, Jr., Chair **Senate Judicial Proceedings Committee 2**  
East, Miller Senate Office Building Annapolis, Maryland 21401

**Re: SUPPORT for Senate Bill 172**

Dear Chair Smith and Members of the Judicial Proceedings Committee,

I am writing to express my strong support for **Senate Bill 172**, introduced by Senator Muse. This legislation is a necessary step in restoring property rights and fundamental fairness to local Methodist congregations across the State of Maryland.

For decades, Maryland law (**§ 5-326 and § 5-327 of the Corporations and Associations Article**) has uniquely and unfairly bolstered the United Methodist Church's "Trust Clause." While most religious property disputes are decided by "neutral principles of law" (the names on the deed), Maryland's statutes have effectively bypassed the deeds of local churches, handing "beneficial ownership" to a regional Conference that, in many cases, has provided no financial support for the acquisition or maintenance of these properties.

**Local churches deserve the protection of SB 172 for the following reasons:**

- **Financial Autonomy:** In nearly every instance, local congregations—not the Conference—have paid the mortgages, covered the insurance, funded the repairs, and maintained the grounds of their buildings for generations.
- **The "Pay-to-Play" Inequity:** Local churches are required to pay monthly "apportionments" to the Conference simply to maintain their membership. These payments are often viewed as a service fee for a connection that provides little to no direct financial assistance in return. It is unjust for the Conference to then demand 50% or more of the property's value as an "exit fee" when the congregation decides to disaffiliate.
- **Correction of Historical Overreach:** Current law (§ 5-327) even applies the trust clause retroactively to deeds signed before 1953, even if those deeds contain no mention of a trust. This is a legislative overreach that prioritizes a denomination's internal policy over the legal property records of Maryland citizens.
- **Fair Reimbursement:** SB 172 is balanced. It requires a local church to reimburse the Conference for any *actual* financial investments the Conference made. If the Conference truly contributed to the building, they get their money back. If they did not, they cannot claim ownership of a building they did not build.

By passing SB 172, the Maryland General Assembly will ensure that religious property disputes are handled with transparency and that the state no longer acts as an enforcer for a denomination's internal property claims against its own citizens.

I respectfully urge a **FAVORABLE** report on Senate Bill 172.

Sincerely,

Marlene Diehl  
3997 Shamrock Court  
Port Republic, MD 20676  
natediehl@comcast.net

**2026 SB0172 FAV.pdf**

Uploaded by: Mathew Goldstein

Position: FAV



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January 28 2026

**SB 01/2 - FAV**

Corporations and Associations - Methodist Church Trust Requirement - Repeal

Dear Chair [William C. Smith, Jr.](#), **Vice Chair** [Jeff Waldstreicher](#), and Members of the Judicial Proceedings Committee,

The Eighth Circuit and the high courts of seven States—Alaska, Arkansas, Indiana, New Hampshire, Oregon, Pennsylvania, and Texas—have adopted the “strict approach” to *Jones v. Wolf* (1979), the leading church property case to date. Intermediate courts in Louisiana, Minnesota, and Missouri have likewise adopted this approach in decisions that the high courts of those states declined to review. Each of these jurisdictions holds that *Jones* requires courts to resolve property disputes between religious organizations the same way they resolve property disputes between secular institutions: by applying ordinary principles of state trust and property law. Accordingly, these courts recognize a trust claimed to vest title to local real property in a national church only if the alleged trust satisfies the established rules that state law requires to create a trust. More than half of the states within the United States have determined that Methodist trust clauses for that one denomination are not enforceable.

Secular Maryland favors the repeal of all denomination specific, and institution specific, laws. Laws narrowly focused on single institutions are unnecessary and unavoidably entangle our government with the partisan interests of particular institutions. State government should avoid such entanglements. A neutral law would apply equally to all similarly situated institutions, both religious and secular. Although this bill fails to achieve that goal it is a step forward towards that goal and Secular Maryland accordingly supports this bill.

# **Testimony to the Maryland Senate Judicial Proceedi**

Uploaded by: Matthew Sichel

Position: FAV

## Testimony to the Maryland Senate Judicial Proceedings Committee

SB 0172

January 28, 2026, 11:00pm

Rev. Matthew S. Sichel

I am the Rev. Matthew Sichel, and I live in Manchester, Maryland. I am now clergy in the *Global* Methodist Church. However, up until July 1 of 2023, I was clergy in the *United* Methodist Church, in the Baltimore-Washington Conference, serving in Hampstead, Maryland. Today, I represent the Baltimore-Washington Chapter of Wesleyan Covenant Association, a caucus group within the United Methodist Church (UMC) that advocates for traditional Christian belief. It is well known that the UMC is going through a schism over theology, especially as it relates to teachings on human sexuality.

Some have noted that this is the largest church schism in America since the Civil War, and that is true. 25% of the churches in the United States have already left the denomination, in what has become a costly method called disaffiliation.

The process for disaffiliation was costly and cumbersome because the denomination owns all local church property. Other Conferences were very gracious in their terms for churches to depart. Not so in the Baltimore-Washington Conference. To leave, the Conference demanded churches pay 50% of their local church's assessed property value. For many congregations, this was impossible.

Note, that though the denomination claims ownership of these properties, it is the *local church* which purchased, improved, and maintained them for decades. The Conference has been reticent and obstinate to any negotiation lowering this cost, and one of the things they consistently point to is this text in the Corporations and Associations Regulations in Maryland's Code, which I believe is an illegal intrusion of government into the life of a church. In the United States, religious organizations are promised freedom from government intervention into their ability to order their religious life. We understand this to be Jefferson's "wall of separation between church and state," to which he referred in his 1802 letter to the Danbury Baptist Association. Yet, here in this law, Maryland has deemed it the *government's business* to regulate the relationship between a local congregation and the denominational leadership. This should not be. The Conference cannot both appeal to the law for their case to keep church property, and then at the same moment complain that the government cannot have a say into the way they do their business.

This should be a disagreement between the local congregations and the denomination in which the State has little to say, other than what is fair and just. The Conference should not be able to point to some item in the Maryland Code which, on its face, looks like an "establishment of religion." For this reason, I urge you all to vote in favor to repeal these items from the Maryland Code.

Thank you, and God bless you.

# Written Testimony.pdf

Uploaded by: Sharon Austin

Position: FAV

My name is Sharon Austin. I am a member of Asbury Broadneck UMC, Annapolis Maryland. I am favorable of SB0172. My forefathers have made grave sacrifices monetary and physical, through sweat and tears to provide us with our place of worship. I am 71 years old and support OUR Church Home of Worship with the same commitment and spirit. We want to be able to make our own decision and keep our building and assets without being penalized. This is the future of our children.

**SB0172\_Testimony\_John\_M\_Strawbridge.pdf**

Uploaded by: John Strawbridge

Position: UNF

SB0172

CORPORATIONS AND ASSOCIATIONS – METHODIST CHURCHES – TRUST REQUIREMENT AND DISAFFILIATION

Written Testimony against

John M. Strawbridge

Lay Leader of Lovley Lane United Methodist Church

Vice-President of the United Methodist Historical Society of Baltimore-Washington

I write to speak against SB0172 on the grounds that is neither good policy nor good practice.

As a matter of policy; The section of Maryland law which this proposal seeks to repeal does not exist as a discrete kernel of law but as one aspect of much larger and more full public policy – policy which is intended to protect the State of Maryland and the entities which operate here. The Methodist Church Trust Clause addressed in the proposal exists independently of Maryland Law as part of the world-wide United Methodist Church Book of Discipline which governs the polity and practice of every United Methodist Church affiliated congregation not only in Maryland, and not only in the United States, but around the world. The law in Maryland does not establish the Trust, but is an affirmation by the State that Maryland recognizes the right of the Church to establish and uphold its polity in this state as it does in every state and nation. Further, the Maryland statute is one of several in Maryland law which also recognize the rights of other denominations. To “cherry pick” the section of law which deals only with one denomination not only is ineffectual, but opens the State of Maryland to accusations of religious favoritism, interference in Church polity and of catering to certain private interests over public freedoms.

As a matter of practice, it is impractical for the State of Maryland to assert that it will not recognize long-standing and binding matters of a Trust which were entered into voluntarily and knowingly by the parties involved.

The governing document of the United Methodist Church (the Book of Discipline) establishes that all real and personal property of any local UM church is held In Trust for the Benefit of the United Methodist Church (§ 2501). This has been true since the Methodist Denomination was established in Baltimore City in 1884. Any person or congregation who has joined the denomination since that time (or was incorporated into it at that time) has knowingly and willingly done so under the terms of this sacred Trust Clause.

The church is a voluntary organization. Any person or group of people are free to leave the denomination at any time at no personal cost. What they are not free to do, is to take property held legally in trust with them as they depart. Overwhelmingly, these church properties date back well before such persons became members, and their current personal reasons for wanting to leave the denomination do not now outweigh the intention of the generations who came before and who freely gave their tithes and offerings to pay for and uphold the church property as a Methodist house of worship.

Those who wish to leave the denomination now became members in the first place because the church was a Methodist Church. Likewise, any other members (and their offerings) were part of the church specifically because it was a Methodist (or United Methodist) church, and has historically been upheld by the appointments of Methodist Pastors by the denomination.

These congregations and their individual members have enjoyed the benefits of having a world-wide, system of mission work, established hymn books and orders of worship, a system of educated and ordained pastors and a well-funded and managed system of healthcare and retirement benefits for the clergy and many other benefits derived from affiliation with a connected world-wide denomination that would not be possible for an individual congregation. The fact that some few congregations, having enjoyed the benefits of their affiliation with the United Methodist Church, currently wish to be relieved of their obligation to the United Methodist church under the Trust Clause is “bad faith” in the legal sense, and not something that the State of Maryland should allow itself to be drawn into. Further, existing congregations

in Maryland (and outside of Maryland) should not be penalized through a challenge to fundamental church polity in order to bend to the desires of a few congregations who no longer wish to live into their commitment under the trust.

I offer this testimony as the Lay Leader of a two-hundred and fifty-four year old congregation in Baltimore City, as the Vice-President of the Baltimore-Washington Methodist Historical Society (founded in 1855), and as a life-long citizen of the State of Maryland who does not wish to see his state expend its legislative energy and credibility on an action which not only is un-impactful under the larger body of policy, but which is contrary to ordinary and logical understanding of trust law and religious freedom.

I thank you for receiving my testimony and your service to the citizens of Maryland in considering these matters.

# **Unfavorable SB0172.pdf**

Uploaded by: Sheridan Allmond

Position: UNF

Chair and members of the Committee, thank you for the opportunity to testify.

My name is Rev. Sheridan Allmond, and I serve as Chair of the Board of Trustees of the Baltimore-Washington Conference of The United Methodist Church. I speak today in opposition to Senate Bill 0172.

As Trustees, our responsibility is fiduciary and legal. We hold church property in trust to ensure that assets given for sacred and charitable purposes are protected, maintained, and used in accordance with the intentions of those who contributed them—past, present, and future.

The Methodist Trust Clause is not an innovation. It is a well-established legal and ecclesial framework that has governed Methodist property for generations. Congregations enter into this arrangement knowingly and voluntarily at the time of incorporation. Courts across the country have consistently recognized its validity under neutral principles of law and the First Amendment.

Senate Bill 0172 would disrupt this settled framework by inviting state intervention into internal church governance and retroactively altering longstanding property agreements. From a trustee perspective, this raises serious concerns about contractual stability, donor intent, and increased litigation risk.

More broadly, the bill sets a precedent that extends beyond Methodists. If the state can redefine the internal property rules of

one denomination, no faith tradition with connectional or hierarchical governance is secure. That is not a narrow fix.

The United Methodist Church already has established, orderly processes to address congregational transitions and property matters. These processes are designed to balance local discernment with broader fiduciary obligations and have functioned without state interference.

For these reasons, and in keeping with our duty to protect charitable assets and religious liberty, I respectfully urge the Committee to issue an unfavorable report on Senate Bill 0172.

Thank you for your consideration.

## **SB172**

Uploaded by: Thomas E. Starnes

Position: UNF



**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.<sup>1</sup> 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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<sup>1</sup> 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**



CAROLYN A. QUATTROCKI  
*Chief Deputy Attorney General*

SANDRA BENSON BRANTLEY  
*Principal Counsel*

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*Chief, Equity, Policy, and Engagement*

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

ANTHONY G. BROWN  
*Attorney General*

NATALIE R. BILBROUGH  
*Assistant Attorney General*

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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> 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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<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup>

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

Sincerely,



Natalie R. Bilbrough  
Assistant Attorney General

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<sup>4</sup> 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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**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY**

**ANTHONY G. BROWN**  
*Attorney General*

**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,<sup>1</sup> 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 (1) 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. Anthony 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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<sup>1</sup> 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. Anthony 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.<sup>2</sup> *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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<sup>2</sup> *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.<sup>3</sup> 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 R. Bilbrough  
Assistant Attorney General

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<sup>3</sup> 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**  
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 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.<sup>1</sup> 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

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<sup>1</sup> 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 and 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.

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## Northside Bible Church v. Goodson

<b>Decision Date:</b>	07 December 1967
<b>Docket Number:</b>	No. 24421., 24421.
<b>Citation:</b>	387 F.2d 534
<b>Parties:</b>	NORTHSIDE BIBLE CHURCH et al., Appellants, v. W. Kenneth GOODSON et al., Appellees.
<b>Court:</b>	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 & McNish, 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,<sup>1</sup> 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 trusteeship<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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,<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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,<sup>8</sup> or where a state court determination might be dispositive without reaching the constitutional issue.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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. Premitting 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.<sup>12</sup> 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*.

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## 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

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

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 " \* \* \* 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.

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

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

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

**Id. vLex Fastcase:** VLEX-886261346

**Link:** <https://fastcase.vlex.com/vid/kedroff-v-st-nicholas-886261346>

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.<sup>1</sup>

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

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, create

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 as depends upon whether the appointment of Benjamin [\*97] Amin by the Patriarch or the election of the Archbishop for North America by the convention of the American churches validly selects the ruling hierarchy 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.

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 see 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 Detroit in 1924.<sup>2</sup> This declared autonomy was made effective by a further legislative requirement that all the churches formerly administratively subject to the Moscow synod and patriarchate should for the future be governed by the ecclesiastical body and hierarchy of the American metropolitan district.<sup>3</sup> The foregoing analysis follows the interpretation of this article by the Court of Appeals of New York, an interpretation binding upon us.<sup>4</sup> Article 5—C is challenged as invalid under the constitutional prohibition against interference with the exercise of religion.<sup>5</sup> The appellants' contention, of course, is based on the theory that the principles of the First Amendment are made applicable to the states by the Fourteenth.<sup>6</sup> See Stokes, *Church and State in the United States* (1950), vol. 1, c. VIII.

The Russian Orthodox Church is an autocephalous member of the Eastern Orthodox Greek Catholic Church. It sprang from the Church of Constantinople in the Tenth Century. The schism of 1054 A.D. split the Universal Church into those of the East and the West. Gradually self-government was assumed by the Russian Church until in the Sixteenth Century its autonomy was recognized and a Patriarch of Moscow appeared. Fortescue, *Orthodox Eastern Church*, c. V. For the next one hundred years the development of the church kept pace with the growth of power of the Czars but it increasingly became a part of the civil government—a state church. Throughout that period it also remained an hierarchical church with a Patriarch at its head, governed by the conventions or sobors called by him. However, from the time of Peter the Great until 1917 no sobor was held. No patriarch ruled or was chosen. During that time the church was governed by a Holy Synod, a group of ecclesiastics with a Chief Procurator representative of the government as a member.

Late in the Eighteenth Century the Russian Church entered 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 administrative control of Moscow. White Russians, both lay and clerical, found asylum in America from the revolutionary conflicts, strengthening the feeling of abhorrence of the secular attitude of the new Russian Government. The church members already here, immigrants and nativeborn, while habituated to look to Moscow for religious direction, were accustomed to our theory of separation between church and state. The Russian turmoil, the restraints on religious activities and the evolution of a new ecclesiastical hierarchy in the form of the 'Living Church,' deemed noncanonical or schismatic by most churchmen, made very difficult Russian administration of the American diocese. Furthermore, Patriarch Tikhon, on November 20, 1920, issued Decision No. 362 relating to church administration for troublesome times. This granted a large measure of autonomy, when the Russian ruling authority was unable to function, subject to 'confirmation later to the Central Church Authority when it is reestablished.' Naturally the growing number of American-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 residence of Saint Nicholas under the administrative authority of the Holy Synod.

In 1917 Archbishop Evdokim returned to Russia permanently. Early that year an All Russian Sobor was held, the first 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 Archbishop. Uncertainties as to the succession to and administration of the American archbishopric made their appearance following this sobor and were largely induced by the almost contemporaneous political disturbances which culminated swiftly in the Bolshevik Revolution of 1917. The Russian Orthodox Church was drawn into this maelstrom. After a few years the Patriarch was imprisoned. There were suggestions of his counter-revolutionary activity. Church power was transferred, partly through a sobor considered by many as non-canonical to a Supreme Church Council. The declared reforms were said to have resulted in a 'Living Church' or sometimes in a 'Renovated Church.' Circumstances and pressures changed. Patriarch Tikhon was released from prison and died in 1925. He named three bishops as locum tenens for the patriarchal throne. It was one of these, Sergius, who in 1933 appointed the appellant Benjamin as Archbishop. The Church was registered as a religious organization under Soviet law in 1927. Thereafter the Russian Church and the Russian State approached if not a reconciliation at least an adjustment which eventuated by 1943 in the election of Sergius, one of the bishops named as locum tenens by Tikhon, to the Patriarchate. The Living or Renovated Church, whether deemed a reformed, a schismatic or a new church, apparently withered away. After Sergius' death a new patriarch 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.<sup>7</sup>

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, covering 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 decision of the dioceses to reunite with the Russian Mother Church, declare the agreement of the American Orthodox Church to abstain 'from political activities against the U.S.S.R.' and so direct its parishes, and elect a Metropolitan subject 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 Metropolitan-Exarch \* \* \* may be given some extended powers by the Moscow Patriarchy \* \* \*.'

The American congregations speaking through their Cleveland Sobor of 1946 refused the proffered arrangement and resolved in part:

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

That movement brought about the arrangements at the Detroit Sobor of 1924 for a temporary American administration of the church on account of the disturbances in Russia.<sup>8</sup> This was followed by the declarations of autonomy of the successive sobors since that date, a spate of [\*104] litigation concerning control of the various churches and occupancy of ecclesiastical positions,<sup>9</sup> the New York legislation (known as Article 5-C, notes 2 and 3, supra), and this controversy.

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

'It is stipulated that Bishop Alexi and Father Dzvionchik, representing the local group of American Churches under Bishop Theophilus, appeared before the Patriarch and the members of his Synod in Moscow, presented a written report on the condition of the American Church

The Religious Corporations Law.—The New York Court of Appeals depended for its judgment, refusing recognition to Archbishop Benjamin, the appointee of the Moscow Hierarchy of the Russian Orthodox Church, upon Article 5-C of the Religious Corporations Law, quoted and analyzed at notes 2 and 3, supra.<sup>10</sup> 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 legislature cannot validate action which the Constitution prohibits, and we think that the statute here in question passes the constitutional limits. We conclude that Article 5—C undertook by its terms to transfer the control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to the governing authorities of the Russian Church in America, a church organization 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. Legislation that regulates church administration, the operation of the churches, the appointment of clergy, by requiring conformity to church statutes 'adopted at a general convention [\*108] (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, prohibits the free exercise of religion. Although this statute requires the New York churches to 'in all other respects conform to, maintain and follow the faith, doctrine, ritual, communion, discipline, canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church),' their conformity is by legislative fiat and subject to legislative will. Should the state assert power to change

'That any administrative recognition of the Synod of the Russian Orthodox Church Abroad is hereby terminated, retaining, however, our spiritual and brotherly relations with all parts of the Russian Orthodox Church abroad \* \* \*'

This ended the efforts to compose the differences between the Mother Church and its American offspring, and this litigation and the enactment of Article 5—C of the Religious Corporations Law of New York followed. We understand that the above factual summary corresponds substantially with the factual basis for determination formulated by the Court of Appeals of New York. From those circumstances it seems clear that the Russian Orthodox Church was, until the Russian Revolution, an hierarchical church with unquestioned paramount jurisdiction in the governing body in Russia over the American Metropolitanate. Nothing indicates that either the Sacred Synod or the succeeding Patriarchs [\*106] relinquished that authority or recognized the autonomy of the American church. The Court of Appeals decision proceeds, we understand, upon the same assumption. 302 N.Y. at pages 5, 23, 24, 96 N.E.2d at pages 57, 68, 69. That court did consider 'whether there exists in Moscow at the present time a true central organization of the Russian Orthodox Church capable of functioning as the head of a free international religious body.' It concluded that this aspect of the controversy had not been sufficiently developed to justify a judgment upon that ground. 302 N.Y. at pages 22—24, 96 N.E.2d at pages 67—69.

belief in such conditions justified the State in enacting a law to free the American group from infiltration of such atheistic or subversive influences.<sup>13</sup>

This legislation, Art. 5—C, in the view of the Court of Appeals, gave the use of the churches to the Russian Church in America on the theory that this church would most faithfully carry out the purposes of the religious trust.<sup>14</sup> Thus dangers of political use of church pulpits would be minimized. Legislative power to punish subversive action cannot be doubted. If such action should be actually attempted by a cleric, neither his robe nor his pulpit would be a defense. But in this case no problem [\*110] of punishment for the violation of law arises. There is no charge of subversive or hostile action by any ecclesiastic. Here there is a transfer by statute of control over churches. This violates our rule of separation between church and state. That conclusion results from the purpose, meaning and effect of the New York legislation stated above, considered in the light of the history and decisions considered below.

Hierarchical churches may be defined as those organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head. In *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666, they are spoken of in like terms.<sup>15</sup> That opinion has been given consideration in subsequent church litigation—state and national.<sup>16</sup> The opinion itself, however, did not turn on either the establishment or the prohibition of the free exercise 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 crime of that period. It was decided here at the 1871 *Te*

the statute requiring conformity to ancient faith and doctrine to one establishing a different doctrine, the invalidity would be unmistakable.

Although § 5 of the Religious Corporation Law<sup>11</sup> had long controlled religious corporations, the Court of Appeals held that its rule was not based on any constitutional requirement or prohibition.<sup>12</sup> Since certain events of which the Court took judicial notice indicated to it that the Russian Government exercised control over the central church authorities and that the American church acted to protect its pulpits and faith from such influences, the Court of Appeals felt that the Legislature's reasonable

In May of 1865 the General Assembly, the highest judiciary of the church, made a declaration of loyalty to the Federal Government denouncing slavery, and directed that new 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 to the alleged usurpation of authority. The Louisville Presbytery divided as did the Walnut Street Church and the proslavery group obtained admission into the Presbyterian Church of the Confederate States. In June 1867 the Presbyterian General Assembly [\*112] for the United States declared the Presbytery and Synod recognized by the proslavery party were 'in no sense a true and lawful Synod and Presbytery in connection with and under the care and authority of the General Assembly of the Presbyterian Church in the United States of America.' They were "permanently excluded from connection with or representation in the Assembly." By the same resolution the Synod and Presbytery adhered to by those whom (the proslavery party) opposed were declared to be the true and lawful Presbytery of Louisville, and Synod of Kentucky.' Id., 13 Wall. at page 692, 20 L.Ed. 666.

Litigation started in 1866 with a suit in the state court by certain of the antislavery group to have declared their right to act as duly elected additional elders 'in the management of church property for purposes of religious worship.' Id., 13 Wall. at page 685, 20 L.Ed. 666. As the Court of Appeals of Kentucky thought that certain acts of the Louisville Presbytery and the General Assembly of the United States, in pronouncing the additional elders duly elected, were void as beyond their functions, id., 13 Wall. at page 693, 20 L.Ed. 666,<sup>18</sup> it refused the plea of the antislavery group and left the proslavery elders and trustees in control of the Walnut Street Church.

Thereupon a new suit, *Watson v. Jones*, was begun by alleged members of the church to secure the use of the Walnut Street Church for the antislavery group. This suit was to decide not the validity of an election of elders [\*113] fought out in *Watson v. Avery*, supra, but which one of two bodies should be recognized as entitled to the use of the Walnut Street Presbyterian Church. It was determined that plaintiffs had a beneficial interest in the church

and that the government of the (Presbyterian) church is exercised by and through an ascending series of 'judicatories', known 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 question that the Louisville church, its property and its officers were originally and up to the beginning of the disagreements subjected to the operation of the laws of the General Assembly of the Presbyterian Church. Id., 13 Wall. at page 683, 20 L.Ed. 666. The actual possession of the church property was in trustees; its operation or use controlled by the Session composed of elders.<sup>17</sup> Both were groups elected 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 the consideration of an hierarchical church, as defined in note 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 should 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 judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which 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 page 727, 20 L.Ed. 666.

As the General Assembly of the Church had recognized the antislavery group 'as the regular and lawful Walnut Street Church and officers,' id., 13 Wall. at page 694, 20 L.Ed. 666, newly elected, and the trial court had found complainants members of that group, and had entered a decree adjudging that this group's duly chosen and elected pastor, ruling elders [\*114] and trustees 'respectively entitled to exercise whatever authority in the said church, or over its members or property, rightfully belonged to pastor, elders, and trustees, respectively, in churches in connection with the 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 adjudications having an effect upon property or its uses, when the civil courts determine the church judicatory has violated the church's organic law.<sup>19</sup> Its ruling is summed up in the following words:

'In this country the full and free right to entertain any religious 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 personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular [\*115] courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides 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. This controversy concerning the right to use St. Nicholas Cathedral is strictly a matter of ecclesiastical government, the power of the Supreme Church Authority of the Russian Orthodox Church to appoint the ruling hierarchy of the archdiocese of North America. No one disputes that such power did lie in that Authority prior to the Russian Revolution.

*Watson v. Jones*, although it contains a reference to the relations of church and state under our system of laws,<sup>21</sup> was decided without depending upon prohibition of state interference with the free exercise of religion. It was decided in 1872, before judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action. It long antedated the 1938 decisions of *Erie R. [\*116] Co. v. Tompkins and Ruhlin v. New York Life Ins. Co.*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 and 304 U.S. 202, 58 S.Ct. 860, 82 L.Ed. 1290, and, therefore, even though federal jurisdiction in the case depended solely on diversity, the holding was based on general law rather than Kentucky law.<sup>22</sup> The opinion radiates, however, a spirit of

In our view the *Douds* case may not be interpreted to validate New York's Article 5—C. That case involved the validity of § 9(h) of the National Labor Relations Act as amended, 61 Stat. 136, 146, 29 U.S.C. § 159(h), 29 U.S.C.A. § 159(h). That section forbade the N.L.R.B. from acting at the suggestion of a labor organization unless affidavits of its officers were filed denying affiliation with subversive organizations or belief in the overthrow of this Government by force or other unconstitutional means. We upheld the enactment as a proper exercise of the power to protect commerce from the evil of disruption from strikes so politically inspired. In so doing we said, 'legitimate attempts to protect th

freedom for religious organizations, 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. Freedom to select the clergy, where no improper methods of choice are proven,<sup>23</sup> we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference. [\*117]

**Legislative Power.**—The Court of Appeals of New York recognized, generally, the soundness of the philosophy of ecclesiastical control of church administration and polity but concluded that the exercise of that control was not free from legislative interference.<sup>24</sup> That Court presented forcefully the argument supporting legislative power to act on its own knowledge of 'the Soviet attitude toward things religious.' 302 N.Y. pages 32—33, 96 N.E.2d at page 74. It was 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 real danger that those properties and temporalities long enjoyed and used by the Russian Orthodox Church worshippers in this State would be taken from them by the representatives 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. Douds*, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed. 925, supported the thesis that where there is some specific evil, found as a fact 'some infringement upon traditional liberties was justifiable' 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 Russia', 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 trustee which 'may be relied upon to carry out more [\*118] effectively and faithfully the purposes of this religious trust (*Carrier 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 of its own legislature and with respect for its standing and ability, we do not agree with its statement as to legislative power over religious organizations.

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. Such prohibition differs from the restriction of a right to deal with Government allowed in *Douds*, in that the Union in the *Douds* case had no such constitutionally protected right. New 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 ideologies, but from present excesses of direct, active conduct 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 one of drawing inferences concerning the need for regulation 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 Congress.' *Id.*, 339 U.S. at page 400, 70 S.Ct. at page 685. It is an exaggeration to say that those sound statements point to a legislative power to take away from a church's governing body and its duly ordained representative the possession and use of a building held in trust for the purposes for which it is being employed because of an apprehension, even though reasonable, that it may be employed for improper purposes. In *Douglas* we saw nothing that was aimed at the free expression of views. Unions could have officers with such affiliations and political purposes as they might choose but the Government was not compelled to allow those officers an opportunity to disrupt commerce for their own political ends. We looked upon the affidavit requirement 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 Court of Appeals apparently assumes Article 5—C does nothing 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 with another. It passes the control of matters strictly ecclesiastical 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 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.<sup>25</sup> Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical [\*121] issues, the church rule controls.<sup>26</sup> This under our Constitution necessarily follows in order that there may be free exercise of religion.

The decree of the Court of Appeals of New York must be reversed, and the case remanded to that court for such further action as it deems proper and not in contravention of this 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 legislature could, consistently with due process, displace the judicial process and decide a particular controversy affecting property so as to decree that A not B owns it or is entitled to its possession. Obviously a legislature would not

do so against prohibition of the free exercise of religion. *Late Corporation of Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 10 S.Ct. 792, 34 L.Ed. 478, relied upon by the appellee, does not support its argument. There the Church of Jesus Christ of Latter Day Saints had been incorporated as a religious corporation by the State of Deseret, with subsequent confirmation by the Territory of Utah. Its property was held [\*120] for religious and charitable purposes. That charter was revoked by Congress and some of the property of the church was escheated to the United States for the use of the common schools of Utah. This Court upheld the revocation of the charter, relying on the reserved power of the Congress over the acts of territories, 136 U.S. at pages 45—46, 10 S.Ct. at pages 803—804. The seizure of the property was bottomed on the general rule that where a charitable corporation is dissolved 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 charity 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 the charitable purpose could have the same effect. *Id.*, 136 U.S. at page 59, 10 S.Ct. at page 808. None of these elements exist to support the validity of the New York statute putting 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 doctrine between the Russian Church in America and the Russian Orthodox Church. It shows administrative control of the North American Diocese by the Supreme Church Authority of the Russian Orthodox Church, including the appointment of the ruling hierarch in North America from the foundation of the diocese until the Russian Revolution. We find nothing that indicates a relinquishment of this power by the Russian Orthodox Church.

It is merely one aspect of the duty of courts to enforce the rights of members in an association, temporal or religious, according to the laws of that association. See *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16—17, 50 S.Ct. 5, 7—8, 74 L.Ed. 131.

Legislatures have no such obligation to adjudicate and no such power. Assuredly they have none to settle conflicts of religious authority and none to define religious obedience. These aspects of spiritual differences constitute the heart of this controversy. The New York legislature decreed that one party to the dispute and not the other should control the common center of devotion. In doing so the legislature effectively authorized one party to give religious direction not only to its adherents but also to its opponents. See *St. Nicholas Cathedral of Russian Orthodox Church in North 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 inroad into the realm of faith are echoes of past attempts at secular intervention in religious conflicts. It is said that an impressive majority both of the laity and of the priesthood of the old local church now adhere to the party whose candidate New York enthroned, as it were, as Archbishop. Be

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

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

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

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

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

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

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

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

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

Mr. Justice JACKSON, dissenting.

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

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

h is the legitimately chosen holder of his office, and the account of the proceedings and pronouncements of the American schismatic group so indicate. Even were there doubt about this it is hard to see by what warrant the New York Legislature is free to substitute its own judgment as to the validity of Patriarch Alexy's claim and to disregard acknowledgment of the present Patriarch by his co-equals in the Eastern Confession, the Patriarchs of Constantinople, Alexandria, Antioch, and Jerusalem, and by religious leaders throughout the world, including the present Archbishop of York.<sup>4</sup> [\*126] These considerations undermine the validity of the New York legislation in that it enters the domain of religious control barred to the States by the Fourteenth Amendment.

If the Fourteenth Amendment is to be interpreted to leave anything to the courts of a state to decide without our interference, I should suppose it would be claims to ownership or possession of real estate within its borders and the vexing technical questions pertaining to the creation, interpretation, termination, and enforcement of uses and trusts, even though they are for religious and charitable purposes. This controversy, I believe, is a matter for settlement by state 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 legislation which results in a denial of due process. This, [\*128] of course, would raise a question of deprivation of property, not of liberty, while only the latter issue is raised by the parties. And it could be sustained only by a finding by us that the legislation worked a transfer rather than a confirmation of property rights. The Court of Appeals seems to have regarded the statute merely as a legislative reaffirmation of principle the Court would find to be controlling in its absence.

But this Court apparently thinks that by mere enactment of the statute the legislature invaded a field of action reserved to the judiciary. However desirable we may think a rigid separation of powers to be (and I, for one, think it is basic in 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 warranted in holding that New York may not enact this legislation in question, which is in form and in substance an amendment of its Religious Corporations Law.

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

greatly oversimplify the history of this controversy to indicate its nature rather than to prove its merits. This Cathedral was incorporated and built in the era of the Czar, under the regime of a state-ridden church in a church-ridden state. The Bolshevik did not free the church from the grip of state from the grip of the church, but it did not free the church from the grip of the state. It only brought to the top a new master for a captive and submissive ecclesiastical establishment. By 1945, the Moscow patriarchy had been reformed and manned under the Soviet regime and it sought to re-establish in other countries its prerevolutionary control of church property and its sway over the minds of the religious. As the Court's opinion points out, it demanded of the Russian Church in America, among other things, that it abstain 'from political activities against the U.S.S.R.' The American Cathedral group, along with others, refused submission to the representative of the Moscow Patriarch, whom it regarded as an arm of the Soviet Government. Thus, we have an ostensible religious schism with decided political overtones.

As a consequence of this Court's decision in *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 4 L.Ed. 629, the Constitution of [\*129] New York since 1846 has authorized the legislature to create corporations by general laws and special acts, subject, however, to a reservation that all such acts 'may be altered from time to time or repealed.' New York Const., Art. X, § 1. That condition becomes a part of every corporate charter subsequently granted by New York. *Lord v. Equitable Life Assurance Society of United States*, 194 N.Y. 212, 87 N.E. 443, 22 L.R.A., N.S., 420; *People ex rel. Cooper Union for Advancement of Science & 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 reserved power which permits the State to alter corporate controls in response to the lessons of experience. Of course, the power is not unlimited and could be so exercised as to deprive one of property without due process of law. But, I do not think we can say that a legislative application of a principle so well established in our common law as the *cy-pres* doctrine is beyond the powers reserved by the New York Constitution.

II.

The Court holds, however, that the State cannot exercise its reserved power to control this property without invading religious freedom, because it is a Cathedral and devoted to religious uses. I forbear discussion of the extent to which restraints imposed upon Congress by the First Amendment are transferred against the State by the Fourteenth Amendment beyond saying that I consider that the same differences 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 freedom of religion and of separation of church and state.

It is important to observe what New York has not done in this case. It has not held that Benjamin may not act as Archbishop or be revered as such by all who will follow him. It 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 each of many denominations with corporate controls appropriate to its own ecclesiastical order. When it sought the privilege of incorporation under the New York law applicable to its denomination, it seems to me that this Cathedral and all connected with its temporal affairs were submitted to New York law.

The fact that property is dedicated to a religious use cannot, in my opinion, justify the Court in sublimating an issue over property rights into one of deprivation of religious liberty 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, conversion, bailment or contract, where the property involved is 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 extend its sway over the minds and souls of the devout. So would possession of a bank account, an income-producing office building, or any other valuable property. But if both claimants are religious corporations or personalities, can not the State decide the issues that arise over ownership 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 Cathedral, had by force barred Benjamin from entering it physically, would the Court say it was an interference with religious freedom to entertain and decide his ejection action? If state courts are to decide such controversies at all instead of leaving them to be settled by a show of force, is it constitutional to decide for only [\*131] one side of the controversy and unconstitutional to decide for the other? In either case, the religious freedom of one side or the other is impaired if the temporal goods they need are withheld or taken 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 trust by virtue of the rules of the Russian Orthodox Church. This Court so holds.

I shall not undertake to wallow through the complex, obscure and fragmentary details of secular and ecclesiastical history, theology, and canon law in which this case is smothered. 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 foreign and unfriendly state masquerading as a spiritual institution. See 'The Soviet Propaganda Program,' Staff Study No. 3, Subcommittee on Overseas Information Programs of the United States, 82d Cong., 2d Sess.

need of spiritual guidance than the Soviet faction. It has only held that this cleric may not have a particular Cathedral which, under New York law, belongs to others. It has not interfered with his or anyone's exercise of his religion. New York has not outlawed the Soviet-controlled sect nor forbidden it to exercise its authority or teach its dogma in any place whatsoever except on this piece of property owned and rightfully possessed by the Cathedral Corporation.

I have supposed that a State of this Union was entirely free to make its own law, independently of any foreign-made law, except as the Full Faith and Credit Clause of the Constitution might require deference to the law of a sister state 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 submit property rights to settlement by canon law. If there is any relevant inference to be drawn, I should think it would be to the contrary, though I see no obstacle to the state allowing ecclesiastical law to govern in such a situation if it sees 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 judgment below violates the religious freedom guaranteed by the Fourteenth Amendment. I find this contention so insubstantial that I would dismiss the appeal. Whether New York has arrived at the correct solution of this question is a matter on which its own judges have disagreed. But they have disagreed within the area which is committed to them for agreement or disagreement and I find nothing which warrants our invading their jurisdiction.

<sup>1</sup> A sobor is a convention of bishops, clergymen and laymen with superior powers, with the assistance of which the church officials rule their dioceses or districts.

There is no problem of title. It is in the appellee corporation. The issue is the right of use. *St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff*, 302 N.Y. 1, 20, 96 N.E.2d 56, 66.

The deed to the Cathedral Corporation required the grantee 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 at page 66:

'Plaintiff does not dispute this trust theory, but on the contrary relies upon it. Plaintiff has endeavored to prove that the beneficial use of the property today rightfully belongs to the Russian church in America, Religious Corporations Law, § 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 an atheistic and antireligious foreign civil government.'

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

2. 50 McKinney's N.Y.Laws § 105:

The 'Russian Church in America', as that term is used anywhere in this article, refers to that group of churches, cathedrals, chapels, congregations, societies, parishes, committees and other religious organizations of the Eastern Confession (Eastern Orthodox or Greek Catholic Church) which were known as (a) Russian American Mission of the Russian Orthodox Church from in or about seventeen hundred red ninety-three to in or about eighteen hundred seventy; (b) Diocese of Alaska and the Aleutian Islands of the Russian Orthodox Church from in or about eighteen hundred seventy to in or about nineteen hundred four; (c) Diocese of North America and the Aleutian Islands (or Alaska) of 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 Most Sacred Governing Synod in Moscow until in or about nineteen hundred seventeen, later the Patriarchate of Moscow, but now constitute an administratively autonomous metropolitan district created pursuant to resolutions adopted at a general convention (sobor) of said district held at Detroit, Michigan, on or about or between April second to fourth, nineteen hundred twenty-four.

'A 'Russian Orthodox Church', as that term is used anywhere in this article, is a church, cathedral, chapel, congregation, society, parish, committee or other religious organization founded and established for the purpose and with the intent of adhering to, and being subject to the administrative 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 incorporated before or after the creation of said autonomous metropolitan district, and whether incorporated or reincorporated pursuant to this article or any other article of the religious corporations law, or any general or private law, shall recognize and be and remain subject to the jurisdiction and authority of the general convention (sobor), metropolitan 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 adopted at a general convention (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 and any other statutes or rules heretofore or hereafter adopted by a general convention (sobor) of the Russian Church in America and shall in all other respects conform to, maintain and follow the faith, doctrine, ritual, communion, discipline, canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church).

'3. The trustees of every Russian Orthodox church shall have the custody and control of all temporalities and property, real and personal, belonging to such church and of the revenues therefrom and shall administer the same in accordance with the by-laws of such church, the normal statutes for parishes of the Russian Church in America approved at a general convention (sobor) thereof held at Cleveland, Ohio, on or about or between November twentieth or twenty-third, nineteen hundred thirty-four, and any amendments thereto and all other rules, statutes, regulations and usages of the Russian Church in America.'

4. *Hebert v. State of Louisiana*, 272 U.S. 312, 317, 47 S.Ct. 103, 104, 71 L.Ed. 270; *Winters v. New York*, 333 U.S. 507, 514, 68 S.Ct. 665, 669, 92 L.Ed. 840.

The court expressed its conclusion in reversing the judgment of the Appellate Division of the Supreme Court, *St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff*, 276 App.Div. 309, 94 N.Y.S.2d 453, which 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 language in sections 105 and 107 is that the statute was intended to apply to those Russian Orthodox churches founded and established before 1924 for the purpose of adhering and being subject to the North American Mission or North American Diocese, and to those Russian Orthodox churches founded and established after 1924 for the purpose of adhering and being subject to the autonomous metropolitan district. The majority in the Appellate Division further intimated that to read the statute literally would result in an interference in ecclesiastical concerns not within the competency of the Legislature. The latter suggestion is the only one which requires discussion, for, as already indicated, 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; \* \* \*'

*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 'Russian Church of America' was the one which, to use our words in 249 N.Y. at pages 77—78, 162 N.E. at page 589, was the trustee which 'may be relied upon to carry out more

6 *Hamilton v. Regents of University of California*, 293 U.S. 245, 262, 55 S.Ct. 197, 204, 79 L.Ed. 343; *Cantwell v. State of Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213; *Everson v. Board of Education of Ewing Tp.*, 330 U.S. 1, 14—15, 67 S.Ct. 504, 510, 511, 91 L.Ed. 711; *People of State of Illinois ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County, Ill.*, 333 U.S. 203, 210—211, 68 S.Ct. 461, 464, 465, 92 L.Ed. 648;

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 Church* (1945); French, *The Eastern Orthodox Church* (1951), c. VII; Danzas, *The Russian Church* (1936); Anderson, *People, Church and State in Modern Russia* (1944), pp. 121—140; Bolshakoff, *Foreign Missions of the Russian Orthodox Church* (1943), c. IV.

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

'Point 1. Temporarily, until the convocation of the All Russian Sobor further indicated in Point 5, to declare the Russian Orthodox Diocese in America a self-governed Church so that it be governed by its own elected Archbishop by means of a Sobor of Bishops, a Council composed of those elected from the clergy and laity, and periodic Sobors of the entire American Church.

'Point 5. To leave the final regulation of questions arising from the relationship of the Russian and the American Churches to a future Sobor of the Russian Orthodox Church which will be legally convoked, legally elected, will sit with the participation of representatives of the American Church under conditions of political freedom, guaranteeing the fullness and authority of its decisions for the entire Church, and will be recognized by the entire Oecumenical Orthodox Church as a true Sobor of the Russian Orthodox Church.'

9 *Nemolovsky v. Rykhloff*, 187 App.Div. 290, 175 N.Y.S. 617; *Kedrovsky v. Archbishop and Consistory of Russian Orthodox 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; *Kedrovsky v. Archbishop and Consistory of Russian Orthodox Greek 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 Consistory of Russian Orthodox Greek Catholic Church*, 142 Misc. 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 the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation 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 to change or modification by the same Legislature which announced it, in cases where literal enforcement would be unreasonable and opposed to the public interest. The Legislature, in the exercise of its extensive and acknowledged 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.' 302 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 directives. The courts have traditionally refused to consider the wisdom or technical validity of such findings of fact, if there be 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 Congress, must be deemed to have investigated the whole problem carefully before it acted. The Legislature knew that the central authorities of the Russian Orthodox Church in Russia had been suppressed after the 1917 revolution, and that the patriarchate was later resurrected by the Russian Government. The Legislature, like Congress, knew the character and method of operation of international communism and the Soviet attitude toward things religious. The Legislature was aware of the contemporary views of qualified observers who have visited Russia and who have had an opportunity to observe the present status of the patriarchate in the Soviet system. 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 real danger that those properties and temporalities long enjoyed and used by the Russian Orthodox Church worshippers in this State would be taken from them by the representatives of the patriarchate. On the basis of these facts, and the facts stated (*supra*) and no doubt other facts we know not of, our Legislature concluded that the Moscow Patriarchate was no longer capable of functioning as a true religious body, but had become a tool of the Soviet Government primarily designed to implement its foreign policy. Whether we, as judges, would have reached the same conclusion is immaterial. It is sufficient that the Legislature reached it, after full consideration of all the facts.' 302 N.Y. at pages 32—33, 96 N.E.2d at page 73.

and in all of its satellite states. \* \* \* *Id.*, 302 N.Y. at page 23, 96 N.E.2d at page 68.

14 See note 10, *supra*.

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

16 *Zollman*, *American Church Law* (1933), c. 9. E.g., *Shepard v. Barkley*, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939; *Barkley 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 uniqueness that existing law is incapable of performing its avowed function—the preservation of religious temporalities for the use of their original and accustomed beneficiaries. If the Legislature find as a fact that, because of drastically changed circumstances, the accustomed beneficiaries of religious properties are thus threatened with their loss, and if there be a basis for such finding, we perceive no constitutional objection to a legislative attempt to trace and identify, as of today, the authentic group entitled to the administration 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 Government was not as apparent in 1924 as it is a quarter of a century later and on the surface, at least, the case appeared to be a proper one for the application of the rule that in an ecclesiastical dispute involving a denominational church, the decision of the highest church judicatories will be accepted as final and conclusive by the civil courts, Trustees of Presbytery of N(ew) York v. Westminster Presbyterian Church, 222 N.Y. 305, 315, 118 N.E. 800, 802; Watson v. Jones, 13 Wall. 679, 724—727, 20 L.Ed. 666, Religious Corporations Law, §§ 4, 5.'

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

20 The decision has encountered vivid and strong criticism for the breadth of its statement that where 'a subject-matter of dispute, strictly and purely ecclesiastical in its character,' is decided, the civil court may not examine the conclusion to see whether the decision exceeds the powers of the judicatory. *Id.*, 13 Wall. at page 733, 20 L.Ed. 666. See Zollman, *American Church Law* (1933), c. 9, p. 291. The criticism does not go so far, however, as to condemn the nonreviewability of questions of faith, religious doctrine and 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.' Zollman, *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. Walton*, D.C., 206 F. 562, 564; *Helm v. Zarecor*, D.C., 213 F. 648, 657.

23 *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16—17, 50 S.Ct. 5, 7, 74 L.Ed. 131:

183, 197—198; *First English Lutheran Church v. Evangelical Lutheran Synod of Kansas and Adjacent States*, 10 Cir., 135 F.2d 701. Cf. *Gibson v. Armstrong*, 7 B. Mon., Ky., 481; *German Reformed Church v. Commonwealth ex rel. Seibert*, 3 Pa. 282.

17 'One or two propositions which seem to admit of no controversy are proper to be noticed in this connection. 1. Both by the act of the Kentucky legislature creating the trustees of the church a body corporate, and by the acknowledged rules of the Presbyterian Church, the trustees were the mere nominal title holders and custodians of the church property, and other trustees were, or could be elected by the congregation, to supply their places once in every two years. 2. That in the use of the property for all religious services or ecclesiastical purposes, the trustees were under the control of the church session. 3. That by the constitution of all Presbyterian churches, the session, which is the governing body in each, is composed of the ruling elders and the pastor, and in all business of the session the majority of its members govern, the number of elders for each congregation 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 rights 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 courts, as in ordinary cases of injury resulting from the violation of a contract, or the fundamental law of a voluntary association.' *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 732 et seq., 20 L.Ed. 666.

25 *Ponce v. Roman Catholic Apostolic Church in Porto Rico*, 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, *Duval v. Synod of Kansas of Presbyterian Church*, 8 Cir., 222 F. 669; *Shepard v. Barkley*, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939.

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

2. Such apprehension, at least in part, seems to have underlain two important religious controversies in a nation as devoted to freedom as Great Britain and as recently as a century ago. Both the dispute giving rise to the Free Church of Scotland Appeals and the brief but vigorous anti-Catholic 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 Problem of Sovereignty*, 27—68, 121 210. See also Buchanan, *The Ten Commandments (Exodus 20:1-17): First Church of*

'Because the appointment is a cononical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicial bodies established by clubs and civil associations.'

See *Brundage v. Deardorf*, C.C., 55 F. 839, where Taft, Circuit Judge, in overruling a demurrer, stated: 'Even if the supreme judicatory has the right to construe the limitations of its own power, and the civil courts may not interfere with 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 the civil courts.' 55 F. at page 847.

Later the case was considered on appeal by the Circuit Court of Appeals; Lurton, Circuit Judge, writing, thought that the facts proven showed conclusively that *Watson v. Jones* 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*.

<sup>4</sup> See Garbett, *In an Age of Revolution*, 207—213; Niemi, *Why I*

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

<sup>3</sup> *Reichs-Gesetzblatt*, 1871, p. 442; *Reichs-Gesetzblatt*, 1872, p. 253; *Reichs-Gesetzblatt*, 1874, p. 43; *Reichs-Gesetzblatt*, 1876, p. 28; 5 *Gesetz-Sammlung für die Königliche Preussischen Staaten*, 154, 221, 223, 225, 228, 337, 342; 6 *id.*, at 30, 38, 40, 75, 170; 7 *id.*, at 291. These laws have been thus summarized: 'The Falk Laws are an attempt to insist on the universal paramountcy of German influences. The expulsion of the Jesuits removed an order which he (Bismarck) believed to be concerned with the promotion of Polish interests. The refusal of bishoprics to any save a German who has followed a course of study approved by the government has a clear purport \* \* \* of purging the Catholic episcopate of men not likely to be in sympathy with German ideals. \* \* \* The twenty-fourth article went even further and gave the State the right of interference with ecclesiastical functions where it deemed them improperly performed. \* \* \* The law of the twentieth of May, 1874, virtually handed over the control of vacant bishoprics to the State. \* \* \* Catholic Churches on Prussian soil were handed over to the old Catholics (those refusing to adhere to the newly-promulgated dogma of papal infallibility) in such parishes as those in which the majority consisted of their sympathisers, for certain hours of the day \* \* \*.' Laski, *op. cit. supra*, note 2, at 256—258. Bismarck's *Culturkampf*, of which these laws were a part, is fully discussed in Goyau, *Bismarck et l'Eglise*. A full text of the laws may be found in the appendix to that work.

Went to Moscow, *The Christian Century*, March 19, 1952, p. 338.

nectional church, governed by representative bodies, with an episcopacy whose powers and duties are constitutionally defined. It has an itinerant ministry in that its ministers are assigned by officials of The Methodist Church and are not called by local societies or subject to the control or discipline of local societies. The basic representative body of The Methodist Church is the Annual Conference made up of ministerial and lay delegates from local societies in each area embraced within an Annual Conference. An Annual Conference is divided for purposes of administration into Districts. The administration of a District is entrusted to a District Superintendent. The General Conference of The Methodist Church, made up of delegates from each Annual Conference of the Church, is the highest legislative body of the Church, determining the ecclesiastical and temporal policies of the Church. The Judicial Council is the highest judicatory body of the Church, deciding appeals taken on legal issues raised within the Church. The Discipline of The Methodist Church is the book of law of the Church containing the Articles of Religion, the Constitution, the rules of the church concerning the moral conduct of its members, and the legislation of the various General Conferences defining the form of government, the duties, powers 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 organized in Mobile County, Alabama, as a local society of The Methodist Church. In April of 1953, lands in Mobile County were conveyed to three named trustees of the local society by a deed in which the trust was declared:

"\* \* \* 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

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 separate denomination. "Such a form of trust deed and ownership of church property, safeguarding the rights of the conference which has jurisdiction over the individual congregations, is important and necessary under the Methodist polity, with its distinctive feature of an itinerant ministry." *Turbeville v. Morris*, supra. The Methodist polity of an itinerant ministry, like the Methodist trust clause, antedates the organization of the Methodist Church as a separate denomination. Under this system, ministers are assigned to churches by the officials of the parent body rather than by act of the local congregation. The ministers are thus subject

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

The trust clause of the Trinity deed is in conformity to the provisions set forth in the body of law of The Methodist Church relating to its real estate. This [\*102] body of law is contained in the Discipline of The Methodist Church.

The members of Trinity, finding themselves in basic disagreement with certain social policies of the parent denomination, and acting under the provisions of the Dumas Act, have separated themselves from the parent denomination and claim the right of ownership of the real estate conveyed by the Trinity deed.

No question here exists as to the compliance by the local congregation with the procedural steps set forth in the Dumas 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 itself from membership in The Methodist Church. The defendants are the representatives of the withdrawing members of Trinity; and the defendants and the class they represent are in possession of the church property, claiming to own 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 Fourteenth Amendments of the Constitution of the United States, the First Amendment being made applicable to the states under the Fourteenth, *Hamilton v. Regents of the University 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 Education*, 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, 20 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 slavery issue. *Watson v. Jones* became a landmark decision and has been accepted throughout all American jurisdictions as committing the judiciary to apply the law of the denomination to controversies arising within such denominations. It is clear that if the law of The Methodist Church is applied to the present dispute, the plaintiffs, as representatives of The Methodist Church, would be entitled to the local church property. *Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821.

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.

The court finds no significance in the size of the majority of the local congregation which wishes to separate from the parent denomination. For, as stated by Justice Frankfurter, in his concurring opinion in *Kedroff v. St. Nicholas Cathedral*, supra, "\* \* \* it is not a function of civil government under our constitutional system to assure rule to any religious 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 vesting in a 65% majority of the local congregation the power to abrogate the Methodist trust clause, the Dumas Act effectively 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 affairs of a religious order. The court is not required, or constitutionally authorized, to pass on the wisdom of the Methodist structure and polity. The court is bound by the Constitution to protect it.

"Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference." *Kedroff v. St. Nicholas 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 to it control over American churches which had formerly been subject to the supervision of the Patriarch of Moscow. [\*103] The New York statute resulted from the political domination 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 *Kreshnik v. St. Nicholas Cathedral*, 363 U.S. 190, 80 S.Ct. 1037, 4 L. Ed.2d 1140, the Supreme Court held that New York could not effect the transfer of the church property through the judicial application of any present or equitable approximation.

The Methodist Church has a constitutionally

The Dumas Act operates only on protestant denominations of Christian faith. Pretermitted 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 [\*104] 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 congrega-

tion 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 separation between Church and State" on other grounds. No constitutional principle is more firmly imbedded in our heritage than this separation. It is a fundamental to our liberty. James Madison explained its value in his "Memorial and Remonstrance Against Religious Assessments" (1785) when he argued: "Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with same ease any particular sect of Christians, in exclusion of all other Sects?"

Protestant Christianity in this country has produced a variety of church structures and governments, creeds and doctrines. Under the protections of the First Amendment, these many expressions of individual religious concepts have evolved an equally varied system of property ownership and control. From the corporation sole to the purely congregational type of church organization, Americans have been free to exercise their religion without infringement by state authorities. This plurality of religious expression was recognized in *Watson v. Jones*, supra, where the Supreme Court declared:

"The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations and officers within the general association, is unquestioned."

or prefer one religion over another." 330 U.S. at 15, 67 S.Ct. at 511. The principle was restated in *School District of Abington v. Schempp*, supra, where Justice Clark for the majority quotes with approval from the unpublished opinion of an Ohio case: "The government is neutral, and, while protecting all, it prefers none, and it disparages none." 374 U.S. at 215, 83 S.Ct. at 1567.

By the passage of the Dumas Act, Alabama has expressed 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 opinion 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 18, 67 S.Ct. at 513.

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

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

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

The Supreme Court has interpreted the First Amendment as prohibiting a state from requiring an affirmation of a belief in God by an applicant for a commission as a notary public, *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 recitation of the Lord's Prayer in public schools, *School District of Abington v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844; from requiring the recitation of a non-denominational prayer in public schools, *Engel v. Vitale*, 370 U.S. 421, 82 S.Ct. 1261; 8 L.Ed.2d 601; from permitting compulsory religious teaching in public schools even where students were given a choice of instructions, *People of State of Illinois ex rel. McCollum v. Board of Education*, 333 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 *Everson* and *Madison* has found expression in *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711, when the majority opinion declared: "Neither a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions

Commencing at the Northwest corner of Section Thirty-three, 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 One Degree Thirty-four minutes East Eighty-four and Six-tenths feet to the North line of Turner Road; thence along the North line of said road run South Seventy-one degrees Fifty minutes East Six Hundred Twenty-three and Five-tenths 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 Eighty-nine Degrees no minutes West One Hundred Thirty-eight and Thirty-five Hundredths feet to a point; thence run 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

requires that the trustees hold the property " \* \* \* as a place of divine worship of The Methodist ministry and members of the Methodist Church" \* \* \*. Without defining the real property interests in the Trinity property of the more than 300,000 Methodists within Alabama, it is apparent that such interests would be terminated by the Dumas Act procedure of the local congregation. Under the Dumas Act, the property rights created by deed in 1953 are retroactively divested from all persons other than the 65% majority of the local congregation. The destruction of the property interests of other Methodists in the Trinity property is, under the Dumas Act, effectuated without notice and without any right to be heard. To give effect to such a retroactive divestiture 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 overruled. [\*105]
2. The Dumas Act (Title 58, Sec. 104 through 113, Code of Alabama) is inapplicable to the parties hereto as to the real estate described in the plaintiffs' complaint because the application of said Dumas Act would be violative of the Fourteenth Amendment to the Constitution of the United States.
3. The defendants are hereby enjoined from interfering with or denying to plaintiffs the right to possession of the real estate described in the complaint, the description of which is stipulated to between the parties and is as follows:
 

feet West of the beginning corner; thence run South Seventy-one degrees Fifty minutes East along the North line of Turner Road, One Hundred Eighty feet to the point of beginning, being Lots Eight, Nine and Ten of COHEN'S SUBDIVISION, in Prichard, Alabama, as per plat of William R. Irby, dated April 14th, 1953, and filed for record on April 17th, 1953, in the Probate Records of Mobile County, Alabama.

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 thirty days of this order.
4. Costs incurred are taxed against defendants, for which let execution issue.