

RELIGION LAW

Expert Analysis

When a Corporation's Members, Not Its Trustees, Make the Decisions

The trustees of non-hierarchical religious corporations that are subject to New York's Religious Corporations Law (RCL) are able to exercise a great deal of authority as the corporation's "managing officers." Yet their power is far from absolute. Indeed, it is the members of the congregation—and not the institution's trustees—who ultimately make virtually all important corporate decisions.

This general scheme arises from the specific provisions of the RCL (and predecessor statutes reaching back to as early as 1813, which established that members "are the body corporate") and over a century of decisions by the U.S. Supreme Court and the New York Court of Appeals. Moreover, it may well be argued that the Free Exercise Clause of the First Amendment

By
**Barry
Black**



prohibits statutory law, such as New York's Not-for-Profit Corporation Law (NPCL) and similar law in other states—including in those many states that do not even have their own religious corporations law—from depriving the members of a religious society of the right to govern themselves.

After first briefly reviewing various provisions of the RCL, this column will explore two landmark decisions by the New York Court of Appeals setting forth the respective powers of congregations and trustees. It then will consider the likely result when the RCL is silent on a specific issue but the NPCL is not, yet the NPCL's rules conflict with a church's Constitutionally-protected form of governance.

The RCL

Section 5 of the RCL sets forth the general powers and duties of trustees of religious corporations. It provides that the trustees of every religious corporation have "the custody and control of all the temporalities"—that is, the secular properties and revenues—"belonging to the corporation." Trustees must administer that property "in accordance with the discipline, rules and usages of the corporation" and of the religious governing body, if any, to which the corporation is subject, "for the support and maintenance of the corporation" or, if authorized by the "members of the corporation," for "some religious, charitable, benevolent or educational" purpose. Section 5 concludes by emphasizing that trustees "shall not use such property or revenues for any other purpose or divert the same from such uses."

Section 200 of the RCL further limits the authority of trustees of certain incorporated churches with a congregational form of government,

BARRY BLACK is a partner in the religion law firm Nelson Madden Black, which serves the legal needs of religious institutions and individuals. Resident in the firm's offices in Midtown Manhattan, he can be reached at bblack@nelsonmaddenblack.com.

providing that they “shall have no power to settle or remove or fix the salary of the minister, or without the consent of a corporate meeting, to incur debts beyond what is necessary for the care of the property of the corporation; or to fix or [change] the time, nature or order of the public or social worship of such church, except when such trustees are also the spiritual officers of such church.”

The limited authority granted to trustees of religious corporations under the RCL may be surprising to lawyers and others who regularly represent or who are involved with trustees of other nonprofit corporations. To put it starkly, trustees of religious corporations are administrators, while members have the ultimate deciding power.

Consider the decisions by the New York Court of Appeals in *Robertson v. Bullions*, 11 N.Y. 243 (1854), and *Walker Memorial Baptist Church v. Saunders*, 285 N.Y. 462 (1941).

‘Bullions’

In *Bullions*, the Court of Appeals first addressed the relative roles of a church’s members and its trustees. In doing so, the court contrasted two distinct views concerning the nature of the corporations formed pursuant to New York’s predecessor statute to the RCL. It rejected the view that “the society itself does not become incorporated, but only its trustees” and that the members are the religious society but “form no part of the corporation,” while the

trustees “constitute a body corporate entirely separate and distinct from the society.”

Instead, the court adopted the view that “the society itself is incorporated” and that “the previous voluntary association is merged in the corporation, so far as its secular affairs merely are concerned.” The court also declared that “the trustees

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are not the body corporate itself, but merely its officers, to whom is committed the custody of its property, and the management of its concerns” and that “the members of the association form the constituent body, the legal entity which is represented by the trustees.” The court favorably cited to this doctrine in *Saunders*.

‘Saunders’

The plaintiff in *Saunders* was the religious corporation that owned and maintained a Baptist church in Harlem. The defendants were the Rev. John W. Saunders, who had been duly inducted as minister of that church, and certain active members and communicants of the church.

Prior to May 1939, the minister and some of his followers urged that

the plaintiff corporation should sell the church building and purchase a larger building. The trustees of the plaintiff corporation opposed this proposal and refused to sanction a campaign for funds for a larger church.

As the court explained, without the consent of the trustees, and in defiance of the trustees’ directions, the defendants proceeded to collect funds for this purpose. The trustees ordered them to hand over the funds to the trustees, but the defendants refused.

The trustees then charged the defendants with misappropriation of funds and called a meeting for the consideration of those charges.

On the night set for the meeting, the minister and almost 300 church communicants met in the church auditorium while the trustees and their smaller group of followers met in another room. The larger group refused to present charges against the defendants but the smaller group, consisting of the trustees and their followers, presented charges and voted to discharge the minister and to expel the other defendants from membership in the corporation.

The defendants refused to recognize the validity of these corporate resolutions, and the plaintiff corporation went to court, seeking to enjoin the minister and the other defendants from interfering in the corporation’s affairs and from using the building for religious services.

A trial court granted a permanent injunction in favor of the plaintiff corporation and the Appellate Division, First Department, affirmed.

The case reached the Court of Appeals, which reversed.

In its decision, the court briefly reviewed a number of provisions of the RCL and then explained that the powers of the trustees of a religious corporation are “distinguished from the corporation itself acting through its voting members.” Citing to *Bullions*, the court added that trustees “are not themselves the corporation,” for the “members of the association form the ... legal entity, which is represented by the trustees.” Members “are the incorporators,” and trustees are “merely the managing officers of the corporation,” the court said.

Therefore, the court ruled, the plaintiff corporation had no power to discharge the minister. The court also decided that because all of the other defendants were members of the “spiritual body of the church,” it followed that the church corporation “had no right to expel them from voting rights in the religious corporation.” See also *Kamchi v. Weissman*, 125 A.D.3d 142 (2d Dept. 2014) (congregation, not trustees, had power to remove rabbi).

The NPCL

The RCL does not provide for all contingencies or situations that might arise involving religious corporations. The statute, however, seeks to address that problem by authorizing

the NPCL to apply in those instances. Thus, §2-b(1) of the RCL states that the NPCL “applies to every corporation to which” the RCL applies, provided that if any provision of the NPCL conflicts with any provision of the RCL, the provision of the RCL prevails and the conflicting provision of the NPCL does not apply. Where there is no conflict, both provisions apply.

But what law governs in a situation where the RCL is technically silent but its underlying principles conflict with the express statutory provisions of the NPCL? Similarly, what law ultimately governs in the many states across the country that do not have their own religious corporations law but have a not-for-profit corporations law?

In most instances, the wishes of the members of non-hierarchical religious corporations will override conflicting views of the incorporated institution’s managers—its trustees.

The answer may lie in the U.S. Supreme Court’s discussions of church governance in cases such as *Watson v. Jones*, 80 U.S. 679 (1872), and *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), and in the First Amendment’s Free Exercise Clause. In these cases, the court, in analyzing the nature of church governance, held that internal church disputes are to be adjudicated by the organization’s highest tribunal which, in the case of

a congregational church, is its membership. As such, said the court in *Watson*, a congregational church is “governed solely within itself” and by a “majority of its members.”

Accordingly, *Kedroff* informs us, when a statute interferes with a church’s Constitutionally-protected right to self-governance, it intrudes “into the forbidden area of religious freedom contrary to the principles of the First Amendment.” As such, the Free Exercise rights of a religious corporation’s members appear to be protected against statutorily-ordained interference by the corporation’s trustees, even when trustees of other types of corporations have the traditional and statutory authority to act.

Conclusion

In most instances, the wishes of the members of non-hierarchical religious corporations will override conflicting views of the incorporated institution’s managers—its trustees. This is mandated by the RCL as well as by Constitutional principles well-grounded in New York Court of Appeals and U.S. Supreme Court jurisprudence.