

RELIGION LAW

Expert Analysis

The Many Benefits of Reviewing And Updating Bylaws

More than 50 years ago, on Feb. 17, 1970, The Hindu Temple Society of North America filed its certificate of incorporation with the New York State Department of State. The certificate provided that the Society was organized “pursuant to Article 9 of the Religious Corporations Law,” and it named seven individuals to its board of trustees.

In the same year, the Society adopted its bylaws. The 1970 bylaws defined the “General Body” as “all members in good standing who have paid their annual dues” and provided that “the members of the General Body shall elect members of the Board of Trustees” for three-year terms, at meetings to be held annually.

From its inception, however, the Society was in fact gov-



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erned by a self-perpetuating board of trustees. The trustees named in the certificate of incorporation added others to their number and, when vacancies later occurred, they were filled by a vote of the board.

In 1978, the board adopted new bylaws that provided that “the

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Board of Trustees will exercise the function of final selection and appointment” of the members of the board. The Society

subsequently operated under the 1978 bylaws, as amended by the trustees from time to time, although none of those amendments disturbed the trustees’ power of “final selection and appointment” of board members.

In 2001, a number of members of the Society who disagreed with some actions of the Society’s management went to court. Among other things, the petitioners sought removal of the board.

The Supreme Court, Queens County, granted the petitioners certain relief, but refused to dissolve the board. The court treated the bylaws adopted in 1978, as amended, as valid amendments to the 1970 bylaws.

On appeal, the Appellate Division, Second Department, found “no evidence in the record that the required procedures were ever followed to amend the 1970 bylaws.” Accordingly, the Second Department held that the “Supreme Court should have voided the bylaws postdating 1970.” Because none of the trustees had been elected

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as the 1970 bylaws required, the Appellate Division removed the board and directed “the appointment of a referee to direct and oversee a reorganizational meeting of the Society for the purpose of electing a new Board.”

A new election was held, and the dispute reached the New York Court of Appeals.

In its decision, in *Matter of Venigalla v. Nori*, 11 N.Y.3d 55 (2008), the court explained that the Religious Corporations Law (RCL), which provides rules for the governance of religious bodies, contained articles applicable to many specific denominations, but not to the Hindu faith. A Hindu group that wanted to become a religious corporation could, like other groups not specifically provided for, choose to incorporate either under Article 9 (Free Churches), which the Society chose, or Article 10 (Other Denominations). (In 2015, the legislature adopted Article 22 for Organizations of the Hindu Faith.)

As the court pointed out, an important difference between Article 9 and Article 10 is that, while the trustees of Article 10 corporations are elected by the body’s members (see RCL Sections 191, 192, 194, 195, 199), Article 9 corporations have self-perpetuating boards. The original trustees of an Article 9 entity are named in its certificate of incorporation (RCL Section 180), and, pursuant to RCL Section 182, vacancies “shall be

supplied by the remaining trustees.” Article 9 makes no provision for any elections, other than votes of the trustees themselves. Indeed, the only “members” referred to in Article 9 are the members of the board of trustees.

The court then ruled that the provisions of the Society’s 1970 bylaws that called for election of trustees by the “General Body” contradicted Article 9 “and were invalid from their inception.” Therefore, the court concluded, the Appellate Division erred in requiring the Society to conduct an election pursuant to those provisions.

The court’s decision in *Venigalla* makes clear that any inconsistencies between a religious corporation’s bylaws and the RCL must be resolved in favor of the RCL. See also *Matter of Home of the Sages of Israel*, 2017 N.Y. Slip Op 32187[U] (Sup. Ct. N.Y. Co. 2017) (“The court determines that the petitioner’s purported amended bylaws are invalid because they violate the RCL.”).

It follows, therefore, that it is important for religious corporations to have counsel review their bylaws to make sure that they are consistent with the RCL.

Benefits of Updating Bylaws

There are a host of other benefits that up-to-date bylaws that are consistent with the RCL, and with other laws, can provide to a religious corporation. Many of

these benefits are preventative in nature and can save the corporation a significant amount of money if it is sued, or if the corporation itself brings a lawsuit. The balance of this column discusses some of the most important of these benefits.

For one thing, bylaws can be used to set forth the religious qualifications of various employees so as to trigger the exemption for religious corporations from Title VII’s anti-discrimination requirements. Bylaws also can support an institution’s assertion of the ministerial exception, which bars employment discrimination claims brought by individuals who had worked for a religious organization in a ministerial capacity and who were terminated.

Properly written bylaws also can help to support a religious corporation’s claim for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code by establishing that it is organized and operated exclusively for religious purposes, and to support a claim for property tax exemption under New York’s Real Property Tax Law. Many New York religious corporations also still have not reviewed their bylaws to bring them into compliance with the Nonprofit Revitalization Act of 2013, which the legislature intended to streamline corporate governance for nonprofits.

Another benefit of properly drafted bylaws is that they can

outline the ecclesiastical nature of a church's governance, church discipline and other church procedures so as to support an ecclesiastical abstention doctrine defense to litigation. This doctrine generally prohibits courts from resolving disputes involving questions of religious doctrine or a church's internal governance out of concern that the government would become excessively entangled in essentially religious controversies or might opine on religious questions in violation of the First Amendment. The ecclesiastical abstention doctrine is meant to free religious bodies to practice their faith and decide disputes that are religious in nature uninhibited by state interference.

Title IX of the Education Amendments of 1972, which applies to schools receiving federal financial assistance, allows students to use federal financial aid at private religious schools that operate according to their beliefs. The religious exemption provision in Title IX was recently upheld by a federal judge in *Hunter v. U.S. Department of Education*, No. 6:21-cv-00474-AA (Ore. D. Ct. Jan. 12, 2023). A religious corporation's bylaws can be drafted to set forth whether it "controls" an educational institution to such a degree that the school may claim the Title IX exemption.

The RCL recognizes two general categories of churches: hierarchical, where congregations belong

to a common ecclesiastical body with other similar houses of worship and agree to be governed by a common ruling convocation or ecclesiastical head, and congregational, which are run and governed by their members. Bylaws should reflect a church's hierarchical or congregational nature and establish a form of governance designed to protect it against rule by faction. As an example, this can arise when a small number of worshippers seeks to remove a minister. In such a case, it can be very helpful for the church to have bylaws that

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set forth clear procedures for the removal of a minister.

Similarly, bylaws should clearly state the relationship between the house of worship itself and any higher body (such as a denomination, synod, etc.). The bylaws should explain specifically what the governing body controls and should accurately reflect any relevant jurisprudence. Unfortunately, many bylaws do not accurately state this relationship, which can lead to costly and potentially destructive litigation.

Up-to-date and well-drafted bylaws also can help to support "substantial burden" claims under the Religious Land Use

and Institutionalized Persons Act (RLUIPA), which protects religious institutions and individuals from discriminatory land use laws and regulations. In particular, the statute, which passed both houses of Congress unanimously and which was signed into law on Sept. 22, 2000, permits religious institutions and people of faith, as well as the U.S. government, to challenge land use regulations that place a substantial burden on religious exercise or that discriminate on the basis of religion. Bylaws can help courts determine whether a specific practice is part of a religious corporation's legitimate religious conduct and, thus, whether to apply the substantial burden test.

Conclusion

The value, and the importance, of up-to-date, accurate, and well-drafted bylaws for religious corporations cannot be overstated. The time and expense spent in reviewing and, where necessary and appropriate, redrafting bylaws often will be dwarfed by the benefits that the religious corporation will obtain as a result.