

Modern cases of Establishment

UNITED STATES OF AMERICA, Plaintiff, vs. INDIANAPOLIS BAPTIST TEMPLE, GREGORY JEROME DIXON, and NBD BANK, INC., Defendants.

The Indianapolis Baptist Temple case is an example of a church that came to the conclusion that it was not entangled with any state or federal agency, including the Internal Revenue Service. Therefore, the church believed it had no obligation to collect F.I.C.A. taxes. The Temple argued that the tax laws imposed on churches violate the First Amendment's Establishment Clause, which is the basis of separation of church and state.

The courts did not agree. Judge Barker, the District Court judge, decided that the church was an unincorporated association during the time that employees' taxes were supposed to be withheld. The decision of the District Court and subsequent rulings from the appeals courts said that tax laws are "neutral laws" that do not run afoul of First Amendment protections of the free exercise of religion.

Is this a case which shows that it makes no difference if a church is incorporated or not in the eyes of the court? Several reasons show this to be a fallacy. Was Baptist Temple a pure church, not entangled with the government, or was it exactly what the Justices saw it to be: an unincorporated religious society, an entity created by statute, and more of a quasi-corporation than a church?

Judge Barker, in her Summary Judgment decision, stated:

"The church was founded in March 1950 and was subsequently incorporated as a not-for-profit corporation on October 27, 1950. IBT began operating at 2711 South East Street, in Indianapolis, Indiana, and has been at that location ever since.

As a not-for-profit corporation, IBT claimed tax exempt status and obtained federal employer identification number 35-1037016. Thereafter, in 1983, the church membership decided to manage the church's affairs as an unincorporated religious society, rather than as a corporation. As part of the transition, the corporation's assets were transferred to the unincorporated religious society and the articles of incorporation were amended to limit the corporation's purpose to "...continuing any litigation in which the corporation may have been involved prior to 6-26-83 and any future litigation and to continue such financial obligations and legal responsibilities as have not been assumed by Indianapolis Baptist Church, an unincorporated Church." The next year, the articles of incorporation were again amended to change the name of the corporation from Indianapolis Baptist Temple, Inc. to "Not a Church, Inc." Two years later, on July 31, 1989, Not a Church, Inc. was administratively dissolved by Indiana's Secretary of State.

Meanwhile, in May of 1987, the unincorporated religious society known as Indianapolis Baptist Temple transferred all of its assets to Gregory Jerome Dixon, the church's pastor, as trustee. After February 15, 1994, the society held title to real property located in Indianapolis, Indiana and known as 2711 South East Street and 339 West Cragmont Drive."

The fallacy of the Baptist Temple position can be seen in several areas from the historical record of the church. First, the church voluntarily entered into a corporate status in 1950 and continued therein for thirty-three years. While incorporated, they "...claimed tax exempt status..." and had a "...federal employer identification number." The corporate church admitted that it had employees and therefore

was an employer. During these years as a corporate church, eight other corporations were started by people or ministries of the church: Indianapolis Baptist Schools, Inc., Christian Senior Housing Foundation, Inc., Columbia Towers of Indianapolis, Inc., Columbia Towers of Springfield, Inc., Foundations of Faith, Inc., Philogians, Inc., Iron Curtain Evangelism, Inc., and Not A Church, Inc. Each of these corporations' officers or incorporators were ministers of Baptist Temple. The majority of these corporations listed the addresses on South East Street or West Cragmont as the registered office of the corporations, including Not A Church, Inc.

Second, the church deliberately amended its articles of incorporation to continue the church's parent corporation, Indianapolis Baptist Temple, Inc., to read that the sole purpose of this corporation was to "...continue any litigation ... prior to 6-26-83 and **any future litigation...and legal responsibilities...**" not assumed by the church.

Third, the church never unincorporated the church corporation. The ways to unincorporate are spelled out in the Not-for-profit Corporation statutes of each state. There is a process to legally unincorporate. Notifying the Secretary of State as to the dissolution of the corporation is one of the first steps. Notifying the Internal Revenue Service is another step. Baptist Temple, although having signed an agreement to abide by all Not-for-profit Corporate law, disregarded this voluntary agreement, and did none of the steps to legally rid itself of its corporate status. Judge Barker wrote in her opinion: "From 1983 to 1987, both **the society and the corporation co-existed**, with the society managing church affairs and the corporation's **role limited to continuing any litigation** in which it was involved. In 1983, the two entities **shared the name Indianapolis Baptist Temple** until the corporation changed its name the following year to Not a Church, Inc." A good question for the church to answer is: Why did you enjoy all the benefits of the corporate status from the law for over thirty-three years, but would not abide by the responsibility of the same law to dissolve the corporation properly?

Fourth, the church, in May of 1987, "...transferred all of its assets to Gregory Jerome Dixon, the church's pastor, **as trustee.**" A trustee, by definition, is the person "...required by law, to execute a trust." A trustee is a legal, corporate office, and not a Scriptural office. A local church determined to follow a course of Biblical opposition to a fictitious, man-made body, would not be able to use the legally created officers of that fiction and be consistent in their beliefs. Also, the church borrowed two million dollars in 1987 from Summit Bank (now NBD Bank, Inc.) in Fort Wayne to pay off a bond program which the church corporation started years before. Thus, NBD Bank, Inc. was named as a defendant in the suit. The paperwork for the loan was also signed by two other ministers as "trustees" of the "unincorporated association."

Fifth, the church corporation, changed deliberately by the church from Indianapolis Baptist Church, Inc. to Not A Church, Inc., was dissolved by Indiana's Secretary of State on July 31, 1989. According to Indiana Law, a defunct corporation can be resurrected up to three years after being dissolved in order to complete further business. This would place the church's parent corporation still in existence to do the business of "future litigation" in 1992. The Internal Revenue Service filed liens two years later in 1994 for the periods 1987 through 1993. For the years 1987 through 1992, the church's parent corporation would have been liable for those years. Naturally, one could assume that the Internal Revenue Service filed their liens a year too late; that the corporation could no longer be resurrected to do business. In spite of that technicality, the parent corporation still would have been in existence for six of the seven years of the liability.

Sixth, of the other corporations which the church started, Indianapolis Baptist Schools, Inc., was dissolved administratively by the Indiana Secretary of State on April 20, 1992. Annual corporate reports were deliberately filed by someone at the church for the years 1987, 1988, and 1989, three of the years on which the Internal Revenue Service placed liens. The church has repeatedly placed into evidence that it unincorporated in 1983. The court record states: "In 1983, the church membership decided to manage the church's affairs as an unincorporated religious society, rather than a

corporation.” A huge, legal problem was the fact that the unincorporated church kept the parent church corporation around, albeit by a different name, for at least another seven years after that, all the while claiming its unincorporated church status. Making matters worse is the fact that even after letting the parent church corporation die, the church kept the church school’s corporate status current and in good standing with the state until the end of 1989. Therefore, with the Secretary of State dissolving this corporation in 1992, that gave another three years in which to resurrect this corporation in order to do the business of settling its affairs. That would place the date at April 20, 1995, at which the government could delay proceedings for another year against a corporation of the church and still be within its lawful right to sue the church corporately.

Seventh, the church claimed that as a New Testament Church, the government had no jurisdiction to decide what a church must do, and how a church must act. The greatest inconsistency the church showed was in this belief that government cannot decide what a church must do, and yet the church voluntarily submitted itself to the federal court’s jurisdiction for the judge to decide what the church must do. Then the church repeated its error when it submitted itself again to the seventh district Court of Appeals to decide what it must do. A third error concerning its jurisdictional argument was when the church submitted itself again to the Supreme Court of the United States to decide what it must do. If a church is going to take a stand against governmental authority, it must be consistent and not submit even to the authority of the court. To go to court, plead the case, and await the judge to rule on the case, is submitting to the jurisdiction of the government. To then cry foul, because the decision made was not agreeable, is unjustified resentment.

The attorney for the church argued that trying to collect Social Security taxes from an unincorporated church is not under the purview of the Internal Revenue Service. He stated that this would be tantamount to establishing a religion. While legally that may be true, and while even modern law professors are coming to this conclusion, it would be paramount for a church to sincerely and consistently hold that position before a court could ever rule in the way Baptist Temple desired the court to rule. Baptist Temple, with the precedent of their voluntary actions, the inconsistency of their stance, the hypocrisy of their own records, and their determination to let the corporations die, could in no way postulate this kind of an argument successfully.

Another logical scenario would have been for the teachers and ministers, who had already paid their own Social Security taxes, to sue the Internal Revenue Service with a class action suit, with demands to know why they could not file as self-employed workers. This would have placed the onus upon the IRS to prove the church was an entity who could have self-employed workers. Of course, this would not have involved the church itself, the media, the militia groups, or the U.S. Marshals, nor would this have brought a stand against government encroachment into a church.

The salient question which must be answered is this: Does the government have a right to decide what its own statutory-created entity must do? Baptist Temple defends itself by stating that now it is only a church, and not a statutory-created entity. The government consistently counters with: The record shows this to be a statutory entity which, by definition, must abide by the corporate contract to perform what it has performed in the past, and has never dissolved performing in the future.

The Baptist Temple case is not a true or accurate example of what would happen if a church did not come under corporate laws, because it was not incorporated. This case is purely an example to all incorporated churches that they must agree to go by the corporate laws which they deliberately volunteered to put themselves under.

Falwell v. Miller

Prior to the recent decision in *Falwell v. Lynchburg and the Commonwealth of Virginia*, Virginia churches were not permitted to incorporate, under Virginia Constitution Article IV, § 14(20), which states, “The General Assembly shall not grant a charter of incorporation to any church or religious

denomination.” This Virginia Constitutional provision was in part based on Thomas Jefferson’s Virginia Declaration of Rights that was adopted in the summer of 1776, which provided strong religious liberties for all people and all sects by stating, “The General Assembly shall not prescribe any religious test whatsoever or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society to levy on themselves or others any tax... in support of any church or ministry, but it shall be left free to every person to select his religious instructor...” Virginia Constitution AM.ART I § 16.

Background

A brief historical background may explain some of the original reasons for the ban on incorporation of churches. In 1777, the Assembly suspended taxation for the support of Anglican ministries, which continued until 1779 when they finally repealed all statutes providing tax support for the Episcopal Church. Nonetheless, the General Assembly retained control of church governance, doctrines and the glebes (church lands). To address the serious matters, including a loss of members to the other sects and a loss of tax money to the Church (which caused serious financial and church decline), the Episcopal Church in 1784 requested, and the Virginia General Assembly passed, an Incorporation Act, which permitted the Episcopal clergy to incorporate themselves separate from the laity, and hold the Church lands. After strong opposition from the Presbyterians and Baptists about Episcopal Church incorporation, the Virginia legislature in 1787 repealed the Act incorporating the Episcopal Church, but allowed the Church to retain its property.

In 1798 however, the legislature repealed all acts that reserved glebe lands to the Episcopal Church and in 1802 authorized the seizure of the church lands. The Episcopal Church challenged the seizures of lands but the Virginia Supreme Court in *Turpin v. Lockett* 10 Va. 113, 6 Coll. 113 (1804), held that the seizures were valid under the Constitution, since the glebes were public property purchased by taxpayers of all denominations and thus, the legislature never had the power to grant them to the Episcopal Church. In a later case, the U.S. Supreme Court held such acts unconstitutional, since the Incorporation Act of 1784 indefeasibly and irrevocably vested title to the glebes in the Church, and the legislature was without authority to reverse it. *Terrett v. Taylor*, 13 US 43 (1815)

Over the next century, Virginia continued with the sale of glebe lands and the Virginia Supreme Court again considered the issues in *Selden v. Overseers of the Poor of London*, 28 Va. 127 (1940). Ignoring the US Supreme Court, the Virginia Supreme Court again upheld the seizure and sale of the glebes, but opined that “...incorporations of religious sects, providing for church government of the members and election or appointment and institution of ministers are outside the scope of legislative power and incompatible with the principles of [the Act establishing religious freedom] now incorporated in the Constitution.” The Virginia Constitutional Convention of 1940, following the dicta in *Selden*, added to Article IV § 14 of the Constitution the provision precluding churches or religious denominations from incorporating and therefore from holding title in its own name.

In the fall of 2001, Jerry Falwell and the Trustees of Thomas Road Baptist Church challenged the constitutionality of the Virginia Constitution based on the United States Constitution in the Federal Court for the Western District of Virginia. The *Falwell* case challenged the constitutionality of several provisions in the Virginia Constitution and Code of Virginia that impose unique limitations on churches. Specifically, Article IV § 14(20) banned churches from incorporating, and in addition, § 57-12 of the Code of Virginia limits the amount of real property a church may own to fifty (50) acres within a city or town and two hundred fifty (250) acres in any one county. This section also limits the value of personal property assets held by a church to ten million dollars (\$10,000,000.00) and requires the appointment of church trustees to hold land in the trustee’s name. Finally, § 57-15 of the Code of Virginia requires court approval of any land transactions.

On April 15, 2002, the United States District Court for the Western District of Virginia held that the portion of § 14(20) of Article IV of the Constitution of Virginia which read “...the General Assembly

shall not grant a charter of incorporation to any church or religious denomination...” violates the First Amendment rights of free exercise of religion, made applicable to the states by the Fourteenth Amendment of the United States Constitution, and granted Falwell and Thomas Road Baptist Church’s Motion for Summary Judgment as to that part. While the court noted that such provision preventing incorporation of churches violated the US Constitution and lacked facial neutrality, it did note that the likely explanation for the existence of § 14(20) is that its drafters believed that state incorporation of individual churches was inconsistent with the principles of Mr. Jefferson’s Statutes of Virginia for Religious Freedom, in that any infringement of religious freedom constituted “...an infringement of a natural right of mankind.” The Attorney General for Virginia decided not to appeal the Summary Judgment ruling, and thus, by order of the federal Court, this Virginia Constitutional provision was invalidated, allowing churches and religious denominations to now incorporate in the state of Virginia.

Peculiarities of the Case

The peculiarities of the case revolve around that which did not happen, and those who did not oppose the suit. Judge Moon, in his court opinion, stated: “Plaintiff’s (Falwell) Motion for Summary Judgment is unopposed.” In other words, the state of Virginia offered no defense against incorporation of churches in Virginia. The state offered no resistance, no arguments, no appeals of the ruling, but, on the contrary, offered their blessings for church incorporation. The judge’s opinion continues: “Although the commission is composed of three members, Chairman Miller has never contended that he is not the proper person to be sued on behalf of the commission. In fact, by arguing that the commission must act in accordance with Virginia law, Chairman Miller effectively has conceded that he may represent the entire SCC in this litigation. Furthermore, by not asserting the defense of sovereign immunity in any of his filings, he has waived that defense as well.” If the state of Virginia does not wish to fight a church becoming incorporated, perhaps the incorporation of churches is exactly what the state wants. In comparison, a man suing another man to become the other man’s slave, would be met with the same type of court argument the state of Virginia displayed.

Another peculiar, and rather telling demonstration in the case is the fact that the American Civil Liberties Union joined the church as a Friend of the Court. The ACLU helped defend the church, and argued that the church should be incorporated. Judge Moon states: “Finally, the Court notes, as the Amicus American Civil Liberties Union has done, that section 14(20) by its terms prohibits only the General Assembly from incorporating a church or religious denomination.” Because of the lack of opposition, no one challenged the fact that the “General Assembly” was the body which made the corporate laws an administrative decision, so that the “General Assembly” would not be so burdened down with voting each individual entity a corporate status.

The third peculiar situation involved the previous decision which came from the Court on February 8, 2002. In that case, the church sued the Attorney General, the State Corporation Commission Chairman (Miller), the clerk of the Circuit Court, the Chief Judge of the Circuit Court, and the attorney for the city of Lynchburg. In this previous case, which is tied closely to the present case, all of the defendants filed motions to dismiss the suits against them, except for Chairman Miller. The Court ruled in that case: “The court dismissed without prejudice all defendants except the one who did not move for dismissal.” The court decided in all the other defendants’ suits that “sovereign immunity applied.”

In essence, this case was no more than what many attorneys describe as a “dog and pony show.” Everyone involved wanted the church to be able to incorporate. Rev. Falwell, in spite of the fact that his institutions own 4300 acres of property, wanted the church to be able to build a new auditorium on 60 acres which, in his opinion, the church should be able to own. The state of Virginia, by offering no opposition, invited all churches in Virginia to come under corporate status. The ACLU, by offering to be a “Friend” of the church, demonstrates the type of friendship the Lord’s church needs to help it incorporate. The judge, ruling uncontested, and knowing his ruling would not be appealed, changed

over 200 years of Virginia law, whose statesmen of the past warned that incorporation would be setting up a state church. And lastly, the attorneys in Virginia, smelling the potential power, prestige, and provision, have bombarded the churches in the state with the prospect of incorporating, and naming the attorney as resident agent, for merely \$1500.00 per church.