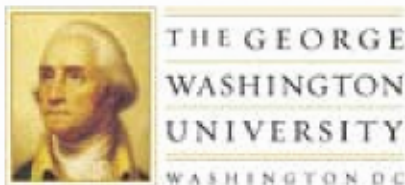


The Burger Court Opinion Writing Database

Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.

396 U.S. 367 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

December 24, 1969

Dear Bill:

In re: No. 414 - The Maryland and Virginia
Eldership of the Churches of God, et al. v. The
Church of God at Sharpsburg, Inc., et al.,

Please note that I concur in the result.

MERRY CHRISTMAS!

H L B
H. L. B.

Mr. Justice Brennan

cc: Members of the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 13, 1970

Dear Bill,

Re: No. 414 - The Maryland and Virginia
Eldership, etc. v. Church of God, etc.

I agree to the Per Curiam opinion circu-
lated today in this case.

Sincerely,



H. L. B.

Mr. Justice Brennan

P.S. Of course I do not agree to your separate
concurrence.

HLB

cc: Members of the Conference.

10: the Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

October Term, 1969

From: Brennan, J.

Circulated: 1-13-69

Recirculated:

THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, concurring.

I join the *per curiam* but add these comments. We held in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969), that "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." It follows that a State may adopt *any* one of various approaches for settling 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.

Thus, the States may adopt the approach of *Watson v. Jones*, 80 U. S. (13 Wall.) 679 (1872), and enforce the property decisions made within a church of congregational polity "by a majority of its members or by such other local organism as it may have instituted for the

M

December 19, 1969

Re: No. 414 - Maryland & Virginia Eldership v. Church
of God at Sharpsburg

Dear Bill:

I would prefer that the second sentence of the paragraph beginning on page 2 read as follows:

Thus, they may follow the approach of Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872),² and defer to the property rulings of the appropriate church governing body, if such a body having power to decide property disputes is part of church polity and can be identified without the determination of doctrinal questions.

Would this put an unacceptable cast on the paragraph? Otherwise I join the per curiam.

Merry Christmas.

Sincerely,

B.R.W.

Mr. Justice Brennan

cc: Conference

Dear Bill

This looks OK
to me
BRW

To: The Chief Justice
Mr. Justice Black
✓ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

See Page 2, 3

3

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

OCTOBER TERM, 1969

Circulated: _____

THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

Recirculated: 1-5-70

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

PER CURIAM.

In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations,¹ upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969).² Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

We held in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969), that "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil

¹ 2 Md. Code Ann., Art. 23, §§ 256-270 (1966).

² The Maryland Court reached the same decision in May 1968. 249 Md. 650, 241 A. 2d 691. This Court vacated and remanded the case "for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* . . ." 393 U. S. 528 (1969).

9 copies
WJ

To: The Chief Justice
Mr. Justice Black
✓ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Brennan, J. 70

October Term, 1969

Circulated: 1-13-69

**THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.**

Circulated: _____

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

PER CURIAM.

In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations,¹ upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969).² Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

*Page
all*

It is so ordered.

¹ 2 Md. Code Ann., Art. 23, §§ 256-270 (1966).
² The Maryland Court reached the same decision in May 1968. 249 Md. 650, 241 A. 2d 691. This Court vacated and remanded the case "for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* . . ." 393 U. S. 528 (1969).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN M. HARLAN

January 7, 1970


Re: No. 414 - Maryland and Virginia Churches

Dear Bill:

Although I recall that I was the originator of the idea that the "guidelines," which you thought necessary to allay confusion among the lower courts as to the intended effect on Watson of our decision in Presbyterian Church, could be handled in a per curiam dismissal of the appeal in the present case, I now have second thoughts.

My basic difficulty with your per curiam is that it seems to me to create a new set of uncertainties which in turn may have to be cleared up in subsequent litigation. This difficulty, I think, inheres in the fact that you have had to formulate the guidelines in a vacuum, so to speak, in that they are all unrelated to the disposition of the actual case before us.

My second thoughts are therefore that the best disposition of this case would be simply to dismiss the appeal per curiam, which could be done by simply utilizing the first paragraph in your opinion. The formulation of guidelines for Presbyterian Church would then be left to the event of future litigation -- whether in the Pennsylvania case or others to follow -- where the subject could be dealt with in a concrete context.

Sincerely,

J. M. H.

Circulated
12-19-69

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

PER CURIAM.

In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations,¹ upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969).² Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

We held in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian*

¹ 2 Md. Code Ann., Art. 23, §§ 256-270 (1966).

² The Maryland Court reached the same decision in May 1968. 249 Md. 650, 241 A. 2d 691. This Court vacated and remanded the case "for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* . . ." 393 U. S. 528 (1969).

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

PER CURIAM.

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¹2 Md. Code Ann., Art. 23, §§ 256-270 (1966).

²The Maryland Court reached the same decision in May 1968. 249 Md. 650, 241 A. 2d 691. This Court vacated and remanded the case "for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* . . ." 393 U. S. 528 (1969).

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AGREES: TM

Black, J. concurs in result

White, J. agrees with suggestions and Stewart, J. joins or agrees with White, J.

for circulation

Agrees:

TM, PS + WOD

Disagree

JMH

3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

PER CURIAM.

In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations,¹ upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969).² Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

We held in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969), that "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil

¹ 2 Md. Code Ann., Art. 23, §§ 256-270 (1966).

² The Maryland Court reached the same decision in May 1968. 249 Md. 650, 241 A. 2d 691. This Court vacated and remanded the case "for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* . . ." 393 U. S. 528 (1969).

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Consulated
1-5-78

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

PER CURIAM.

In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations,¹ upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969).² Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

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¹ 2 Md. Code Ann., Art. 23, §§ 256-270 (1966).

² The Maryland Court reached the same decision in May 1968. 249 Md. 650, 241 A. 2d 691. This Court vacated and remanded the case "for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*," 393 U. S. 528 (1969).

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January 5, 1970

MEMORANDUM TO THE CONFERENCE

RE: No. 414 - The Maryland, etc. Eldership v. Church of God

Byron has suggested that the second sentence of the paragraph beginning on page 2 of the previous circulation be revised to add "if such a body having power to decide property disputes is part of church polity."

I suggest that an inquiry by civil courts whether a church body has "power to decide property disputes" that exceeds that permitted by Gonzales (fraud, collusion or arbitrariness) would be as much barred by the First Amendment as inquiry into doctrine. Admittedly, Hull concerned inquiry into doctrine and not polity but I think the admonition that civil courts are not "to resolve ecclesiastical questions", 393 U.S., at 499, can embrace both. I've revised the per curiam accordingly.

It may be, however, that the Conference will think that we should take a case for argument of the question. Neither this case nor the Georgia case is the best vehicle for the purpose since both went off on the constitutionally permissible "formal title" approach. It would therefore be difficult to justify asking the parties in either case to argue the constitutional contours of the Watson approach. A better case would be the decision of the Pennsylvania Supreme Court which I mentioned at the last conference, St. John Chrysostom Greek Catholic Church v. Elko, in which that court held that a certain Greek Catholic Church of Pittsburgh is, and always has been since its founding in 1910,

united spiritually and hierarchically with Rome. That conclusion was based upon an inquiry into doctrine and polity that I think very questionable under Hull. However, a petition for rehearing is awaiting decision in the Pennsylvania Court and, while it will probably be denied in the next several weeks, the case will not get here until late next Spring, if it's brought here at all.

Our choices therefore seem limited to (1) dismissing this appeal and denying certiorari in the Georgia case with the attached opinion, (2) doing so without opinion, or (3) holding both cases until Spring to see if certiorari is sought in the Pennsylvania case. Personally rather than continue the confusion over whether any but the formal title approach is permissible under Hull, or take the chance that the Pennsylvania case won't come here, I'd decide the question now by filing the opinion. I think this is a question as to which briefs and oral argument would be of minimal help.

W.J.B. Jr.

Circulars
1-13-70

SUPREME COURT OF THE UNITED STATES

October Term, 1969

THE MARYLAND AND VIRGINIA ELDERSHIP
OF THE CHURCHES OF GOD ET AL. v. THE
CHURCH OF GOD AT SHARPSBURG, INC., ET AL.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND

No. 414. Decided January —, 1970

PER CURIAM.

In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations,¹ upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A. 2d 162 (1969).² Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland Court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

It is so ordered.

¹ 2 Md. Code Ann., Art. 23, §§ 256-270 (1966).

² The Maryland Court reached the same decision in May 1968. 249 Md. 650, 241 A. 2d 691. This Court vacated and remanded the case "for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*" 393 U. S. 528 (1969).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 29, 1969

No. 414 - Md. and Va. Churches
v. Church of Sharpsburg

Dear Bill,

I am glad to join your Per Curiam along
with Byron's suggested modification.

Sincerely yours,

P.S.
/

Mr. Justice Brennan

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 6, 1970

No. 414 - Maryland and Virginia Churches

Dear Bill,

I am not in favor of setting either this case or the Pennsylvania case for argument, and would decide the issues now with an opinion along the lines of the one you have circulated.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 13, 1970

No. 414 - Maryland & Virginia Churches

Dear Bill,

I am glad to join the one-paragraph Per
Curiam you have now circulated in this case.

Sincerely yours,

P.S.
/

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1969

Re: No. 414 - Maryland & Virginia Eldership v. Church
of God at Sharpsburg

Dear Bill:

I would prefer that the second sentence of the paragraph beginning on page 2 read as follows:

Thus, they may follow the approach of Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872),³⁷ and defer to the property rulings of the appropriate church governing body, (if such a body having power to decide property disputes is part of church polity) and can be identified without the determination of doctrinal questions.

Would this put an unacceptable cast on the paragraph? Otherwise I join the per curiam.

Merry Christmas.

Sincerely,

Byron
B.R.W.

Mr. Justice Brennan

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 14, 1970

Re: No. 414 - Maryland & Virginia
Eldership v. Church of God

Dear Bill:

I join the per curiam in this
case as circulated January 13.

Sincerely,


B.R.W.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 30, 1969

Re: No. 414 - Maryland and Virginia Eldership
of the Churches of God v. Church
of God at Sharpsburg, Inc.

Dear Bill:

Please join me in your per curiam.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1970

Re: No. 414 - The Maryland, etc. Eldership v.
Church of God

Dear Bill:

I would decide this case with the
Opinion you have circulated.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

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