

Memorandum

Date: January 11, 2006

To: Interested Persons

From: D. Avila, Mass. Catholic Conference

RE: Massachusetts Case Law Relevant to Issues Raised by Charitable Reporting Bill (S. 1074).

Relevant Legal Principles

The Massachusetts courts recognize that the constitutional guarantees protecting religion prohibit the state “from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization.”¹

Consequently, “religious organizations as spiritual bodies ‘have rights which require distinct constitutional protection’”² and “religious freedom encompasses the ‘power [of religious bodies] to decide for themselves, free from State interference, matters of church government as well as those of faith and doctrine.’”³

Thus, a religion’s “own internal guidelines and procedures must be allowed to dictate what its obligations to its members are,”⁴ and the religion guarantees preclude any state “assessment of the church’s priorities of its ministries[.]”⁵ Such governmental intrusion cannot be justified by any “balancing test,” given the absolute constitutional bar against interfering with “ecclesiastical matters.”⁶

While the Massachusetts courts will entertain complaints against or involving religious entities, they do so only after they determine that “property rights, the interpretation of trusts, or some definite legal obligations [are] involved.”⁷ The courts, as state actors, lack subject matter jurisdiction unless they can “resolve the dispute without entangling ourselves in questions of religious doctrine, polity, and practice, and rely instead on objective, well-established concepts of trust and property law.”⁸

This is not always an easy distinction to make: “The determination of a religious question by religious authorities may seriously affect the property or property rights of an individual. This was the case in *Grosvenor v. United Soc. of Believers*, 118 Mass. 78, where the court would not review the correctness of the decision. Conversely, the construction of a trust may determine a question such as whether a church must remain open for worship against the wishes of a majority of its members and

¹ *Callahan v. First Congregational Church of Haverhill*, 441 Mass. 699, 708 (2004) (quoting *Alberts v. Devine*, 395 Mass. 59, 72, cert. den. sub nom. *Carroll v. Alberts*, 474 U.S. 1013 (1985)).

² *Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts*, 426 Mass. 268, 286 (1997) (quoting Laurence H. Tribe, *American Constitutional Law* 1238 (2d ed. 1988)).

³ *Id.* (brackets in original and quoting *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952)).

⁴ *Williams v. Episcopal Diocese of Massachusetts*, 436 Mass. 574, 581 (2002) (quoting *Dowd v. Society of St. Columbans*, 861 F. 2d 761, 764 (1st Cir. 1988)).

⁵ *Id.* at 580.

⁶ *Id.* at 579-80.

⁷ *Moustakis v. Hellenic Orthodox Society of Salem & Peabody*, 261 Mass. 462, 466 (1928).

⁸ *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781, 788 (1994).

against the orders of a bishop. In a case involving this question the court has intervened. *Canadian Religious Assn. v. Parmenter*, 180 Mass. 415. Thus judicial intervention is determined by the nature of the central issue to be resolved, and not by the incidental or consequential results of the decision.”⁹

While “the mere examination” of church documents or records by the courts or other state authorities “is not, in and of itself, an impermissible intrusion into the religious realm,”¹⁰ any state required production or extensive investigation that has, “as [its] ultimate goal, regulatory control over religious institutions,” or that otherwise “seek[s] to control or influence any aspect of the [entity’s] operation,” falls outside the bounds of constitutional permissibility.¹¹

Application to S. 1074

The asserted state interest behind S. 1074 is “transparency.” The mechanism employed to further that interest is the state-mandated reporting by all religious entities of internal organizational information to a degree equal to that required of secular charities.

Thus the bill relates intrinsically to institutional matters and contemplates state entanglement with ecclesiastical policies.

As an initial matter, by equating religion to secular charities, the bill imposes a governmental characterization (churches are now to be considered, per state dictate, as nothing more than an organizational variation of the Little League) that is foreign to the churches’ own self-understanding of their institutional character.

Moreover, the bill’s passage would govern the internal operations of churches concerning their assumed obligation towards their membership to report on church finances and property. The bill would impose a uniform standard ostensibly for the benefit of the institution’s members to which all church leaders would be subject.

Significantly, the state’s reporting mandate would encompass matters extending beyond legal trusts and property contracts, for example reaching Sunday collections and tithes,¹² thus affecting activities fraught with religious significance.

The imposition of uniform state reporting standards would interfere with the constitutionally-protected autonomy of churches to decide whether and how to address internal issues of institutional transparency. That some members of a particular church disagree with that church’s internal reporting practices is not enough to justify the state’s intrusion through which specific practices are imposed on any and all religious institutions, no matter how reasonable such practices may be. The ends do not justify the unconstitutional means.

⁹ *United Kosher Butchers Association v. Associated Synagogues of Greater Boston, Inc.*, 349 Mass. 595, 598-99 (1965).

¹⁰ *Society of Jesus of New England v. Commonwealth*, 441 Mass. 662, 668 (2004) (quoting *Antioch Temple, Inc. v. Parekh*, 383 Mass. 854, 862 n. 10 (1981) and upholding subpoena for internal documents ‘relevant to determining whether one of its priests sexually assaulted his students’). Even here, however, when state intrusion does not directly implicate an ecclesiastical matter of “church autonomy” absolutely barred from government purview, any resulting burden on religion still must be justified by a compelling state interest and a showing that such an interest cannot be furthered by any other means. *Id.* at 669.

¹¹ *Id.* at 668 n. 6.

¹² The bill would amend the Charitable Funds Solicitation Act (M.G.L. c. 68, § 18-35), removing an exemption for religious organizations, thus requiring churches to register for and report on any contribution “solicitation” which necessarily would include Sunday collections and tithing appeals.

Compelling internal uniformity among religious institutions with respect to whether and how they provide for organizational transparency is an incursion that violates the constitutional guarantee of ecclesiastical autonomy. Entanglement with church doctrine, discipline, and internal organization necessarily would result. S. 1074 would put the state in the position of determining the course of every church's internal governance on matters concerning transparency, based on a constitutionally inappropriate legislative assessment that current institutional practices in the churches are insufficient.

In essence, S. 1074 would wrongly make the state the "final arbiter"¹³ within each and every religious institution as to what degree of organizational transparency is desirable. The state cannot assert such control and influence over the internal operation of any church without breaching its constitutional obligations.

¹³ Moustakis, 261 Mass. at 466.