

George Saunders and the Church Split: Legal Ramifications of Ownership Disputes in 501(c)3 Organizational Forms

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ABSTRACT

This case involves donations made to an organization (in this case a church) and whether donors can request a return of a donation once they find themselves in disagreement with the organization.

In this particular incident, George Saunders made a substantial donation to the local United Methodist Church's new building where he is a member. Recently, the United Methodist denomination has wrestled with some social issues, and it appears the church may split over these issues. Current proposals would allow churches to vote to stay with the United Methodist Church or to move to a new denomination. The property will go with the majority vote. This leaves George with a dilemma. If George disagrees with the church's vote he can stay with people with whom he disagrees or go with the people who think more like he does. If he chooses to leave, it appears that he leaves his investment in the building as well.

Teaching Notes are available by request from the lead author rstevens@SE.edu

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INTRODUCTION

George Saunders, a business professional in his community, was furious at the prospect of his church splitting. As an active layman in his local church, the impending choice of staying with a group of people he did not agree with theologically or leaving with those who wanted to form another church was frustrating. He had personally invested heavily in the construction of the new Methodist church building, and if he had to leave the church he wanted his money back to invest in the new church. He believed his money had been taken under false pretenses as the pastor had never informed the congregation of a possible split nor warned them of the consequences of what would happen to the church property they were being asked to construct.

George contacted an attorney to explore what legal grounds he had to sue for a return of what he had invested in the new building. He knew that different denominations had different protocols in terms of who owned the church property—ascending and descending liability—and so he began to research a basis for a claim. As he awaited a response from his attorney, George began to research the issue of church property ownership to try to bolster his case against the local church should future events warrant such a suit.

Church Property Ownership

As George researched the topic, he learned that the issue he was faced with fell into the category of church polity. Polity is best understood as how a church is governed. This seems fairly straightforward, but in reality, polity is impacted by a church's particular theology and ecclesiology. He found work done by Kauper especially interesting. As Kauper (1969) stated, "Polity refers to the general governmental structure of a church and the organs of authority..." Polity matters on issues ranging from whether a local church pastor is appointed by a council, presbytery, or other authority in a more hierarchal governed denomination¹ or selected by the local congregation, and are determinant of issues related to disputes including who owns the church property. As is the case with George Saunders and his current disagreement with his local church, the issue will largely be settled as to the church's own bylaws and governing documents and its relationship with its denomination.

Understanding church polity in the United States is no small undertaking. Olson has rightly pointed out that, "America is not only the most religious industrialized nation; it has become the most religiously diverse nation in history" (Olson, et. al., 2018, p. 3). In an attempt to understand the influence of power structures on decision-making in churches in the United States, Takayama and Cannon (1979, p. 325) surveyed twenty-six protestant denominations. Their classification of those denominations is of particular interest and basically recognized three categories of polity: "Episcopal, Presbyterian: and Congregational." They then describe the three categories as: "Formal hierarchy is the most explicit in the episcopal forms of government and administration...Because of this type of arrangement, authority flows down, the autonomy of the local church is limited. Congregational formal polity recognizes the local church as the single source of authority. Authority beyond the local level is often ill defined, and the national denomination, in theory, has only those powers delegated to it by local churches...Presbyterian formal polity falls between the episcopal and congregational polities, with authority flowing

¹ The term "denomination" is used in this paper with a recognition that some religious groups reject the concept, and some take offense as a descriptor of their particularly faith group. It is used here as a commonly understood means of grouping religious faiths.

from the middle. Synodical and Presbyterian authority are preserved to safeguard some of the autonomy of local congregations. Ministerial and lay representatives at the middle and national levels form a complex structure of checks and balances..." (Takayama, Canon, 1979 pp. 325-326).

Their work, relative only to the issue of polity is included in Exhibit 2. Kauper (1969) categorized two broad types of church polity that are generally recognized by the courts: the hierarchical and the congregational. "In the hierarchical type of church, the local congregation is an organic part of a larger church body is subject to its laws, procedures, and organs according to an ascending order of authority. It does not enjoy local autonomy. Its doctrine is defined by that of the parent body and its property, while peculiarly a matter of local enjoyment, is held for uses consistent with the doctrines and practices of the denominational parent church" (Kauper, 1969 p. 354-355). He further distinguished hierarchical polities as either episcopal or synodical also using "associational polity" as synonymous with synodical. He wrote, "In churches with the episcopal polity, of which the Roman Catholic and Episcopal churches are good examples, authority is vested at various defined levels in ecclesiastical officers, and the general system may be described as authoritarian in character. In churches with synodical or associational polity, authority is delegated to elected organs exercising power at various levels and culminating at the top in an elected representative body which constitutes the highest organ of authority. This polity has a democratic base. The Presbyterian Church affords the best example of the synodical polity" (Kauper, 1969 p. 354-355).

George knew that his church was part of his state's Methodist Conference and the information he discovered helped him understand the difference in how different local churches viewed themselves in relation to other churches within a conference or denomination. But he still did not know whether getting reimbursed for his donations to the new church building was possible should the church split.

After years of struggling over social issues, the United Methodist Church, with a worldwide membership of 12.5 million, saw a split was inevitable. A 16-member mediation team representing all factions in the dispute was formed to develop a plan for conferences and congregations to leave the church and form new denominations. A key element of this plan is the disposition of church property. The proposed plan, expected to pass at the new General Conference (a meeting of representatives of the entire denomination), would allow individual congregations to retain all of their assets and liabilities. George is aware of this proposal, but it does not solve his problem. If his church votes differently from the way George believes and votes, he can—as previously noted—continue to attend and be a part of a church where he disagrees with the doctrine and theology, or he is free to leave. If he leaves, however, it appears his donation to his previous church building is forfeited.

George discovered an article on what happened in the Missouri Baptist Convention. The Missouri Baptist Convention owned a large youth camp called Wyndemere. When the Wyndemere board of directors (all of whom had been appointed by the Missouri Baptist Convention) declared the youth camp independent from the state convention, a lawsuit ensued. After years of costly litigation, the camp was returned to the Convention. But in the 15-plus years of dispute, much business has been conducted by the youth camp board, including the sale of 1,000 acres of prime real estate. That sale and the ownership of the sold land was disputed.

Researching further, George discovered that the issue of ownership of church property has a long legal history in the United States Supreme Court. In the 1800s, as churches began to split over the issue of slavery and state courts looked to precedent in English common law. They

found that English courts had applied the concept “implied trust” in church ownership cases. A trust exists when property ownership is designated for specific uses or the benefit of specific people. English law held that there was an “implied” trust so that the church property was held in trust for the portion of the congregation most faithful to the larger church’s traditional doctrine. This became known as the “English Rule.”

In 1871, the U.S. Supreme Court took up a Kentucky case where a Presbyterian church split over the issue of slavery before the Civil War and disallowed the English Rule (*Watson vs. Jones*). The court’s decision was that in order to apply the English Rule, courts would have to decide the authenticity of a denomination’s doctrine. This, according to the court, is contrary to the Establishment Clause of the U. S. Constitution in that, by deciding on the authenticity of doctrine, the government is supporting a particular dogma and/or deciding on the definition of heresy.

Once the court decided not to use the English Rule, it had to decide what legal standard to use in its place. Three possibilities were considered. First was the consideration of any valid legal document (deed, explicit trust document, etc.) that legally bound all parties to use the property for the promotion of a particular religious doctrine. Most often, however, there is no legal document specifically imposing doctrinal conditions on the use of the property or its ownership. In the absence of specific language in the deed, the court said that the dispute could be decided on the basis of whether or not the church in question belonged to a denomination with a hierarchical structure. If the church property in questions was part of a hierarchical denomination, the courts should defer to the denomination about which group of the congregation should receive the property. If the first two considerations were not possible (i.e., there was no unambiguous governing legal document and the denomination did not have a hierarchical governing structure) then courts should address the problem as they would for any other voluntary association. This usually meant resolving the dispute with a majority vote of the congregation’s members.

The *Watson vs. Jones* ruling stood for almost one hundred years. However, two cases in 1969 and 1979 changed the ruling slightly. The first (*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*) noted that the ruling in *Watson* was originally applicable in federal court, but would now apply to state courts. The second (*Jones v. Wolf*) had a more far reaching effect. The court ruled that if there were no unambiguous legal documents the court did not have to classify the denomination as hierarchical or congregational and could choose among a variety of legal options as long as they did not attempt to interpret religious doctrine. Basically, the Supreme Court said that state courts could apply the same legal principles to disputes over church property as the court might apply them in a similar problem with a secular group.

Exhibit 1: Attorney's Letter to George

George,

Undesignated donations are considered unconditional gifts. If your donations were not designated for a specified purpose or set aside for that purpose, then there is no recourse; they are considered a gift and are gone forever.

Designated donations are held by the church in trust for the purpose stipulated. If the church plans to use the funds for the purpose in the future, that means there is no grounds for revocation of the gift. If there is no plan to use the funds for the purpose, or that purpose has been frustrated or rendered an impossibility, then the gift may be revoked at the behest of the donor.

If the church has already been built, then the purpose for the donation has been exhausted and there is little recourse. If the church has not been built then there must be a delving into the subjective. If the recipient of the donations did not express any reservations about their ability to meet the conditions proposed for the donation then there is a conclusion that a reasonable expectation in the donor's mind was created. If that expectation is not met, then fairness principles mandate a return of the gift to the donor.

False pretenses are when someone legally obtains possession of property but retains it illegally. It is intentional in nature and stems from false representations. It is legal possession because the owner willingly gives over control of the property, but it is illegal retention because possession was given for a promise that will never and was never intended to happen. If it is the intention of the church to build the facility, or that facility has already been constructed, then the representation has been fulfilled and there are no grounds for false pretenses.

Disposition of property after a church split depends on answering a few questions. If the property is owned by trustees, it must be used for the benefit of the church. This is a fiduciary duty, meaning that the trustees must always act in the best interest of the entity they are beholden towards. This also means that any property transaction has to be done with approval from a court. Also, there are many codes written that determine how a trustee must behave that vary by state. If the church is incorporated, the property is dispensed with according to set guidelines. For instance, if it is determined that the real estate is owned 50/50 by each side of the split, the side that would like to keep it must pay the departing side 50% of the value of the land. The articles of incorporation set the standard of who is in charge and what processes must be followed to dispense with property.²

I hope this helps clarify the situation. I look forward to hearing how you would like to proceed.

Sincerely,
C.M. Beauregard, Esquire

² Adler v. SAVE, 432 N.J. Super. 101 or 74 A.3d41. <https://www.pewforum.org/2011/03/31/churches-in-court2/>

Exhibit 2: Denomination Church Polity as Hierarchical or Congregational

This classification scheme utilizes Olson’s presentation of over 120 denominations presented in nineteen groups of denominations (Olson, et. al., 2018). Based on the work of Kauper (1969), Takayama and Cannon (1979), Olson, Mead, Hill and Atwood (2018), as well as discussion with theologians and local pastors, the following table was presented by Whitlock, Stephens, and Silver (2020).

Denomination	Polity
Orthodox ³	Hierarchical
Catholic	Hierarchical
Episcopal and Anglican	Hierarchical
Lutheran	Hierarchical
Reformed, Presbyterian, and Congregationalist	Hierarchical
Mennonite and Anabaptist	Congregational
Religious Society of Friends (Quakers)	Congregational
Brethren and Pietist ⁴	Congregational
Baptists ⁵	Congregational
Methodists	Hierarchical
Holiness ⁶	Hierarchical
Pentecostal	Congregational
Christian and Restorationist ⁷	Congregational
Adventist ⁸	Congregational
Unitarians and Universalists	Congregational
Fundamentalist and Bible Churches	Congregational
Latter Day Saints	Hierarchical
Esoteric/Miscellaneous ⁹	Varies

³ These include but are not limited to African, Coptic, Greek, Russian, Syrian as exemplars.

⁴ In addition to various Brethren churches, Evangelical Congregational Churches, and the Evangelical Free Church of American are exemplars.

⁵ Olson, et. al., list twenty-six different Baptist groups, which share similar polity, but differ widely on ecclesiology and other matters. Exemplars range from the Southern Baptist Convention to the National Baptist Convention, Progressive National Baptist Convention, to the Full Gospel Baptist Church Fellowship International, Cooperative Baptist Fellowship, and the Free Will Baptists.

⁶ Exemplars are the Church of God (Anderson, Indiana), Church of the Nazarene, Free Methodist Church of North America, The Salvation Army, and the Wesleyan Church. “In the twenty-first century most Holiness denominations and churches have dropped the word *Holiness*...” (Olson, et. al., 2018).

⁷ Exemplars are Christian Church (Disciples of Christ), Churches of Christ, and International Churches of Christ.

⁸ Seventh-Day Adventists, the United Church of God, and Jehovah’s Witnesses (Watch Tower) are exemplars. Note that Adventists are not all Seventh-Day observants.

⁹ Two categories in Olson, et. al.’s. categories (2018) are combined here: Esoteric, Spiritualis, and New Thought Bodies, and Miscellaneous Denominations. These groups are small or non-affiliated and therefore the polity varies widely. Exemplars include Church of Christ, Scienties (Christian Science), Metropolitan Community Churches, and the Unification Church.

Questions:

1. Does George have the basis of a suit against the church/conference?
2. What kind of protection do 501(c)3 entities have against such suits?
3. If a church split caused the remnants of the church to become insolvent, what recourse would a company have in collecting monies owed them by the church?
4. What safeguards could a business develop to protect itself against 501c organizations becoming insolvent and how might the classification scheme presented in Exhibit 2 be helpful in making decision?



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