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Clerk, Supreme Court of Appeals
Richmond, Va.

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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 8241

THE NORFOLK PRESBYTERY
Appellant,

v.

JERRY L. BOLLINGER, LAWRENCE E. KEENER
AND CHARLES A. WORNOM, TRUSTEES OF
GRACE COVENANT PRESBYTERIAN CHURCH,
Appellees.

ON APPEAL FROM THE CIRCUIT
COURT OF THE CITY OF HAMPTON

JOINT APPENDIX

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Robert C. Stackhouse
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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

IN THE MATTER OF THE PETITION OF JERRY L. BOLLINGER, LAWRENCE E. KEENER AND CHARLES A. WORNOM, TRUSTEES OF GRACE COVENANT PRESBYTERIAN CHURCH

TO THE HONORABLE NELSON T. OVERTON,
Judge of the Court aforesaid

Your Petitioners, Trustees of Grace Covenant Presbyterian Church of the City of Hampton, Virginia, respectfully represent unto the Court as follows:

1. That they are the Trustees of the Grace Covenant Presbyterian Church of Hampton, Virginia, and that they were duly nominated according to the rules and regulations of said church and appointed by the Judge of this Honorable Court by its order, a copy of which is attached hereto and marked, "Exhibit A", and filed herewith to be read as a part of this Petition.

2. That your Petitioners, as Trustees of the aforesaid church, hold the legal title as duly appointed trustees, as the successors to the original trustees, to certain real estate located at 2424 North Armistead Avenue, in the City of Hampton, Virginia, and more particularly described as follows:

(Deed Book 387, at page 475, et seq.)

PARCELS A & B

All those certain parcels or tracts of land situate and being in the City of Hampton, Virginia, lying on the Easterly side of North Armistead Avenue and described as the Westerly portion of Parcel "A", A. W. Brittingham, Sr.,

5.02 Acres, more or less, and Parcel "B", A. W. Brittingham, Sr., 0.55 Acres, more or less, on a certain plat entitled, "Plat Showing Portion of Property of A. W. Brittingham, Sr. to be Conveyed to Grace Covenant Presbyterian Church", dated November 7, 1966, and made by S. J. Glass & Associates, Hampton, Virginia, a copy of which said plat is attached to that certain deed dated December 5, 1966, from Alvin W. Brittingham, Sr., et ux, et als, to E. L. Jones, et als, Trustees, and recorded in the Clerk's Office of the Circuit Court for the City of Hampton, in Deed Book 387, at page 475, to which said plat reference is here made.

Together with all and singular the buildings and improvements thereon, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

and

(Deed Book 271, at page 503)

PARCEL C

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia, and known, designated and described as Lot Number TEN (10) in Block C, as shown on that certain plat entitled, "Riverdale, Section One", made by R. F. Pyle, Certified Land Surveyor, dated December 7, 1955, and recorded in Plat Book 3, page 205, in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia.

Subject, however, to Declaration of Restrictions applying to Riverdale, Section One, dated January 10, 1956, and recorded in Deed Book 242, page 77, in the Clerk's Office aforesaid.

Parcels A & B were purchased by the Trustees of said church for use by it as a church and an elementary school (known as The Mary Atkins Christian Day School), and Parcel C was purchased by said church as a parsonage or residence for the pastor of said church. Thereafter,

plans were developed for the construction of a sanctuary and school and various facilities were constructed and are now being used as such.

3. That the school has grown constantly, and at present consists of an enrollment of about 450 students who are being taught and supervised by 22 teachers, together with an administration staff, including bus drivers, of twelve persons, with the result that the entire facilities, including the sanctuary, are needed and used for the school operations during the school week.

4. In view of the recent growth of the school and the risks and potential liabilities attendant thereto, the church's officers, with the consent and approval of the congregation, authorized the formation of a corporation, The Mary Atkins Christian Day School, the charter for which was issued August 1, 1972. Thereafter, at a meeting of the congregation of said church held on August 6, 1972, a resolution was unanimously adopted to transfer and convey to the aforesaid corporation all of the property and assets of said church. A copy of the minutes of the meeting of August 6, 1972, including the resolutions referred to, is attached hereto and marked, "Exhibit B", to be read as a part of this petition.

5. The aforesaid real estate will continue to be used for the same purposes as at present, namely as a church and as a school, and while the corporation will

hold legal title to said real estate, the Trustees will reserve the perpetual right to use the property for religious purposes.

6. That on Sunday, July 23, 1972, the congregation of said church passed various resolutions disaffiliating and severing all associations and identification with the Norfolk Presbytery and The Presbyterian Church in the United States, and declared itself an independent and autonomous, all as appears from the resolutions attached hereto and marked, "Exhibits C & D", respectively, to be read as a part of this petition.

WHEREFORE, your Petitioners pray that they be reaffirmed as Trustees of said church, and be granted leave to transfer and convey the aforementioned real estate, together with improvements thereon, unto The Mary Atkins Christian Day School, a Virginia corporation, in accordance with the wishes of the congregation, provided, however, that the aforementioned Trustees of the church reserve the perpetual right to continue to use the said property as a church for religious purposes from time to time.

And for such other and general relief as the Court may deem fit and proper.

Respectfully submitted,

/s/ Jerry L. Bollinger
/s/ Lawrence E. Keener
/s/ Charles A. Wornom

William McL. Ferguson
Attorney at Law
225 - 28th Street
Newport News, Virginia 23607

EXHIBIT "A"

CONGREGATIONAL MEETING, APRIL 6, 1969, GRACE COVENANT PRESBYTERIAN CHURCH, HAMPTON, VIRGINIA

A Congregational Meeting was held immediately following the 11 A.M. worship service on April 6, 1969, with Reverend J. Burdette Slicer, Jr. serving as Moderator. Mr. Lawrence Keener opened the meeting with prayer. The clerk stated that a quorum was present. Mrs. Bernice Roscopf was elected as temporary clerk. There being no further nominations she was elected by acclamation.

Mr. Ralph Bollinger, Chairman of the Nominating Committee, recommended that Mr. Charles Wornom, Mr. Jerry Bollinger and Mr. Lawrence Keener be elected to serve as trustees. It was moved by Mr. Carl Mancil, seconded by Mr. J. C. Stout that "Mr. Charles Wornom, Mr. Jerry Bollinger and Mr. Lawrence Keener serve as Trustees and replace the present Trustees, Mr. Edgar Jones, Mr. Ray Sterne, Mr. Fred Rogerson and Mr. Carl Mancil, due to their resignations and inability to serve." Motion Carried.

Mr. Ralph Bollinger, Chairman of the Nominating Committee, recommended that Mr. William H. Roscopf, Mr. J. C. Stout and Mrs. Lawrence Keener serve as a Building Commission. It was moved by Mrs. J. B. Slicer and seconded by Mr. Billy Bollinger that "Mr. William H. Roscopf, Mr. J. C. Stout

and Mr. Lawrence Keener serve as the Building Commission." Motion Carried.

Mrs. Roscopf read the minutes. Mr. Carl Mancil moved that the minutes be accepted and approved, Mr. Billy Roscopf seconded this motion and the motion carried.

Mr. William Roscopf closed the meeting with prayer.

/s/ Rev. J. B. Slicer, Jr.
Moderator:
Rev. J. B. Slicer, Jr.

/s/ Mrs. Bernice Roscopf
Temporary Clerk:
Mrs. Bernice Roscopf

EXHIBIT "B"

The Mary Atkins Christian Day School
GRACE COVENANT PRESBYTERIAN CHURCH
2424 N. Armistead Avenue
Hampton, Virginia 23366

Telephones 838-2355 - 245-3443

J. Burdette Slicer, Jr., Pastor
21 Charlton Drive
Hampton, Virginia

Mrs. Helen N. Simpson, Principal
127 Locust Avenue
Hampton, Virginia

Congregational Meeting

The Moderator, Rev. J. Burdette Slicer, Jr., called the congregational meeting to order immediately following the 11:00 A.M. worship service August 6, 1972.

Elder Bollinger led in prayer. The clerk stated that a quorum was present for the meeting. The next order of business was the election of a temporary clerk. It was

moved by Mr. Charles Wornom, seconded by Mr. George Lucas that Mrs. Bernice Roscopf act as temporary clerk. Motion carried.

The moderator stated that the purpose of the congregational meeting was to consider the transfer of the church assets into the corporation of the Mary Atkins Christian Day School in order to protect the church and its assets. It was moved by Mr. Ralph Bollinger, seconded by Mr. George Lucas that the resolution be adopted:

RESOLUTION

> Be it resolved, by the congregation of the Grace Covenant Presbyterian Church that all property and assets of said Church be transferred, conveyed and granted to the Mary Atkins Christian Day School, a corporation organized under the laws of the State of Virginia.
>
> And be it further resolved that the proper church officers, of the Grace Covenant Presbyterian Church, are authorized, empowered and directed to execute all instruments needed and to do all things necessary to effect such transfer conveyance and grant.

After a lengthy discussion, the call for the question was next in order. Motion was carried. There were no dissenting votes.

Minutes were read and approved.

It was moved and seconded that the meeting be adjourned. Motion carried.

Rev. Slicer closed the meeting in prayer.

/s/ Mrs. Bernice Roscopf
Mrs. Bernice Roscopf
Temporary Clerk

/s/ J. Burdette Slicer, Jr.
Rev. J. Burdette Slicer, Jr.
Moderator

This is to certify that the foregoing is a true copy of the Congregational Meeting held Sunday August 6, 1972.

/s/ Mrs. Bernice Roscopf
Mrs. Bernice Roscopf
Clerk of the Grace Covenant
Presbyterian Church

EXHIBIT "C"

The Mary Atkins Christian Day School
GRACE COVENANT PRESBYTERIAN CHURCH
2424 N. Armistead Avenue
Hampton, Virginia 23366

Telephones 838-2355 - 245-3443

J. Burdette Slicer, Jr., Pastor
21 Charlton Drive
Hampton, Virginia

Mrs. Helen N. Simpson, Principal
127 Locust Avenue
Hampton, Virginia

R E S O L U T I O N #2

WHEREAS the congregation of Grace Covenant Presbyterian Church did, on the 23rd. day of July, 1972, withdraw and separate from the Norfolk Presbytery and the Presbyterian Church in the United States and became an independent church, and:

WHEREAS it is the wish of the congregation to maintain the present church officers, and to affirm its confidence in its Pastor, J. Burdette Slicer, Jr.

NOW THEREFORE BE IT RESOLVED that the congregation of Grace Covenant Presbyterian Church affirms the present officers of the church and asks that they serve

in their respective capacities until their successors are duly elected:

AND BE IT FURTHER RESOLVED that the congregation expresses its unanimous confidence in its Pastor, J. Burdette Slicer, Jr., and confirms him as its pastor.

This is to certify that the foregoing is a true copy of a resolution, Adopted at a congregational meeting held Sunday July 23, 1972.

/s/ Bernice Roscopf
Bernice Roscopf
Clerk of the Grace Covenant
Presbyterian Church

EXHIBIT "D"

The Mary Atkins Christian Day School
GRACE COVENANT PRESBYTERIAN CHURCH
2424 N. Armistead Avenue
Hampton, Virginia 23366

Telephones 838-2355 - 245-3443

J. Burdette Slicer, Jr., Pastor
21 Charlton Drive
Hampton, Virginia

Mrs. Helen N. Simpson, Principal
127 Locust Avenue
Hampton, Virginia

R E S O L U T I O N #1

WHEREAS the Session of the Grace Covenant Presbyterian Church, after prayerful deliberation, voted unanimously to recommend to the congregation that the church disaffiliate from and sever all association and identification with the Norfolk Presbytery and the Presbyterian

Church in the United States, and:

WHEREAS the congregation of Grace Covenant Presbyterian Church at a duly called meeting with 73 members of the congregation present, which constituted a majority of the congregation, received the recommendation of the Session, and:

WHEREAS the congregation of the Grace Covenant Presbyterian Church concurs in the recommendation of the Session and wishes to separate from the Norfolk Presbytery and the Presbyterian Church in the United States and become an independent and autonomous church adhering to the Holy Bible as the infallible Word of God and following the active Lordship of Jesus Christ:

NOW THEREFORE BE IT RESOLVED that the congregation of Grace Covenant Presbyterian Church declares itself independent and autonomous and does sever all association, relationship, and identification with the Norfolk Presbytery and the Presbyterian Church of the United States, and does remove itself from all ecclesiastical control, jurisdiction, and oversight of the Norfolk Presbytery and any and all other judicatories, commissions, or tribunals of the Presbyterian Church in the United States:

AND BE IT FURTHER RESOLVED that the congregation reaffirms its conviction that the Holy Bible is the Word of God and affirms that the Holy Bible together with the

Westminister Confession of Faith and the Larger and Shorter Catechisms as historically received as the official doctrine and discipline of this church.

This is to certify that the foregoing is a true copy of a resolution, Adopted at a congregational meeting, held Sunday July 23, 1972.

/s/ Bernice Roscopf
Bernice Roscopf
Clerk of the Grace Covenant
Presbyterian Church

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

IN THE MATTER OF THE PETITION OF JERRY L. BOLLINGER, LAWRENCE E. KEENER AND CHARLES A. WORNOM, TRUSTEES OF GRACE COVENANT PRESBYTERIAN CHURCH	)	O R D E R #11208

This day came Jerry L. Bollinger, Lawrence E. Keener and Charles A. Wornom, Trustees of the Grace Covenant Presbyterian Church of Hampton, Virginia, by counsel, and asked leave to file their Petition with exhibits thereto attached, which leave was granted, and the same was accordingly filed.

And it appearing to the Court from the allegations of said Petition and from the exhibits filed therewith, that the persons named above are Trustees of the Grace Covenant Presbyterian Church of Hampton, Virginia, and as such hold title to those certain pieces or parcels

of land, with improvements thereon, situated in the City of Hampton, and more particularly described in said Petition, and that it is now desired to transfer and convey the aforementioned property to The Mary Atkins Christian Day School, a Virginia corporation, as therein set forth.

And it further appearing to the Court from a copy of the minutes of a meeting of the congregation of said church held on August 6, 1972, and filed with said Petition as "Exhibit B" that the aforesaid congregation voted unanimously to transfer, convey, and grant the aforesaid property unto The Mary Ankins Christian Day School, in order to protect the said Church and its assets, it being understood, as appears from the evidence of Charles A. Wornom, one of the aforesaid Trustees, that the aforementioned property will continue to be used for the said purposes as at present, namely as a church and a school, and that the deed conveying said property will contain an appropriate clause reserving the perpetual right to use said property for religious purposes by the Grace Covenant Presbyterian Church, its successors and assigns, with the understanding that the Grantee will make regular payments to or upon behalf of the said Church for the purpose of assisting the Church in paying off the debt incurred for the construction of the improvements on the aforesaid property.

And the Court being satisfied from the exhibits attached to the said Petition and from the evidence adduced,

that it is the wish of the congregation of said church to transfer and convey the aforementioned properties, and that the said congregation is the governing body of said church, and that the rights of no one will be violated thereby, and that the wishes of the congregation, in respect to said properties should be controlling under the existing circumstances.

The Court doth accordingly ADJUDGE, ORDER and DECREE that Jerry L. Bollinger, Lawrence E. Keener and Charles A. Wornom be and they are hereby authorized and directed, in their capacity as Trustees of said Church, to sign, seal, acknowledge and deliver to The Mary Atkins Christian Day School, a Virginia corporation, a good and sufficient deed conveying the several parcels of real estate mentioned herein and more particuarly described in said Petition with a special warranty of title.

And this cause is dismissed from the docket of this Court.

ENTER: September 22, 1972

/s/ Nelson T. Overton
Judge

I ask for this:

/s/ William McL. Ferguson
Attorney for Petitioners

A COPY, TESTE:
C. M. GIBSON, CLERK
/s/ By Juanita F. Gupton, Dep. Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

In the Matter of the Petition of JERRY L. BOLLINGER, LAWRENCE E. KEENER and CHARLES A. WORNOM, TRUSTEES of GRACE COVENANT PRESBYTERIAN CHURCH	:

TO: The Honorable NELSON T. OVERTON,
JUDGE of the Court aforesaid:

MOTION TO SET ASIDE OR STAY

NOW COMES THE NORFOLK PRESBYTERY, by Counsel, and moves the Court to set aside its Order heretofore entered on the 22nd day of September, 1972, as contrary to the law and the evidence, and as improvidently granted; to grant a new hearing with respect to this matter; or, in the alternative, to stay said Order pending a full hearing upon the Petition of THE NORFOLK PRESBYTERY, filed herein, for leave to file its Petition as an Intervener.

MOTION FOR LEAVE TO FILE
PETITION AS INTERVENER

NOW COMES THE NORFOLK PRESBYTERY, by Counsel, and moves the Court for leave to file a Petition as an Intervener in this matter pursuant to Rule 2:15, Rules of the Supreme Court of Virginia, and for cause, shows unto the Court as follows:

1. Grace Covenant Presbyterian Church of Hampton, Virginia, its Ruling Elder and other officers, including the Trustees who are the original Petitioners herein, and the congregation of said Church whom they represent,

make up a duly constituted church of The Presbyterian Church of the United States, and as such they are subject to its jurisdiction, government and discipline.

2. Your Petitioner, THE NORFOLK PRESBYTERY, under the jurisdiction, government and discipline of The Presbyterian Church of the United States, is the first Ecclesiastical Court having direct jurisdiction over the said Grace Covenant Church of Hampton and its members.

3. The Presbyterian Church of the United States, as a super-congregational body, or parent church, has established due procedures by which a congregation or church may withdraw, with or without its property, from the parent church.

4. The action of a portion of the congregation of Grace Covenant Church of Hampton, taken on July 23, 1972, by which it purported unilaterally to withdraw itself and its property from the said parent church, was irregular, improper, and contrary to law under the established ecclesiastical law of The Presbyterian Church of the United States.

5. The Petition of the Trustees herein, by reason of the foregoing, seeks the sanction and approval of this Court, a civil court, for actions contrary to the ecclesiastical law of the parent church to which said Trustees owe allegiance.

6. Your Petitioner, THE NORFOLK PRESBYTERY,

wrongfully has been denied access to the records and documents of Grace Covenant Church of Hampton, and the Elders and Ruling Elder of said Church have failed and refused to meet with a duly constituted investigating body of THE NORFOLK PRESBYTERY, by reason of which your Petitioner has been unable to determine the true facts and circumstances surrounding the apparent disaffection of Grace Covenant Church of Hampton with the parent church, and has, therefore, been unable to determine the appropriate action to be taken.

7. The Presbyterian Church of the United States has not only a jurisdictional and pastoral, but also a proprietary interest in Grace Covenant Church of Hampton and its property, both of which interests will be denied without due process of law if this Court's Order of September 22, 1972 is allowed to become final.

8. By reason of the foregoing, the Court's Order of September 22, 1972 is, or may be, an unwarranted interference of the State with the Church, in violation of both the State and Federal Constitutions.

9. Your Petitioner did not learn of the pendency of this matter until after the Order of September 22, 1972 was entered, and for that reason this Motion comes now, so late in these proceedings.

WHEREFORE, your Petitioner prays that the Order of September 22, 1972 be set aside or stayed pending a fur-

ther, full hearing on this matter, that an Order be entered granting your Petitioner leave to file its Petition as Intervener within a reasonable time, that the Trustees be cited to answer said Petition, and that it have such other and further relief in the premises as justice may dictate.

THE NORFOLK PRESBYTERY

By /s/ Robert C. Stackhouse
Of Counsel

I'd like to explain it to you.

COURT: All right.

MR. ROWE: The church -- we allegedin the petition -- I was trying to get to the procedural posture of the case.

COURT: Go ahead with --

MR. ROWE: That's all right. The procedural posture of the case is such, that on this motion we have alleged certain things that go directly to the question your Honor has asked.

COURT: My question was directed, though, at the order, itself.

MR. ROWE: Yes sir.

***

COURT: Is there anything in the order which, in your view, bears upon whether this Church is or is not a part of the Presbyterian Church?

MR. ROWE: Not by its terms directly, but indirectly it does. And in this way exactly: The position of the Norfolk Presbytery, as alleged in their petition is, that this Church

1 and its congregation, may not, in the
2 manner which they purported to do so,
3 withdraw itself from the Presbyterian
4 Church of the United States, unilaterally,
5 without approval or without petition
6 for application to the Presbytery.
7 Now, because they may not do
8 that and because they may not transfer
9 their property without the, at least,
10 tacit approval and subject to the
11 review of the Presbytery which review
12 has never been obtained in this case;
13 if this Court enters an order approving
14 and giving civil sanction to the
15 transfer of that property, it does
16 so in the face of allegations by the
17 Presbytery that that transfer is
18 unlawful under Ecclesiastical Law.
19 That property could technically
20 and I say technically because I don't
21 think the Presbytery has any intention
22 of -- any present intention of expressing
23 this right. But the Presbytery is a
24 large body of elected persons, and I
25 can't speak for them all. But I say

1 technically the Presbytery could say
2 and declare that this property belongs
3 to it. And therefore, the Court,
4 by entering the order of September 22,
5 is indirectly giving civil sanction
6 to an action which under the Ecclesiastical
7 Law, we allege, is improper.
8 Now, that gets right to the
9 Constitutional heart of our argument,
10 if your Honor please, and puts your finger
11 right on it. The issue I think before
12 the Court, I think Mr. Ferguson agrees
13 is, under the Ecclesiastical Law, does
14 a church, a congregation of the Presbyterian
15 Church of the United States, have the
16 power and the right to withdraw
17 itself, unilaterally, from the Church?
18 And by this Court's order, we submit
19 this Court is intermeddling and going
20 across the boundary line of the
21 separation between church and state
22 by lending civil court sanction and
23 approval to this action of the Trustees.
24 COURT: Well, I'll interrupt you
25 there to say, that this Court by its

1 order, has neither sanctioned nor
2 disapproved the -- I'll call it
3 attempted withdrawal of Grace Covenant
4 Presbyterian Church, and is not going
5 to. The order of this Court is
6 limited to one thing, the conveyance
7 of a piece of property, of real estate,
8 at the request of the congregation.
9 I realize that these other things
10 are sort of pulled along, but I want
11 to get that straight before we go any
12 further.
13 MR. ROWE: I wish to make a
14 statement on the record, and for your
15 Honor also, that it is not the
16 position of Norfolk Presbytery that
17 this Court or your Honor intended
18 to do any such thing. We are simply
19 suggesting to your Honor, that if
20 all the facts had been known to your
21 Honor at the time the Trustees'
22 original petition had been filed,
23 that your Honor's action might have
24 been different.
25 We understand that it was ex parte

1 and that your Honor did not know
2 these things. That's why we have
3 alleged them in our motion. For
4 the purpose of this hearing, I think
5 the allegations of our motion should
6 be accepted. If they are true, then
7 there may be a grave question, in-
8 deed, whether this Court should take
9 this action.
10 And we want simply, and we ask
11 you this morning, simply for the
12 opportunity to make the full facts
13 known to your Honor, so that your
14 Honor may make a judgment.
***
15 COURT: All right.
16 MR. FERGUSON: May it please
17 the Court, I think the first thing
18 we would ask would be that the
19 injunction which was issued on an
20 assumption of facts that were not
21 true, be dissolved. I think had the
22 Court been advised -- had Judge Massenburg
23 been advised that the conveyance had
24 already been made, that he would not
25 have issued an injunction staying

1 these disputes that come up in
2 churches from time to time and
3 seems to have more or less concentrated
4 in recent years, around the Presbyterian
5 Church. But that is neither here
6 nor there.
7 But the point is the case
8 went to the Supreme Court and the
9 Supreme Court reaffirmed its position
10 and refortified its position of
11 earlier years by calling attention
12 to the fact that the First Amendment
13 as to religious freedom, was to
14 be given full effect. And that
15 the civil courts were not to
16 intermeddle. That's a term I believe
17 that Mr. Rowe used.
18 COURT: It's a very descriptive
19 term, Mr. Ferguson.
20 MR. FERGUSON: Sir?
21 COURT: It's a very descriptive
22 term.
23 MR. FERGUSON: Well, this
24 Court is being accused of intermeddling
25 in church affairs. *** My position is,

1 that this Court acted under the
2 statutes of Virginia, long established
3 statutes of Virginia, as to conveyance
4 of property, acquiring property,
5 conveying property, mortgaging
6 property, and the statutes apply
7 to the church, regardless of the
8 church's rules. I think the church's
9 rules have to be subordinated
10 eventually to the civil law,
11 because we have got to have some
12 certainty as to property rights in
13 this State.. We just can't have
14 a separate set of rules applying
15 to churches and a separate set
16 applying to private individuals.
17 *** I want to refer, particularly,
18 to the doctrine announced by the
19 Supreme Court and if permitted, I
20 would like to read a couple of
21 sentences from this opinion. "Civil
22 Courts do not inhibit free exercise
23 of religion, merely by opening their
24 doors to disputes involving church
25 property. And there are neutral

1 to us. We elected to withdraw from
2 the Norfolk Presbytery; maybe not
3 according to their rules. But we
4 did, in fact, withdraw and we want
5 to be considered as an independent
6 church here today.
7 COURT: Well, the position
8 of the Presbytery is that Grace
9 Covenant Church, as a congregation,
10 has otherwise ceased to exist; they
11 don't exist anymore.
12 MR. FERGUSON: Well, we think
13 we're existing very much so in the
14 flesh and in the spirit as well.
15 And we feel that the action of -- what
16 they are really complaining about,
17 is the transfer of this real estate;
18 when you get right down to it, we're
19 talking property. And, incidentally,
20 a very valuable piece of property.
***
21 And we have followed the statutes
22 of Virginia with reference to how
23 a religious body may transfer its
24 property. And they have elected
25 to transfer their property to a

1 school which the church also operates.
2 They've set up a separate corporation.
3 Incidentally, all done with the
4 approval of the congregation. They
5 knew what they were doing from the
6 start.
7 And we think that the motion
8 that the Norfolk Presbytery has made
9 on its face, calls for this Court or
10 is asking this Court to take judicial
11 notice of Ecclesiastical Law and rules.
12 And the Court, we think, is without
13 jurisdiction to settle these disputes.
14 For example, in the petition,
15 paragraph five of their petition
16 says that the Trustees, by reason
17 of the foregoing, seeks the sanction
18 and approval of this Court, a civil
19 court, for actions contrary to the
20 Ecclesiastical Laws of the parent
21 church. And you're being asked to
22 write or interpret or construe
23 Ecclesiastical Law.
24 And true, maybe Grace Covenant
25 Church did not play by the Presbytery's

1 rules. But they elect to assert
2 their freedom of religion. Certainly
3 no one would say that a member had to
4 stay bound to the Presbytery. And
5 here is a group of people who are almost
6 unanimous, I forget what the exact
7 vote was, but it was tremendously
8 overwhelming vote, wished to withdraw.
9 Now, why they wanted to withdraw,
10 is a religious question that I don't
11 think the Court is interested in.
12 The fact is, they did want to withdraw.
13 They think they've got ample reason
14 and strong reason for their decision;
15 it was a very important decision.
16 And we would say that the civil court
17 should not be asked to interpret
18 the Ecclesiastical rules and regulations.
***
19 Now, I think when -- I think
20 that when the Presbytery appointed
21 a commission and wanted to talk with
22 the representative of the Grace Covenant
23 Church, they had already taken the
24 action of withdrawing. And, therefore,
25 they consistently said, "Well, we're

1 against the Board of Education, 330 US
2 "Paren" One. And Reed against Vanhoven,
3 237 Fed. Sup., page 48; that's a 1965
4 case. All those cases support the
5 theory there has to be a cleavage
6 between state and church.
7 So, I would ask your Honor to
8 deny their motion to intervene, even
9 if they were properly before the Court;
10 I don't think they are. But even if
11 they were properly here, the parties
12 are obviously not here, the school,
13 the Grace -- the Mary Atkins Day School,
14 which is a corporation, and now the
15 title owner of the property, is not
16 in Court, of course.
***
17 MR. ROWE: Your Honor, one
18 thing concerns me, initially, and
19 I think Mr. Ferguson completely,
20 from his statements, completely mis-
21 understands our intentions, and I hope
22 that that misunderstanding is not shared
23 by the Court.
24 Norfolk Presbytery is not
25 suggesting that this Court should

*** 28-a

1 determine an Ecclesiastical question.
2 Norfolk Presbytery is suggesting
3 that this Court may not, if the
4 allegations of Norfolk Presbytery
5 are true, that this Court may not
6 have jurisdiction to do what it did
7 on September 22.
8 COURT: All right. Let me
9 interrupt you there, Mr. Rowe, for
10 a minute. I know I've done this to
11 you several times and I apologize,
12 but we may as well get to what
13 we're talking about. Section
14 57-15 is really what we're talking
15 about, whether or not the action
16 taken under that section was, on the
17 face of it, proper or improper.
18 MR. ROWE: Yes. I think it
19 indirectly involves also 57-9,
20 but, your Honor, go ahead.
21 COURT: Now, tell me, if you will,
22 the position of the Presbytery as
23 to what provision of those sections
24 was not complied with in the original
25 petition and the order that resulted

1 from the original petition authorizing
2 the transfer.
3 MR. ROWE: I think I can tell
4 you that very simply and very quickly,
5 if your Honor please. Directly in
6 the language of the section and the
7 first argument in our brief deals
8 with this --
9 COURT: These sections, both of
10 them have necessarily been drafted
11 so they apply not only to the independent
12 congregation but to the connectional
13 kind of congregation.
14 MR. ROWE: All right, let me
15 start that way. There are basically
16 two kinds of churches that we have
17 in this country. One is the congregational
18 type of church which is ruled entirely
19 within its own boundary and framework.
20 The other is the super congregational
21 type of church, such as the Presbyterian
22 Church of the United States which have --
23 is made up of numerous member churches.
24 Now, the statutes are different
25 or the statutes apply differently to

1 each one. And if your Honor will
2 look at 57-15, you will see that it
3 says that the court may approve
4 a transfer of church property upon a
5 showing that it is the wish of the
6 congregation or church or religious
7 denomination or society or branch or
8 division thereof, or the constituted
9 authorities, thereof, "having jurisdiction
10 in the premises."
11 And the key to that sentence, the
12 key to that whole statutory section,
13 is "having jurisdiction in the premises."
14 Now --
15 COURT: How about the use of
16 the word "or", isn't that a disjunctive
17 list of those loops groups which may approve
18 or request such a transfer, rather than
19 conjunctive --
20 MR. ROWE: I don't think that --
21 COURT: This one or this one
22 or this one or this one, isn't that
23 what it says?
24 MR. ROWE: That's possible,
25 but I don't think that that would be

1 a constitutional reading of the
2 statute. And exactly the reason
3 I feel that way, is the Savannah
4 case which Mr. Ferguson has referred
5 to as the Hull case. Let me for
6 a moment digress here and explain the
7 Savannah case to your Honor.
***
8 The Savannah case involved
9 a Presbyterian church in the United
10 States and it involved an organization
11 or a congregation of that church which
12 became disaffected. And it held an
13 election in which it elected to
14 disaffiliate itself from the Presbyterian
15 Church of the United States because
16 it felt that the Presbyterian Church
17 of the United States had not been
18 true to its original tenets and beliefs.
19 And when it did that, it attempted
20 to take its property with it, and
21 to use it in accordance with its
22 own directions.
23 Now, the Presbyterian Church
24 of the United States came in and took
25 possession of that property under the

1 You're going to get out of church
2 and Ecclesiastical matters.
3 The question of whether the Presbyterian
4 Church of the United States adhered
5 to its original tenets, or not, is
6 an Ecclesiastical question which
7 you shall not decide."
***
8 The question of whether this
9 congregation has the Ecclesiastical
10 authority to transfer this property
11 is an Ecclesiastical question,
12 which we submit your Honor should
13 not and will not want to decide.
14 Now, this congregation comes
15 to you and says, "We are an independent
16 congregation and we want to transfer
17 our church; please let us do it."
18 And your Honor quite properly, under
19 those circumstances says, "Of course,
20 go ahead and do it."
21 We come to you, your Honor, the
22 Norfolk Presbytery, and we say
23 to you that we attack the basic
24 assumption of fact upon which your
25 Honor made that decision. And that is

1 the statement of this congregation,
2 that it is an independent and autonomous
3 church. We say to you that if we are
4 allowed to come into this case, we
5 will show you that it is not an
6 independent and autonomous church.
7 That it was and is a member of the
8 Presbyterian Church of the United States.
9 That if it wants to withdraw from
10 the Presbyterian Church of the United
11 States, it may do so in accordance with
12 the Ecclesiastical Law, rules and regulations
13 of the Presbyterian Church of the
14 United States. We do not ask you
15 to decide -- we do not ask you to
16 decide whether it has done so, whether
17 it has followed Ecclesiastical Law.
18 We say this is an Ecclesiastical
19 question to be decided by Ecclesiastical
20 Courts and when that's decided, then,
21 if it is decided in the way that the
22 congregation wants it to be decided,
23 the congregation may come back to you
24 and say, now will your Honor approve this
25 transfer.

1 Now this case comes before
2 you on a property question simply
3 because that is the procedural framework
4 into which we are thrust. Not because
5 we want to necessarily assert the
6 proprietary interest in this real
7 estate. What we wish to assert
8 and what we do assert to your Honor,
9 is that the question of whether Grace
10 Covenant's congregation is an independent
11 and autonomous congregation is an
12 Ecclesiastical question which has not
13 been decided by the Ecclesiastical
14 courts and if this Court allows its
15 order of September 22 to stand, it
16 gives implied and tacit approval
17 and sanction of the civil court to a
18 question which has never been determined
19 under Ecclesiastical Law. You are
20 saying, in effect, yes, you are an
21 independent and autonomous congregation;
22 I will allow you to operate in that
23 way.
24 COURT: And you think that changing
25 the situation as to title of the real

1 estate will determine the question?
***
2 MR. ROWE: No sir.
3 COURT: Then maybe I don't
4 understand you.
5 MR. ROWE: Well, then I --
6 let me go back again.
***
7 COURT: Let me ask you this;
8 and maybe you can't answer this one.
9 If this congregation, the one
10 that we're talking about here, had
11 adopted the same resolution, saying
12 whatever they said about we want
13 to withdraw from the Presbyterian
14 Church of the United States, and
15 directing its Trustees to convey
16 all its property to the Norfolk
17 Presbytery, would this suit have
18 been heard today?
19 MR. ROWE: Your Honor, I
20 don't know.
21 COURT: All right.
22 MR. ROWE: If the congregation --
23 no -- well, I think it might very well.
24 Because what your Honor is saying is,
25 if we got a hundred and fifty thousand

1 dollar mortgage, that we don't want
2 to sit on and take care of any more,
3 are we going to give it to you, the
4 Presbytery; I think that that action
5 might very well be challenged.
6 COURT: Well, I'm asking, I think
7 it might be interesting to know how
8 much that consideration plays in this
9 litigation.
10 MR. ROWE: Your Honor, I don't
11 think that the ownership of the property
12 plays an essential part in this litigation.
13 COURT: Okay.
14 MR. ROWE: I think that what
15 does play an essential part, we are
16 cast in a situation which involves
17 the ownership of the property, because
18 this is where the issue arose; we didn't
19 choose that issue. I think that the
20 issue that arises is, is this Court --
21 does this Court have jurisdiction to
22 lend its approval and sanction to an
23 action which may be illegal under the
24 Ecclesiastical Law.
25 COURT: I can answer that one now,

1 Mr. Rowe. This Court has the jurisdiction
2 and duty to enter orders in accordance
3 with the laws of the Commonwealth of
4 Virginia and not to make any rulings
5 at all concerning Ecclesiastical Law.
6 MR. ROWE: All right, sir.
7 Now, this Court -- ~~reposit~~ We suggest also,
8 and I think your Honor would agree --
9 that this Court has not only the
10 power but the duty to inquire
11 whether it has jurisdiction in the
12 premises of any case. We suggest to
13 your Honor, that your Honor did not
14 have jurisdiction, as it now stands.
15 We ask your Honor to investigate that
16 question.
17 We do not ask your Honor to decide
18 any questions of Ecclesiastical Law.
19 We ask you to investigate your own
20 jurisdiction without any suggestion
21 that the Court acted improperly, because
22 it was an ex parte situation in which
23 your Honor was not aware of the full
24 facts.
25 Now, to go back to your statutory

1 question again if I may, if this
2 congregation came to you and said --
3 and I pose this "hypothetical" in
4 the brief, that if this congregation
5 came to you and said, "We are a church
6 of the Presbyterian Church of the
7 United States and we want to transfer
8 our property to the Mary Atkins Christian
9 Day School," under 57-15, your Honor
10 would have a duty to inquire the attitude
11 and position of the Presbytery and
12 through it the church -- the Presbyterian
13 Church of the United States, as to
14 the transfer of that property.
15 COURT: Under which provision
16 of that section?
17 MR. ROWE: The provision that
18 provides that the Court may approve
19 the transfer upon a showing that
20 it is the wish of the governing body
21 whichever it may be, having jurisdiction
22 in the premises. If your Honor decided
23 that question in any other way, I
24 would submit that you would be deciding
25 a question of Ecclesiastical Law.

1 Now, the position that we're
2 in today is not that. The congregation
3 or the Trustees came to this Court and
4 said, "We are not members of the Presbyterian
5 Church of the United States but we are a
6 separate and Autonomous body."
7 Assuming those facts to be correct,
8 there's nothing wrong with the order
9 of September 25; it's perfectly proper.
10 We challenge the statement, "We
11 are a separate and autonomous body."
12 If your Honor wants to know, and I
13 think perhaps the questions of the
14 Court indicate this, if your Honor wants
15 to know what does Presbytery want, the
16 answer is simple and we've given it to
17 Mr. Ferguson this morning. Norfolk
18 Presbytery wants its church, which is
19 Grace Covenant Church, to operate within
20 the Ecclesiastical framework of the
21 Presbyterian Church of the United States
22 in its desire to withdraw from that
23 church.
24 Now, this kind of thing is going
25 on everyday. There's an article in this

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1 morning's paper that the fact -- that
2 the Hopewell Presbyterian Church was
3 ~~forbidden~~ permitted, by the Hanover Presbytery,
4 which is not this Presbytery and not
5 a party in this case, to withdraw from
6 the Presbyterian Church of the United
7 States on its requested motion with
8 its property.
9 There is a procedure set up
10 for doing that. This church elected
11 not to follow it. We want this church
12 to follow it.
13 COURT: To follow Ecclesiastical
14 Law.
15 MR. ROWE: That's right. I
16 can't predict to your Honor what
17 two hundred people or delegates
18 in the Presbytery will rule. I
19 could guess at it; I could suggest
20 it. Perhaps the Hanover case is -- the
21 Hopewell case with the Hanover Presbytery
22 is an example. We do say that having
23 affiliated themselves with this
24 church, the Presbyterian Church of
25 the United States, and having enjoyed

1 the benefits of it and having lived
2 under its rule for a period of years,
3 when they want to leave, they ought
4 to do it in accordance with the rules.
5 We state it in the brief and
6 I'll state it to your Honor, this church,
7 this congregation had no more right to
8 withdraw from the Presbyterian Church
9 of the United States in the manner in
10 which it did than the State of Virginia
11 would have the right to withdraw from
12 the United States.
***
13 COURT: We tried that point.
14 MR. ROWE: Yes sir, we did.
15 I don't mean to make light of this
16 situation. It is a jurisdictional
17 question. Of course, if your Honor
18 please, we're asking this morning
19 only that we be allowed to raise this
20 jurisdictional question so the Court may
21 decide it but in essence, we are arguing
22 our case today.
23 MR. FERGUSON: Your Honor,
24 may I make further comments?
25 COURT: Well, I think, Mr. Ferguson,

1 books and records, although the
2 commission has been appointed and
3 has tried to meet with the members
4 of that church to determine the
5 accuracy and the validity of the
6 various statements in the affidavits
7 and so forth. We have not had an
8 opportunity thus far, simply because
9 we have not had their cooperation
10 and they would not meet with us.
11 How can you determine who is for
12 and who is against and what the
13 validity of the records is if you cannot
14 meet with the parties and they have
15 refused us to meet with us. That's
16 one of the problems in the case.
17 *** COURT: All right, gentlemen.
18 The Court is indebted to counsel for
19 the discussions here and the memorandums
20 filed today. There are several items or
21 issues which have been discussed and
22 depending on which side of the fence
23 you're on, you either think that they're
24 all connected and bound up together or
25 they're in separate compartments.

1 So, I'll try to do this in some sort
2 of form.
3 First, even though this was
4 not the first thing taken up, perhaps,
5 is the question of the injunction;
6 a petition for the injunction and the
7 injunction which has been issued
8 returnable to today. That injunction
9 was issued forbidding an act which
10 had already occurred, and it seems
11 obvious either that some error was
12 made in the information provided the
13 Court or there was just a misunderstanding.
14 In any case, it doesn't make much
15 difference at this point. That
16 injunction is dissolved, effective at
17 once. It never had any effect anyway
18 because it forbade something that
19 had already happened.
20 Now, we get to the other
21 questions, the right to intervene
22 and the question of what sort of
23 determination could result or might
24 result if the intervention were
25 allowed and the position of the

1 Presbytery be supported by evidence.
2 Mr. Rowe has said quite candidly,
3 I think, in response to the Court's
4 question, that the ownership of the
5 property involved does not necessarily
6 play an essential part in the litigation.
7 The position taken is that the
8 congregation, the local congregation
9 in this case could not unilaterally
10 withdraw from its connection or status
11 with the Norfolk Presbytery and
12 through the Presbytery, the Presbyterian
13 Church of the United States. And
14 that the thrust -- the intended
15 thrust of the peition of the Presbytery
16 is not to regain possession or to
17 establish possession of the property,
18 the assets involved. I think that's
19 consistent with the tenets of the
20 Christian faith. But that the real
21 thrust is to see that this congregation,
22 if it is going to withdraw or wishes to
23 withdraw, follow Ecclesiastical Law.
24 Now, gentlemen, assuming everything
25 in the petitions and motions and

1 memoranda of the Presbytery to be
2 properly founded, this Court sees
3 no way in which it could determine the
4 questions now raised, without ruling
5 on the validity of the Ecclesiastical
6 rules. And at least in the view of this
7 Court, that area of human experience
8 or relation is one in which no court
9 in this nation, let us leave aside
10 the State, is privileged to trespass.
11 This Court has made no ruling
12 and will make no ruling as to whether
13 the Ecclesiastical rules or standards
14 set forth in the Presbyterian Church
15 have been or will be followed or should
16 be, beyond the area of responsibility
17 and jurisdiction of this Court and
18 every court of this Commonwealth.
19 The allegations in the various
20 papers exhibited and the arguments,
21 fail to indicate, even if thoroughly
22 established by evidence, that there
23 was any failure in the technical requirements
24 of the statutory provisions for the
25 transfer of property of the church.

Consequently, having already dissolved the injunction, the petition for the injunction is denied and dismissed. The petition to set aside or stay is denied. The petition for leave to file the petition as an intervenor is denied. I will ask Mr. Ferguson to prepare an appropriate decree which will reflect the rulings reserving of course all due exceptions to the Presbytery and the matter is dismissed.

MR. ROWE: We do of course except, your Honor.

***

MR. STACKHOUSE: Except on the record.

COURT: Yes sir. All right, thank you, gentlemen.

(The hearing was then concluded.)

- - - oOo - - -

O R D E R

THIS CAUSE came on this day to be heard upon the motions of The Norfolk Presbytery to set aside the Court's Order heretofore entered on the 22nd day of September, 1972, to grant a new hearing with respect to this matter or in the alternative to stay the aforementioned Order pending a hearing upon the Petition of The Norfolk Presbytery and for leave to file its Petition as Intervener in this matter, and upon the papers and proceedings heretofore filed and had on September 22, 1972 and on October 12, 1972, and was argued by Counsel.

WHEREUPON, the Court, after due deliberation, being of the opinion that the Temporary Injunction dated October 12, 1972, should be dissolved and that the aforementioned motions should not be granted for the reasons stated in open Court, it is accordingly ORDERED that the Temporary Injunction be and the same is hereby dissolved; and it is further ORDERED that the several motions of The Norfolk Presbytery, namely to set aside the Court's Order entered on September 22, 1972, to grant a new hearing with respect to this matter or in the alternative to stay said Order of September 22, 1972, pending a hearing on its Petition, together with its Motion for Leave to file its Petition as Intervener, be and the same hereby are each

denied; to all of which action counsel for The Norfolk Presbytery noted his objection.

ENTER:

_____
Judge

I ask for this:

/s/ William McL. Ferguson
Attorney for Jerry L. Bollinger, et al, Trustees

Have seen and objected to:

/s/ Robert C. Stackhouse
Attorney for The Norfolk Presbytery

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

In the Matter of the Petition of JERRY L. BOLLINGER, LAWRENCE E. KEENER and CHARLES A. WORNOM, TRUSTEES of GRACE COVENANT PRESBYTERIAN CHURCH	: : : : : :

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

THE NORFOLK PRESBYTERY, by Counsel, hereby gives Notice that it will apply to the Supreme Court of Virginia for a Writ of Error to the judgment of the Circuit Court for the City of Hampton entered herein on the 13th day of November, 1972, denying the several Motions of THE NORFOLK PRESBYTERY in this matter, assigning the following errors of the Circuit Judge:

1. The Court erred in denying PRESBYTERY'S Motion to Set Aside or Stay its Order of September 22, 1972.

2. The Court erred in denying PRESBYTERY'S Motion for Leave to File its Petition as Intervener.

3. The Court erred in holding that permitting PRESBYTERY to intervene would be an unconstitutional interference by the State with the Church.

A transcript of the evidence and other incidents of the case will hereafter be filed in accordance with Rule 5:9 of the Supreme Court of Virginia.

THE NORFOLK PRESBYTERY

By /s/ Peter W. Rowe
Of Counsel

Peter W. Rowe
STACKHOUSE, WEINBERG & STEWART
Counsel for The Norfolk Presbytery, Intervener
1400 Virginia National Bank Building
Norfolk, Virginia 23510

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignments of Error was mailed this 22nd day of November, 1972, to Counsel of Record.

/s/ Peter W. Rowe
Peter W. Rowe

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 5 1973
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