

**IN THE
SUPREME COURT OF THE UNITED STATES**

BOBBIE LABORDE,

Petitioner,

v.

**NAYLOR ANOINTED APOSTOLIC
CHURCH,**

Respondent.

**ORDER GRANTING PETITION FOR
WRIT OF CERTIORARI**

November 14, 2008

On Petition for Writ of Certiorari to the Supreme Court of the State of Fremont in the Above Captioned Case:

The petition is hereby GRANTED on the following questions:

1. Whether the First Amendment limits adjudication of civil actions with respect to the ministerial employment decisions of a religious organization.
2. Without regard to an employee's ministerial status, whether the First Amendment protects religious organizations against judicial enforcement of statutory and contractual obligations to avoid discrimination on the basis of sexual orientation.

/s/ _____
Todd Ferguson
Clerk of the Court

THE SUPREME COURT
OF THE STATE OF FREMONT

Supreme Court No. S-12259

BOBBIE LABORDE,

Appellant,

versus

NAYLOR ANOINTED APOSTOLIC CHURCH,

Appellee.

Appeal from the 4th District Court
Of the State of Fremont

[June 3, 2008]

Before Dirk Harpeck, Chief Justice, and Gizelle McThornody and Steve Stevens, Justices.

Chief Justice HARPECK delivered the Opinion of the Court.

I. Introduction

Bobbie Laborde, former employee of Naylor Anointed Apostolic Church (NAAC), in the town of Naylor, Fremont, sued the NAAC. Laborde claims that the NAAC discharged him on the basis of his sexual orientation in violation of both his employment contract and Fremont state law prohibiting discrimination on the basis of sexual orientation. The NAAC defends on First Amendment grounds. The following facts are not in dispute.

The NAAC is a quiet, rural church. Its membership has never exceeded seventy-five, and weekly attendance for the past five years has averaged fifty. The majority of its members have been attendees for over twenty years. The NAAC has since 1980 belonged to the Apostolic Christian Assemblies of America (ACAA), a union of several independent congregations nationwide. The ACAA now includes 63 congregations across the United States.

The ACAA Charter serves as the denomination's constitution. (J.A. 4.) The Charter provides that the ACAA is governed by a Council of Elders (Council). (J.A. 4.) Declarations of the Council are binding on all congregations in the denomination, and any congregations that fail to comply with the ACAA Charter or decisions of the Council may be disciplined or expelled. (J.A. 4.)

The NAAC has a constitution of its own. (J.A. 5.) It states that the NAAC is a member of the ACAA, but retains the right to hire and fire its pastor. (J.A. 5.) It does, however, note that the NAAC will only employ pastors who have been ordained by the Council. (J.A. 5.) The pastor is given authority to make all of the day-to-day decisions of the NAAC, including its employment decisions. (J.A. 5.)

Bobbie Laborde was hired in 2005 as Chapel Steward of the NAAC. According to his employment contract with the NAAC, the duties of a Chapel Steward are to:

Provide for the security, safety, and cleanliness of the Naylor Chapel. These duties include . . . [m]onitoring compliance with applicable health and safety regulations and policies. . . . Prepare the Naylor bulletin, including announcements and a passage from scripture to be printed on the front page, for each Sunday worship service, and post the selected scriptural text on the sign outside the church. Greet church members as they arrive on Sunday morning, and distribute copies of the bulletin to them.

(J.A. 2-3.) The choice of the front-page scripture was within Laborde's discretion. The pastor did not interfere with Laborde's choice, but did share with Laborde the topic of each week's upcoming sermon for inclusion in the bulletin. It is unclear from Laborde's contract which of his duties was most important, but Laborde approximates that he spent fifteen percent of his working hours preparing the bulletin, including the time he spent selecting the scripture. This has not been disputed by the NAAC, but the congregation has said it considered Laborde's bulletin duties important to its spiritual mission.

Laborde's employment contract was based primarily on a form contract provided by the ACAA to the NAAC. The duties quoted above were typed in by Pastor Harrison Jones, who was pastor of the NAAC at the time Laborde was hired.

Laborde's contract contained a termination clause. He could only be terminated for "just cause," which included "a failure to abide by the doctrine of Jesus Christ as laid out in scripture, the charter of the [ACAA], and/or the constitution of the [NAAC]." (J.A. 4.) This clause borrowed language almost verbatim from the ACAA Charter. (J.A. 4.) The termination clause also reaffirmed that "[e]mployment with the [NAAC] shall conform to the Employment Policies of the [ACAA]." (J.A. 3.)

The policies of the ACAA and Fremont State law both prohibit certain discriminatory employment actions, and those provisions are at the heart of this case. Article 7 of Laborde's contract, entitled "Non-Discrimination," provides: "[W]e do not discriminate against any person, group or organization in hiring, promotion, membership, appointment, use of facility, provision of services or funding on the basis of race, gender, age, physical disability, nationality, or sexual orientation." (J.A. 4.) The ACAA has, since its inception, officially followed a policy

of nondiscrimination on grounds of race, gender, age, and nationality, and this policy is reflected in its Charter and employment contracts. In 2004, the ACAA added sexual orientation discrimination to the list of prohibited actions. When it did so, it declared: "[S]uch discrimination is contrary to the principles of the Gospel of Jesus Christ." (J.A. 4.)

With this action, the ACAA voluntarily brought itself into compliance with state law, which, since 2004, has prohibited discrimination based on sexual orientation in the workplace. In 2004, the Fremont legislature passed the Non-Discrimination Act (NDA), which amended Fremont's existing prohibition on employment discrimination found in Fremont State Code Section 413.2. The statute, as amended, bars employers from taking any adverse employment action against employees "because of such individual's race, color, religion, sex, national origin, or actual or perceived sexual orientation." F.S.C. § 413.2 (J.A. 6). Prior to passage of the NDA, Section 413.2 mirrored the language of Title VII of the federal Civil Rights Act of 1964, which does not include sexual orientation discrimination. *See* 42 U.S.C. § 2000e-2. Like Section 702 of Title VII, Section 413.3 of the Fremont Code exempts religious institutions "with respect to the employment of individuals of a particular religion." F.S.C. § 413.3 (J.A. 6); *cf.* 42 U.S.C. § 2000e-1.

Against this background, events at Naylor unfolded in a way that put Laborde on a collision course with his church. Pastor Jones considered outreach to community groups an important part of his ministry, and he befriended a local group named One Nation, which advocated for gay and lesbian rights. Beginning in 2005, the pastor increasingly mentioned same-sex issues in his sermons. The congregation grew uneasy. Members soon

registered protests with the Council, and tensions escalated. Pastor Jones chose to withdraw from the gathering storm, and transferred to an ACAA member congregation in another State.

In September 2006 the NAAC, by a majority vote of the congregation, hired Clarence Strickland as the new pastor. Pastor Strickland was not an ordained ACAA minister, and indeed the NAAC did not consult the ACAA Council in the matter of its pastoral replacement. Sermons at the church soon took a more conservative tone, including several that openly condemned homosexuality and even the ACAA's nondiscrimination policy itself. In November of 2006, Pastor Strickland proposed an official resolution of the NAAC rejecting the ACAA's policy with respect to sexual orientation, and a majority of the congregation approved this resolution.

After the congregation's approval of the resolution, Laborde began criticizing Pastor Strickland's "intolerant" sermons, on one occasion remarking, during refreshments after the Sunday service, that "the new pastor seems to harbor some un-Christian feelings towards people different from him." On another occasion, following a homily on charity, Laborde was heard saying he wished Pastor Strickland would practice real charity and reach out to people of all lifestyles.

After several months, Laborde could endure it no longer, and one Sunday afternoon in December confronted Pastor Strickland. In the lobby of the building they engaged in a heated conversation about homosexuality. Laborde revealed he had been a sexually active gay man for eight years, and that Pastor Jones had known of his sexual orientation at the time he was hired to be the Chapel Steward. Pastor Strickland had never before heard or suspected that Laborde was gay, and according to Laborde the pastor became highly uncomfortable and hostile, and terminated the conversation.

When Laborde walked up the hill to church the following Sunday, Pastor Strickland was waiting at the front door. The pastor told Laborde that his services as Chapel Steward would no longer be required, and that he was being terminated with two weeks' notice. When Laborde asked why, the pastor replied that it was on account of lifestyle choices that were "out of harmony with the gospel of Christ." Laborde attempted to give the pastor the copies of the bulletin he had prepared for the day, but Pastor Strickland refused to take them. Laborde left immediately and ceased participation in the congregation. He appealed his firing to the congregation, but having learned of the basis for his termination, the congregation by majority vote endorsed Pastor Strickland's decision. Pastor Strickland and others speaking for the church told Laborde that he was free to remain a member of the church, and to attend its services, but that he could no longer serve as its agent or employee.

Laborde then filed a complaint with the Naylor County Employment Commission, alleging discrimination on the basis of sexual orientation. The commission, after a preliminary investigation, declined to pursue the matter and issued Laborde a right to sue letter. Laborde then promptly filed suit in the Fourth District Court of the State of Fremont. In his complaint, Laborde asserted that the church's termination based on sexual orientation constituted both a breach of contract and a violation of Fremont State Code Section 413.2(a)(1).

The church filed a motion to dismiss all of Laborde's claims for lack of subject matter jurisdiction, arguing that Laborde's position was ministerial in nature and therefore the court was precluded from examining the employment decision. Laborde argued that his position was not ministerial, and that the NAAC had waived its right to claim a ministerial exception when it included the ACAA policy on non-discrimination in his employment contract. The NAAC

further moved to dismiss on grounds that Laborde's complaint failed to state a claim on which relief can be granted, on the ground that the First Amendment required an exemption from the NDA for the church. The district court concluded that the ministerial exception applied to this case, that the ministerial exception was not waivable, and that the First Amendment barred recovery under both the contract and the NDA even if the ministerial exception did not apply. Accordingly, the district court granted all of the church's motions. Laborde timely appealed to this Court.

Before the Court are several questions arising under the First Amendment to the United States Constitution, including whether the First Amendment precludes the Court's subject matter jurisdiction over Laborde's breach of contract claim against his church, and whether the First Amendment requires an exemption for the church from a statute prohibiting discrimination based on sexual orientation. In considering these questions, we will also have to examine the extent to which Laborde's duties were ministerial.

II. Breach of Contract

Laborde's first claim is for breach of contract. Laborde asserts that the NAAC breached its contract and waived any potential defense based on a ministerial exception when it terminated Laborde on account of his sexual orientation. As proof, Laborde points to a provision in his employment contract where the NAAC promised not take any adverse employment action on the basis of sexual orientation. The NAAC does not dispute that it fired Laborde based on his sexual orientation, but instead claims a right to do so, protected by the First Amendment.

While this is a case of first impression in this State, the facts before us are not unprecedented in American law. On the federal level, a long series of cases arising from Title VII of the Civil Rights Act of 1964 present the same two interests at issue here: an individual's claim to non-discrimination and a church's claim to non-interference by the state.¹ These cases created a ministerial exception for religious institutions, shielding from judicial inquiry a church's employment decisions about its ministers. The first case was *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972), in which a sexual discrimination claim was brought by a female minister against the Salvation Army. The court there declared:

The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern. Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection. It is unavoidably true that these include the determination of a minister's salary, his place of assignment, and the duty he is to perform in the furtherance of the religious mission of the church.

Id. at 558-59. As a result, the court refused to consider the claim and affirmed the district court's dismissal for lack of subject matter jurisdiction. *Id.* at 561.

McClure opened the gateway to a flood of cases that now covers every circuit in the land, in which courts have recognized an exemption from employment laws for the ministerial decisions of a church. A ministerial exception has been explicitly recognized in *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1172 (4th Cir. 1985); *Rweyemamu v. Cote*, 520 F.3d 198, 207 (2d Cir. 2008); *Young v. Illinois Conference of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994); *Minker v. Baltimore Annual Conference of United*

¹ Title VII was the prototype for F.C. § 413.2.

Methodist Church, 894 F.2d 1354 (D.C. Cir. 1990). It has also been applied to comparable state laws. *See, e.g., Natal v. Christian & Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989).

This line of cases applies an exception for a church's employment decisions regarding its *ministerial* employees only. *McClure*, 460 F.2d at 560-61. Determining who is a minister, therefore, is pivotal. Such a determination "does not depend upon ordination but upon the function of the position." *Rayburn*, 772 F.2d at 1168-69. Thus, "if the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered 'clergy.'" *Id.* at 1169. This "primary duties" test requires an examination of "whether a position is important to the spiritual and pastoral mission of the church." *Id.*

The judicial role in deciding internal church disputes is "severely circumscribed," and may only be exercised where the dispute "involves no consideration of doctrinal matters." *Jones v. Wolf*, 443 U.S. 595, 602-03 (1979); *see also Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) (holding that internal property disputes are only justiciable where they can be decided "without resolving underlying controversies over religious doctrine."). Where the dispute involves a ministerial employee, questions of religious doctrine inevitably arise. In such a circumstance the First Amendment protects the very act of clerical decision, regardless of the motives behind it. *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 465 (D.C. Cir. 1996). This is required by the Establishment Clause, which prohibits excessive government entanglement with religion. *Id.* at 466. The bar is jurisdictional in nature, regardless of the competing rights or interests asserted by the parties. *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006). Simply put, when

courts are confronted with cases involving a ministerial employment decision, the First Amendment deprives those courts of jurisdiction. *Catholic Univ.*, 83 F.3d at 465.

We now adopt the ministerial exception in this State. It operates with full force in this case, because on these facts Laborde was a ministerial employee. He was assigned by the pastor of the congregation to provide a scripture each week for the benefit of the congregants. He also announced that scripture to the public, posting it on the sign outside the church. This duty vested a discretionary choice in Laborde over a highly spiritual matter. Pastor Strickland found this responsibility to be important to NAAC's spiritual and pastoral mission, and Pastor Jones even shared with Laborde the content of his upcoming sermons. Both pastors intended that the scripture would prepare the faithful for their sermon. In short, Laborde was "spreading the faith," and communicating a spiritual message, to the congregation and the public. *See Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 703-04 (7th Cir. 2003). If this Court were to step into such a ministerial situation, it would quickly be entangled in sensitive theological issues.

We are therefore unable to adjudicate Laborde's breach of contract claim. Indeed, if we were to proceed, it is easy to see the problems we would face. There would be no breach of contract here if Laborde had "fail[ed] to abide by the doctrine of Jesus Christ as laid out in scripture, this charter, and/or the constitution of the [NAAC]." At issue, therefore, would be whether Laborde's active homosexuality constituted a failure to abide by the doctrine of Jesus Christ. Answering such a question would amount to deciding who is qualified to serve as a minister. We would need to inquire into NAAC's charter and constitution to see what qualifies as the doctrine of Christ; the parties might well ask us to peruse scripture as well. If the Court

took these steps, it would no longer be a secular court but a religious court, an institution intolerable under the First Amendment. *Tomic*, 442 F.3d at 1042.

Laborde has a further argument. He states that NAAC not only breached its contractual promise not to discriminate on the basis of sexual orientation, but also that the promise acted as a waiver of any potential assertion of the ministerial exception. In light of the above discussion, Laborde is clearly wrong. A private litigant cannot waive the court's lack of subject matter jurisdiction. *See Tomic*, 442 F.3d at 1042. What the church may have promised in its contract, therefore, is of no moment. *McDonnell v. Episcopal Diocese of Georgia*, 381 S.E. 2d 126, 128 (Ga. Ct. App. 1989).

Furthermore, even if Laborde were not a ministerial employee, the church's rights of expressive association and free exercise of religion (as discussed in more detail in Part III, below) would bar any claim of breach of contract. The NAAC, acting through Pastor Strickland and with the approval of the congregation, renounced the ACAA policy with respect to sexual orientation, and adopted its own contrary policy. When it did so, the NAAC spoke with a new voice, and the Constitution protected its right to exclude from employment those who acted inconsistently with its doctrines. This Court cannot, through adjudication of an action for breach of contract, act as an agent of enforcement of the ACAA's policy against a congregation that has rejected it. *Cf. Arlin M. Adams & William R. Hanlon, Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment*, 128 U. Pa. L. Rev. 1291 (1980) (rule of compulsory deference to the main church body in property disputes denies association rights to the local church body).

For these reasons, we affirm the dismissal of Laborde's breach of contract claim for lack of subject matter jurisdiction.

III. Non-Discrimination Act

The NAAC argues that it is both statutorily and constitutionally exempt from the NDA. The NDA, passed in 2004, did not contain an explicit exemption for religious organizations. Because of this, Laborde argues that the NAAC is fully subject to the NDA's command not to discriminate on the basis of sexual orientation. By contrast, the NAAC would have us construe the NDA to contain such an exemption by implication, because the NDA amends Section 413.2, which already contains an exemption for religious organizations. *See* F.S.C. § 413.3 (J.A. 6). Nothing in the NDA suggests that religious organizations are exempt from the prohibition on discrimination based on sexual orientation. Accordingly, we do not find either an express or implied exemption in the statute.

Nevertheless, whether or not Laborde occupies a ministerial position, the NAAC is constitutionally exempt under the First Amendment from the requirements of the NDA. Because of the congregation's expressed belief regarding homosexuality, to hold otherwise would unduly burden the church's rights to expressive association and the free exercise of religion, and would lead to an impermissible entanglement in the affairs of religious bodies by courts.

The U.S. Supreme Court has affirmed that the First Amendment includes a right to create associations to pursue shared political, religious, or other goals. *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). To obtain the protection of this right, an association must establish that it engages in some sort of expression. *Id.* Courts, however, are obliged to treat

with deference the association's assertion that it does so. *Boy Scouts v. Dale*, 530 U.S. 640, 650 (2000). Indeed, in *Dale*, the Court simply took the Boy Scouts at its word that the organization expressed an opposition to homosexuality. *Id.* at 651. Here, the record is clearer. NAAC's constitution makes clear that its role is to promote and spread the gospel of Jesus Christ. Pastor Strickland stated that the practice of homosexuality is not in harmony with that message. That message was affirmed in a resolution by a majority of the congregation, and reaffirmed when the congregation upheld the employment decision. The congregation thus has expressed by word and by deed a religious view on sexual orientation, and we must accept this as the protected expression of the congregation.

Government regulation that intrudes into the internal structure of such an association to force it to accept members they would not otherwise desire may unduly burden the right to expression. *Roberts*, 468 U.S. at 622. The concern is the same in decisions regarding whom the organization employs. *Dale*, 540 U.S. at 659. Courts are also obliged to defer to an assertion that a given regulation would impede an association's ability to perform that expression. *Dale*, 540 U.S. at 653. In *Dale*, the Court stated that employment of Dale would "force the organization to send a message, both to the youth members and the world, that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior." *Id.* Because enforcing the NDA against the congregation would run directly counter to the policies and decisions made by Pastor Strickland and upheld by the congregation, the burden here is largely the same. The congregation's ability to voice its opinion on sexual orientation would be muffled by a regulation that prohibits a church from considering sexual orientation in its employment decisions.

The right of an association to define itself in this way is not unlimited, however; it may be circumscribed by regulations adopted to further compelling state interests, unrelated to the suppression of ideas, which cannot be achieved through less restrictive means. *Roberts*, 468 U.S. at 623. Laborde argues that *Dale* should not apply to employment discrimination laws, because such laws protect the right to earn a livelihood as well as promote compelling state interests of tolerance instead of prejudice. *Dale*, 540 U.S. at 657. However, a state has other, more narrowly tailored means to reduce discrimination and increase tolerance, such as limiting application of laws like the NDA to commercial enterprises. An exception must be made for a religious organization that voices opposition to alternative sexuality.

Further, to force the church to disregard sexual orientation in making employment decisions despite the congregation's sincere belief that homosexuality is prohibited by church teachings unduly burdens the church's right to exercise its religion. The Supreme Court has recognized that religious organizations are entitled to independence from secular control or manipulation not just in matters of faith and doctrine, but also in matters of church government and polity. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 107, 117 (1952). However, those cases concerned direct governmental interference in church affairs; the effect of neutral, generally applicable laws that adversely affect religious organizations is somewhat less clear.

Laborde argues that, in light of *Employment Division v. Smith*, 494 U.S. 878 (1990), the NAAC has no free exercise-based right to exemption from a neutrally applicable law such as the NDA. In *Smith*, however, the Court repeatedly stated that its focus was on the free exercise claims of individuals. 494 U.S. at 880. As Justice Brennan noted in his concurring opinion in

Corp. of the Presiding Bishop v. Amos, religious organizations represent an “organic entity not reducible to a mere aggregation of individuals.” 483 U.S. 327, 342 (1987) (Brennan, J., concurring in the judgment). Free exercise claims made by religious organizations are unique; such claims were not addressed in *Smith* and we hold that they are not governed by that decision.

When neutral, generally applicable laws regarding employment have conflicted with a professed religious belief, other courts have held similarly and employed the pre-*Smith* compelling interest test to determine whether or not an exemption to the law was required. *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 462 (D.C. Cir. 1996).

In the context of employment law, we believe that free exercise exemptions for churches should be limited to “protected choices,” such as the selection of clergy, or situations in which the church has a “doctrinal” justification for the claimed exemption. *Bollard v. Cal. Province of the Soc’y of Jesus*, 196 F.3d 940, 948 (9th Cir. 1999). Even if the choices regarding Laborde’s employment were not protected, the doctrinal justification is clear. Pastor and congregation have expressed their belief that homosexuality does not comport with a Christian belief, and immoral behavior is grounds for being removed from employment with the church. If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect. *Sherbert v. Verner*, 374 U.S. 398, 404 (citing *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961)). When as here, a generally applicable law puts such a burden on a religious organization, an exemption must be constitutionally implied to protect the rights of free exercise.

Laborde contends that the religious justification here is not sincere and so does not qualify for protection under *Sherbert*; to this effect, he points out the provision of the ACAA embracing those of all sexual orientations. However, the sincerity of the belief by the NAAC has not been questioned. The relationship between the denomination and the local congregation on doctrinal issues is not for us to review. We will not look behind the reasoning proffered by the NAAC.

Finally, we note that requiring a church to disregard its employees' sexual orientation even though the church believes that homosexual conduct is immoral would place the courts directly in the middle of a church's internal affairs. Laws that create excessive entanglement in the affairs of churches violate the Establishment Clause of the Constitution. *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971).

Of course, churches are not wholly exempt from governmental regulation as organizations. Religious organizations, like any other, must comply with fire inspections and building regulations; government enforcement of these regulations does not create entanglement in the church's affairs. *Id.* at 614. However, enforcement of laws that affect the substantive content of the employer/employee relationship of the church is constitutionally questionable, largely due to the inevitable entanglement in church affairs that would result. *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). While the Court ultimately resolved the issue in *NLRB v. Catholic Bishop* on a statutory basis, we must rely directly on the protections afforded by the First Amendment. Especially in these circumstances, where many religious organizations oppose homosexuality, we refuse to apply state law to interpose the courts in employment disputes on those grounds.

In some situations, the Free Exercise and Establishment clauses work jointly to produce the best course of action regarding the involvement of religion and government. This is one of those situations. Plaintiff's statutory claim was also correctly dismissed.

For the reasons above, we AFFIRM the decision of the trial court dismissing Mr. Laborde's claims.

THE SUPREME COURT
OF THE STATE OF FREMONT

Supreme Court No. S-12259

BOBBIE LABORDE,

Appellant,

versus

NAYLOR ANOINTED APOSTOLIC CHURCH,

Appellee.

JOINT APPENDIX

JOINT APPENDIX

APOSTOLIC CHRISTIAN ASSEMBLIES OF AMERICA

EMPLOYMENT AGREEMENT

AGREEMENT made as of April 1, 2005, between Bobbie Laborde (“Employee”) and Naylor Anointed Apostolic Church, a Fremont corporation (“Employer”), a congregation of the Apostolic Christian Assemblies of America, Inc.:

1. Position:

- 1.1. Employer hereby employs Employee for the Term (as defined in Article 2 hereof) to render full-time services as a Chapel Steward, to perform such duties as Employee shall reasonably be directed to perform as defined in Article 4 hereof.

2. Term of Employment:

- 2.1. The Term of Employee’s employment shall begin on April 1, 2005, and shall end on April 1, 2010, subject to the provisions of Article 5 hereof.

3. Compensation:

- 3.1. As compensation for all services rendered pursuant to this Agreement, Employer agrees to pay Employee a salary at the rate of \$18,000 per annum.
- 3.2. During the Term, Employee shall be entitled to participate in any group insurance, qualified pension, hospitalization, medical health and accident, disability, or similar plan or program of Employer now existing or hereafter established to the extent that he is eligible under the general provisions thereof. Notwithstanding anything herein to the contrary, however, Employer shall have the right to amend or terminate any such plans or programs.

4. Duties:

- 4.1. Provide for the security, safety, and cleanliness of the Naylor Chapel. These duties include:
 - 4.1.1. Monitoring compliance with applicable health and safety regulations and policies.
 - 4.1.2. Ensuring that the building is locked and alarmed at the end of every church meeting.
 - 4.1.3. Cleaning the Communion Hall and teaching rooms prior to Sunday services.
 - 4.1.4. Providing refreshments in the annex after Sunday meetings.
- 4.2. Prepare the Naylor bulletin, including announcements and a passage from scripture to be printed on the front page, for each Sunday meeting, and post the selected scriptural text on the sign outside the church.

4.3. Greet church members as they arrive on Sunday morning, and distribute copies of the bulletin to them.

5. Termination:

- 5.1. Employer may at any time during the Term, by two weeks' notice, terminate the employment of Employee for just cause.
- 5.2. Just cause shall include a failure to abide by the doctrine of Jesus Christ as laid out in scripture, the charter of the Apostolic Christian Assemblies of America, and/or the constitution of the member congregation.
- 5.3. Employment with the member congregation shall conform to the Employment Policies of the Apostolic Christian Assemblies of America.

6. Governing Law:

6.1. This Agreement shall be construed and enforced in accordance with the laws of the State of Fremont.

7. Non-Discrimination:

7.1. In the interests of justice and human dignity, the Apostolic Christian Assemblies of America upholds a policy of non-discrimination. This body and its member congregations will not take any adverse employment action on the basis of race, gender, age, physical disability, nationality, or sexual orientation.

8. Severability:

8.1. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

Naylor Anointed Apostolic
Church

Bobbie Laborde

By

Title

Date

Date

Selections from Charter of the Apostolic Christian Assemblies of America

Polity

1. The leadership of the Apostolic Christian Assemblies of America (ACAA) shall be vested in the Council of Elders (Council), which is responsible for governing the church, teaching the Word, and tending the flock of God in this church. The elders shall be equal in authority, but may be specialized in function. Under the authority of Jesus Christ and the Word of God, the Council is the final authority within the ACAA, and declarations of the Council are binding on all congregations in the church. The Council will gather monthly to resolve any questions of governance and doctrine, and the ACAA will gather together in an Annual Meeting of the Assemblies to discuss any major happenings or developments.
2. ACAA membership may be subject to review at the Annual Meeting of the Assemblies. Congregation membership shall be accorded on the basis of the standards of the ACAA, as set forth in the By-laws of this Constitution. Congregations of the ACAA agree to adhere to the Statement of Faith and the Statement of Polity and the workings of the ACAA. Any congregation that fails to comply with the ACAA Charter or decisions of the council may be disciplined or expelled.

Employment Policies for ACAA Congregations

1. Non-Discrimination.

In the spirit of the statement by the Apostle Paul “we are all one body in Christ,” (Romans 12:4), we do not discriminate against any person, group or organization in hiring, promotion, membership, appointment, use of facility, provision of services or funding on the basis of race, gender, age, physical disability, nationality, or sexual orientation. The church upholds this policy in the interests of justice and human dignity, declaring that such discrimination is contrary to the Gospel of Jesus Christ. We enjoin all congregations of this church to comply with this rule of non-discrimination in employment.

2. Termination.
 - a. Termination shall be only for just cause, and shall provide for two weeks advance notice.
 - b. Just cause shall include a failure to abide by the doctrine of Jesus Christ as laid out in scripture, this charter, and/or the constitution of the member congregation;

- c. Employment with the member congregation shall conform to the policies of the Apostolic Christian Assemblies of America.
- d. Other additional terms that the member congregation deems necessary may be included if approved by the Council.

Selections from the Constitution of the Naylor Anointed Apostolic Church

General

1. We believe the Holy Bible as the inspired Word of God, without any error, the all-sufficient authority in matters of faith, doctrine, and Christian living.
2. We believe in one God, eternally existing in three Persons: the Father, the Son, and the Holy Spirit.
3. We believe in the Virgin Birth of Jesus Christ, and that He is true God and man. He died on the cross for our sins. He rose bodily from the dead, ascended into heaven where He sits at the right hand of the Father and is now our High Priest and Advocate.
4. We believe in the role of the church to actively spread the gospel of Jesus Christ to all the ends of the earth, as commanded by Him.
5. We are a member congregation of the Associated Apostolic Churches of America, and subscribe to the principles laid out in the charter of the AACCA as our statement of faith with scriptural references.

Employment

1. Pastors
 - a. A pastor shall be chosen and called by majority vote of the congregation whenever a vacancy occurs.
 - b. As an AACCA member, we will employ only pastors who have been ordained and approved by AACCA.
 - c. The qualifications for pastor shall be consistent with those listed in 1 Timothy 3:1-7. His training, skills, and experiences are needed in this area of leadership.
 - d. The chosen pastor shall serve until the relationship is terminated by either his request or that of the congregation. In either case, at least sixty (60) days' notice shall be given unless otherwise mutually agreed.
 - e. The pastor has authority to make all day-to-day decisions of the congregation, including decisions regarding employment of staff members.

2. Church Staff

This church shall employ staff, as it shall need:

- a. A written job description and mutual contract/agreement will be prepared when the need for church staff is determined;
- b. The congregation shall decide, by majority vote, whether a staff position should be created or abolished;
- c. The pastor shall make all decisions regarding the employment of particular staff members, including whether to hire or fire a member of the staff.
- d. Any staff employment decision may be appealed to the entire congregation; a majority vote shall uphold or reverse the decision made by the pastor.

Fremont State Code (2006)

§ 413.2 Unlawful employment practices

(a) It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, or actual or perceived sexual orientation; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, national origin, or actual or perceived sexual orientation.

§ 413.3 Applicability to religious employment

(a) Inapplicability of subchapter to employees of religious entities

This subchapter shall not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.