



# Assessment of Clergy Candidates: Legal Issues

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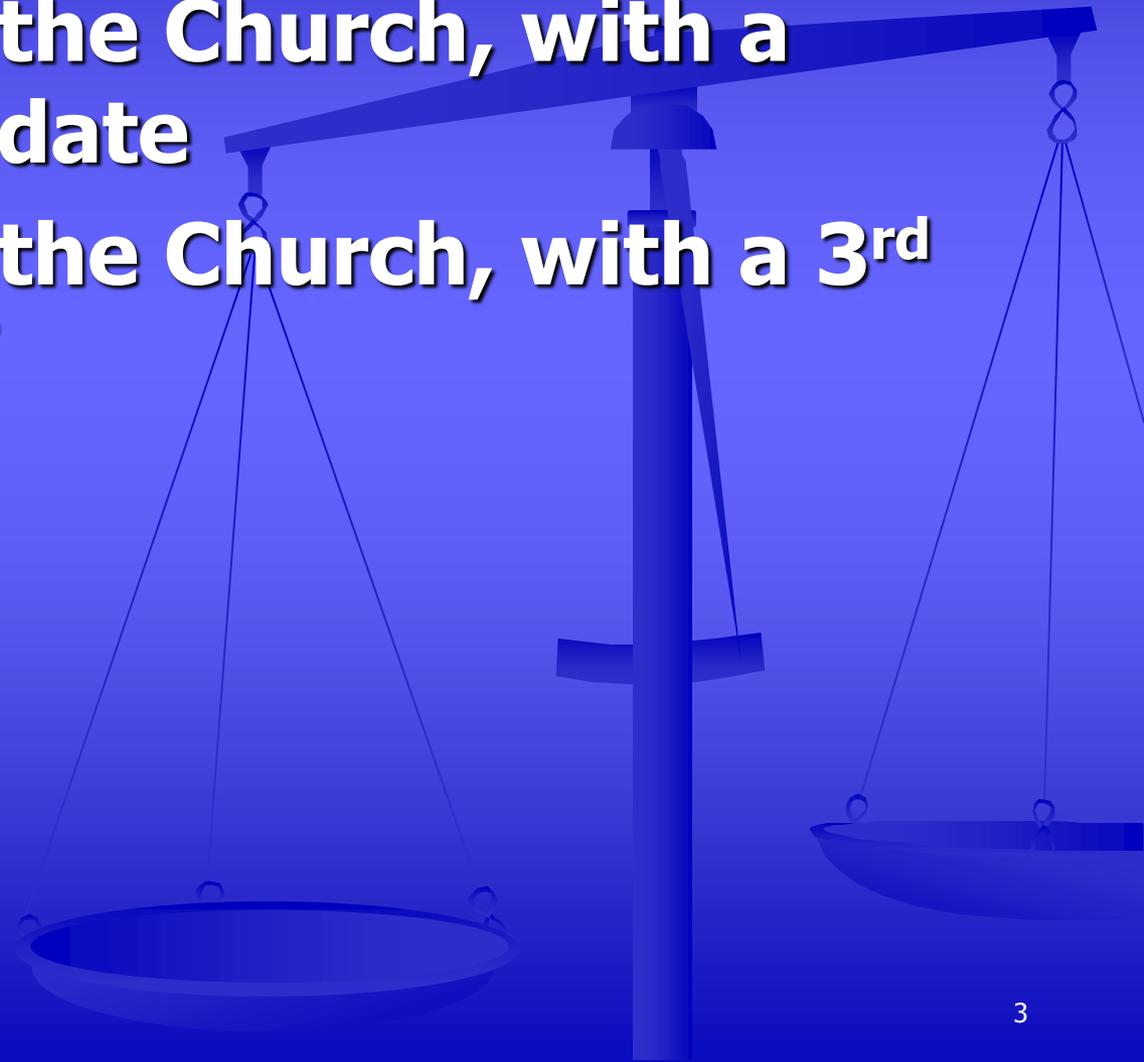
# Disclaimer



- **This presentation is not intended to be, nor should it be construed as:**
- **Supplanting consultation with your chancellor, and/or GCFA Legal Services, or**
- **Consultation with your Bishop.**
- **The opinions represented here are my own.**

# Issues for the Church

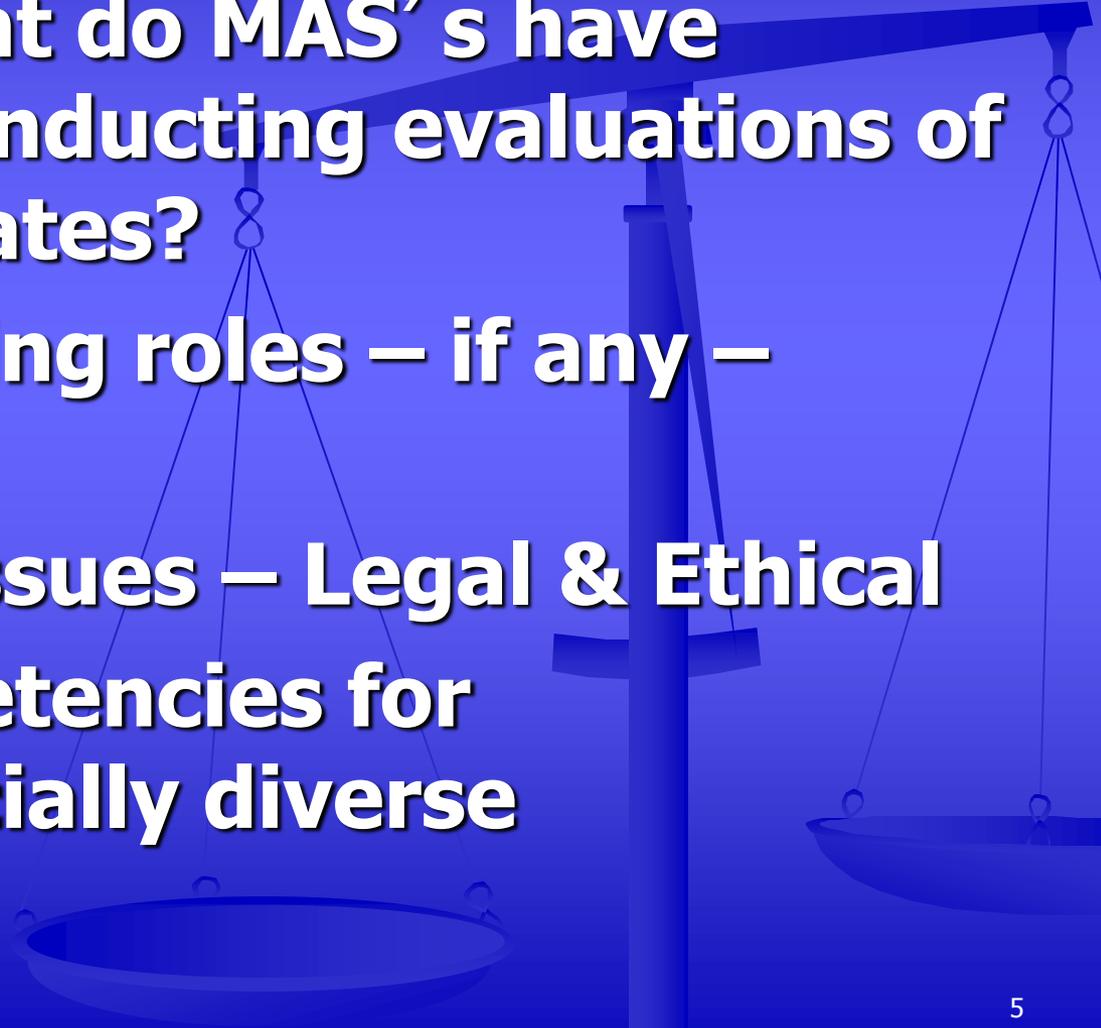
- **Liability – for the Church, with a plaintiff candidate**
- **Liability – for the Church, with a 3<sup>rd</sup> party plaintiff**



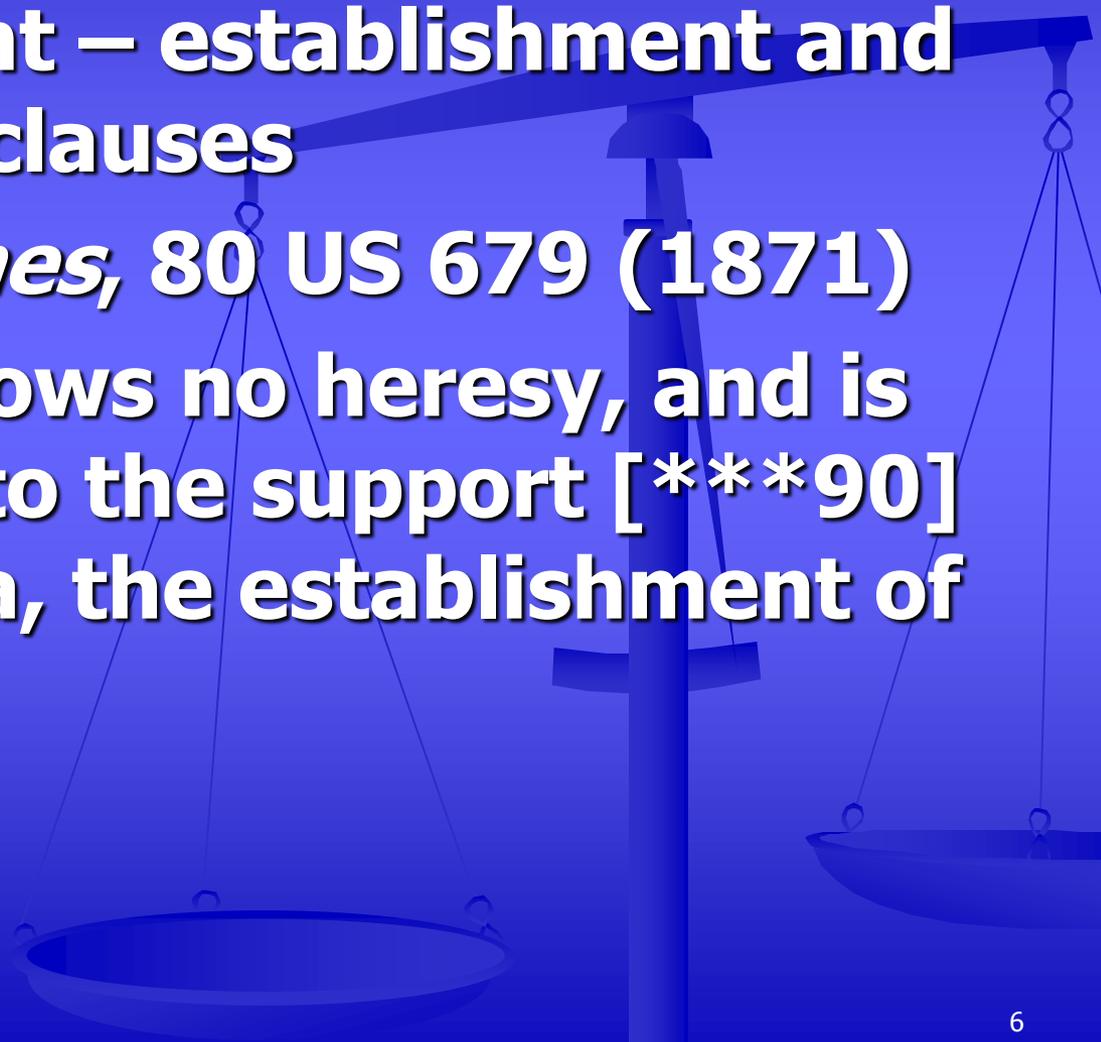
# **Liability: Psychological Assessments – by Church**

- **Specifically, does liability attach to Annual Conferences for conducting psychological evaluations of candidates?**
- **And, does HIPAA or Title VII, or the ADA apply to psychological evaluations of clergy? (Issue for both Church and MAS)**

# Issues: For the MAS

- To what extent do MAS' s have liability for conducting evaluations of clergy candidates?
  - What competing roles – if any – exist?
  - Assessment issues – Legal & Ethical
  - Special competencies for ethnically/racially diverse populations
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# Legal principles



- **1<sup>st</sup> Amendment – establishment and free exercise clauses**
- ***Watson v. Jones*, 80 US 679 (1871)**  
“The law knows no heresy, and is committed to the support [\*\*\*90] of no dogma, the establishment of no sect...”

# Legal principles p2

- ***Watson v. Jones*, 80 U.S. 679 (1871)**
- **“It would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed”**

# Liability: None for the Church viz. the Candidate

- **No liability** exists for requiring psychological assessment of clergy candidates. See *Starkman v. Evans*, 198 F3d 173 (5<sup>th</sup> Cir. 1999), discussion of 1<sup>st</sup> Amendment ministerial exception
- Neither the ADA nor Title VII apply
- See *Watson v. Jones*, 80 U.S. 679 (1871). Civil Courts may not resolve ecclesiastical disputes.

# Liability: None for the Church viz. the Candidate

- **Basis of court decisions:**
  - a) The “ministerial exception” arises out of 1<sup>st</sup> Amendment establishment and free *exercise* clauses
  - b) This exception has the effect of also exempting the Church from the application of Title VII and the ADA
  - c) **This exception applies to *clergy* and the “spiritual functions” of the church, i.e. not to lay employees *per se***

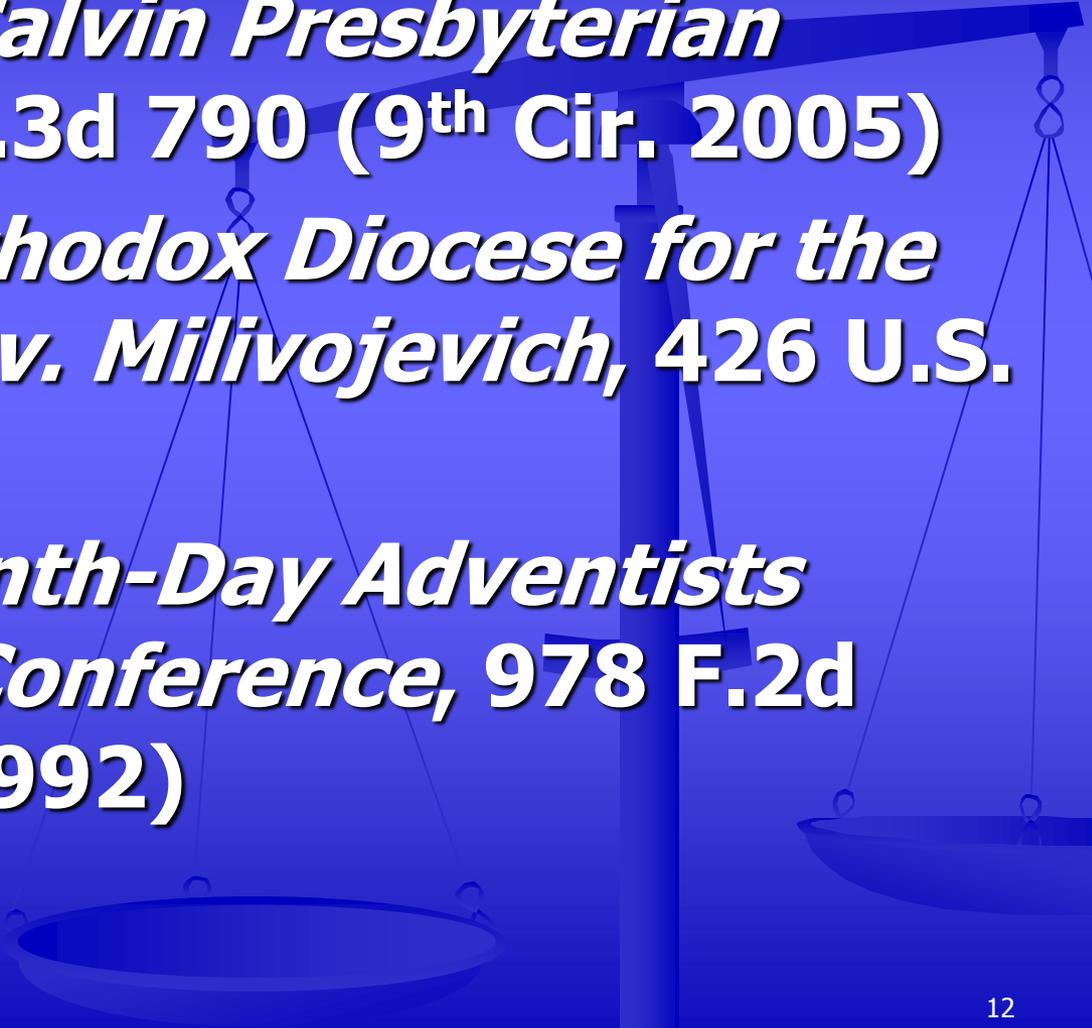
# Liability: None for the Church by Candidate

- *Minker v. Baltimore Ann. Conf.*, 894 F2d 1354 (D.C. Cir. 1990). “We cannot imagine an area of inquiry less suited to a temporal court for decision; evaluation of the ‘gifts and graces’ of a minister must be left to ecclesiastical institutions.”

# Liability: None for the Church by Candidate

- *Combs v. Cent. TX. Conf.*, 173 F3d 343 (5<sup>th</sup> Cir. 1999). An associate at 1<sup>st</sup> Church, Hurst was terminated and claimed violation of FMLA & Title VII. The court asserted “the fundamental right of churches to be free from government interference in their internal management and administration...”

# Illustrative cases



- *McDowell v. Calvin Presbyterian Church*, 397 F.3d 790 (9<sup>th</sup> Cir. 2005)
- *Serbian E. Orthodox Diocese for the U.S. and Can. v. Milivojevich*, 426 U.S. 696 (1976)
- *Lewis v. Seventh-Day Adventists Lake Region Conference*, 978 F.2d 940 (6<sup>th</sup> Cir. 1992)

# Starkman v. Evans -1

- Louisiana Conference case, 1992, decided 1999.
- Organist sued under ADA
- The "ministerial exception encompasses all employees of a religious institution, whether ordained or not, whose primary functions serve its spiritual and pastoral mission."
- *Catholic University*, 83 F.3d at 463

# McClure v. Salvation Army

- McClure v. Salvation Army, 460 F.2d 553 (5th Cir.1972), the Fifth Circuit first articulated the "ministerial exception" to employment discrimination claims. In McClure, this court held that the application of the provisions of Title VII to the employment relationship existing between the plaintiff and her church "would result in an encroachment by the State into an area of religious freedom which it is forbidden to enter by the principles of the free exercise clause." 460 F.2d at 560.

# Liability: Exists re non-clergy employees

- The ministerial exception would not apply to employees whose duties are not intrinsically religious and integral to the religious functions of the church
- A janitor, or secretary, may well be covered by Title VII or the ADA