January 1996

State v. Pendleton: Impermissible Delegations to Religious Institutions: Is Campbell University an Armed Church?

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STATE V. PENDLETON: IMPERMISSIBLE DELEGATIONS TO RELIGIOUS INSTITUTIONS: IS CAMPBELL UNIVERSITY AN ARMED CHURCH?

I. INTRODUCTION

State v. Pendleton is the North Carolina Supreme Court's most recent attempt to apply the Establishment Clause in the realm of higher education. On December 30, 1994, the Supreme Court evaluated the constitutionality of permitting Campbell University, a church-affiliated school, to employ a campus police force under Chapter 74A of the General Statutes of North Carolina. Although divided, the Court ruled that the statute was unconstitutional as it applied to Campbell University.

This State's Supreme Court held that Campbell University is a religious institution and its use of a police force entangled church and state. As a result, Campbell's police force was decommissioned and the University now pays the county Sheriff's Department to patrol the campus. The Supreme Court used Larkin v. Grendel's Den, Inc. as the controlling test for excessive entanglement. Although this is arguably the controlling case, the North Carolina Supreme Court's interpretation of the case appears to defy the logic of the United States Supreme Court in Larkin. This note will review the North Carolina Supreme Court's use and interpretation of Larkin and compare it with the interpretation of Larkin by other courts in cases that specifically follow Larkin.

II. THE CASE

The incident that brought this issue before the North Carolina Supreme Court was a simple case of drinking and driving. Alan Pendleton, an undergraduate student at Campbell University, was pulled over by campus police after weaving across the

centerline on his way toward campus. Pendleton was convicted for driving while impaired\(^6\) in Harnett County District Court. On appeal in Superior Court, Pendleton unleashed his constitutional defense to conviction for drinking and driving. He moved that the case be dismissed because Chapter 74A of the General Statutes of North Carolina, which gave authority to the campus police, violated the First Amendment of the Constitution of the United States as well as provisions of the Constitution of North Carolina.\(^7\)

Chapter 74A permitted the Attorney General of North Carolina to commission employees of private institutions to function as police officers.\(^8\) Pendleton argued that Campbell University is a private, church-owned, religious institution, and therefore the Constitution prohibits Campbell from employing personnel that exercise the state's police power. The Superior Court found Chapter 74A unconstitutional as applied because it created excessive entanglement of church and state, it constituted an impermissible delegation of authority to a religious institution, and it was an establishment of religion.\(^9\) This holding was reversed by the Court of Appeals and subsequently reinstated by the Supreme Court.\(^10\) The state decommissioned the University police force on January 1, 1995.

III. THE BACKGROUND: FROM LEMON TO LARKIN

The creation and application of a manageable standard with which to maintain a constitutional relationship between church and state has been a vexing question since the United States Supreme Court first attempted to construe the establishment

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7. Pendleton alleged that N.C. GEN. STAT. § 74A (1989) violated Article I, Section 13 of the Constitution of North Carolina as it applied to Campbell University. Pendleton, 339 N.C. at 383, 384, 451 S.E.2d at 277. This, however, was not the focus of the case.

8. Chapter 74A was repealed after the order of the Superior Court and before this case was heard before the Court of Appeals. 1991 N.C. SESS. LAWS ch. 1043 § 8 (effective 25 July 1992). However, this Chapter was in force at all times relevant to this case, and its provisions are the focus of this case. The subject matter of Chapter 74A is now contained in N.C. GEN. STAT. § 74E (1992).


10. Id. at 383, 384, 451 S.E.2d at 277.
clause. \textsuperscript{11} From 1963 to 1971, the Supreme Court experimented with two elemental tests. \textsuperscript{12}

In 1971, the Court reformulated its test in \textit{Lemon v. Kurtzman}. \textsuperscript{13} According to the \textit{Lemon} test, for a statute to be found constitutional: (1) it must have a secular purpose, (2) its principal or primary effect must be one that neither advances nor inhibits religion, and (3) the statute must not foster "an excessive government entanglement with religion." \textsuperscript{14} If a statute lacks any one of these prongs it is unconstitutional. \textsuperscript{15} Although this case has been criticized and the \textit{Lemon} test has yielded inconsistent results \textsuperscript{16} it remains the controlling test. \textsuperscript{17}

In 1982, \textit{Larkin v. Grendel's Den, Inc.} \textsuperscript{18} appeared to supply a clear example of "excessive government entanglement with religion." \textit{Larkin} involved a Massachusetts statute that vested in the governing bodies of churches or schools the power to deny applications for liquor licenses within 500 feet of the school or church. The statute was invalidated when a restaurant challenged the denial of its application for such a license by a local church. \textsuperscript{19} The Supreme Court stated that "the Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institu-

\begin{itemize}
  \item \textsuperscript{11} In \textit{Everson v. Board of Educ.}, 330 U.S. 1 (1947), the United States Supreme Court upheld a New Jersey statute providing reimbursement of transportation expenses to parents who sent their children to private schools even where the children attended religious schools. Despite the holding, the Court stated that the "wall of separation" must be "high and impregnable." \textit{Id.} at 18.
  \item \textsuperscript{12} In \textit{School Dist. of Abington v. Schempp}, 374 U.S. 203, 222 (1963), the Court stated that a law would pass constitutional scrutiny if it (1) has a secular purpose and (2) has the effect of neither advancing nor inhibiting religion. In \textit{Walz v. Tax Comm'n}, 397 U.S. 664, 674-75 (1970), the Court stated that a law would not violate the Establishment Clause where it (1) has a secular purpose and (2) does not create excessive entanglements of government with religion. \textit{Id.} at 612-13.
  \item \textsuperscript{13} \textit{Edwards v. Aguillard}, 482 U.S. 578, 583 (1987).
  \item \textsuperscript{14} For a review of the United States Supreme Court's use of the \textit{Lemon} Test to determine statutory violations of the Establishment Clause, see Stuart W. Bowen, Jr., \textit{Is Lemon A Lemon? Crosscurrents in Contemporary Establishment Clause Jurisprudence}, 22 St. Mary's L.J. 129 (1990). For a review of criticism of the \textit{Lemon} test, see \textit{Pendleton}, 339 N.C. at 384, 451 S.E.2d at 277.
  \item \textsuperscript{15} \textit{Lamb's Chapel v. Center Moriches}, 113 S. Ct. 2141 (1993).
  \item \textsuperscript{16} \textit{Larkin}, 459 U.S. 116 (1982).
\end{itemize}
Larkin's delegation analysis has been closely followed by four cases.21

IV. THE RATIONALE

The North Carolina Supreme Court based its ruling entirely on federal constitutional grounds, and did not address North Carolina state constitutional violations.22 The Court looked to Lemon v. Kurtzman,23 to begin its analysis to determine whether a statute violates the Establishment Clause. The only prong at issue in the Court’s review of Chapter 74A was the third—whether the statute fosters “an excessive government entanglement with religion.”24

The Supreme Court then looked to Larkin v. Grendel’s Den, Inc.25 for a definition of “excessive government entanglement with religion.” The majority interpreted Larkin as creating a two part test.26 According to the majority, an excessive entanglement was

20. Id. at 126.
21. Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet, 114 S. Ct. 2481, 129 L. Ed. 2d 546 (1994) (holding unconstitutional a statute creating a special school district following village lines of a religious enclave incorporated as a village to exclude all but its practitioners); United Christian Scientists v. Christian Science Bd. of Directors, First Church of Christ, Scientist 829 F.2d 1152 (D.C. Cir. 1987) (holding unconstitutional a private copywrite law granting a religious denomination extended copyright on all editions of a religious text); Spacco v. Bridgewater Sch. Dep’t, 722 F. Supp. 834 (D. Mass. 1989) (allowing a preliminary injunction requiring reassignment of public school children assigned to attend classes in a facility leased from a Roman Catholic Church); Farris v. Minit Mart Foods, Inc., 684 S.W.2d 845 (Ky. 1985) (holding unconstitutional a statute stating that no license for sale of alcohol will be granted within 200 yards of a church or school if the governing authority of the church or school objects).
22. The question of state constitutional violations was deemed “unnecessary and dilatory” by the Pendleton court because to the majority the violation of the United States Constitution was clear. Pendleton, 339 N.C. at 383, 451 S.E.2d at 277.
created whenever a delegation of important discretionary governmental power is made to a religious institution.\textsuperscript{27} The Court concluded the first element was met because the Supreme Court of the United States has already stated that the police power calls for a high degree of judgment and discretion.\textsuperscript{28}

The Court then used \textit{Lemon} and \textit{Zobrest v. Catalina Foothills Sch. Dist.}\textsuperscript{29} to further define the term "religious institution." In \textit{Lemon}, the constitutional challenge regarded state funding assistance to Catholic primary and secondary schools. The findings of fact indicate that: the schools integrated faith and morals into the curriculum, specific religious instruction was given 30 minutes a day, and approximately two-thirds of the faculty consisted of nuns.\textsuperscript{30}

The Court concluded that the schools were controlled by religious organizations and that a substantial purpose of the school was propagating and promoting a religious faith.\textsuperscript{31} Thus the schools were incompatible with the statutory scheme for public funding.\textsuperscript{32}

In \textit{Zobrest}, the Supreme Court held that the Establishment Clause did not prevent a school district from supplying an interpreter under the Individuals with Disabilities Act for a deaf student that attended a Catholic high school.\textsuperscript{33} In \textit{Zobrest} the Court defined a sectarian institution as "one in which the two functions of secular education and advancement of religious values or beliefs are inextricably intertwined."\textsuperscript{34} This statement, however, was not defined in terms of specific findings of fact, as it was a stipulation of both parties.\textsuperscript{35}

The findings of fact used by the North Carolina Supreme Court in \textit{Pendleton} included: Campbell is a Baptist university, its property was deeded to the Baptist State Convention, students take a required religion course, the North Carolina Baptist State Convention elects trustees, and the University catalog contains a

\textsuperscript{27} The dissent viewed this case as requiring a third element in the test: the religious institution’s exercise of that power must fuse religious and governmental functions. \textit{Id.} at 391, 451 S.E.2d at 282 (Whichard, J., dissenting).
\textsuperscript{29} 113 S. Ct. 2462 (1993).
\textsuperscript{30} \textit{Lemon}, 403 U.S. at 613, 618.
\textsuperscript{31} \textit{Id.}
\textsuperscript{32} \textit{Id.}
\textsuperscript{33} \textit{Zobrest}, 113 S.Ct. at 2469.
\textsuperscript{34} \textit{Id.} at 2464 n.1.
\textsuperscript{35} \textit{Id.}
religious commitment. The Court then concluded that Campbell University is a "religious institution" within the meaning of the Supreme Court of the United States in its decision in Larkin. The North Carolina Supreme Court, finding both prongs of the Larkin analysis satisfied, held N.C. GEN. STAT. § 74A (1989) unconstitutional as applied.

V. THE ANALYSIS

The holding of the North Carolina Supreme Court rests squarely on a comparison of Pendleton and Larkin. This note will analyze this comparison by reviewing the factors of Larkin and its following cases that were deemed to create an "unconstitutional delegation to a religious institution." This note will first consider the definition of "religious institution," and second what constitutes "delegation" according to these cases. This note will then review the facts of Pendleton and compare them with those of other "delegation cases" and make a conclusion as to whether Chapter 74A created an impermissible delegation as it applied to Campbell. This note will focus exclusively on the "delegation cases." Other lines of cases dealing with the Establishment Clause are beyond the scope of this note.

A. What Is a "Religious Institution" Under Larkin?

The religious institution involved in Larkin was a church, in the traditional sense of the word. The statute under review in that case defined church as "a church or synagogue building dedicated to divine worship." The Supreme Court interpreted the definition to mean: "any building primarily used as a place of assembly by a bona fide religious group." The Supreme Court later referred to the entity in Larkin as a "formally constituted parish council" that was "an institution of religious govern-

37. Id. at 389, 451 S.E.2d at 280.
38. Id. at 390, 451 S.E.2d at 281.
39. Larkin, 459 U.S. at 121 n.3.
40. Id.
A church was also the religious institution in a virtually identical statute reviewed by the Supreme Court of Kentucky.42

A traditional church is also the institution involved in Spacco v. Bridgewater Sch. Dep't,43 a First Circuit case out of Massachusetts, that is instructive in its treatment of Larkin. In Spacco, the constitutionality of a public school leasing classroom space from a Roman Catholic Church was challenged. The plaintiffs, students at the public school, sought a preliminary injunction requiring their reassignment from classes held in the leased classrooms. After a determination of probable success on the merits, the court granted the injunction. The terms of the lease that give the church the ability to terminate the lease if the use of the classrooms was not consistent with the teachings of the Roman Catholic Church.44 The court concluded this may give the church influence over the curriculum and was the functional equivalent of the delegation of the authority in Larkin.45 Here again, the "religious institution" is a church in the traditional sense of the word.

The definition of religious institution also includes the leadership of a religious denomination. In United Christian Scientists v. Christian Science Bd. of Directors, First Church of Christ, Scientist,46 the United States Court of Appeals for the District of Columbia held unconstitutional a copyright granted to the First Church of Christ Scientist for Science and Health, the religious text of Christian Scientists. The 1971 copyright granted the church exclusive rights to all extant editions of the work until 2046, and provided that subsequently published editions were to be protected for 75 years.47 When United Christian Scientists, another sect of Christian scientists, challenged the copyright, the court held that the law was an impermissible delegation under Larkin.48

42. Farris v. Minit Mart Foods, Inc., 684 S.W.2d 845 (Ky. 1985). The Supreme Court of Kentucky follows the reasoning of Larkin so closely that separate analysis of this case is unnecessary.
44. Id. at 845.
45. Id. at 844.
46. 829 F.2d 1152 (D.C. Cir. 1987).
47. Id. at 1157.
48. Id. at 1170.
In *Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, the Court expanded the definition of religious institution in the context of government delegations of power. In that case, the Supreme Court held that a New York statute unconstitutionally delegated state authority to the school board of an exclusively Hasidic school district. The district had been drawn specifically for the purpose of creating an exclusively Hasidic neighborhood. The statute granted the elected school board plenary authority over primary and secondary schools in the district.

The Court stated that the delegation of authority over public schools “to a group defined by its character as a religious community” was prohibited. The Supreme Court then stated that *Larkin* "teaches that a State may not delegate its civic authority to a group chosen according to a religious criterion."  

**B. Does Larkin’s Definition of “Religious Institution” Include the “Pervasively Sectarian” Standard?**

Since *Lemon*, a line of cases has developed that addresses the constitutional issues involved in public funding for private, religiously affiliated organizations. The Supreme Court has held that religious affiliation does not disqualify a religious organization from participation in state statutory programs. Participation by religiously affiliated organizations in public financial programs creates excessive entanglement under two circumstances: (1) where the program involves a “specifically religious activity” or (2) where the institution is “pervasively sectarian.”

The Supreme Court of North Carolina used *Lemon* and *Zobrest* in its analysis of Campbell University’s status as a reli-

50. Id. at 2485.
51. Id. at 2487.
52. Id. at 2488.
53. Roemer v. Board of Pub. Works of Md., 426 U.S. 736 (1976) (upholding a grant program for private colleges where the funding is used for secular purposes); Hunt v. McNair, 413 U.S. 734 (1973) (upholding a state bond program for private college construction as long as the school is not pervasively sectarian); Tilton v. Richardson, 403 U.S. 672 (1971) (upholding grants to universities so long as religion did not permeate schools).
55. Id. at 617-18.
gious institution. Both cases involve direct or indirect state aid.\textsuperscript{56} The application of state aid cases, to \textit{Pendleton}, where no state aid is involved, is questionable. It is not certain the United States Supreme Court intends the "pervasively sectarian" standard to be used to determine whether an institution is a religious institutions in a delegation analysis.\textsuperscript{57} An exhaustive review of holdings under the "pervasively sectarian" standard is beyond the scope of this note.

\section*{C. What Delegations of State Authority are Prohibited by \textit{Larkin}?}

In \textit{Larkin}, the Supreme Court appears to give four distinct reasons why the statute's delegation of authority was unconstitutional: (1) the church would be able to exercise the state's power without any standards, (2) there would be no guarantee as to neutral application by the church, (3) the statute could create political divisiveness concerning religion, and (4) the statute could create a symbolic benefit to religion.\textsuperscript{58}

The Supreme Court stated in \textit{Larkin} that the invalidated statute "substitutes the unilateral and absolute power of a church

\begin{footnotesize}
\begin{enumerate}
\item Zobrest v. Catalina Foothills Sch. Dist., 113 S. Ct. 2662 (1993) (holding constitutional the placement of an interpreter in a catholic high school under the Individuals With Disabilities Act); Lemon v. Kurtzman, 403 U.S. 602 (1971) (invalidating two statutes: one that allowed reimbursement to private schools for the purchase of educational materials for certain secular courses, the other authorized state supplementation of salaries for teachers of secular subjects in private, church-affiliated schools).
\item If this standard did apply then both Hunt v. McNair, 413 U.S. 734 (1973), and Tilton v. Richardson, 403 U.S. 672 (1971), would be instructive.
\item In Hunt v. McNair, a Baptist college was held not to be pervasively sectarian. 413 U.S. at 743-44. The South Carolina Baptist Convention elected the College's trustees and held the sole power to amend the College charter and approve financial arrangements. However, students and faculty did not have to meet religious qualifications for admission or hiring. Although the charter contained religious rhetoric, the court found its operation was not oriented toward sectarian over secular. \textit{Id.}
\item Similarly in Tilton v. Richardson four universities were found not to be pervasively sectarian. 403 U.S. at 686-87. The universities were run by catholic religious organizations and dominated by Catholic faculty and students. However, the universities employed non-Catholics, and no attendance at religious services was required. Theology courses were required but they not limited to Catholic theology. The Supreme Court held that their predominant mission was secular education. \textit{Id.} These schools bear a strong resemblance to Campbell University.
\item 459 U.S. at 124.
\end{enumerate}
\end{footnotesize}
for the reasoned decision making of a public legislative body acting on evidence and guided by standards, on issues with significant economic and political implications." 59 The Court later stated that "the churches' power under the statute is standardless, calling for no reasons, findings, or reasoned conclusions." 60

The lack of standards leads to the concern that the power may be used by churches to promote its own goals because the statute "does not by its terms require that churches' power be used in a religiously neutral way." 61 The Court believed that the church could use its veto to override the licenses of non-church members and therefore use governmental power to discriminate on the basis of religion. 62 This in turn would create "the danger of political fragmentation and divisiveness along religious lines." 63 Although the point went virtually undiscussed, the Court stated that resulting appearance of a joint exercise of legislative authority by church and state that would, in the minds of some, provide a symbolic benefit to religion. 64

The concerns in Larkin are re-iterated in United Christian Scientists. The copyright at issue in the case effectively gave the First Church of Christ the authority to veto any and all publications of the major doctrinal work in the Christian Scientist faith. 65 Thus there was no means of guaranteeing that the delegated power would be used for nonideological purposes. 66

The "fusion" in Spacco resulted from a lease of a church facility by a public school. The court held that this relationship created a "sharing of the town's power and responsibility concerning what is taught to its elementary school students." 67

The Circuit Court raised three concerns also raised in Larkin. First, the court stated that there was no guarantee that the governmental power would be exercised neutrally. 68 Because the church could terminate the lease if the use of the classroom was inconsistent with the teachings of the Roman Catholic Church,

59. Id. at 128.
60. Id. at 125.
61. Id.
62. Id.
63. Larkin, 459 U.S. at 127.
64. Id. at 124.
66. Id.
68. Id.
the court feared that the school would avoid teaching matters to which the church might object.⁶⁹ In addition, it appeared that the school deferred to the church's judgment concerning which religious symbols should be removed from the children's sight.⁷⁰

Second, the court stated that the relationship created political divisiveness along religious lines.⁷¹ Since the suit was brought, the plaintiffs and their faith became subjects of ridicule in phone calls, letters, and local newspaper columns.⁷²

Finally, the court stated that the relationship was unacceptable because it created the appearance of joint exercise of authority by church and state.⁷³ The court specifically noted that religious symbols and messages were highly visible to the children as they entered the building for classes.⁷⁴ On several occasions a priest greeted the students at the door.⁷⁵ This was of great concern because the children involved were "impressionable, young children."⁷⁶

In Grumet, the Supreme Court indicated that the statute in question created a "fusion" because there was no means of guaranteeing that the "governmental power will be and has been neutrally employed."⁷⁷ The Supreme Court held the statute was invalid because it effectively identified recipients of governmental authority by reference to "doctrinal adherence."⁷₈ Although the statute itself did not identify a religious group, the district to which it applied was created on purely religious grounds.⁷⁹ The statute created a "purposeful delegation on the basis of religion."⁸₀

D. Is Campbell a Religious Institution Under Larkin?

Campbell University is an educational institution directed by an independent Board of Trustees. Although trustees are elected by the Baptist State Convention, no church has authority over the

⁶⁹. Id. at 845.
⁷₀. Id.
⁷¹. Id. at 847.
⁷³. Id. at 842.
⁷₄. Id. at 842.
⁷₅. Id.
⁷₆. Id. at 841.
⁷₇. Kiryas Joel, 114 S. Ct. at 2491.
⁷₈. Id. at 2489.
⁷₉. Id. at 2488.
⁸₀. Id.
Board. The responsibilities of the board are confined to the operations and funding of the University, and have no other religious mission. The curriculum of Campbell University is much like that of other universities, and is not focused on religious education.

As a university, Campbell University is made up of students and faculty of many different faiths. There are no religious criteria associated with admissions or hiring.

Campbell University is not a church in the traditional sense of the word as in Larkin and Spacco or the governing body of a religious denomination as in United Christian Scientists. Campbell University is not a religious community in the context of Grumet.

E. Is Chapter 74A a Delegation Under Larkin?

Based on the above cases, the courts raise the following concerns about delegation of power to a religious institution: (1) absolute power or lack of standards might be exercised by a religious institution, (2) political fragmentation on religious lines might result, (3) the delegation itself could be made on the basis of religion, (4) the delegation could create the appearance of joint authority of church and state. Each of these will be discussed in relation to the facts of Pendleton.

1. Absolute Power or Lack of Standards

The delegation of authority to Campbell University police under Chapter 74A allows the police to make arrests for felonies and misdemeanors and charge for traffic infractions. The enforcement of state law cannot be said to be without standards. The statutes and the United States Constitution operate as standards for proper law enforcement. Similarly, the authority of Campbell University or its police force cannot be said to be absolute. Judges, magistrates, and juries are designed to inject dispassionate reason into criminal prosecution. This system is designed to prevent arbitrary and absolute exercise of police authority. These standards distinguish Pendleton from Larkin and United Christian Scientists.

82. Id.
83. Id. at 393, 451 S.E.2d at 283.
2. Political Fragmentation on Religious Lines

Prosecution of criminal law to reduce drug abuse, reckless driving, or drunk and disorderly conduct is rarely divisive along religious lines. In Larkin, a church was given veto power over the operation of a liquor store. Alcohol is something many church denominations have taken a stand against. In Spacco, the statute caused religious tension between the plaintiffs, an agnostic and a Hindu, and members of the majority Catholic town. In the absence of unusual University policies like warning speeders that have been baptized and ticketing speeders that have not been baptized, it is hard to imagine any division on religious lines as a result of Chapter 74A as occurred in Larkin, or Spacco. The dissent indicated that such activities did not occur.

3. Purposeful Delegation on the Basis of Religion

Former Chapter 74A provided that:

any educational institution or hospital, whether State or Private, or any other state institution, public utility company, construction company, manufacturing company, auction company, . . . may apply to the Attorney General to commission such persons . . . to act as policemen for it.

Campbell applied as only one of a large group eligible for application under the statute. Unlike Grumet, the delegation was not made on the basis of religion in Pendleton.

4. Appearance of Joint Authority of Church and State

Under former Chapter 74A, Campbell University, a church affiliated school, employs individuals that "possess all the powers of municipal and county police." On this basis, one could argue that the use of state authority by employees of a religiously affiliated school could create an impression in the minds of some that the state endorses that religion.

However, one major concern raised in Spacco, the only case that analyzed the appearance of joint authority, is not present in Pendleton. Because students at Campbell are college age and older, the risks of symbolic union are significantly different than

86. Pendleton, 339 N.C. at 395, 451 S.E.2d at 284.
with the impressionable young elementary school students in Spacco.89

The Supreme Court of the United States has held that religiously affiliated organizations are not barred from participation in statutory schemes that are not religious in character and are available to a wide spectrum of organizations.90 In such cases the Supreme Court stated that there is no impermissible advancing of religion.91

According to the dissenting justices of the North Carolina Supreme Court, there is no evidence that Campbell's police proselytized students, visitors, or faculty or acted in a religious manner or for a religious purpose in the exercise of their duties.92 Further, unlike each of the delegation cases mentioned above, Chapter 74A is available to a large group of organizations.93 Under the delegation cases, and prior establishment clause jurisprudence, Chapter 74A does not appear to create an advancement of religion through symbolic union.

VI. CONCLUSION

Campbell is a Baptist-affiliated university that employed a campus police force under state law. The North Carolina Supreme Court held the arrangement unconstitutional based on Larkin. The Court concluded that Campbell University is a "religious institution" within the meaning of the Supreme Court of the United States in its decision in Larkin.94 However, Larkin, and all of the delegation cases following it involve a "religious institution" that is a church, a religious community, or the leadership of a religious denomination. Campbell University does not fit in these categories.

The Court concluded that Chapter 74A was a delegation within the meaning of Larkin because police power calls for a high degree of judgment and discretion.95 However, Larkin and all of the delegation cases following it involve a delegation of a different kind. The delegations struck down by the United States Supreme

89. Spacco, 722 F. Supp at 841.
91. Id.
Court were (1) delegations of absolute power that could be exercised without standards, (2) delegations that were made on the basis of religion, or (3) delegations that could cause either political fragmentation on religious lines, or an advancement of religion by the appearance of joint authority of church and state. None of these describes the effect of Chapter 74A as it applied to Campbell University.

The delegation of state power to a church that *Larkin* holds to be violative of the Establishment Clause is simply not present in *Pendleton*. As pointed out by the dissent in *Pendleton*, *Larkin* is distinguishable and *State v. Pendleton* warranted a different outcome.96 Nevertheless, the North Carolina Supreme Court followed *Larkin*, apparently finding that Campbell University was a church exercising state authority by directing its own police force under Chapter 74A.

*Stephen See*

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