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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION

FUNDAMENTALIST CHURCH OF JESUS )  
CHRIST of LATTER-DAY SAINTS, )  
Association of Individuals, )  
Plaintiffs, )

vs. ) CASE NO. 2:08-CV-772DB

BRUCE R. WISAN, Special )  
Fiduciary of the United Effort )  
Plan Trust, et al., )  
Defendants. )

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BEFORE THE HONORABLE DEE BENSON

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December 22, 2009

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Status Conference

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A P P E A R A N C E S

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For Defendant:  
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20 For Defendant:  
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23 Court Reporter:

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1 December 22, 2009

11:00 a.m.

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P R O C E E D I N G S

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THE COURT: Good morning. Thank you for coming.

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We're here in the case of Fundamentalist Church of

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Jesus Christ of Latter-day Saints against Bruce R. Wisan and

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others. The case number is 08-CV-772.

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The Court asked for this status conference

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primarily because this case is getting along in age and

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nothing has happened, at least here in Federal Court, in

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this action for some time. We were in here on a matter

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involving a request for a temporary restraining order

13

sometime, and I don't remember the date, but --

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MR. ZACHARY SHIELDS: November of 2008.

15 THE COURT: A year ago.

16 MR. JENSEN: November 12, 2008.

17 THE COURT: Just a little over a year ago. I knew  
18 it had been a while and I miss you.

19 Could I start over here with this table and have  
20 everyone stand up and remind me who you are and who you  
21 represent so that we have that straight.

22 MR. JENSEN: Jerrold Jensen representing the Utah  
23 Attorney General.

24 MR. ZACHARY SHIELDS: Zachary Shields with my  
25 partners Jeff Shields and Mike Stanger representing Bruce

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1 Wisan, the special fiduciary of the United Effort Plan  
2 Trust.

3 THE COURT: Okay. Is Mr. Wisan here?

4 MR. ZACHARY SHIELDS: He is not. He is out of the  
5 country.

6 THE COURT: Yes, sir.

7 MR. RICHARDS: Good morning, Your Honor. Bill  
8 Richards from the Arizona Attorney General's Office on  
9 behalf of Terry Goddard, the Attorney General of Arizona.

10 THE COURT: Is the Arizona Attorney General still  
11 involved in this whole situation?

12 MR. RICHARDS: Yes, Your Honor.

13 THE COURT: I remember reading in the paper  
14 something about the Arizona Attorney General considered  
15 withdrawing or getting out of the trust business or  
16 something.

17 MR. RICHARDS: Well, Your Honor, I don't recall  
18 that ever happening. I am not sure. It may have been the  
19 Utah Attorney General that that was referring to, but I am  
20 not sure.

21 THE COURT: If it happened, you would know.

22 MR. RICHARDS: I would hope so, Judge.

23 THE COURT: And you are Mr. Richards?

24 MR. RICHARDS: Richards.

25 THE COURT: Two more.

5

1 MR. BODILY: Tim Bodily, Your Honor. I am an  
2 attorney with the Attorney General's Office. At one time I  
3 was officially on the case and I am not sure if I still am  
4 now.

5 THE COURT: And you're with which Attorney  
6 General's office?

7 MR. BODILY: Utah.

8 THE COURT: Bodily?  
9 MR. BODILY: Tim Bodily.  
10 Next to you is Mr. --  
11 MR. STANGER: Mr. Stanger, also on behalf of Bruce  
12 Wisan.  
13 THE COURT: Yes. We already did you. Yes. Okay.  
14 You're with Mr. Shields and Mr. Shields.  
15 MR. STANGER: Correct.  
16 THE COURT: Okay. That is this side.  
17 Mr. Parker, would you start over here.  
18 MR. PARKER: Rodney Parker representing the  
19 plaintiff.  
20 MR. OKAZAKI: Ken Okazaki.  
21 THE COURT: Thank you.  
22 MR. BRADSHAW: Jim Bradshaw also --  
23 THE COURT: Hi, Mr. Bradshaw.  
24 MR. BRADSHAW: Good morning, Your Honor.  
25 THE COURT: Good morning.

6

1 As I said, this is a status conference at the  
2 Court's request, so let me ask either side, who wants to  
3 begin, to tell me what you anticipate happening in Federal  
4 Court in the near future, if anything.

5 Mr. Parker.

6 MR. PARKER: Thank you, Judge.

7 We were here about a year ago, as you noted,  
8 dealing with the T.R.O. regarding the sale of some property  
9 actually on the Arizona side of the border, what has been  
10 designated as the temple site. Right after that happened,  
11 the case in the state court took a turn. The state court  
12 stayed things and asked the parties to try to negotiate a  
13 settlement. A lot of time was spent on that. Judge Cassell  
14 was our mediator and we came close to a deal. I think we  
15 more or less had a deal with the Utah Attorney General, but  
16 others were not on board with it, and ultimately all of the  
17 proposals were submitted to the state court and they were  
18 rejected in the summer.

19 Then the state court action moved to the question,  
20 and back to where it left off in November, whether to  
21 approve the sale of Berry Knoll, which is the farm and  
22 temple site that is at issue, most directly at issue and the  
23 most urgent thing. There is plenty at issue. There was  
24 what the court called a hearing, but it was not really a  
25 hearing it was like a public comment opportunity in the late

1 summer and then issued some rulings about the sale process  
2 for the property. There presently is pending in the state  
3 court a motion to approve the sale procedure.

4 Now what we are trying to figure out, because when  
5 we left off in this Court on November 12th of last year, the  
6 Court extracted a promise from Mr. Wisan and his counsel  
7 that they would not do something, would not take a step that  
8 couldn't be untaken, so to speak, until this Court had an  
9 opportunity to review our claims. We have been relying on  
10 that commitment and sort of watching the state process move  
11 along and trying to figure out where is it appropriate to  
12 bring the case back to this Court.

13 I think that we are almost to that point, if not  
14 to that point, where we need to now refile our motion and  
15 ask this Court to take a look at it. At this point the  
16 state court is looking at a motion to approve a sale  
17 procedure. I should say, maybe backtracking just a little  
18 bit, that we believe that the promise that was extracted a  
19 year ago has been violated, because there is a binding  
20 contract to sell, at least there is an option, subject to  
21 the approval of the state court, but we think that they have  
22 gone somewhat beyond where this Court anticipated and where  
23 this Court expected in terms of getting to a point where

24 this Court could review the case.

25 I think that is where we are at this point. I

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1 think we need to bring the case back to this Court and have  
2 this Court look at not only the sale of Berry Knoll but some  
3 of these other issues involved in having the state managing  
4 what really is something that is at the core of a religious  
5 belief. It is kind of like -- this is a very poor analogy,  
6 and I tried to come up with one, but it is a very poor  
7 analogy -- the United Effort Plan is sort of an integral  
8 part of the religious practice down there because of the  
9 belief in the United Order and the attempt to actually  
10 implement something that looks like the United Order. It is  
11 all tied together in that sense, in a religious sense.

12 What is happening here is the state has come in  
13 and pulled this property out of that religious practice and  
14 now is trying to manage it according to civil rules, and  
15 that is what leads us to these sales and all of these  
16 problems is that step. My analogy is it is like taking the  
17 baptismal font out of the Salt Lake Temple and saying this  
18 is a historical artifact, it is a cultural artifact and  
19 important to all of the people in the State of Utah,  
20 therefore, we are going to take it and put it in a museum

21 and the state will manage who gets to use it. We'll make it  
22 available to everybody, not just to the members. Of course,  
23 the members would view that as a desecration and would view  
24 that as a violation of their religious rights. This is kind  
25 of like that. We are taking this property and having the

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1 state manage it for the just wants and needs of the people,  
2 which is the religious standard that should be applied by  
3 the bishop.

4 I am getting a little ahead of myself, but  
5 status-wise I think where we are at is we need to bring this  
6 sale issue now to this Court and establish a procedure for  
7 how the Court would like to see that done in terms of  
8 briefing and when you would like to hear that.

9 THE COURT: Thank you, Mr. Parker.

10 Did anyone on this side of the room want to  
11 respond?

12 Mr. Shields.

13 MR. ZACHARY SHIELDS: Your Honor, just responding  
14 to what Mr. Parker said, generally the fact pattern has been  
15 accurate, although I would dispute some of the  
16 characterizations, but I don't think that is pertinent here.

17 It is true there was a stay put in place in November. Last  
18 summer the Court lifted the stay partially in order to allow  
19 the fiduciary to sell the property. One of the key aspects  
20 and the reason this is so critical on the fiduciary side is  
21 because the fiduciary has very, very limited funding, is in  
22 a very extreme cash crisis, and has been unable to pay for  
23 ongoing attorneys' fees, and at the same time has been  
24 bombarded with literally more than two dozen lawsuits that  
25 are pending right now that he is involved in.

10

1 He has brought some of them, but a lot of them  
2 have been brought against the fiduciary. There has been a  
3 great barrage of litigation and no ability to fund this  
4 trust. The court recognized that, the state court who is  
5 over this action. The court did lift the stay last summer  
6 after a hearing, and the court did enter an order allowing  
7 the sale to go forward. We filed a notice with this Court  
8 so the Court would be aware of what that court's ruling was.

9 After that we filed a motion to approve the sales  
10 procedure. This is a sale that is going to be an auction  
11 and the highest bidder will become the owner of this  
12 property. That is pending. Actually the time for the  
13 response expired, but we received a request from the other

14 side to have an extension, which we granted, and that  
15 deadline is today. They will have a chance to file a  
16 response today. We anticipate there will be a ruling very  
17 soon from Judge Lindberg on that. We propose to go forward.

18 Your Honor, as to this promise that was extracted,  
19 I take issue with the assertion that that has been violated.  
20 The promise was that we wouldn't do anything binding until  
21 this Court had a chance to rule. Your Honor, this Court has  
22 had a year to rule, or at least six months since Judge  
23 Lindberg lifted the stay to allow the sale to go forward.  
24 Had they wanted this Court to rule they could have come back  
25 last summer or any time since then. I hope they are not

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1 trying to twist that promise, as they call it, into a T.R.O.  
2 A T.R.O. was not granted.

3 Our position is that we have complied and we  
4 intend to comply. If they want to kick this case back up  
5 and seek an injunction they can, but there is no injunction  
6 pending. We have complied with the promise. We are  
7 desperate. We need to sell this property and we intend to  
8 go forward. It sounds to me like they want to end the stay  
9 and litigate that. We would welcome that.

10 I am not going to get into the analogy Mr. Parker  
11 talked about, other than to say it is a bad analogy. I  
12 don't think it is appropriate to get into the merits today.  
13 We do need to sell this property. We intend to go forward,  
14 and if they want to litigate and respond, okay, but what we  
15 don't want and what we think is inappropriate is to wait  
16 months and months and months and wait until just before the  
17 sale and then come in here and reheat the case and act like  
18 there is an emergency and seek a T.R.O.

19 The last time we didn't get much time at all to  
20 respond. I stayed up late getting the brief filed.  
21 Unfortunately this Court was in trial the whole day and  
22 didn't even have a chance to read it when we were here  
23 before. It has been a year now and there has been plenty of  
24 time to litigate this. If there is going to be any attempt  
25 to stop the sale in this Court, it ought to happen now so

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1 that we don't have a last-minute emergency.

2 THE COURT: Mr. Parker, anything in reply to that?

3 MR. PARKER: Yes, Your Honor. I said my analogy  
4 was a bad analogy before I gave it.

5 Very briefly, Your Honor, and I guess what I am  
6 concerned about is this idea that we are waiting until just

7 before the sale. What I understood last time we were here  
8 was that this Court wanted to know what the state court was  
9 going to do before you looked at it. So the question for us  
10 has been has the state court done everything it is going to  
11 do so that when we bring it to your attention you have that  
12 question answered.

13 Quite honestly --

14 THE COURT: As I recall -- you go ahead.

15 MR. PARKER: I'm sorry.

16 THE COURT: As I recall, my concern was pretty  
17 simple -- not concern -- but as I saw it, it was quite  
18 simple. I was not inclined to grant a temporary restraining  
19 order and use that equitable power of the Court unless there  
20 was something imminent that put someone at risk. As I  
21 recall it then, there was a hearing before the state judge  
22 that was scheduled and was set to happen in the near future.

23 MR. PARKER: Like a week later.

24 THE COURT: I didn't want to act inappropriately  
25 or precipitously. I didn't see that there was imminent harm

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1 of any kind, which is one of the requirements I would want  
2 to see as a basis for a T.R.O. I simply said don't do

3 anything that puts anyone at serious risk before you let me  
4 rule. That was pretty much it.

5 MR. PARKER: Right. That is the way we understood  
6 it.

7 THE COURT: I don't know. What has happened in  
8 the meantime in the state court has seemed to move the ball,  
9 and I don't know if a ball is involved, but to move things  
10 and --

11 MR. PARKER: That might be a bad analogy.

12 THE COURT: It is. To move things -- I am not  
13 sure that is even an analogy.

14 MR. PARKER: A metaphor.

15 THE COURT: Now things have moved forward to the  
16 point where it looks like that sale is more and more  
17 imminent. It sounds like the sale has been approved by the  
18 state, and that sounds more imminent to me. My issue on  
19 this or the issue that has been brought to me in this  
20 lawsuit is a request, a complaint seeking a declaration from  
21 the plaintiffs that the plaintiffs' federal constitutional  
22 rights are being violated by this action of the two state  
23 attorneys general.

24 Fair?

25 MR. PARKER: Yes.

1           THE COURT: That includes religion clauses, the  
2 equal protection clause, and there might be something else  
3 in there for good measure. There are federal constitutional  
4 issues. It is is what the states are doing here in  
5 violation of the federal constitution? I understand that  
6 Judge Lindberg in the State of Utah has looked at those  
7 issues, at least to some extent, but I have not. I have  
8 always looked at the big picture here and wondered if a  
9 state is entitled to do what the State of Utah and the State  
10 of Arizona are doing in this case.

11           There is the Utah and the Arizona, apparently,  
12 Charitable Trust Act, and --

13           MR. PARKER: They have identical statutes.

14           THE COURT: I think that it appears clearly that  
15 they have invoked their authority under those statutes to  
16 come in and take over a trust, a charitable trust that  
17 appeared to be in the process of being improperly managed.  
18 Misfeasance, I suppose, would be the best word to use. They  
19 were not taking care of business, letting default judgments  
20 happen and dissipating assets, and allowing things to be  
21 done with trust property that shouldn't be happening. That  
22 seems like the trigger, and that may be a fair use of state

23 resources and state authority, but it is the remedy they  
24 have picked that has always, as I understand it, been the  
25 focus of your complaint, and if it is ever litigated and

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1 argued here, that will be the focus of a presentation in  
2 Federal Court.

3 That has not happened other than in a very  
4 truncated form in connection with the temporary restraining  
5 order. Mr. Shields is right, I barely had time to look at  
6 the briefs before we were in here on a T.R.O. That event,  
7 if that needs to happen, it ought to happen before something  
8 serious has happened such as possibly the sale of this  
9 property. As I understand it, some people think it is  
10 sacred land to them. Some people don't. I don't know.

11 I don't know if this behavior in any way violates  
12 the free exercise clause or the establishment clause or the  
13 due process clause of the Fifth Amendment or the equal  
14 protection class of the Fourteenth Amendment. I don't know.  
15 All I know is that it hasn't been briefed here and it has  
16 not been argued here. It would not appear to me to be  
17 proper to let too many things happen, and a lot has already  
18 happened, but too many things happen, such as the sale of

19 significant areas of property that would be hard to put back  
20 in place if there was a finding that any of this is  
21 constitutionally improper. I am not suggesting it is. I am  
22 not suggesting it isn't. I just wanted to know the status,  
23 so that you know that the Court is available to you.

24 Mr. Shields is right in the sense that it is up to  
25 the plaintiffs if you want to seek something by way of

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1 preliminary injunctive relief or summary judgment or  
2 whatever the appropriate motion is to make.

3 I think we all know where we are, don't we?

4 MR. PARKER: Well, I think so, but we have relied  
5 on the promise that was made, and we are continuing to rely  
6 on that, that once the District Court, the State District  
7 Court has looked at the proposal to sell and said this  
8 methodology is okay, and the reason that is important is  
9 because it is a sale to a rival polygamist group, and part  
10 of our issue here has to do with the selection and how it  
11 was done and those sorts of things.

12 We're trying to make sure all of the facts are  
13 nailed down before we come in. If Mr. Shields is saying  
14 that he no longer considers himself bound by the promise,  
15 well, then that tells me that it may be an emergency whereas

16 before I didn't think it was an emergency. I would like to  
17 get that clarified today, at least, if we can.

18 THE COURT: Thank you.

19 Mr. Shields, do you want to respond to that?

20 MR. ZACHARY SHIELDS: Sure, Your Honor.

21 Your Honor, it is not that I'm bound by the  
22 promise, it is that we have fulfilled the promise. They  
23 have had ample opportunity to get this case heated again and  
24 to get the ruling --

25 THE COURT: But that was not, whatever we are

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1 referring to, as the promise. I refrained from acting  
2 because nothing was imminent. You have moved it more to an  
3 imminent stage by getting the state court to approve the  
4 very sale that prompted the T.R.O. hearing in the first  
5 place.

6 I do think there has been maybe some  
7 misunderstanding of what I asked for in exchange for not  
8 ruling. I would freeze this and put status quo arms around  
9 it and say let's get these important constitutional issues  
10 sorted out, and you can't move forward in some ways, it  
11 seems to me, as far as you have and say, oh, we have done

12 nothing wrong, and they have to come into court and again  
13 ask you for injunctive relief before we have done anything  
14 wrong. My simple notion was don't let this thing go down  
15 the road too much farther before we have a ruling on what is  
16 before me.

17 MR. ZACHARY SHIELDS: I thought it was before you  
18 had a chance to rule, and --

19 THE COURT: You didn't withdraw the motion.

20 MR. ZACHARY SHIELDS: No. I understand that Your  
21 Honor. They have had a chance to have you rule for six  
22 months.

23 THE COURT: Well, and you too have had a chance to  
24 come in here and tell me, Judge, we are going to state  
25 court. Do you want me to be the proactive one here? Do you

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1 think sending me a notice of ruling is going to have me act?  
2 You I thought agreed that you wouldn't do anything  
3 precipitous, such as sell property, without allowing their  
4 motion to be ruled upon by me.

5 MR. ZACHARY SHIELDS: And that is --

6 THE COURT: You have come in here today and said  
7 two people should have done something to help you keep your  
8 promise or agreement. They should have come in with a

9 motion if they wanted injunctive relief, but they have  
10 already done that. Or I guess I should have done something.  
11 I am doing it today. I'm asking for a status conference in  
12 part because I get these notices of ruling. What did you  
13 think had to happen before you needed to inform me that  
14 maybe we're going a little too far here, Judge?

15 MR. ZACHARY SHIELDS: Your Honor, I'm sorry, but  
16 my understanding was that we had to keep you apprised of  
17 what the court had done, and there was going to be a hearing  
18 that you refused to enjoin, and that hearing was delayed but  
19 it eventually was held last summer, so we let you know that  
20 the hearing had been held and the court had ruled.

21 It was not my understanding that there was a  
22 T.R.O. in place and that we had to seek relief from that or  
23 have them --

24 THE COURT: There was never a T.R.O. in place,  
25 there was a suspension of any ruling on the motion for a

19

1 T.R.O.

2 MR. ZACHARY SHIELDS: Yes, Your Honor.

3 I apologize if I misunderstood. Our understanding  
4 was that --

5 THE COURT: I don't think you really misunderstood  
6 anything, it is just that you seem to want to blame him and  
7 in a way me, and --

8 MR. ZACHARY SHIELDS: No, Your Honor. I am not  
9 blaming you at all.

10 What I am saying is if they want -- maybe I should  
11 give you a little explanation. After that hearing in  
12 November was delayed, the parties did file a stipulation in  
13 this case staying this case but saying either party could at  
14 any time undo the stay.

15 THE COURT: Well, maybe that is fair enough, and  
16 that is where we are.

17 MR. ZACHARY SHIELDS: That was my understanding,  
18 is that you didn't stay the hearing, we had the hearing,  
19 although it was six months later or eight months later than  
20 anticipated, but the court did rule on that and we let this  
21 Court know. What we don't want to have happen, and maybe  
22 I'm glad that we had this status conference today, is to  
23 wait until it is all done and the Court has approved  
24 everything and then come in on another emergency basis.

25 If these constitutional issues you are talking

20

1 about are there, they are there now and they are not going

2 to be there any different if the court approves the sale.

3 THE COURT: Fair enough. I think that is exactly  
4 right. I think we are all on the same page now.

5 You need to do some things if you want the matters  
6 you have brought before the Court in your complaint acted  
7 upon, and I think you're right in that regard, that  
8 something needs to be done to cause this Court to act. We  
9 can put a briefing schedule in place. It is unusual, it  
10 seems to me, in the history of the country, to have a state  
11 running a religious trust.

12 MR. ZACHARY SHIELDS: Well, Your Honor, it is not  
13 a religious trust, it is a charitable trust.

14 THE COURT: Well, it is now that you took it over.

15 MR. ZACHARY SHIELDS: Well, it was a charitable  
16 trust under Utah law, subject to all of the laws of Utah.

17 THE COURT: No one is quibbling that it was ever  
18 anything but a charitable trust, a religiously based  
19 charitable trust. I will readjust that. In the history of  
20 this country I don't know of a state that has taken over a  
21 religiously based charitable trust and run it on secular  
22 principles, completely eliminating the religion basis for  
23 the trust which was put in place by the church. I just  
24 don't know of any precedent for that. It is an irony to me

25 that you say that your, what do you call him, the special

21

1 fiduciary hasn't been paid and that lawsuits are chipping  
2 away at him. That seemed to be the same kind of thing that  
3 caused the state to get involved in the first place, lots of  
4 lawsuits against the trust and against Mr. Jeffs and all of  
5 that. Someone should come in and relieve you guys.

6 MR. ZACHARY SHIELDS: The difference being is that  
7 he is responding to the lawsuits and defending the trust.  
8 He has actually improved the financial position of the trust  
9 tremendously during his time even though it has been  
10 expensive. The trust's balance sheet is better off today  
11 than it was the day he took over. He is not defaulting and  
12 he is not firing his attorneys and saying we will not  
13 respond. He is not allowing trust property to be lost. He  
14 is not transferring trust property to insiders.

15 THE COURT: He just needs money to get paid.

16 MR. ZACHARY SHIELDS: Obviously that is a part of  
17 the process, yes.

18 THE COURT: That is why you need to sell the  
19 property.

20 MR. ZACHARY SHIELDS: Yes, and there have been

21 severe hardships because of that.

22 THE COURT: It does seem to me that there are  
23 significant constitutional issues that probably ought to be  
24 addressed before that property gets sold.

25 MR. ZACHARY SHIELDS: I think, Your Honor, that  
22

1 the state court has addressed those and will continue to do  
2 so.

3 THE COURT: Well, I don't run the state court, I  
4 only run this court, hopefully, and I only address what is  
5 before me. I know what they have brought by way of a  
6 complaint, and I know that you know what that is, and I'm  
7 sure there will be differences of opinion on it. It may be  
8 that they choose not to press it any further, but I hope  
9 that that is at least clear today that you need to do  
10 something to move your declaratory relief request forward in  
11 some manner, if you think that is appropriate, and, if not,  
12 then you have no further obligation to do anything with this  
13 Court other than to respond to something that they bring.

14 Is that fair?

15 MR. ZACHARY SHIELDS: Thank you, Your Honor.

16 THE COURT: Okay.

17 Yes, Mr. Richards?

18 MR. RICHARDS: Would you object to hearing from  
19 me?

20 THE COURT: No, I would be happy to hear from you.

21 MR. RICHARDS: Thank you, Your Honor. I flew all  
22 the way up here today, and I probably ought to justify my  
23 experience by actually speaking.

24 THE COURT: Why not.

25 MR. RICHARDS: Your Honor, just two points that I  
23

1 did want to address.

2 One is your concern with the sort of unprecedented  
3 nature of the case and your comments about the state taking  
4 over the trust. I do just want to make one brief comment on  
5 that and make it clear that the history of this was not two  
6 states deciding, hey, this would be a great idea, let's go  
7 in and take over a trust. What happened was the trust was  
8 sued in a couple of lawsuits in Utah state courts, and the  
9 plaintiffs sought to have the trustees removed because of  
10 their defaults.

11 The attorneys general attempted to intervene at  
12 that point in protection of the trust. At that point the  
13 court decided that it would deny that relief to the

14 plaintiffs. Mr. Parker, who was representing the trust at  
15 the time, withdrew any representation from the trust, and in  
16 doing so he actually recommended that the Court issue notice  
17 to the Attorney General of Utah because there were  
18 individuals whose interests in the trust might be impacted  
19 and they deserved some representation. And recognizing that  
20 that is what happens in a case where the trustees abandon a  
21 trust, the Attorney General steps in in protection of the  
22 trust.

23 That is ultimately what happened here. Mr. Bodily  
24 and his office brought the action to remove the trustees and  
25 to have the trustees replaced. At that point the trustees  
24

1 were in fact noticed. They received notice of the  
2 proceedings. They were ordered by the Court to appear and  
3 to provide an accounting of their administration of the  
4 trust and they simply defaulted. For years, Your Honor,  
5 they defaulted. Mr. Wisan was appointed by the court to try  
6 and make something out of the mess that had been created  
7 there. That went on for several years without cooperation  
8 from the former trustees and from much of the local  
9 community. That put the trust in the situation it is in.

10 The ultimate objective of the Court, from my

11 understanding, was always to appoint replacement trustees  
12 and not to continue indefinitely running the trust.

13 Your Honor, I also want to make it clear that it  
14 is not the state that is running the trust as much as the  
15 state court has the trust under administration. Ultimately  
16 I think you'll find in the record that the state court would  
17 still like to have new trustees appointed and have the trust  
18 move forward from there.

19 THE COURT: New trustees from the religion, and  
20 turn it back to the religion or --

21 MR. RICHARDS: No, Your Honor.

22 The trust was formally reformed. It was reformed  
23 in 2006. It was done through a final order and judgment and  
24 it was done to enforce what the Court --

25 THE COURT: I just wondered what you meant by new  
25

1 trustees. I don't know why I am hearing all this anyway,  
2 but --

3 MR. RICHARDS: I apologize, Your Honor.

4 I felt compelled to say something because I wanted  
5 to make sure that we have it in the proper context, and that  
6 is to be argued before you later, and --

7 THE COURT: It will be.

8 MR. RICHARDS: Yes.

9 THE COURT: I don't have any preconceived notion  
10 about whether anything that has been done has been improper.

11 MR. RICHARDS: No, Your Honor, and I was not  
12 suggesting that you did. I just wanted to make sure that it  
13 was clear that the history is complex with this, and it does  
14 involve state law trust issues, and we can brief all of  
15 that, and obviously we'll have to, but --

16 THE COURT: We went through a lot of this at the  
17 hearing last time.

18 MR. RICHARDS: Right.

19 THE COURT: A lot of it, the entire history, and  
20 I'm aware of maybe more of it than you think I am.

21 MR. RICHARDS: I have no doubt --

22 THE COURT: As I have said now three or four  
23 times, I am not ruling on anything. I know the history is  
24 tortured. I assume that everyone has been acting in good  
25 faith, no pun intended. I think that that is probably

26

1 absolutely true, and unless evidence is presented otherwise,  
2 I'm assuming that, that the attorneys general have acted in  
3 good faith and the state court has done yeoman work and very

4 carefully considered it from its point of view. She may be  
5 absolutely correct on everything she has ruled on when it  
6 touches issues that have been presented in this lawsuit. I  
7 think everyone -- maybe not -- but I think everyone would  
8 have to agree that this is a unique situation.

9 MR. RICHARDS: Yes.

10 THE COURT: If this were a real estate deal you  
11 couldn't find any comparables. How do you deal with this?  
12 I know that the church involved caused a lot of the problems  
13 we have now by essentially doing nothing for a long, long  
14 time. That was a big issue we discussed at the last  
15 hearing. I am not saying they were, but if their rights  
16 were being violated in any way they certainly didn't defend  
17 them. They seemed to do exactly the opposite, invite  
18 adverse rulings by taking no steps to defend themselves,  
19 even if they had rights.

20 I'm aware of all of that history. I am not even  
21 suggesting that the plaintiffs come forward with anything  
22 now. It would seem to me that we left it somewhat suspended  
23 last time. I have seen things happen, and I am not unaware  
24 of the news, and I know there was a big settlement effort,  
25 which I thought might end everything, but it didn't.

1           I looked with some interest at the fact that  
2 things are apparently moving forward to allow a sale to  
3 happen, which was the triggering event that concerned me  
4 last time, which, I guess, was the understanding that I felt  
5 we all had that this court not just be apprised by way of a  
6 notice, but that somebody would do something that would  
7 honor at least the understanding that nothing would happen  
8 unless I was comfortable that both sides felt that the  
9 motion before this Court had been adequately dealt with  
10 before anything like a sale happened.

11           If you all agree that nothing should happen in  
12 this Court and that everything can just move forward  
13 pursuant to the state court rulings and the appellate  
14 process there, you will find a completely happy person in  
15 me. But, on the other hand, we have the lawsuit pending and  
16 I just want to make sure it gets properly attended to.

17           MR. RICHARDS: Your Honor, that brings up the  
18 second point that I was going to raise, because there have  
19 been some changes in at least what is happening at the state  
20 court level, as I mentioned, in the ongoing trust  
21 administration. Whether new trustees are able to be  
22 appointed or not is still uncertain at this point. We may

23 be heading towards liquidation or termination or something  
24 else, and certainly the plaintiffs here had asked for that  
25 sort of result in the state court.

28

1           Your Honor, there have been a number of actions  
2 filed with the Utah Supreme Court including one that is  
3 currently pending. I won't say it is identical to what you  
4 have, but it is extremely overlapping with what you have.  
5 As you're aware, we had filed a motion to dismiss the claims  
6 against the Arizona Attorney General and that got stayed.  
7 There has never been a response filed to that. Among the  
8 things we argued in there were federal abstention issues,  
9 and I think there will be some new glosses on that, if you  
10 will, Judge, based on the new things that are currently  
11 pending in the state court that will need to be addressed.  
12 It may be appropriate, and I think we can talk about this  
13 with counsel, but it may be appropriate that we simply  
14 supplement those portions of the motion to dismiss and have  
15 that heard immediately.

16           THE COURT: Before the Utah Supreme Court?

17           MR. RICHARDS: I'm sorry, Judge?

18           THE COURT: Which motion to dismiss are you  
19 referring to?

20 MR. RICHARDS: Our motion to dismiss before you.

21 THE COURT: Is there a pending motion to dismiss  
22 before me?

23 MR. RICHARDS: Yes.

24 It was filed a long time ago, Judge. We filed it  
25 I think within probably a week or so of --

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1 THE COURT: On abstention grounds or something?

2 MR. RICHARDS: It is on several grounds, Judge,  
3 but part of it is the abstention issues. Obviously, though,  
4 much has happened since that time and it would have to be  
5 supplemented for you to get the full record on that.

6 THE COURT: As a general proposition you say  
7 matters are pending before the appellate courts in the State  
8 of Utah that address many of the same issues that are raised  
9 in the plaintiffs' complaint here.

10 Fair?

11 MR. RICHARDS: Right. Yes.

12 THE COURT: That is what I thought you said.

13 Is it expected that those issues will be addressed  
14 in the state appellate system, that the Utah Supreme Court  
15 will rule as a final ruling on those matters before this

16 property is sold?

17 MR. RICHARDS: Your Honor, I don't know that.

18 THE COURT: You don't know that. Nobody knows  
19 that.

20 MR. RICHARDS: It is hard to say.

21 My point was, though, that we don't have a sale of  
22 property scheduled. What they proposed was an auction, and  
23 actually the judge said no to a direct sale.

24 THE COURT: Bidders or --

25 MR. RICHARDS: Some sort of a public bidding

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1 process. They have proposed a procedure for that. The  
2 Court has not yet approved that. When it will be approved,  
3 I don't know. After it is approved, if it is approved, and  
4 when the actual sale or auction would take place I don't  
5 know. In the interim it might be appropriate for us to put  
6 some of these abstention issues in front of you. Judge, I  
7 don't know, but it may make the ultimate resolution of the  
8 T.R.O. request unnecessary if the Court finds that there is  
9 an abstention issue.

10 THE COURT: That is up to you --

11 MR. RICHARDS: Right.

12 THE COURT: -- to move that if you feel that that

13 would be --

14 MR. RICHARDS: I just wanted to put that on the  
15 table.

16 THE COURT: Just out of curiosity, in the  
17 meantime, is the church, the Fundamentalist LDS Church  
18 continuing to function in these communities in Arizona and  
19 Utah? I assume it is and still exists.

20 MR. RICHARDS: I assume so as well, Your Honor.

21 THE COURT: I saw a lot of people here at the  
22 hearing last year, so I assume people still belong to the  
23 church. Their property is being administered by Mr. Wisan,  
24 and it just goes on month after month after month, and he  
25 makes decisions based on these secular criteria set forth by  
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1 Judge Lindberg?

2 MR. RICHARDS: Frankly, Your Honor --

3 THE COURT: Is that roughly the way it is  
4 happening now?

5 MR. RICHARDS: Roughly, Judge. However, because  
6 of the stay that was put in place by the court, the trial  
7 court, the state court last fall of 2008, I will tell you  
8 there has been from my perspective little active

9 administration in the town. There is administration going  
10 on. There is no question about that. Mr. Wisan has folks  
11 working down there who do various things. Compared to what  
12 was going on before that, though, it has changed  
13 dramatically.

14 From our perspective or from my perspective the  
15 trust remains under the administration of the court and is  
16 subject to the court's jurisdiction. Mr. Wisan has powers  
17 that he has been assigned by the court, but he also has to  
18 get approval for many of the things that he does from the  
19 court.

20 THE COURT: Could I ask you a question? You may  
21 not know the answer, and Mr. Shields may know the answer, or  
22 maybe Mr. Parker or somebody else, and it is not especially  
23 important here, but I'm wondering because in the past it  
24 seems from what I have read in connection with the T.R.O.  
25 request last year and elsewhere that some decisions with

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1 respect to trust property, housing, for example, may be  
2 based on a church member's religious activities or behavior,  
3 so that somebody could be kicked out of a house or removed  
4 from a house because of not following the church rules or  
5 something like that. That happened in the past apparently.

6 MR. RICHARDS: Before the trust was being  
7 administered by the court?

8 THE COURT: Yes, when it was --

9 MR. RICHARDS: That is my understanding.

10 THE COURT: When it was run pursuant to the  
11 F.L.D.S.U.E.P. if somebody was not following the rules of  
12 the church and the prophet of the church decided that the  
13 rules were not being followed, this person might be -- what  
14 is the word?

15 MR. RICHARDS: Excommunicated.

16 THE COURT: No.

17 MR. JEFF SHIELDS: Evicted.

18 THE COURT: Evicted, the E word, evicted from the  
19 home and somebody else would be moved in there all at the  
20 behest of the leadership of the church.

21 Now what happens when a person commits some church  
22 rule breaking error or sin or whatever the church sees it  
23 as, that in the past would have caused the leaders of the  
24 church to move that person out and move somebody else in,  
25 and move people around the way they apparently did in the

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1 past? What would happen now? Has that just ceased to

2 occur?

3 MR. RICHARDS: Your Honor, I think that is best  
4 answered by the folks --

5 THE COURT: Do you know that, Mr. Shields? Maybe  
6 it just does not happen anymore.

7 MR. ZACHARY SHIELDS: Your Honor, to be honest, we  
8 really don't control what is going on on the ground. There  
9 is a lot of scoffing of the law. There is a lot of  
10 disregard of the rule of law. My understanding is that  
11 there are people moving in and out all the time without our  
12 knowledge.

13 THE COURT: I am wondering, do you know if they  
14 are based on decisions of the church?

15 MR. ZACHARY SHIELDS: I would speculate they are,  
16 but I don't know.

17 THE COURT: Just, again, out of curiosity, how  
18 does that comport with this notion that everything is being  
19 administered pursuant to these secular rules?

20 MR. ZACHARY SHIELDS: Your Honor, the former  
21 trustees when they abandoned the trust were ordered to come  
22 and cooperate and they were given a chance to say their  
23 peace and to not be suspended. When they didn't come they  
24 were removed as trustees.

25

THE COURT: I understand the background of it, I  
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1 am just wondering now that it is in place, and Mr. Wisan  
2 can't use religious reasons to allocate property to this  
3 person versus that person, but you say it is happening  
4 anyway, so is it just some kind of rough justice that is  
5 going on?

6 MR. ZACHARY SHIELDS: I am saying it is under the  
7 table. Mr. Wisan does not know. He has tried to find out  
8 who is living where. We don't know who is living in most of  
9 the houses. We had to subpoena the public utility to even  
10 get a list of who has utilities hooked up to which house  
11 because there is massive --

12 THE COURT: It is a mess. Is it just hard to  
13 figure out?

14 MR. ZACHARY SHIELDS: No, it is a conspiracy and a  
15 refusal to cooperate and to give information. That is our  
16 position. We are way afield from the merits of this case,  
17 but we are having a very difficult time controlling the  
18 ground, if you will.

19 THE COURT: I am not at all meaning to be  
20 critical, but earlier at that podium you seemed to be  
21 extolling the virtues of this system, that it has made

22 money, they are in better shape than they were before, it is  
23 running well, that this special fiduciary just wants to get  
24 paid and pay his attorneys. This picture sounds like it is  
25 a bit of a mess down there.

35

1 MR. ZACHARY SHIELDS: Your Honor, I admit there  
2 has been a gross disregard for the rule of law and that it  
3 is a mess, but the law needs to be followed, and that  
4 happens through allowing the law to take its course. We do  
5 have lawsuits pending that hopefully will be cases that will  
6 set a precedent for the officers and for people to trespass  
7 and to -- there are people that are being harassed. The  
8 reports we get are that people that are not in good faith  
9 with certain church leaders are being harassed. Yes, there  
10 are people that have been evicted in the past for those  
11 types of things, and --

12 THE COURT: Pursuant to some church requirement?

13 MR. ZACHARY SHIELDS: Yes.

14 THE COURT: Evicted pursuant to a church order?

15 MR. ZACHARY SHIELDS: Well, the leaders of the  
16 church at the time were also the trustees.

17 THE COURT: I mean now. I was trying to make it a

18 simple question. Do church leaders now tell this person,  
19 Mr. Green, you have to move and they move? You think that  
20 is happening?

21 MR. ZACHARY SHIELDS: I hear reports that that is  
22 happening. We certainly are not evicting people for their  
23 refusal to comply with what the church wants them to do.

24 THE COURT: One more question. Mr. Wisan, does he  
25 tell people to move out of one house and to move into

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1 another? As I understand it, part of his process is to  
2 administer this for the just wants and needs of the people.  
3 Does he move people in and out of property?

4 MR. JEFF SHIELDS: Your Honor, maybe I can answer  
5 that, Jeffrey L. Shields. I have been involved in more of  
6 the administration --

7 THE COURT: I think I can hear you guys fine  
8 without the microphone. You can just stand up there.

9 MR. JEFF SHIELDS: Mr. Wisan, pursuant to the  
10 reformed trust, cannot use religion as any factor in  
11 determining who lives where or who gets benefits under the  
12 trust.

13 THE COURT: I totally understand that.

14 I am just wondering when there is a clash between

15 the two, what happens?

16 MR. JEFF SHIELDS: Right now they are waiting  
17 because they have most of the -- they meaning the leadership  
18 of whatever the group is that is running it, and the people  
19 that are in charge there, they are moving people in and out.  
20 We know that because we see the movements. We have asked  
21 for a list of who lives where and we can't get that.

22 THE COURT: So possession really is nine-tenths of  
23 the law as --

24 MR. JEFF SHIELDS: It is.

25 THE COURT: No one taught us that in law school.

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1 MR. JEFF SHIELDS: If you read in the newspaper  
2 where Mr. Wisan has moved to evict somebody, it is because  
3 they have not paid taxes or they have not --

4 THE COURT: I see.

5 MR. JEFF SHIELDS: He is prohibited from using  
6 religion as --

7 THE COURT: I am not suggesting he was. I assumed  
8 that he was not using a religious based reason. I assume  
9 that people who belong to the church still are willing to  
10 have decisions made about them by church leaders based on

11 what the church leaders feel their adherence to the rules  
12 has been.

13 MR. JEFF SHIELDS: We can't answer that. We don't  
14 know. We assume like you that there is somebody calling the  
15 shots because we know movement is going on. Whether it is  
16 because they don't abide with the religious principles, we  
17 don't know.

18 THE COURT: Wouldn't that be in violation of the  
19 current administration of the trust property, as your  
20 brother has well pointed out, the rule of law?

21 MR. JEFF SHIELDS: It would be.

22 That is part of the frustration that we have in  
23 administering this trust, is that even though the trustees  
24 have been removed by operation of law, they have been  
25 ordered to turn over lists and to give an accounting and

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1 cooperate, they refuse to do so.

2 THE COURT: I guess that is what I mean by this is  
3 so unique. You have sort of taken over a way of life of  
4 these people. They are used to having everything, as I read  
5 the record in this case, is turned over to the church, their  
6 property, their labor, their things to a certain extent, and  
7 then they are allowed to use them and be evicted from them,

8 and have had a lot of their daily life dictated by the  
9 decisions of their church leaders.

10 Now you, maybe for perfectly valid reasons, for  
11 misfeasance by the trustees of the trust, and I am not going  
12 to debate that, but for whatever reason now you have got the  
13 State of Utah and the State of Arizona involved and it is  
14 not the same anymore, and it can't be for those people, and  
15 I am just wondering how much of a shift has actually taken  
16 place.

17 MR. JEFF SHIELDS: I can't answer how much, but I  
18 can tell you this, that it was not like the state came in  
19 and said let's take this over. The charitable trust that  
20 was reformed by Judge Lindberg was the revision of a  
21 non-charitable trust, a private trust that the church  
22 leaders reorganized back in the early 1900s.

23 THE COURT: 1998.

24 MR. JEFF SHIELDS: It was because of the people  
25 that were living in these homes were being kicked out for

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1 religious reasons said enough. I built this home. I should  
2 live here. They started defending that action. This is  
3 deeper than just the last year or two. This is a decade old

4 problem.

5 THE COURT: No matter how it is being run, there  
6 are always going to be issues. It is like a bad divorce.

7 MR. JEFF SHIELDS: What is going on now is what  
8 should be going on, the secular administration and we do not  
9 look at --

10 THE COURT: That was my question.

11 MR. JEFF SHIELDS: It was who built the house, who  
12 donated things. There are nine factors that the reformed  
13 trust and the fiduciary are supposed to look at in  
14 distributing benefits. Those have no religious function  
15 whatsoever.

16 THE COURT: I understand that. I appreciate that.  
17 That is why I guess I have always wondered that sooner or  
18 later, whether it is the Utah Supreme Court or this Court or  
19 the U.S. Supreme Court, someone has to say whether this  
20 is -- maybe they don't have to say -- it seems like  
21 naturally sooner or later the question would have to be  
22 answered, and that question is is this consistent with the  
23 United States Constitution? Especially the First  
24 Amendment's religion clause. Is this an establishment  
25 clause violation? Is this a free exercise violation? I

1 don't think there is any question that what is happening has  
2 had a significant impact on the daily religious lives of  
3 some people. Under all of the background facts of this,  
4 maybe it is completely constitutionally proper. Maybe it  
5 has some problems. I don't know. It is certainly  
6 interesting.

7 MR. ZACHARY SHIELDS: Can I make two brief points?

8 MR. RICHARDS: I have said everything that I need  
9 to say.

10 THE COURT: You have been a catalyst for  
11 discussion. Thank you, Mr. Richards.

12 MR. ZACHARY SHIELDS: As far as controlling the  
13 lives of the people, this trust does not control their  
14 lives, it controls property. The people are free to  
15 exercise their religion. If they don't want to do it in  
16 property that this trust owns, they can do it elsewhere.

17 THE COURT: Well, the property in the way they are  
18 doing it becomes a large part of the religion.

19 MR. ZACHARY SHIELDS: Well, that is because that  
20 is where they live. They don't have to live there. Many of  
21 them have moved on to Texas. In fact, the report we had was  
22 that the intent was to move them all out and let it be lost.  
23 They made a conscious decision to allow this to be lost.

24 Had the states not gotten involved, this very well could  
25 have been lost to the default judgments.

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1 THE COURT: Well, what would have been so bad  
2 about that?

3 MR. ZACHARY SHIELDS: Again, the people could have  
4 lost their homes and wouldn't have had the chance to live  
5 there. We are allowing them to live there if they want to.

6 THE COURT: I see.

7 MR. ZACHARY SHIELDS: If this would have been lost  
8 to the plaintiffs in those cases, they could have been  
9 evicted and had no rights. We have been very accommodating.

10 THE COURT: I didn't mean by that anything  
11 unfeeling, I am just wondering if someone is choosing not to  
12 defend themselves against the multiple lawsuits, maybe one  
13 way of looking at it is maybe they are smart enough to know  
14 what the consequences of that non-defense is, and maybe they  
15 know they are going to lose all their property, but I know  
16 that the state did what it felt it needed to do to --

17 MR. ZACHARY SHIELDS: They are welcome to move  
18 out. There are a lot of people that live in those homes  
19 that are not considered to be faithful adherents by the

20 present day leaders. Their homes are at risk as well.

21 THE COURT: There homes are what?

22 MR. ZACHARY SHIELDS: Their homes are at risk as  
23 well. If the people that are following this F.L.D.S. group  
24 want to lose those homes and give them up, they are more  
25 than entitled to. The state, by coming in and preserving

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1 the trust, did not stop them from giving up their homes.

2 All it did was to make it so that those that didn't want to  
3 lose their homes and wanted to stay there were allowed to.

4 The second point, Your Honor, and I think you  
5 ought to be aware of the background, but the very purpose of  
6 the fiduciary is to distribute these homes and get them back  
7 in the hands of the people. If they want to turn around and  
8 give them back to the F.L.D.S. Church, they can do so. All  
9 we need to do is get the land subdivided and the land back  
10 to the people and they can distribute it however they want.  
11 That is what we are trying to do.

12 Unfortunately, there have been many efforts to  
13 stop that. This is not a situation where we want to forever  
14 own the homes. They are free to move out and to give them  
15 up as a sacrifice, and they are free to stay there and have  
16 ownership or give them back to their church if they want,

17 but we did protect them from being lost to default judgment.

18 THE COURT: Thank you, Mr. Shields.

19 Mr. Parker?

20 MR. PARKER: Your Honor, it is almost hard to know

21 where to start with all of that. There is so much of that

22 that is incorrect. Let me just address a couple of things.

23 I know that we are sort of maybe a little beyond things, but

24 to start with what Mr. Richards said, he said that they did

25 not come in because they thought it would be a great idea to

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1 take over this trust and that they came in for this limited

2 purpose. Well, the limited purpose was long ago achieved.

3 The purpose now is exactly what he said they did want to do,

4 the reformation of the trust, the takeover, the management

5 by secular terms, as the Court noticed, of a religious

6 institution. They are not free, as Mr. Shields said, to

7 exercise their religion because they can't exercise their

8 religion in this context with their property being

9 controlled by the state, because the United Effort is a

10 component of their religious practice.

11 They do not intend to distribute the homes as

12 Mr. Shields described. The reformed trust provides for a

13 spend thrift trust to be imposed on any home that is given  
14 to an F.L.D.S. person, but not the same restriction if it is  
15 given to a non-F.L.D.S. person, because the district court,  
16 and Judge Lindberg said she didn't want a U.E.P. two, and  
17 she did that specifically to preclude them from forming a  
18 new trust and exercising their religion.

19 Now, that is a violation of the constitution.  
20 That is one of the things that is at the core of the  
21 dispute, and it is at the core of the First Amendment issue  
22 that we are trying to bring before this Court.

23 They said, Mr. Richards, I think, or Mr. Shields,  
24 I don't know who said this, but that there has been nothing  
25 going on. That is not true at all. They have sold the

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1 community's cattle. They have been evicting people. They  
2 have moved people into F.L.D.S. homes to the exclusion of  
3 the person who built the home, and we have had to deal with  
4 getting those people out. They say they don't know who  
5 lives where. What business do they have of knowing who  
6 lives where if they are here for a limited purpose? They  
7 are not here to run these people's lives.

8 Mr. Wisan has been charged and one of his agents  
9 has been convicted of a crime in Arizona for trespassing in

10 people's homes and trying to take their homes without due  
11 process of law. It is chaos down there, Your Honor. It is  
12 complete chaos. People do not intend to leave. They do  
13 intend to stay. This is a serious burden on their ability  
14 to practice their religion. I'll just say that much about  
15 it, and there is a lot more that could be said.

16 Let me come back to the status of this case, if I  
17 could. I have a question. Do we need then, based on what  
18 has been said, to tee up our T.R.O. motion in order to  
19 prevent the sale of the property until such time as the  
20 Court can hear the merits of our claims? I guess that is my  
21 question. Is there an agreement or is there not? If there  
22 is not, then we'll tee up the motion. I am actually a  
23 little unclear whether I need to or not.

24 THE COURT: Let me make it clear that there is no  
25 agreement now of any kind.

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1 MR. PARKER: Okay.

2 THE COURT: I think the past has passed and now  
3 you need to do whatever you feel you need to do to protect  
4 your clients' rights.

5 I don't have any vested interest in this. I was

6 interested in what Mr. Richards said about the state supreme  
7 court, that it is anticipated that the state supreme court  
8 will be hearing some of these same issues.

9 MR. PARKER: Some of the issues at the supreme  
10 court are very similar, if not the same. We are not unaware  
11 of the abstention issue here and that question, and we feel  
12 that we have an obligation at some level to -- this is maybe  
13 not the best word -- exhaust those remedies. That is what  
14 we are trying to do.

15 In fact, we have been told that we can't come here  
16 because we went there, and we have been told that we can't  
17 go there because we came here, and because we have sought  
18 remedies in multiple forums, we are told we have no remedy  
19 in any forum. It is a really complex problem. We are  
20 trying to work our way through it. We are trying to  
21 protect, as best we can, ourselves in every place that we  
22 feel it is appropriate to seek protection. When that  
23 abstention issue is appropriate for this Court to look at  
24 it, we'll deal with that.

25 THE COURT: I hope that is clear, and if you feel  
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1 you need to file something, you're going to have to file it.

2 MR. PARKER: We will. I understand.

3 THE COURT: I don't know what remains of the stay  
4 that you all agreed to.

5 MR. PARKER: Well, there is a big dispute about  
6 that. What we were told essentially is that we are stayed  
7 and they are not, that they can go forward with the sale and  
8 we are stayed from stopping it. We have a real dispute  
9 about that.

10 THE COURT: Well, in light of that, then I think  
11 you would be well advised to file something rather than  
12 fight over what your stay meant.

13 MR. PARKER: Right. I agree with that.

14 THE COURT: Okay. I think that your partner,  
15 Mr. Okazaki, has something for you.

16 MR. PARKER: Would it be appropriate to ask the  
17 Court to set a date to hear the T.R.O. at this point while  
18 everybody is present?

19 THE COURT: Well, why don't you get together with  
20 the other side and see if you can figure it out, and tell  
21 them what you're planning to do, and I don't know if you are  
22 planning to move forward on it --

23 MR. PARKER: We need to --

24 THE COURT: -- we would need a briefing schedule.  
25 You can call Ron and get a date about any time you want it.

1 I don't know that it would be that productive to give you a  
2 date now, unless you know how much time you anticipate that  
3 you're going to want for briefing in the interim.

4 MR. PARKER: Okay. Understood.

5 We may tee up a T.R.O. and preliminary injunction.  
6 We may need to seek a T.R.O. to preserve time to get the  
7 briefing, depending on what --

8 THE COURT: Well, they are essentially the same  
9 thing. That would be such a waste. Is there something that  
10 you think is going to happen in the near future that would  
11 cause you to need a T.R.O. --

12 MR. PARKER: Yes.

13 THE COURT: -- that they won't agree to hold off  
14 on unless we have a preliminary injunction hearing?

15 MR. PARKER: I am sure they won't agree. That is  
16 the question, is how fast is this sale process really  
17 moving? It is difficult for us to get information about it.

18 THE COURT: Well, they are quite agreeable people.  
19 They always have been in my experience with them.

20 The inefficiency of this, and I only have one  
21 complaint, and that is the inefficiency of this. We spent

22 not a lot but quite a bit of time thinking about and reading  
23 about and getting prepared for the hearing a year ago, and a  
24 lot of this history was discussed in the T.R.O. briefing and  
25 in a fairly lengthy hearing that we had here in this

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1 courtroom. For some reason you were not involved. You were  
2 not on the front row. Were you just --

3 MR. PARKER: That was during the time when we were  
4 disqualified before the --

5 THE COURT: Mr. Bradshaw was here. I remember Mr.  
6 Okazaki.

7 Anyway, that was gearing up for this issue and  
8 then nothing happened except a stay and whatever this deal  
9 was. Here we are again having spent not nearly as much time  
10 today, but we have thought about it again, and then we'll  
11 let air go out of the balloon and do it again. You suggest  
12 we do it with a T.R.O. and then a preliminary injunction.

13 MR. PARKER: Only if --

14 THE COURT: It seems like so much wasted effort.  
15 If we are going to meet these issues, we ought to meet them.  
16 If the preliminary question is whether I should abstain,  
17 then we ought to meet that. I hate to do it four times.

18 MR. PARKER: Well, I hate to do that too. I don't

19 disagree with that at all. I hate to too, but if we have to  
20 move to prevent the sale of the property to preserve this  
21 Court's jurisdiction, this Court's opportunity to --

22 THE COURT: I understand that.

23 MR. PARKER: We may have to do that. That is all  
24 I'm suggesting is that you may see it come to you in pieces,  
25 if it becomes an emergency.

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1 THE COURT: Did Ron leave the room? Nobody is  
2 there. He does not need to be here. I just wondered if he  
3 was here.

4 Just call Ron and get a hearing date, if you want  
5 a hearing date.

6 What would be the best from my standpoint, and  
7 maybe not from yours, but from mine it would be if you  
8 choose to pursue your motion for preliminary injunction,  
9 which would be based on your claim that what they are doing  
10 violates your clients' First Amendment and Fourteenth  
11 Amendment constitutional rights, and it seems to me that is  
12 the legal issue, and the legal issue based on the current  
13 factual premise would need to be addressed, and if they know  
14 that you're planning to get a ruling from me before they can

15 go ahead with the sale, then the best for me would be one  
16 hearing where that would be the issue. That would include  
17 anything that this side had with regard to abstention or  
18 their motion to dismiss. It would all get sorted out in one  
19 hearing.

20 MR. PARKER: Maybe what makes sense is to have  
21 us -- I honestly am not sure what was filed a year ago, but  
22 forget that and say file our motion for a preliminary  
23 injunction and move forward on that path, and then if steps  
24 are taken which would result in this Court --

25 THE COURT: Seek a T.R.O. so the status quo would  
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1 be frozen. I don't think they would disagree and they don't  
2 want to do this twice either, I don't think. They are not  
3 getting paid anyway. They have to sell property to get  
4 paid. All right.

5 Thank you for coming in. I know it was at my  
6 request, and you have been very enlightening, both sides.  
7 It is an interesting situation which, as I said, is very  
8 unique and I thank you for your helpful comments.

9 Anything else from anyone else before we adjourn?

10 Court will be in recess.

11 (Proceedings concluded.)

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