

KRESHIK ET AL. v. SAINT NICHOLAS CATHEDRAL
OF THE RUSSIAN ORTHODOX CHURCH
OF NORTH AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF NEW YORK.

No. 824. Decided June 6, 1960.

Certiorari is granted and a decision of the Court of Appeals of New York, holding that, under the common law of New York, petitioners, as the appointees of the Patriarch of Moscow, may not exercise the right conferred under canon law to use and occupy St. Nicholas Cathedral of the Russian Orthodox Church in New York City, is reversed on the authority of *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, since the constitutional principles there applied forbid the judiciary, as well as the legislature, of a State to interfere with the free exercise of religion. Pp. 190-191.

7 N. Y. 2d 191, 164 N. E. 2d 687, reversed.

Philip Adler and Eugene Gressman for petitioners.

Ralph Montgomery Arkush and Charles H. Tuttle for respondent.

PER CURIAM.

The motion for leave to proceed upon the record in No. 3, October Term, 1952, and the petition for certiorari, are granted.

In a prior decision in this litigation, we held that the right conferred under canon law upon the Archbishop of the North American Archdiocese of the Russian Orthodox Greek Catholic Church, as the appointee of the Patriarch of Moscow, to the use and occupancy of the St. Nicholas Cathedral in New York City, owned by respondent corporation, was "strictly a matter of ecclesiastical government," and as such could not constitutionally be impaired by a state statute, New York Religious Corpo-

rations Law, Art. 5-C, purporting to bestow that right on another. *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94. We reversed a judgment of the New York Court of Appeals against the petitioners' predecessors in office, and remanded the case for "further action . . . not in contravention" of our opinion. *Id.*, at 121.

The Court of Appeals ordered a retrial of the question of petitioners' right to use and occupancy, on a common-law issue assertedly left open by our invalidation of the statutory basis for the former decision. 306 N. Y. 38, 114 N. E. 2d 197. After trial, the Court of Appeals directed the entry of judgment against petitioners, holding that, by reason of the domination—so found by that court to be the fact—of the Patriarch by the secular authority in the U. S. S. R., his appointee could not under the common law of New York validly exercise the right to occupy the Cathedral. 7 N. Y. 2d 191, 164 N. E. 2d 687.

As the opinions of the Court of Appeals make evident, compare 302 N. Y., at 29-33, 96 N. E. 2d, at 72-74, with 7 N. Y. 2d, at 209-216, 164 N. E. 2d, at 696-700, the decision now under review rests on the same premises which were found to have underlain the enactment of the statute struck down in *Kedroff*. 344 U. S., at 117-118. But it is established doctrine that "[i]t is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize." *N. A. A. C. P. v. Alabama*, 357 U. S. 449, 463. See *Shelley v. Kraemer*, 334 U. S. 1, 14-16, and cases there cited. Accordingly, our ruling in *Kedroff* is controlling here, and requires dismissal of the complaint.

Reversed.