

Resolving Church Property Disputes: Past, Present, and Future

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I. Introduction: Discussion of Constitutional Interests in Play

A. The Establishment Clause of the First Amendment provides that “Congress shall make no law respecting an establishment of religion.”

1. *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969), wherein two local churches sought to leave the Presbyterian Church in the United States because it had departed from its original doctrinal tenets. A jury and Georgia Supreme Court found in favor of local churches after finding that the denomination had departed from its doctrinal tenets. The Supreme Court reversed and held that the state could not pass judgment concerning matter of religious doctrine.

2. *See Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevic*, 426 U.S. 696 (1976), wherein the Supreme Court held that the Illinois Supreme Court had violated the First and Fourteenth Amendments which serve prohibit government interference in ecclesiastical matters decided by hierarchical religious tribunals.

2. *See also, Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694 (2012), wherein the Supreme Court invoked the “ministerial exception” and held that the government was barred by the First Amendment from adjudicating employment discrimination claims brought by a teacher against the church.

B. The Free Exercise Clause provides that “Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof.*”

1. The First Amendment protects the right of people to worship as they choose. *Engel v. Vitale*, 370 U.S. 421, 430 (1962).

2. “Implicit in the right to choose freely one’s form of worship is the right of unhindered and unimpeded withdrawal from the chosen form of worship.” *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 777 (Okla. 1989).

C. The Equal Protection Clause provides that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The Fourteenth Amendment makes First Amendment rights applicable to the states and protects against state action which infringes upon the exercise of First Amendment rights.

II. Past: History of the Supreme Court’s Jurisprudence

A. Court’s first religious property dispute involving slavery and ownership of the Methodist publishing houses. *Smith v. Swormstead*, 57 U.S. 288 (1854).

B. The Supreme Court adopts “deference” approach. *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871). In essence, the “deference” or “compulsory deference” approach requires the courts to decide property disputes by deferring to the rules and decisions of the highest adjudicatory body in a hierarchical denomination.

C. The Supreme Court introduces “neutral principles” approach. *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969). The neutral principles approach resolves church property disputes

according to the well-established, neutral principles of state law which generally govern disputes over title and trusts.

D. The Supreme Court clarifies and promotes neutral principles approach and recognizes the following benefits of the neutral principles approach in *Jones v. Wolf*, 443 U.S. 595 (1979):

1. Completely secular in operation
2. Able to resolve all disputes regardless of polity
3. Focus on mutual intent
4. Requires legally cognizable form
5. Relies on concepts and principles familiar to judges
6. Establishes reliable property rights

III. Present: A Survey of State Approaches to Church Property Disputes

A. Deference approach is still used in over 20 states

B. Neutral principles approach is used in an increasing number of states

1. Strict neutral principles (“formal title”)- courts resolve church property disputes by applying ordinary principles of property, trust, or contract law to civil legal documents, such as deeds, trust agreements, or contracts. Internal church rules are not enforced unless they have been legally established or incorporated through a trust or otherwise.

2. Hybrid neutral principles- courts give greater weight to enforcing internal church rules even when those rules would not otherwise establish a property or trust interest under the applicable state laws.

3. *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446 (Ga. 2011) treats *Jones v. Wolf* as a creating a unique and separate analytical framework for deciding church property disputes.

C. Recent Episcopal Church Cases:

1. In response to *Jones v. Wolf*, the Episcopal Church (TEC) adopted the “Dennis Canon” in 1979, which purports to impose a trust on all church property for TEC's benefit. It provides:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

2. In *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594 (Tex. 2013), the Texas Supreme Court transitioned from deference approach to neutral principles approach.

3. In *Falls Church v. Protestant Episcopal Church*, 740 S.E.2d 530 (Va. 2013), the Supreme Court of Virginia, applying neutral principles, interpreted the Dennis Canon to require application of constructive trust principles. The constructive trust doctrine involves consideration of the deed, the course of dealings of the parties, church canons, and neutral principles of property and entity law. The Court held that property the parish obtained from third parties was subject to a constructive trust to enforce the Dennis Canon, and thus the parish forfeited the property to its parish when it left TEC to affiliate with another branch of the Anglican Communion. The Court applied the constructive trust doctrine even though the Diocese did not rely on this theory and the parties did not brief it.

4. In *Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417 (Tex. 2020) the Texas Supreme Court rejected the constructive trust doctrine and applied neutral principles of entity and property law to resolve a dispute between TEC and a disaffiliating diocese. The Court held that the diocese had disavowed the Dennis Canon prior to disaffiliation, and that the disaffiliating diocese continued in ownership of its property as a matter of law.

5. Recently, the Supreme Court of Virginia denied review in *Church of the Messiah v. Protestant Episcopal Church*, where a Virginia trial court applied the constructive trust doctrine to invalidate title conveyed by a diocese in fee simple absolute by general warranty deed with all English covenants of title.

6. In *The Protestant Episcopal Church in the Diocese of S.C. v. The Episcopal Church* (S.C. April 20, 2022), a diocese and 36 parishes disaffiliated from TEC. The S.C. Supreme Court held that a parish must affirmatively adopt or accede in writing in order to create an express trust to enforce the Dennis Canon. The Court held that 14 parishes did so but the others did not.

D. Other Recent Cases:

1. *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575, 583 (Mo. Ct. App. 2012)

2. *Hebron Church v. Wisconsin Conference Board of Trustees of the UMC* (pending in the United States District Court for the Western

District of Wisconsin). This case challenges Wisconsin's Methodist0 specific statutory scheme, Wis. Stat. Ann. § 187.15(4) (West):

“Whenever any local Methodist church or society shall become defunct or be dissolved the rights, privileges and title to the property thereof, both real and personal, shall vest in the annual conference and be administered according to the rules and discipline of said church.”

This statutory scheme was first called into question by two dissenting justices in *Wisconsin Conf. Bd. of Trustees of United Methodist Church, Inc. v. Culver*, 2001 WI 55, 243 Wis. 2d 394, 627 N.W.2d 469 (2001) but the constitutionality of the statute was not decided because the parties had failed to raise it below.

IV. Future: Anticipating Future Trends and Developments

A. More states will transition to a strict neutral principles approach.

B. Is Supreme Court likely to take another church property case soon?