UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 86
Number 6 *North Carolina Issue*

Article 8

9-1-2008

Creating Ecclesiastical Immunity: How the Supreme Court of North Carolina Stripped Civil Protections from Religious Bodies in Harris v. Matthews

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Creating Ecclesiastical Immunity: How the Supreme Court of North Carolina Stripped Civil Protections from Religious Bodies in *Harris v. Matthews*[*]

Separation of church and state under the First Amendment has long been a hotly debated issue in the jurisprudence of the United States. However, despite this lasting attempt to strike a fair balance between religious freedom and secular law, cases against pastors and church officials regarding church property disputes are not always afforded the protection of civil laws in a civil court. In order to steer clear of any potential First Amendment infringement, the Supreme Court of the United States has articulated a doctrine that forbids civil court determination of any dispute that touches on ecclesiastical matters.[1] Under this regime, judicial resolution of church disputes is allowed only when the issues at stake can be resolved using "neutral principles of law."[2] On its face, this doctrine purports to be a rational precaution taken to preserve the freedoms of religious institutions crafted by this country's founders. However, applied too conservatively, it can grant virtual immunity from state and federal law to religious officials as demonstrated by the result in a recent case from North Carolina, *Harris v. Matthews*.[3] In *Harris*, the Supreme Court of North Carolina held that its courts could not hear a case involving the gross misappropriation of church funds by a pastor on the grounds that a decision on the dispute would require a court to

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1. *See* Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969).

2. *Id.*; *see infra* notes 29, 44–47 and accompanying text for a discussion of "neutral principles of law." Courts and scholars alike have noted that there is an underlying tension between the Free Exercise and the Establishment Clauses of the First Amendment as applied to cases of church property disputes. *See* Patti Gerstenblith, *Civil Court Resolution of Property Disputes Among Religious Organizations*, 39 AM. U. L. REV. 513, 518 (1990). While the Establishment Clause limits the amount of support a government may give to a religious organization, the Free Exercise Clause conversely requires the government to provide a certain level of support to such organizations. *Id.* at 519. The "neutral principles of law" doctrine resolves this tension by requiring a court to treat property disputes among religious organizations as they would any non-religious body. *Id.* at 520. In other words, a court should decide any property issue brought by a religious organization according to "neutral principles of law"; when that is not possible, a court should abstain from deciding the issue. *Id.* at 521.

3. 361 N.C. 265, 643 S.E.2d 566 (2007).

rule on ecclesiastical matters.[4] The court's ruling left the parishioner plaintiffs without a remedy by which to reclaim their lost property and effectively granted church officials in North Carolina immunity in future church property disputes.

This Recent Development will argue that the court's ruling in *Harris v. Matthews* was unnecessarily harsh in so circumscribing a court's ability to hear property disputes arising within and among religious organizations. First, this Recent Development will offer an in-depth discussion of the specific facts and holding of the *Harris* case. Next, it will explore the existing Supreme Court jurisprudence regarding property disputes involving religious organizations and provide an analysis of the "neutral principles of law" doctrine. This Recent Development will go on to discuss how the doctrine has been previously applied in North Carolina and will assert that the *Harris* decision marks an unnecessary departure from that jurisprudence as well as other jurisdictions' decisions on similar issues. Finally, this Recent Development will examine the implications of the *Harris* decision in North Carolina and will argue that a less stringent holding was both possible, given the state and federal precedent, and desirable, to avoid providing unchecked immunity to religious officials and organizations. Overall, this Recent Development will argue that the *Harris* court inappropriately found that any resolution of the property dispute at issue would necessarily touch on "ecclesiastical matters," and that the issue at stake could have been resolved using the "neutral principles of law" doctrine articulated by the Supreme Court of the United States.[5] Applying the "neutral principles of law" doctrine in this way, it is possible to reconcile notions of religious freedom inherent to the First Amendment with appropriate civil consequences for religious organizations.

In *Harris v. Matthews*, members of Saint Luke Missionary Baptist Church ("Saint Luke") filed a derivative suit on behalf of the church against its pastor and several church officials alleging, among other claims, extensive misappropriation of church funds.[6] Though the complaint was not filed until July of 2003, the plaintiffs first became suspicious of the governance of church funds in 2001, after

4. *Id.* at 273, 643 S.E.2d at 571 (noting that "[b]ecause no neutral principles of law exist to resolve plaintiffs' claims, the courts must defer to the church's internal governing body . . . thereby avoiding becoming impermissibly entangled in the dispute").

5. *Presbyterian*, 393 U.S. at 449 (holding that there are "neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded").

6. *Harris*, 361 N.C. at 268, 643 S.E.2d at 568.

the church's accountant wrote a letter detailing "major problems with the reconciliation of the amounts of Sunday collections and bank deposits."[7] A year-long struggle ensued in which the parishioner plaintiffs fought with church officials to obtain full access to the church's complete financial records.[8] The parishioners finally gained access to the church's legal and financial records in July of 2002, but only after a trial court order required Saint Luke to comply with their request for the documents.[9] After reviewing the records, the parishioner plaintiffs identified nearly $260,000 of the church's money that they believed had been misappropriated by the defendants over a three-and-a-half-year period.[10]

Faced with such alarming information regarding the use of their church's funds, the plaintiffs were quick to bring suit against both the pastor and certain members of the church's governing body, specifically alleging that those individuals breached their fiduciary duty to the church, converted church funds and participated in a civil conspiracy.[11] The church officials, in response, promptly filed a motion to dismiss for lack of subject matter jurisdiction, which was denied by both the trial court and the Court of Appeals of North Carolina.[12] Refusing to be defeated, the church officials then filed an

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7. Plaintiff Appellee's New Brief at 5, *Harris*, 361 N.C. 265, 643 S.E.2d 566 (No. 479PA05-2), 2006 WL 3226634.

8. *Id.*

9. *Harris*, 361 N.C. at 268, 643 S.E.2d at 568.

10. Plaintiff Appellee's New Brief, *supra* note 7, at 6. For example, the audit showed that

> [d]efendant Matthews and others made monthly out-of-town trips by air and stayed at luxury hotels such as the Radisson, Sheraton, Hilton and Omni. Expensive restaurant meals were charged, including $235.00 at Harpers Restaurant; $249.00 at Mortons of Chicago; $406.00 at the Tower Club; and $367.00 at Park Avenue BBQ in Palm Beach, Florida, just to name just a few. Large clothing and gift purchases were made at: The Casual Male ($220.00); Talbots (silk jacket, skirt, etc.) ($377.00); Sharon Comers Men's Apparel ($963.91); and Godiva Chocolate ($42.00). In addition, funeral services for Defendant Matthews' father ($2,954) and lodging at the Radisson ($1,521) were paid for by the Church credit card in West Palm Beach, Florida, during a trip that Defendant Matthews made in June 2002.

Id. at 7.

11. *Harris*, 361 N.C. at 268, 643 S.E.2d at 568.

12. *Id.*; *see also* Harris v. Matthews, No. 05-28, 2006 WL 389647, at *2 (N.C. Ct. App. Feb. 21, 2006) for the court of appeals' decision. The court of appeals noted that because the trial court had denied defendants' motion to dismiss for lack of subject matter jurisdiction, that ruling was interlocutory and not immediately appealable. *Id.* at *1. However, the court also noted that interlocutory orders *are* immediately reviewable when a party can show that the trial court's decision deprives him of a substantial right that would otherwise be lost without immediate review. *Id.* Regardless, the court of appeals

appeal from the interlocutory order[13] to the Supreme Court of North Carolina on the grounds that the case implicated a substantial First Amendment right which would cause injury to the church if the trial court were to become "entangled in ecclesiastical matters from which it should have abstained."[14]

In a 4-2 decision, the Supreme Court of North Carolina granted the defendants' motion to dismiss, holding that a decision on the issue in the case would require judicial consideration of ecclesiastical matters, which the Supreme Court of the United States expressly forbade in its *Presbyterian* decision.[15] The court held that "[d]etermining whether actions, including expenditures, by a church's pastor, secretary, and chairman of the Board of Trustees were proper requires an examination of the church's view of the role of the pastor, staff, and church leaders, their authority and compensation, and church management."[16] In an attempt to bolster its position, the court then analogized the situation at bar to one in which a court is asked to rule on the adequacy or correctness of spiritual grounds for membership in the church.[17] The court stated that an inquiry as to spiritual correctness is an inherently ecclesiastical matter, and thus, one that no court could settle using "neutral principles of law."[18] Although the comparison between judicial determination of the adequacy of spiritual guidelines—an inherently doctrinal-based inquiry—and a ruling on a property dispute seems weak, the court nevertheless used this analogy to illustrate that the issue in *Harris* could not be resolved using "neutral principles of law."[19]

Overall, the *Harris* ruling is quite damaging to future claims brought by religious congregations frustrated by misuse of their church property. The *Harris* majority found that it was enough for one party to merely indicate a concern that a suit would touch on an "ecclesiastical matter" to have that matter dismissed—even when there was no evidence that the case would present ecclesiastical issues

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determined that there was no meaningful constitutional question at issue which would deprive defendants of a substantial right, and the court dismissed the appeal. *Id.* at *2.

13. *See supra* note 12 for a discussion of the appeals process for an interlocutory order.

14. *Harris*, 361 N.C. at 269–71, 643 S.E.2d at 570.

15. *Id.* at 270, 643 S.E.2d at 570–71 (citing Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969)).

16. *Id.* at 273, 643 S.E.2d at 571.

17. *Id.*

18. *Id.*

19. *Id.*

in the pleadings.[20] Such a ruling acts as a virtual bar on all claims that have any connection to a church body. As Justice Hudson warned in her dissent, "this approach could have the unintended consequence of allowing, or even inviting, misbehavior by church officials who could then avoid court review by baldly *asserting* that further review would result in impermissible entanglement in ecclesiastical matters."[21]

Given the existing decisions of the Supreme Court of the United States on this issue, the holding of the Supreme Court of North Carolina in *Harris* was unduly strict. While the court was correct to note that the Supreme Court of the United States forbids consideration of any matter that touches on ecclesiastical issues and that any dispute involving a religious organization must be resolved using "neutral principles of law,"[22] this precedent did not preclude consideration of the issues presented in *Harris*. Federal jurisprudence regarding the "neutral principles of law" doctrine originated when a Georgia state case made its way to the Supreme Court of the United States.[23] The issue in the *Presbyterian* case arose when the congregations of two local Presbyterian churches decided to detach themselves from a larger governing hierarchical church organization.[24] After the withdrawal, a property dispute arose as to which body—the hierarchical organization or the defecting local congregations—owned the property physically held by the local churches.[25] Under Georgia law, ultimate determination of property ownership turned on a finding of whether the local churches' withdrawals were due to a "fundamental or substantial abandonment of the original tenets and doctrines" on the part of the hierarchical church organization.[26]

On the basis of these facts, the Supreme Court issued a dual-pronged ruling regarding civil court determination of church property disputes. First, the Court held that civil courts should have "*no* role in determining ecclesiastical questions in the process of resolving

20. *Id.* at 280, 643 S.E.2d at 575 (Hudson, J., dissenting).

21. *Id.*

22. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969).

23. *See id.*

24. *Id.* at 441–43.

25. *Id.* at 443.

26. *Id.* (noting that "Georgia law implies a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to its tenets of faith and practice existing at the time of affiliation by the local churches").

property disputes."[27] However, the Court did note that not all property disputes arising from religious organizations implicate First Amendment separation of church and state concerns.[28] As such, the Court recognized in the second prong of its holding that "there are neutral principles of law, developed for use in all property disputes, which can be applied" to resolve property disputes arising among religious organizations and which do not implicate the First Amendment.[29] Given that resolution of the issue in *Presbyterian* required an interpretation of church "tenets and doctrines,"[30] the Court ultimately found that such a determination required a ruling on ecclesiastical matters and was an improper inquiry for a civil court of the United States.[31]

The ruling in *Presbyterian* is important because it introduces the "neutral principles of law" doctrine, which articulates a standard for courts to follow when faced with cases concerning property disputes among religious organizations. However, the facts of *Presbyterian* differ from those in *Harris* in important ways that suggest the North Carolina court could have tried and decided the case, rather than simply dismissing it. First, the *Presbyterian* Court would have had to rule on whether a hierarchical religious body had departed from fundamental church principles, as Georgia law required that such a departure occur before property owned by the hierarchical organization could be released from trust.[32] Such an inquiry inherently involves consideration and ruling on ecclesiastical issues. By contrast, the *Harris* court was merely asked to determine whether a pastor and other church officials had improperly used church funds for their personal benefit.[33] Further, despite holding that it would be improper for any court to adjudicate the matter before it, the *Presbyterian* Court definitively concluded that a civil court *can* resolve matters such as property disputes involving religious

27. *Id.* at 447. The Court further noted that "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice." *Id.* at 449.

28. The Court noted that civil courts do not violate the Free Exercise Clause by merely "opening their doors to disputes involving church property"; neither do they violate the establishment clause by finding in favor of—and, thus, granting property to—one religious body over another. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 449–50.

32. *Id.* at 443.

33. Harris v. Matthews, 361 N.C. 265, 273, 643 S.E.2d 566, 571 (2007).

organizations, so long as it can do so using "neutral principles of law."[34]

Ultimately, the *Presbyterian* Court did not expound upon what it meant by "neutral principles of law" other than to suggest that they are principles that may be used to adjudicate property disputes among any group, religiously affiliated or not.[35] However, eight years later, the Supreme Court took the opportunity to elaborate on what it meant by "neutral principles of law" when it granted certiorari in a second case involving a church property dispute. *Jones v. Wolf*,[36] another case from the Georgia state courts, involved a dispute over ownership of church land that arose after a majority of a local church congregation withdrew from a hierarchical organization and continued to possess and control the church property.[37] The hierarchical organization then announced that the remaining minority faction, which had maintained its ties with the hierarchical organization, constituted the true congregation of the church and, as such, retained ownership rights to the church property.[38] The question presented to the Supreme Court was whether ownership of the property was an issue appropriate for determination by a civil court pursuant to "neutral principles of law," or whether a court must defer to the decision of the hierarchical organization.[39]

In ruling on the issue, the Court first inquired as to whether the property was held by deed or in trust.[40] Again, this inquiry was necessary because Georgia law "implies a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to its tenets of faith and practice existing at the time of affiliation by the local churches" in the absence of documentation indicating otherwise.[41] To determine ultimate ownership of the church property, the *Jones* Court looked to the constitutional provisions of the general church in the Book of Church Order.[42] Because this document was not instructive on the ownership question, the trial court applied Georgia implied trust law.[43] The

34. *Presbyterian*, 393 U.S. at 449.
35. *See id.*
36. 443 U.S. 595 (1979).
37. *Id.* at 598.
38. *Id.*
39. *Id.* at 597.
40. *Id.* at 602–03.
41. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 443 (1969).
42. *Jones*, 443 U.S. at 601.
43. *Id.*

Supreme Court held that the inquiry did *not* involve a ruling on ecclesiastical matters, as forbidden by *Presbyterian*, but instead involved simple application of state property laws. The adjudication was thus based on "neutral principles of law."[44] Additionally, the *Jones* Court cited a Maryland case in support of its decision as an illustration of appropriate use of the "neutral principles of law" doctrine.[45] The Supreme Court of the United States denied certiorari on the case because it felt that there was no substantial federal question in light of the fact that the local church property disputes could be settled without an inquiry into religious doctrine.[46]

Jones sets forth the idea that a civil court may analyze and interpret the language of religious charters and church constitutions without violating the "neutral principles of law doctrine."[47] Accordingly, the *Jones* Court found that the Georgia court's determination that the property in question was owned by the "local congregation" was both a proper inquiry and was properly decided.[48] The more difficult question for the Supreme Court was determining which body—the majority or the minority faction—constituted the "local congregation."[49] The Supreme Court noted that the Georgia courts ruled in favor of the majority faction by seeming to apply a presumption in favor of the majority.[50] Though remanding the case to the Supreme Court of Georgia to articulate a more exact holding of law, the Supreme Court of the United States did find that such a

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44. *See generally* Harris v. Matthews, 361 N.C. 265, 272, 643 S.E.2d 566, 570 (citing Atkins v. Walker, 284 N.C. 306, 319, 200 S.E.2d 641, 650 (1973) for the proposition that a court can review issues such as "(1) [w]ho constitutes the governing body of this particular [church], and (2) who has that governing body determined to be entitled to use the properties" without risking adjudication of ecclesiastical matters). Such inquiries are analogous to applying state property laws to determine ownership of church property. *See infra* notes 57–67 and accompanying text for a discussion of the Supreme Court of North Carolina's decision in *Atkins*.

45. *Jones*, 443 U.S. at 603 (citing Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 370 (1970)).

46. *Md. & Va. Eldership of Churches of God*, 396 U.S. at 368; *see also Jones*, 443 U.S. at 603 (noting that the dispute in *Md. & Va. Eldership of Churches of God* was resolved "on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property").

47. *Jones*, 443 U.S. at 603; *see also* Elizabeth Ehrlich, Note, *Taking the Religion Out of Religious Property Disputes*, 46 B.C. L. REV. 1069, 1071 (2005) (noting that the "neutral principles of law" doctrine allows civil courts "to interpret relevant provisions of a religious organization's governing documents—such as deeds, church constitutions, bylaws, and contracts—under current state law").

48. *Jones*, 433 U.S. at 601.

49. *Id.* at 606–07.

50. *Id.* at 607.

presumption "would be consistent with both the neutral-principles analysis and the First Amendment."[51]

The *Jones* holding provided a novel application of the "neutral principles of law" doctrine. Prior to this ruling, courts had uniformly deferred to church authorities to define terms such as "congregation" under the theory that determining the identity of that body was an ecclesiastical matter.[52] In *Jones*, however, the Supreme Court of the United States expanded the "neutral principles of law" doctrine by acknowledging not only that a court *could* properly interpret religious documents under the "neutral principles of law" guidelines, but that in many cases, it *must* do so to reach a fair and considered verdict.[53] The Court's acknowledgment that a civil court may interpret religious deeds, charters, and other documents marked an expansion of the "neutral principles of law" doctrine and a further shift away from a policy of deference in all church property disputes.[54] The Court went on to note that, pursuant to the "neutral principles of law" doctrine, "a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts."[55] Overall, the *Jones* decision illustrates the willingness of the Supreme Court to allow certain matters connected to the church to be decided by a civil court using the "neutral principles" doctrine. Perhaps most importantly, the Court's decision shows that it did not intend "ecclesiastical matters" to have an unlimited meaning.[56]

Harris is not the first North Carolina case to grapple with how to interpret the Supreme Court's mandate to apply "neutral principles of law" to civil issues regarding the church. As early as 1973, the Supreme Court of North Carolina struggled with the question of when to intervene in matters involving religious bodies. Though its

51. *Id.* The Court also held that such a presumption would be subject to defeasance "upon a showing that the identity of the local church is to be determined by some other means." *Id.*

52. *See id.* at 611; *see also* David Young & Steven Tigges, *Into the Religious Thicket — Constitutional Limits on Civil Court Jurisdiction over Ecclesiastical Disputes*, 47 OHIO ST. L.J. 475, 497 (1986) (noting that the Court's holding that it must "apply neutral principles to decide who constitutes the local congregation" is novel).

53. *Jones*, 443 U.S. at 604 ("The neutral principles method . . . requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church.").

54. *See* Ehrlich, *supra* note 47, at 1079 (noting that the *Jones* decision marked a shift in the deferential attitude of the Court toward adjudicating religious property disputes).

55. *Jones*, 433 U.S. at 604.

56. *See* Young & Tigges, *supra* note 52, at 498 (noting that "[a]fter *Jones*, the courts need not defer to church authorities . . . but can proceed to adjudicate it according to neutral principles, whatever they may be").

decision in *Atkins v. Walker*[57] provided the basis for the court's reasoning in *Harris*,[58] the *Atkins* decision set a precedent that should have resulted in a different outcome in *Harris*. *Atkins* involved a dispute between two factions of the Little Mountain Baptist Church, wherein certain members of the church congregation accused church leaders of taking improper actions that departed from traditionally accepted church doctrine, which entitled the members to take ownership of the church property.[59] At trial, the jury was asked to determine whether the plaintiffs (members of the church) remained "faithful to the doctrines and practices of the Little Mountain Baptist Church recognized and accepted by the Plaintiffs and the Defendants prior to the division"[60] and whether the defendants (church leaders) "departed radically and fundamentally from the characteristic usages, customs, doctrines and practices of the Little Mountain Baptist Church accepted by all members prior to the division."[61]

Ultimately, the Supreme Court of North Carolina held that such a determination constituted a ruling on "ecclesiastical matters," which the nation's highest court forbid in *Presbyterian*.[62] However, it is important to note that the court did not make a sweeping dismissal of all future property disputes brought by conflicting factions of a religious organization. To the contrary, the court held that it was within the authority and the duty of courts to consider and rule on property disputes which can be resolved using "neutral principles of law" as set forth by the Supreme Court of the United States.[63] Furthermore, the court explicitly mapped out two definitively appropriate questions for a civil court to address when considering property disputes involving religious organizations: "(1) [w]ho constitutes the governing body of [a] . . . particular . . . church, and (2) who has that governing body determined to be entitled to use the properties."[64] The *Atkins* court noted that although the plaintiffs alleged that meetings of the church's governing body were conducted improperly—an inquiry the court acknowledged would be appropriate for a civil judiciary—they did not present any evidence to

57. 284 N.C. 306, 200 S.E.2d 641 (1973).

58. Harris v. Matthews, 361 N.C. 265, 272, 643 S.E.2d 566, 571 (2007) (articulating the North Carolina standard for "neutral principles of law" set out in *Atkins*).

59. *Atkins*, 284 N.C. at 307–08, 200 S.E.2d at 642–43.

60. *Id.* at 308, 200 S.E.2d at 643.

61. *Id.*

62. *Id.* at 321, 200 S.E.2d at 651.

63. *Id.* at 319, 200 S.E.2d at 650.

64. *See id.; see also* Harris v. Matthews, 361 N.C. 265, 272, 643 S.E.2d 566, 571 (2007).

support these allegations.[65] Accordingly, the only issues left for the court to decide—whether the church members remained faithful to church doctrine and whether church leaders radically departed from church doctrines and customs—required an evaluation of church doctrines, which the court correctly deemed to be an inappropriate inquiry.[66]

To further accentuate that this decision was not meant to preempt all future court considerations of internal church property disputes, the *Atkins* court strongly emphasized the duty a civil court has to consider such issues:

> It nevertheless remains the duty of civil courts to determine controversies concerning property rights over which such courts have jurisdiction and which are properly brought before them, notwithstanding the fact that the property is church property. Neither the First Amendment to the Constitution of the United States nor the comparable provision in Article I, Section 13, of the Constitution of North Carolina deprives those entitled to the use and control of church property of protections afforded by government to all property owners alike, such as the services of the Fire Department, police protection from vandals and trespassers or access to the courts for the determination of contract and property rights.[67]

It is telling that the court felt compelled to make such a strong statement. In writing this decision, the Supreme Court of North Carolina understood the risk that future courts might interpret the decision as a mandate that courts should not tackle *any* issue regarding property disputes from church organizations. The court's statement illustrates not only that such a result was not intended by the justices, but also that it was a result they felt compelled to combat. As such, *Atkins* should be seen *not* as precluding or even making more difficult the determinations of church property disputes; rather, it should be seen as defining a line between adjudicating based on "neutral principles of law" and ruling on ecclesiastical issues.

In *Harris*, the Supreme Court of North Carolina departed from the underlying logic in *Atkins*. The facts in *Harris* differ from those in *Atkins* in several key ways, indicating that a court could have reached

65. *Atkins*, 284 N.C. at 321, 200 S.E.2d at 651. However, the court noted that there was evidence tending to show that, at certain meetings, votes of non-members were incorrectly counted with the majority, shedding doubt on the idea that the meetings did, in fact, follow their own stated procedures correctly. *Id.*

66. *Id.* at 308, 200 S.E.2d at 643.

67. *Id.* at 318, 200 S.E.2d at 650 (emphasis added).

a decision using "neutral principles of law." To resolve the issue before it, the *Atkins* court needed to evaluate whether the actions of the two parties in the case were true to church doctrines and practices.[68] These questions clearly delved into issues of church doctrine,[69] and thus were ecclesiastical matters inappropriate for court interpretation.[70] By contrast, as Justice Hudson noted in her dissent, the issue in *Harris* was whether the defendants improperly used and disposed of church funds.[71] A strong argument exists that such an inquiry does *not* touch on "ecclesiastical matters" and can, in fact, be decided using "neutral principles of law." One might even argue this is the exact inquiry that the *Atkins* court acknowledged to be within the proper jurisdiction of civil courts. Indeed, the *Atkins* majority specifically held that "[w]here civil, contract or property rights are involved, the courts will inquire as to whether the church tribunal acted within the scope of its authority and observed its own organic forms and rules."[72]

As noted earlier, the *Atkins* court concluded that the plaintiffs could have pleaded (and presented evidence) in a way that would have enabled the court to rule on the matter.[73] Specifically, the court held that the validity of any action taken by an official church body can be contested "by showing that such action was not taken in a meeting duly called and conducted according to the procedures of the

68. *See supra* notes 60–61 and accompanying text (discussing the questions given to the jury at the trial court level).

69. There are some scholars who go so far as to suggest that it is possible and desirable for a court to rule on matters that require interpretation of church bylaws and *written* doctrine. One such scholar compares an inquiry of this kind to court consideration of patent litigation. *See* Ira Mark Ellman, *Driven from the Tribunal: Judicial Resolution of Internal Church Disputes*, 69 CAL. L. REV. 1378, 1412–13 (1981). Most judges are not scientific experts, yet our judicial system gives them the power to read and interpret guidelines of patent law and to interpret the basic meaning of scientific discoveries that are the subject of patent law. Why, then, can we not entrust the judiciary to perform this same type of analysis with respect to religious doctrine and bylaws? If a judge has the intelligence to interpret scientific language, why can he not apply "neutral principles of law" to interpret the language of church agreements, bylaws, and other church documents? This paper will not go so far as to advocate the adoption of the viewpoint discussed therein.

70. *See Atkins*, 284 N.C. at 321, 200 S.E.2d at 651.

71. Harris v. Matthews, 361 N.C. 265, 280, 643 S.E.2d 566, 575 (2007) (Hudson, J., dissenting).

72. *Atkins*, 284 N.C. at 320, 200 S.E.2d at 651. See also discussion of *Jones* accompanying *supra* notes 40–43, noting that it was appropriate for the Court to examine the church's constitution in the Book of Church Order to determine property ownership. The same methods might be useful to examine church financial procedures.

73. *Id.*; *see supra* note 65 and accompanying text.

church, themselves properly adopted and then in effect."[74] Unfortunately for the plaintiffs, the court also held that the plaintiffs neither alleged nor presented evidence to show that the officially established procedures of the church council were not followed properly, and held that the court could not rule on the fairness of the procedures themselves without overstepping the line created by the "neutral principles" doctrine.[75] As such, the court could, and would, have ruled on an issue that required it to rely on and interpret the meaning of church bylaws, had such an action provided a useful tool for settling the controversy, effectively settling a dispute between internal church factions. In *Harris*, however, the court acknowledged no manner by which the plaintiffs could seek relief outside of the church council.[76]

The plaintiffs in *Harris* alleged three specific causes of action—"that defendant converted church funds, breached a fiduciary duty owed to the church and its members, and engaged in a civil conspiracy to convert money and assets of the church"[77]—all of which the majority held to be outside the realm of church issues able to be decided under "neutral principles of law."[78] In doing so, the majority took the position that "[d]etermining whether actions, including expenditures, by a church's pastor, secretary, and chairman of the Board of Trustees . . . [are] proper requires an examination of the church's view of the role of the pastor, staff, and church leaders, their authority and compensation, and church management."[79] However, the majority failed to articulate any reasoning behind this presumption. It seems counterintuitive that a court may use "neutral principles of law" to determine the composition of a congregation,[80]

74. *Atkins*, 284 N.C. at 320, 200 S.E.2d at 651.
75. *Id.* at 321, 200 S.E.2d at 651.
76. *See Harris*, 361 N.C. at 272, 643 S.E.2d at 571.
77. *Id.* at 283, 643 S.E.2d at 577 (Hudson, J., dissenting).
78. *Id.* at 273, 643 S.E.2d at 571.
79. *Id.*

> Because a church's religious doctrine and practice affect its understanding of each of these concepts, seeking a court's review of the matters presented here is no different than asking a court to determine whether a particular church's grounds for membership are spiritually or doctrinally correct or whether a church's charitable pursuits accord with the congregation's beliefs. None of these issues can be addressed using neutral principles of law.

Id.

80. The Supreme Court of the United States sanctioned this action by the Georgia courts in the *Jones* case. Jones v. Wolf, 443 U.S. 595, 606–07 (1979).

or that a church meeting was "conducted according to the [official] procedures of the church[,]"[81] but not to determine whether a pastor expended church funds according to official procedures of the church.

The actions asserted by the *Harris* plaintiffs could be adequately settled using "neutral principles of law." If a civil court has jurisdiction to determine whether a meeting was "conducted according to the procedures of the church,"[82] and further, that such procedures were "properly adopted and then in effect,"[83] then it should follow that such a court must also be within its jurisdiction to review church bylaws to determine whether certain expenditures were properly sanctioned.[84] Otherwise, holding that an issue as simple as the one in *Harris* touches too closely on "ecclesiastical matters" is essentially the equivalent of holding that church constituents with legal rights to the property and funds of the church are afforded no protections by the government.

Significantly, other jurisdictions have taken a much less stringent stance on what constitutes "ecclesiastical matters," rendering the *Harris* decision a national outlier in addition to a departure from past state standards. The idea that a civil court can and should adjudicate matters that involve secular disputes within religious organizations is not a new one among the states. Indeed, many other jurisdictions have a strong history of deciding these types of issues. For example, the Supreme Court of Alabama in *Murphy v. Green*[85] heard and decided a case that turned on the question of whether a former pastor and other church officials had converted church funds to support an outside organization.[86] The Alabama court ruled that, although the issues in the case may have arisen due to spiritual differences, the issue to be resolved was an inherently civil dispute involving issues of property ownership and trusteeship.[87] Applying *Presbyterian*, the court held that, "[b]ecause the resolution of these issues requires a court merely to review church records and incorporation documents, without delving into spiritual matters, there is no constitutional bar to

81. The Supreme Court of North Carolina acknowledged this issue to be a correct consideration for civil courts in *Atkins*. Atkins v. Walker, 284 N.C. 306, 320, 200 S.E.2d 641, 651 (1973).

82. *Id.*

83. *Id.*

84. *See Harris*, 361 N.C. at 283, 643 S.E.2d at 577 (Hudson, J., dissenting).

85. 794 So.2d 325 (Ala. 2000).

86. *Id.* at 329.

87. *Id.* at 330.

a court's hearing this case."[88] The *Harris* court could have come to the same resolution.

Another Alabama case, *Abyssinia Missionary Baptist Church v. Nixon*,[89] took an even stronger stand on this issue. The Supreme Court of Alabama in that case ruled that the trial court erred in dismissing a case brought by former members of a church alleging wrongful expulsion from the congregation for lack of subject matter jurisdiction.[90] Again applying *Presbyterian*, the court ruled that "there are civil, as opposed to ecclesiastical, rights which have cognizance in the courts. A determination of whether the fundamentals of due process have been observed can be made in the judicial arena."[91]

Additionally, courts in other states have frequently interpreted *Presbyterian* to mean that it is within the jurisdiction of a civil court to rule on whether a pastor was terminated by and with the proper church authority.[92] Such cases turn on an analysis of church bylaws and other written documents and, as such, are analogous to certain inquiries which are proper for courts to make in matters of church property disputes. For example, in the Illinois case *Ervin v. Lilydale Progressive Missionary Baptist Church*,[93] an action was brought by a pastor who was removed from his position by a vote of the church board.[94] The pastor alleged that the church bylaws specified that a pastor could only be removed upon a vote of the entire

88. *Id.*

89. 340 So.2d 746 (Ala. 1976); *see also In re* Galilee Baptist Church, 186 So.2d 102, 106-07 (Ala. 1966) (holding that it was proper for a court to rule on the procedures followed at a church congregational meeting). The *Galilee* court held that adequate notice must be given to all members when a congregational meeting involving business transactions takes place. *Id.* at 105–07. A court may also rule on whether the meeting was conducted in an orderly manner, and whether the expulsion of a member is valid based on church rules and regulations. *Id.*

90. *Nixon*, 340 So.2d at 747–48.

91. *Id.* at 748. Likewise, in a case very similar to *Harris*, the Tenth Court of Appeals of Texas, Waco, upheld a verdict against a former pastor and his wife for fraud, constructive fraud, and conversion—claims very similar to those pled in *Harris*. *See* Libhart v. Copeland, 949 S.W.2d 783, 790 (Tex. App. 1997).

92. *See generally* Vincent v. Raglin, 318 N.W.2d 629, 634 (Mich. App. 1981) (remanding the case to the trial court to determine whether a pastor was properly terminated); Tibbs v. Kendrick, 637 N.E.2d 397, 402 (Ohio App. 1994) (holding that, in a congregational church, "a civil court retains jurisdiction to determine whether the decision concerning 'who shall preach from the pulpit' was made by the proper church authority"); Williams v. Wilson, 563 S.E.2d 320, 323 (S.C. 2002) (holding that the trustees in this case had no authority to dismiss the pastor because such an act was the exclusive prerogative of the church membership).

93. 813 N.E.2d 1073 (Ill. App. 2004).

94. *Id.* at 1074.

congregation—an act that did not occur in his case—and brought suit to enforce adherence to those bylaws.[95] The trial court ruled that the decision of the church board members was an ecclesiastical one, and thus was outside the jurisdiction of the court.[96] However, the Supreme Court of Illinois overruled the lower court and held that the church board did not have the proper authority to remove the pastor without the vote of the congregation.[97] The Supreme Court of Illinois recognized that it was proper for a civil court to interpret church bylaws when settling a dispute. An inquiry into similar church documents in *Harris* would have allowed the court to reach a decision settling the property dispute. Specifically, the *Harris* court could have examined the bylaws to the church's corporate structure or other instructive documents to determine the financial structure of the church organization. Such an inquiry could have shed light on the appropriate use of church funds, allowing the court to make a ruling on whether they were inappropriately used by the defendants.

The history in both North Carolina and other states indicates that congregations, religious organizations, and church members turn to civil courts for resolution of many issues, particularly those in which they feel they have been wronged and have no other avenue by which to pursue relief. Commentator Ira Ellman stated,

> It would be simple indeed to deal with all of these conflicts with a policy of noninvolvement .... But courts serve neither the church nor its members by placing their affairs in a special law-free zone. Law-free is also lawless, and the consequence is that neither the faithful, nor the church or those with which it deals, can rely on the other parties playing by the rules, for there are then no enforceable rules .... The solution most of the time is to honor internal church agreements just as a court would honor the internal agreements of a secular organization.[98]

As this Recent Development has argued, the practical effect of the Supreme Court of North Carolina's recent holding in *Harris* is to deny religious organizations these civil protections. The allegations in the *Harris* case—specifically the property conversion claims—are very similar to the allegations presented by and against religious organizations in other states, and can be decided based on "neutral principles of law." By refusing to hear the *Harris* case due to First

95. *Id.*
96. *Id.*
97. *Id.* at 1077–78.
98. Ellman, *supra* note 69, at 1444.

Amendment concerns, the North Carolina court has misconstrued the breadth of protection afforded to religious bodies. As courts in other states have recognized, a court is not ruling on "ecclesiastical affairs" when it merely interprets church bylaws or examines church financial records.[99] An inquiry of that kind would have resolved the dispute in *Harris*.

The Supreme Court of North Carolina's refusal to hear the *Harris* case signals a sad future for religious bodies hoping to settle civil disputes in a court of law in the state of North Carolina. To deny that a civil court is justified in interpreting church bylaws and other written governance documents effectively prevents any church-related claim from reaching the trial stage, effectually granting total civil immunity to all church officials when any religious entanglement question surfaces.[100] While a clear argument against such a policy points to instances of abuse of power from officials within the organization, perhaps a more nuanced argument against such a policy is that it robs both members and organizations of their due process rights. As one scholar has articulated, "the [price] of immunity . . . is denying church members ordinarily available remedies, solely on the account of the religious nature of the organization in which the corporation, contract, or trust dispute arose."[101]

Moreover, many church congregations, including ones ultimately governed by hierarchical organizations, have chosen a primarily democratic structure by which to conduct their insular activities.[102] In such situations, denying religious organizations their day in civil court seems even more outrageous as it withholds democratic protections from bodies that have voluntarily chosen a democratic structure. Indeed:

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99. *See, e.g.*, Abysinnia Missionary Baptist Church v. Nixon, 340 So.2d 746, 748 (Ala. 1976).

100. *See generally* Frederick Mark Gedicks, *Towards a Defensible Free Exercise Doctrine*, 68 GEO. WASH. L. REV. 925, 952 (2000) ("[T]he time has come to abandon the religious exemption doctrine and construct a more plausible and defensible doctrine that takes account of the regrettably diminished place of religion in contemporary society.").

101. Ellman, *supra* note 69, at 1383. Ellman also notes that the goal of "avoidance of judicial involvement in church disputes . . . is not achieved by deference to the hierarchy." *Id.* at 1411. Further, he points out that "[d]eference is also intervention, since it asserts the authority of the state into an internal church dispute in support of one faction," the church hierarchy. *Id.* Finally, Ellman notes that the mere fact that a court "avoid[s] hearing the parties' evidence . . . hardly means that there is no intrusion" by the court into church affairs. *Id.*

102. For the proposition that Baptist churches are governed by a majority vote of their congregations, see Atkins v. Walker, 284 N.C. 306, 312, 200 S.E.2d 641, 645–46 (1973); Reid v. Johnston, 241 N.C. 201, 212, 85 S.E.2d 114, 123 (1954); Dix v. Pruitt, 194 N.C. 64, 69, 138 S.E. 412, 415 (1927).

> [A] court should not impose a hierarchy on members who have chosen a democratic structure. If the Constitution bars the government, through its courts, from imposing a democratic polity upon a church that prefers an absolute hierarchy, then surely it also bars the courts from imposing an absolute hierarchy upon a church that has chosen to give its ruling authorities more limited power.[103]

Critics would argue that the application of "neutral principles of law" to interpret any church document, secular in nature or otherwise, verges on ruling on ecclesiastical matters. A concern of this nature is not completely without merit—the line between ecclesiastical and lay matters is admittedly a fine one. An argument that any interpretation of church documents assumes a greater understanding of the wider doctrine of the church may be legitimate in a great number of cases. However, an absolute, preemptive ban on adjudication of these matters is extreme, to say the least. The argument that it is desirable to afford religious organizations the rights and benefits of average citizens and organization is "too obvious to require extended discussion; after all, we normally do enforce private contractual arrangements, and the belief that such enforcement is appropriate and necessary is rather basic to common law jurisprudence."[104]

The Supreme Court of the United States, in writing its *Presbyterian* decision, did not intend to preclude all matters connected to a religious organization from receiving the protections afforded by state and federal law. Neither did the Supreme Court of North Carolina in *Atkins v. Walker* intend to deprive religious institutions the protections of state government regulation of their secular interests. However, the Supreme Court of North Carolina's decision in *Harris v. Matthews* marked a departure from both *Presbyterian* and *Atkins* and effectively took away the protections contemplated both by its own precedent and the Supreme Court of the United States. It is understandable that the Supreme Court of North Carolina acted with caution in its holding, as the protections afforded to religious bodies by the First Amendment are strong and should not be taken lightly. Nevertheless, it was simply not necessary to strip religious organizations of their rights to have civil matters determined and resolved by a court of law in order to protect their First Amendment rights. The court's decision in *Harris* places

103. Ellman, *supra* note 69, at 1404.
104. *Id.* at 1402.

religious organizations in North Carolina in a precarious position. In the future, such organizations may find themselves without weapons to combat internal injustice other than the potentially biased ones afforded by their organizations.

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