

Courts, Church Disputes, and the First Amendment

Just like other organizations, churches can sue and be sued. Much of the time religious doctrine is not relevant to the dispute, such as when a contractor does a shoddy job building the sanctuary, when the church's neighbor contests a boundary, or when the church's van gets into a collision. But sometimes disputes can hinge on, or at least involve, the organization's beliefs, principles, creeds, or canons. Usually that happens in internal disagreements—actions among the church and its members, officers, directors, or leaders; or between an individual assembly and the larger organizing body. In such cases, the authority of secular courts to decide the outcome is sharply limited by the Free Exercise and Establishment clauses of the [First Amendment](#) to the United States Constitution.

Analyzing a church's internal property dispute, the U.S. Supreme Court stated decades ago that

[F]irst 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. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.

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

When such conflicts arise in North Carolina civil actions, our courts must ask the following: May the court resolve the dispute using only neutral principles of law? If so, the First Amendment does not prohibit the court from exercising jurisdiction. If, instead, deciding the issue would entangle the court in ecclesiastical matters, the court must decline to intervene. See *Harris v. Matthews*, 361 N.C. 265, 274 (2007). "The dispositive question is whether resolution of the legal claim requires the court to determine or weigh church doctrine." *Smith v. Privette*, 128 N.C. App. 490, 494 (1998).

North Carolina's appellate courts have not, of course, had the opportunity to subject every type of internal church dispute to this test. But there are plenty of examples of how it applies—many quite recent—and these are some of the key conclusions:

- **Courts may not decide who is or is not a church member.**

In [Tubiolo Abundant Life Church, Inc.](#), 167 N.C. App. 324 (2004), the plaintiffs' membership was terminated "based on scriptural discipline." The Court of Appeals held that the courts could not decide whether this decision was doctrinally correct:

Membership in a church is a core ecclesiastical matter. The power to control church membership is ultimately the power to control the church. It is an area where the courts of this State should not

become involved. This stricture applies regardless of whether the church is...congregational..., incorporated or unincorporated, or...hierarchical[.]

Id. at 328; see also [Vuncannon v. North Carolina Inst. of Christian Dev., Inc.](#), 723 S.E.2d 584 (2012) (unpub'd) (court had no authority to decide if plaintiffs were members per the defendant organization's religious tenets).

Likewise, the court very recently held that there was no jurisdiction over a challenge to church actions that depended on whether plaintiffs had properly been removed as "registered members." To decide this, the court would have had to interpret ecclesiastical language within the church's bylaws, which required members, among other things, to "believe[] that our Lord Jesus Christ is the Savior", to "diligently work to promote the mission of the [church]", and to refrain from "disruptive or divisive action" and "misconduct or immoral behavior." [Azige v. Holy Trinity Ethiopian Orthodox Tewahdo Church](#), 790 S.E.2d 570, 574–75 (2016).

- **Courts generally may not adjudicate whether church funds have been misused.**

A pastor's misuse of funds was plaintiffs' primary allegation in [Davis v. Williams](#), 774 S.E.2d 889 (2015). Although acknowledging that the allegations of conversion and embezzlement were "indeed troubling", the court concluded that they were not reviewable. Instead, "the Constitution requires courts to defer to the church's internal governing body with regard to ecclesiastical decisions concerning church management and use of funds." *Id.* at 893. The court relied on the Supreme Court's analysis in [Harris v. Matthews](#), 361 N.C. 265, 274 (2007). In *Harris*, members accused the pastor of converting church funds. The majority concluded that,

Determining whether...expenditures...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. Because a church's religious doctrine and practice affect its understanding of each of these concepts, seeking...review of the matters...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. at 273.

- **Courts may not resolve property rights disputes that turn on doctrine.**

After a church congregation split, the two factions differed as to which of them remained faithful to church "usages, customs, doctrines and practices," and, therefore, which of them was entitled to certain use of church property. The Supreme Court declared that "[p]ressed to its logical conclusion, such a judicial inquiry becomes a heresy trial. Such trials may not properly be conducted by any civil court, state or Federal, in view of the First Amendment[.]" [Atkins v. Walker](#),

284 N.C. 306, 318 (1973).

- **Courts are allowed to decide negligent supervision claims related to sexual misconduct.**

In [Smith v. Privette](#), 128 N.C. App. 490 (1998), several of the church's clerical staff sued the church based on alleged sexual harassment and sexual contact by the pastor. The Court of Appeals reversed the trial court's order dismissing the claim. The court explained,

[T]he decision to hire or discharge a minister is inextricable from religious doctrine and protected by the First Amendment from judicial inquiry. We do not accept, however, that resolution of the Plaintiffs' negligent retention and supervision claim requires the trial court to inquire into the Church Defendants' reasons for choosing [the pastor] to serve as a minister. The Plaintiffs' claim, construed in the light most favorable to them, instead presents the issue of whether the Church Defendants knew or had reason to know of [his] propensity to engage in sexual misconduct...conduct that the Church Defendants do not claim is part of the tenets or practices of the...Church. Thus, there is no necessity for the court to interpret or weigh church doctrine in its adjudication of the Plaintiffs' claim for negligent retention and supervision. It follows that the First Amendment is not implicated and does not bar the Plaintiffs' claim against the Church Defendants.

Id. at 495.

Just last year, the Court of Appeals applied *Privette* in a suit against a diocese, bishop, and priest for the priest's sexual assault on a minor parishioner. The court held that the issue was purely secular, governed by neutral principles of law, and thus subject to court review. [Doe v. Diocese of Raleigh](#), 776 S.E.2d 29, 39 (2015). At the same time, however, the court held that plaintiff's claim that the diocese and bishop were negligent in not requiring the priest to undergo STD testing was not reviewable because it would require analysis of the degree of a bishop's control over a priest. *Id.* at 40; *cf. Bell v. Presbyterian Church*, 126 F.3d 328, 332–33 (4th Cir. 1997) (no review of termination of minister which would require court to assess church's funding decisions).

- **Courts generally are allowed to review violations of corporate formalities and bylaws.**

In [Johnson v. Antioch United Holy Church, Inc.](#), the defendant church had been incorporated under [Chapter 55A](#), the North Carolina Nonprofit Corporation Act. Plaintiff, a founding member, alleged a number of ongoing failures to comply with both the Act and the bylaws. The plaintiff further alleged that the church removed her from membership without complying with the Act and that such action caused her severe emotional distress. The court held that determining whether the church's actions complied with the Act and the bylaws could be done by applying neutral principles of law, and thus the trial court erred in dismissing the action. 214 N.C. App. 507, 511–12 (2011). The court relied in part on *Tubiolo*, discussed above, which held that, although a court cannot review a membership decision, it could decide the "very narrow issue" of whether the termination process

was done without compliance with the bylaws. *Tubiolo*, 167 N.C. App. at 164–65. *But see* [Emory v. Jackson Chapel First Missionary Baptist Church](#), 165 N.C. App. 489 (2004) (no jurisdiction over compliance with bylaws in decision about church structure where plaintiff’s property rights not substantially affected).

The court recently reached a similar result in *Davis*, discussed above, when it concluded that a court could review whether a church violated its bylaws in conducting a vote to amend them. The court noted that it is “well-established 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.’” *Davis*, 774 S.E.2d at 892 (quoting *Harris*, 361 N.C. at 274–75).

Grievances within religious organizations will always exist. Whether our courts are a forum for airing them, however, is a matter of First Amendment analysis. Thoughts about these cases? Experiences in similar matters? Let us know.