

RELIGION LAW

Expert Analysis

The Parameters of Ecclesiastical Abstention

By Barry Black and Hillary Byrnes

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At its heart, the ecclesiastical abstention doctrine, rooted in the First Amendment's Establishment Clause and Free Exercise Clause and established by U.S. Supreme Court precedent, prohibits secular courts from resolving disputes that involve religious doctrine. For example, a secular court may not interpret the religious precepts of denominational canons, the Quran, or the Talmud.

Beyond religious doctrine, abstention requires secular courts to abstain from resolving disputes by considering questions of religious practice, tradition, custom, discipline, governance,

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and administration. See Barry Black and Jonathan Robert Nelson, *The Complex Relationship Between a Hierarchical Denomination and its Local Churches*, New York Law Journal (May 17, 2024).

Neutral Principles of Law

Not every religious dispute, however, is beyond the reach of civil courts. The U.S. Supreme Court has made it clear that courts may rule on issues that can be determined solely upon the application of “neutral principles of law.”

Specifically, the Supreme Court condoned the use of neutral principles of law because it is “completely secular in operation,

and yet flexible enough to accommodate all forms of religious organization and polity,” and it therefore presents “promise of nonentanglement and neutrality.” *Jones v. Wolf*, 443 U.S. 595 (1979).

The neutral principles method allows secular courts to resolve

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religious disputes by wholly avoiding anything religious and considering only secular evidence. As the Supreme Court noted in *Jones v. Wolf*, “[t]he 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. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts.”

Accordingly, New York’s Court of Appeals sanctioned a secular court’s review of church documents: “[i]n applying neutral principles, the focus is on the language of the deeds, the terms of the local church charter, 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.” *First Presbyterian Church v. United Presbyterian Church*, 62 N.Y.2d 110, 122 (1984).

Secular courts can, and routinely do, examine religious documents in an effort to make determinations based upon neutral principles of law. In *Avitzur v. Avitzur*, 58 N.Y.2d 108 (1983), the Court of Appeals sanctioned a secular court’s reliance upon a ketubah, a purely ecclesiastical document, written in Hebrew-Aramaic, which is executed as part of a Jewish marriage ceremony.

The court held that “[t]he fact that the agreement was entered into as part of a religious ceremony does not render it unenforceable,” and just because

“the obligations undertaken by the parties to the Ketubah are grounded in religious belief and practice does not preclude enforcement of its secular terms.”

But there is a caveat: in a case involving the question of congregational membership as determined by the congregation’s bylaws, the Court of Appeals explained that the neutral principles approach is limited to cases in which *no* interpretation of ecclesiastical doctrine is required. While courts may rely on a congregation’s internal documents, such as bylaws, they may do so only if the examination of those documents does not necessitate delving into religious principles.

In that particular case, the bylaws conditioned membership on religious adherence, such as following in the “ways of the Torah,” thus rendering the dispute inherently ecclesiastical and nonjusticiable. *Matter of Congregation Yetev Lev D’Satmar, Inc. v. Kahana*, 9 NY3d 282 (2007).

It is worth noting that ecclesiastical abstention is not intended to be a convenient way for a court to reduce its docket; a court should abstain only when it *must*. As the U.S. Supreme Court explained so long ago, “[r]eligious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their

rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints.” *Watson v. Jones*, 13 Wall [80 US] 679 (1871).

The law is the law, and even religious organizations must comply. While secular courts have no jurisdiction over matters which concern “theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,” civil disputes occurring within religious organizations “*must* be determined by the ordinary principles which govern voluntary associations” (emphasis added).

As noted earlier, *Jones v. Wolf*, too, held that courts are *required* to adjudicate a matter that is determinable by neutral principles of law. And, in New York, the *Kahana* decision likewise held that “[t]he ‘neutral principles of law’ approach *requires* the court to apply objective, well-established principles of secular law to the issues” (emphasis added) in resolving disputes.

Contract and Tort Disputes in Religious Organizations

What about, for example, contract disputes between clergy and congregations, or defamation claims arising out of disciplinary proceedings? Must courts abstain pursuant

to the ecclesiastical abstention doctrine, or can they adjudicate these disputes by the application of neutral principles of law?

The U.S. Supreme Court has yet to answer these questions. In *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012), the court held that the

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“Ministerial Exception” under the First Amendment protects a religious institution's autonomy in selecting and managing its ministers. But the court expressly limited the holding to employment discrimination suits brought by ministers against their employers.

The court stated that it “express[ed] no view on whether the [ministerial] exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers,” leaving open for future consideration the question of whether the other legal claims, such as tort or contract disputes, may be adjudicated by courts.

In leaning on *Hosanna Tabor*,

some states bar contract disputes filed by clergy against their congregation for wrongful termination, holding that, the existence of a written contract notwithstanding, a secular court may not force an unwanted minister upon a congregation. Likewise, some states hold that church disciplinary proceedings are sacrosanct ecclesiastical proceedings, and immune from suit.

New York courts have heard and resolved dozens of disputes between clergy and their congregations. While the hiring and firing of clergy is purely ecclesiastical in nature and therefore outside of the authority of a congregation's board of trustees under the Religious Corporations Law Section 200, the termination of clergy often involves the trustees in one form or another.

Ultimately, however, the members have the final authority to decide upon their clergy. Disputes that end up in court therefore often involve the minister, trustees, and congregational members.

‘Kamchi v. Weissman’

One such case involved a rabbi who was under contract with his congregation. A group of members petitioned the board to schedule a member meeting so that a vote could be had on renewing the rabbi's contract. But the board refused, insisting it had the authority to determine

whether to present the question of renewal to the congregation.

The members sued, alleging that the board had improperly prevented them from extending the rabbi's contract, from choosing their spiritual leader, in violation of both Religious Corporations Law Section 200 and the congregation's bylaws. The Supreme Court, Rockland County, dismissed the complaint, concluding that neither Section 200 nor the congregation's bylaws prohibited the board from making the determination not to renew or extend the rabbi's contract. The plaintiffs appealed.

The Second Department reversed, holding that the “Religious Corporations Law and the Congregation's bylaws do not grant the Board the power to make the determination to remove a rabbi.” *Kamchi v. Weissman*, 125 A.D.3d 142 (2d Dep't 2014). Moreover, the court allowed the cause of action for defamation, alleging the board had defamed the rabbi, to proceed to trial, finding that there was no qualified privilege because evidence was introduced to show malice, which defeated the privilege.

In *Kamchi*, the Second Department ruled on a clergy-congregation dispute involving both contract and defamation claims. In doing so, the court did not abstain from ruling on grounds of ecclesiastical

abstention; it did not take the position that this was an internal dispute within a congregation which is better left for the congregation to work out on its own or in a religious tribunal. Instead, the court closely examined New York law, the congregation's bylaws, and the Rabbi's contract.

It resolved the entire dispute by utilizing purely neutral principles of law, not once considering anything ecclesiastical or interfering with the congregation's internal governance. Indeed, an argument can be made that the court served to *enforce* the congregation's chosen form of governance, as reflected in its bylaws.

'Laguerre v. Maurice'

In *Laguerre v. Maurice*, 192 A.D.3d 44 (2020), the plaintiff, Pierre Delor Laguerre, a former elder of the Gethsemane Seventh Day Adventist Church, brought a defamation claim against the defendant, Pastor Jean Renald Maurice, who was the church's pastor.

The case arose from allegedly defamatory statements made by Maurice during a church membership meeting—allegedly specially called for the purpose of disciplining

Laguerre and revoking his church membership—accusing Laguerre of being a homosexual and of viewing gay pornography on the church's computer. These accusations were significant because the church manual classified "homosexual activity" and the use of "pornographic material" as grounds for disciplinary action.

The court addressed the issue of whether the ecclesiastical abstention doctrine barred the defamation claim. The defendants argued that adjudicating the claim would require the court to impermissibly delve into internal church governance and religious doctrine.

However, the court held that the dispute could be resolved using neutral principles of law, as the defamatory statements could be evaluated without reference to religious doctrine. The court emphasized that Laguerre was not challenging his expulsion from the church or seeking reinstatement as an elder, which would have necessitated an inquiry into religious doctrine. *Laguerre v. Maurice*, 192 A.D.3d 44.

Was *Laguerre* decided correctly? As noted at the outset, the ecclesiastical abstention doctrine prohibits a court from not only

considering doctrine in resolving religious disputes but from becoming involved in a church's internal governance, particularly disciplinary proceedings.

As the U.S. Supreme Court said in *Watson*, "[a]ll who unite themselves to such a [church] body do so with an implied consent to [the church's] government, and are bound to submit to it." When Laguerre joined the church, he understood he would need to submit to its doctrine and would be subject to its discipline. Should the court therefore have abstained?

Conclusion

The parameters of ecclesiastical abstention are unclear. The U.S. Supreme Court has denied several petitions for certiorari that sought clarity on the question of abstention in tort and contract contexts. New York's courts intermediate appellate courts seem to have applied abstention sparingly, and the Court of Appeals has yet to speak definitively on the subject. As the Supreme Court said in *Hosanna Tabor*, "[t]here will be time enough to address the applicability of [abstention with tort and contract claims] if and when they arise."