

RELIGION LAW

Expert Analysis

Clergy Contracts and the Ministerial Exception

By Barry Black

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In our last column, we focused broadly on the ecclesiastical abstention doctrine and its applicability to contract and tort claims. See Barry Black and Hillary Byrnes, *The Parameters of Ecclesiastical Abstention*, New York Law Journal (October 03, 2025). Today we consider the more nuanced question of whether the Ministerial Exception prohibits courts from adjudicating contract disputes between clergy and their congregations.

Since the United States Supreme Court adopted the doctrine of ecclesiastical abstention in *Watson v. Jones*, 13 Wall 679 (1871), prohibiting courts from reviewing ecclesiastical determinations,

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there has been uncertainty concerning the extent of the doctrine's application. Nearly a century-and-a-half later, the court delivered its opinion in *Hosanna-Tabor Evangelical Lutheran Church & Sch. V. EEOC*, 565 US 171 (2012). Leaning on *Watson's* holding that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judiciatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them," a unanimous court formally adopted the ministerial exception.

Because the First Amendment's "wall of separation between church and state" requires secular courts to stay out of a church's ecclesiastical affairs, the legislature's antidiscrimination statutes cannot be held by the courts to, in effect, force upon a church an unwanted minis-

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ter. For example, if a church declines to engage a female or gay minister, no court may apply the provisions of Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin, to force the church to hire that minister.

With the extension of abstention principles to the employment context, courts are now

divided on whether contract claims by clergy against a church are barred by the ministerial exception.

The Watsonian Dichotomy and Bifurcation

Watson drew a dichotomy between a church's protected sphere of ecclesiastical autonomy and the reality that churches exist and function in a mundane, secular world. On the one hand, the courts are forbidden from reviewing a church's ecclesiastical judgments. "It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

On the other hand, *Watson* recognized that criminal and civil disputes fall within the realm of the civil courts and not that of churches, noting that if a "[c]hurch should undertake to try one of its members for murder, and punish him with death or imprisonment, its sentence would be of no validity in a civil court or anywhere else." Likewise, if a church would "at the instance of one of its members entertain jurisdiction as between

him and another member as to their individual right to property, real or personal, the right in no sense depending on ecclesiastical questions, its decision would be utterly disregarded by any civil court where it might be set up."

The notion that courts retain full jurisdiction over all matters secular would later be refined and clarified by the Supreme Court in *Jones v. Wolf*, 443 US 595 (1979). There, the court held that secular courts may resolve civil disputes involving religious organizations by applying "neutral principles of law." This includes even analyzing religious documents, such as church constitutions or canons, so long as the court avoids reviewing any ecclesiastical portions of those documents. This important clarification establishes that abstention is not necessarily categorical. Instead, it is individualized to things that are of spiritual character, even if only a small part of a larger whole. Thus, the Watsonian dichotomy may be applied not only to legal disputes at large, but even narrowed down to the examination of individual documents.

While secular courts must categorically abstain, for example, from questioning or overturning the ecclesiastical

ruling of a church's highest judicatory, *Jones* requires courts to scrutinize even spiritual documents for their secular content. New York's courts have repeatedly recognized that institutions, documents, and people, have both spiritual and secular natures, each treated differently by the law. Indeed, the Court of Appeals noted that "[c]onstitutional problems are avoided because the Religious Corporations Law governs a religious corporation's temporal affairs, while spiritual affairs remain with the religion's leadership." *Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 31 AD3d 541, 543 (2d Dep't 2006).

The Court of Appeals has routinely bifurcated disputes, issues, and documents into ecclesiastical and secular segments as part of the neutral principles of law analysis. In *First Presbyt. Church v. United Presbyt. Church*, 62 NY2d 110 (1984). The court scrutinized the Presbyterian Church's Book of Order, noting that it "may look only to provisions relating to property and it must interpret them in a secular light." In *Episcopal Diocese of Rochester v. Harnish*, 11 NY3d 340 (2008), the court considered the Episcopal Church's Dennis Canon, which dealt with churches

holding property in trust for a diocese. Finally, in *Avitzur v Avitzur*, 58 NY2d 108 (1983), the court analyzed the dispute resolution provision of a ketubah—a Jewish marriage document, written in ancient Aramaic, and which subjects the parties to the “laws of Moses and Israel.”

Ministers and congregations who avail themselves of an employment agreement should be held to its secular terms

Nevertheless, the Court of Appeals held that this provision could be analyzed via neutral principles and enforced, because “the provisions of the Ketubah relied upon by plaintiff constitute nothing more than an agreement to refer the matter of a religious divorce to a nonjudicial forum. Thus, the contractual obligation plaintiff seeks to enforce is closely analogous to an antenuptial agreement to arbitrate a dispute in accordance with the law and tradition chosen by the parties.”

Hosanna Tabor’s Application to Contract Disputes

Hosanna-Tabor involved a discrimination suit filed

by a dismissed narcoleptic ministerial employee. The church employer argued that the plaintiff had been fired because her threats to sue violated tenets of their faith and that enforcing the antidiscrimination statutes would constitute a free exercise violation. The Supreme Court, however, declined to take this road in resolving the case. Instead, the court turned to ecclesiastical abstention jurisprudence, holding that the church’s ecclesiastical freedom was impaired by employment discrimination law—that these laws in effect force upon churches unwanted ministers. Yet *Hosanna-Tabor* stopped short in limiting its holding to antidiscrimination suits, noting that “[w]e express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers.”

Predictably, courts are divided on this question. New York courts have shown a willingness to involve themselves in ministerial disputes. In *Mills v. Standing Gen. Commn. on Christian Unity & Interreligious Concerns* a New York court declined to evaluate the claims of a non-contracted at-will minister, suggesting

that claims under a contract would be enforceable. However, other state courts have reached the opposite conclusion. For example, in *Reese v. Gen. Assemblies of Faith Cumberland Presbyterian Church*, a Texas appellate court invoked the ministerial exception as grounds for refusing to hear a breach of contract claim involving a ministerial employee, on the grounds that it would be forcing an unwanted minister on the members of a church. Notably, both Texas and New York claim to follow the neutral principles of law approach.

Hosanna-Tabor relied on cases that specifically singled out ecclesiastical decisions. Thus, the court was harkening to the dichotomy introduced in *Watson*, later refined in *Jones*, between a church’s spiritual and temporal facets: judicial interference with a church’s spiritual functions is prohibited, but its civil activities in a mundane world are subject to temporal laws.

In the words of *Hosanna-Tabor*, the First Amendment’s Religion Clauses ensure that government has “no role in filling ecclesiastical offices.” In other words, employment discrimination claims are not barred simply because they involve a minister, but because

of the minister's ecclesiastical role. A church would be unlikely to succeed in invoking the ministerial exception in a lawsuit by an ordained minister who served exclusively as the church's accountant.

How, then, does this analysis carry over to clergy contract disputes? When a church enters into a contract with its minister, is it engaging in an ecclesiastical prerogative or judgement? The answer is likely no. While a Catholic bishop has the spiritual power to dismiss a priest, and a Jewish congregation has the power to appoint a rabbi, neither party has the spiritual power or right to create an employment contract. Contracts are creatures of civil law, not canons or religious doctrine. For example, clergy-congregation employment agreements typically:

- are governed and adjudicated by common law contract principles;
- are subject to the laws of the state in which the contract is to be performed;
- contain much the same content and form that secular contracts do;

- envision disputes and contain dispute resolution clauses; and
- contain choice of law and venue clauses.

Both the church and the minister voluntarily avail themselves of the privileges and responsibilities imposed by a secular legislature and subject themselves to the jurisdiction of secular courts for perceived mutual benefit. Moreover, the contract is not between the church's spiritual body and minister, but between the minister as an *employee* and the church as a corporate *employer*.

Since secular courts are permitted to consider even ecclesiastical documents, focusing only on the secular content, it seems inconsistent to prohibit those same courts from reviewing largely (if not exclusively) secular employment agreements merely because they are between clergy and congregations. Abstention in this context seemingly disregards *Watson's* exhortation that churches have little say in criminal or civil matters.

Moreover, abstention would give churches the one-sided power to void their own contracts, effectively giving them authority over civil claims that may establish religion by giving these institutions their own judicial authority, and hampering the free exercise rights of ministers. A proper understanding of *Watson's* dichotomy and *Jones's* bifurcation avoids these constitutional conundrums and preserves the secular rights and expectations of all those involved in religious life.

Conclusion

The divine relationship between a congregation and its minister is sacrosanct, and unquestionably outside of government's reach. But those same parties are also subject to temporal realities, such as criminal and civil laws imposed by government. It logically follows, therefore, that ministers and congregations who avail themselves of the civil device known as an employment agreement should be held to its secular terms.