CONTEXTUAL BENEFITS OF A NEUTRAL PRINCIPLES APPROACH TO RELIGIOUS PROPERTY DISPUTES

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INTRODUCTION

Religious property disputes raise an assortment of issues both practical and constitutional. Should civil courts be able to decide these disputes, and if so, under what circumstances? What is the role of the doctrine of "church autonomy" in these disputes?[1] Can "neutral principles of law" help courts decide these cases, and if so, what issues might arise?[2] What should happen when no civil court and no religious body has jurisdiction over a claimant's case?

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1. This Article uses the term *church autonomy* which has become a term of art in these situations. The term is Christocentric and underinclusive because it applies to all religions but uses the Christocentric term *church*. For the sake of clarity, I have used the term because it is an ingrained term of art. I do, however, far prefer the term *religious autonomy* or the term *autonomy of religious institutions*, and may at some point write a bit more about why, but that is not the purpose of this Article.

2. *See generally* Greenawalt, *infra* note 5 (discussing the concept of neutral principles of law).

None of these questions have an easy answer, and each is fraught with constitutional, policy, and other concerns. Thankfully, there is a significant amount of scholarship addressing these issues from a variety of perspectives.[3] There is also a significant amount of case law that does the same.[4] This Article asserts that, although far from being perfect, the use of neutral principles of law is the best way to answer property disputes involving religious entities. In fact, this Article argues that the use of neutral principles in resolving religious property disputes is sometimes preferable to relying on religious hierarchies.[5]

Finally, this Article argues that some courts have interpreted the neutral principles of law concept too narrowly. In fact, in situations where contractual or other property related documents contain religious language with a meaning commonly understood between the parties it is okay to use neutral contract or property principles to apply that language.[6] When there is no meaning commonly understood between the parties, or for some other reason the court would be required to interpret rather than simply apply a religious term, a civil court might have to dismiss the case unless some other neutral principle of law would help the court decide the case.[7] This Article will proceed in three parts. Part I provides background on religious property disputes and the evolution of the neutral principles of law approach. Part II explores some of the criticisms of the neutral principles approach and explains why a neutral principles approach is most useful when viewed contextually rather than as a general approach for deciding all cases involving religious topics or entities. Part III suggests that the neutral principles approach is the best approach in the context of religious property disputes. Acknowledging that it is the "best approach," however, is not the same as saying it is

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3. *See infra* notes 76–92 and accompanying text.

4. *See infra* notes 8–22 and accompanying text.

5. For an excellent discussion of the benefits and shortcomings of the neutral principles approach in achieving ecclesiastical abstention see, Kent Greenawalt, *Hands Off! Civil Court Involvement in Conflicts over Religious Property*, 98 COLUM. L. REV. 1843 (1998). For a powerful argument in favor of an approach relying on trust, property, and contract doctrine rather than deference to religious hierarchies see, Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 ARIZ. L. REV. 307 (2016).

6. *See infra* Part III; *cf.* Michael A. Helfand, *Litigating Religion*, 93 B.U. L. REV. 493, 494 (2013) (explaining that where non-controversial religious language is involved courts can decide the case even under current law but often do not and arguing for civil courts to decide religious questions where no religious body can do so).

7. *See infra* Part III.

a good approach. Some issues have no good solutions given constitutional, theoretical, and pragmatic concerns. In these situations, the best approach might simply be the least terrible one, and that is the case in the context of religious property disputes. This Part also addresses what should happen when a religious term is relevant to interpreting a document at issue before a court. This will be followed by a brief conclusion.

I. THE LAW ON RELIGIOUS PROPERTY DISPUTES AND THE EVOLUTION OF NEUTRAL PRINCIPLES OF LAW

As the law currently stands, state and federal courts cannot involve themselves in ecclesiastical disputes,[8] but courts may address issues concerning civil or property rights as long as they need not resolve ecclesiastical questions in order to do so.[9] The initial, but still

8. *See* Kreshik v. Saint Nicolas Cathedral, 363 U.S. 190, 190 (1960) (finding that the question of who had the right to the position of archbishop of the North American Archdiocese of the Russian Orthodox Greek Catholic Church was an ecclesiastical matter and should be left up to the ecclesiastical authorities); Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696, 709 (1976) (finding that the lower court's detailed inquiry into the defrockment of a bishop was improper); *see also* Watson v. Jones, 80 U.S. 679, 726–27 (1871) (finding that because the case involved a hierarchical church the court should defer the matter, due to its ecclesiastical nature, to the church authority).

9. *See, e.g.*, Jones v. Wolf, 443 U.S. 595, 603 (1979) (saying that, as a general proposition, courts may decide such disputes using neutral principles, but the First Amendment severely limits the role of the courts); Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969) (holding that courts may decide church property disputes as long as they do not need to deal with ecclesiastical matters); *Watson*, 80 U.S. at 723–27 (discussing the questions and rules to apply when considering whether the court would need to resolve ecclesiastical issues in the case); Murphy v. Green, 794 So. 2d 325, 330 (Ala. 2000) (holding that courts may address non-ecclesiastical matters, based on neutral principles, without running afoul of the First Amendment); N.Y. Ann. Conf. of the United Methodist Church v. Fisher, 438 A.2d 62, 67–68 (Conn. 1980) (holding that courts may resolve church property disputes as long as they may do so without deciding ecclesiastical matters); Fluker Cmty. Church v. Hitchens, 419 So. 2d 445, 447 (La. 1982) (saying that courts may resolve church property disputes through neutral principles of law); Cavalry Baptist Church of Port Huron v. Shay, 290 N.W. 890, 892 (Mich. 1940) (holding that where church property is at issue, subject to civil law, the courts may decide these rights but may not determine ecclesiastical matters); Berthiaume v. McCormack, 891 A.2d 539, 545, 547 (N.H. 2006) (reaffirming the proposition that courts may determine church property disputes as long as they do not involve doctrinal matters); Presbytery of Cimarron v. Westminster Presbyterian Church, 515 P.2d 211, 215 (Okla. 1973) (saying that courts may determine property rights but not ecclesiastical matters); *In re* Church of St. James the Less, 888 A.2d 795, 805 (Pa. 2005) (holding that courts may resolve church property disputes but not

relevant, approach to these issues is derived from an 1871 case called *Watson v. Jones*.[10] In that case, the Court held that unless there is a trust which determines ownership, courts should consider the structure of a religious entity: Is the entity hierarchical or congregational?[11] If

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doctrinal matters); First Baptist Church of Paris v. Fort, 54 S.W. 892, 896 (Tex. 1900) (determining that church property disputes may be resolved by the courts by applying ordinary principles of law without inquiry into the religious matters); Masterson v. Diocese of Nw. Tex., 422 S.W.3d 594, 606 (Tex. 2013) (holding that neutral principles of law is the best approach for resolving property issues without answering ecclesiastical questions); New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc., 328 P.3d 586, 598 (Mont. 2014), *overruled on other grounds by* Warrington v. Great Falls Clinic, 467 P.3d 567, 573 (Mont. 2020) (stating that neutral principles can be used to decide case where neutral principles could determine the interpretation and validity of the church's constitution); Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church, 817 S.E.2d 547, 553 (Va. 2018) (stating that an agreement to merge two entities can be governed by neutral principles of contract law and need not involve inherently ecclesiastical determinations); Episcopal Diocese of Fort Worth v. Episcopal Church, 602 S.W.3d 417, 420 (Tex. 2020) (holding the same in a context where a withdrawing faction of the church was held to have the right to the property against claims to the contrary by the national church); Etlingville Lutheran Church v. Rimbo, 108 N.Y.S.3d 39, 42 (N.Y. App. Div. 2019) (stating that courts may resolve property disputes through neutral principles of law, but where a local congregation unites with a denominational body it consents to be bound by that body's' religious determinations).

10. *See generally Watson*, 80 U.S. 679 (1871).

11. *See, e.g.*, Bouldin v. Alexander, 82 U.S. 131, 133 (1872) (involving a congregational religious institution); *Jones*, 443 U.S. at 597–98 (dealing with a hierarchical religious institution but contrasting hierarchical institutions with congregational institutions); Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94, 96 (1952) (involving a hierarchical religious institution); *Presbyterian Church in U.S.*, 393 U.S. at 441 (involving a hierarchical religious institution); *Watson*, 80 U.S. at 679 (discussing general rules for both congregational and hierarchical churches but focusing on hierarchical determinations because the church in question was such); Mount Olive Primitive Baptist Church v. Patrick, 42 So. 2d 617, 618 (Ala. 1949) (involving a congregational religious institution); Britton v. Jackson, 250 P. 763, 764 (Ariz. 1926) (involving a hierarchical religious institution); Protestant Episcopal Church v. Barker, 171 Cal. Rprt. 541, 543 (Cal. Ct. App. 2d Dist. 1981) (involving a hierarchical religious institution); Trs. of Pencader Presbyterian Church in Pencader Hundred v. Gibson, 22 A.2d 782, 791 (Del. 1941) (overturning a referee's conclusion that the religious institution was congregational and finding it to be hierarchical); Carnes v. Smith, 222 S.E.2d 322, 325 (Ga. 1976) (involving a hierarchical religious institution); Little Grove Church v. Todd, 26 N.E.2d 485, 487 (Ill. 1940) (involving a congregational religious institution); Fonken v. Cmty. Church of Kamrar, 339 N.W.2d 810, 814 (Iowa 1983) (involving a hierarchical religious institution); Graffam v. Wray, 437 A.2d 627, 629 (Me. 1981) (involving a congregational religious institution); *Shay*, 290 N.W. at 891 (congregational religious institution); Protestant Episcopal Church in Diocese of N.J. v. Graves, 417 A.2d 19, 21 (N.J. 1980) (involving a hierarchical religious institution); Cape v. Moore, 253 P. 506, 507 (Okla. 1927) (involving a congregational religious

the former, what is its structure, and what mechanisms does it have in place to resolve disputes?[12] If the latter, how does it govern itself?[13]

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institution); Niemann v. Vaughn Cmty. Church, 113 P.3d 463, 464 (Wash. 2005) (involving a congregational religious institution).

12. *See, e.g.*, *Watson v. Jones*, 80 U.S. 679, 681 (1871) ("[T]he government of the church is exercised by and through an ascending series of 'judicatories,' known as Church Sessions, Presbyteries, Synods, and a General Assembly."); *Kedroff*, 344 U.S. at 107–08 (holding that the legislature of New York could not break the hierarchical connection with "the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod" and that the creation of an autonomous North American branch of the church by the legislature violated the Fourteenth Amendment); *Presbyterian Church in the U.S.*, 393 U.S. at 441–42 ("Presbyterian Church in the United States is an association of local Presbyterian churches governed by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body."); *Britton*, 250 P. at 765 ("[T]he local Church of God in Christ affiliated itself with the national organization having headquarters in Memphis, Tenn., and . . . the local church accepted and followed the doctrines and discipline of the Memphis organization."); *Gibson*, 22 A.2d at 786 (holding that the Pencader Church, as a member church, could not break free of the parent church, Presbyterian Church, in the hierarchical structure and take the church property with them); *Fonken*, 339 N.W.2d at 814 ("Like *Jones v. Wolf*, the present case involves a hierarchical church and a dispute between factions of the local congregation. The national organization in *Jones*, however, was the Presbyterian Church of the United States (PCUS) rather than UPCUSA. The constitution of UPCUSA contains provisions dealing with church government that were not shown in *Jones* to be in the PCUS constitution. Therefore, the neutral principles approach would not necessarily produce the same result in this case."); Heartland Presbytery v. Presbyterian Church of Stanley, Inc., 390 Pac.3d 581, 584 (Kan. 2017) (explaining courts should defer to hierarchical authorities); Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church, 806 S.E.2d 82, 92 (S.C. 2017) (explaining that courts need to look at the form of church governance and defer to decisions of church judicatories on doctrinal and religious issues, but neutral principles can be used when they can totally resolve the dispute).

13. *See, e.g.*, *Bouldin*, 82 U.S. at 133 ("A congregation had by this time been organized with sufficient regularity and in full conformity with the constitution of the general Baptist Church of the United States, in which, as is known, the congregational form of government prevails; and there was at this time no serious dissensions in the particular Third Church of which we are speaking. 'The Rules of Church Order,' making part of the Baptist Manual, an authoritative book in the Baptist church generally, required that 'seven trustees' should be elected in January of each year, but provided that in case of any omission to hold an election then, the election should be held 'at the next regular meeting for business.'"); *Patrick*, 42 So.2d at 619 ("In the instant case the church, through its congregation, was the final arbiter, no action by a higher body having been taken. The lower court therefore correctly held that the matters complained of were not of that character which allowed court intervention."); *Todd*, 26 N.E.2d at 487 (finding that the church property, which was governed by an

Thus, *Watson* created a tripartite approach. The first category of situations involved in church property disputes consists of express trusts and similar devises reflecting the express will of the donor to give the property for a specified use or to devote it to the propagation of a specific faith or set of doctrines. Many jurisdictions still require an express trust or similar legally valid document reflecting the will of the donor.[14] A few jurisdictions also recognize implied trusts as valid evidence that church property was intended for a specific use or to support a particular faith or set of religious commitments.[15] Several

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elected board of trustees, remains with the faction who "adheres to the tenets and doctrines originally taught by the congregation to whose use the property was originally dedicated" and that in this case the plaintiffs failed to show that the defendants departed from such tenets); *Graffam*, 437 A.2d at 629 (finding the church to be run through a series of "parliamentary rules" and meetings and by elected officials from within the body); Weare Bible Baptist Church, Inc. v. Fuller, 172 N.H. 721, 726 (N.H. 2019) (explaining if dispute involving congregational church dispute cannot be resolved under neutral principles courts can defer to the decision of a majority of members or other church policies instituted by the church).

14. *See Britton*, 250 P. at 765–66 (finding that whoever the beneficiary of the express trust was would prevail); Korean United Presbyterian Church v. Presbytery of the Pac., 281 Cal. Rptr. 396, 413 (Cal. Ct. App. 2d Dist. 1991) (requiring an express trust); Mt. Olive Afr. Methodist Episcopal Church of Fruitland, Inc. v. Bd. of Incorporators of Afr. Methodist Episcopal Church Inc., 703 A.2d 194, 202 (Md. Ct. App.) ("[The] three ways in which hierarchical denominations may insure that they maintain control over local church property: 1. requiring the local churches to place reverter clauses in the deeds to its property; 2. providing in their constitutions or other authoritative sources for the reversion of local church property upon the withdrawal by a local congregation, with an implied consent by the local church to the reversion provision; 3. obtaining from the General Assembly an Act providing for that result."); Bennison v. Sharp, 329 N.W.2d 466, 470 (Mich. Ct. App. 1982) (requiring a showing of an express trust for a faction, even if a majority, who no longer adheres to the beliefs of the parent church in hierarchical structure to retain the property); Boyles v. Roberts, 121 S.W. 805, 807–08 (Miss. 1909) (stating that the property of a congregational church, absent an express trust, is generally controlled by the majority).

15. *See* Holiman v. Dovers, 366 S.W.2d 197, 201 (Ark. 1963) (finding, essentially, an implied trust that recognized a right to the property for those who continued to follow the original beliefs of the church even if they be in the minority); Bishop & Diocese of Colo. v. Mote, 716 P.2d 85, 100 (Colo. 1986) ("Colorado recognizes that the intent to create a trust can be inferred from the nature of property transactions, the circumstances surrounding the holding of and transfer of property, the particular documents or language employed, and the conduct of the parties."); *Fisher*, 438 A.2d at 68–69 ("Where the property is not subject to an express trust, we must decide, without becoming entangled in religious controversy, what is the nature of the relationship between the Methodist Church and the local church, and the nature of the affiliation of Round Hill to the Methodist Church."); St. John's Presbytery v. Cent. Presbyterian Church of St. Petersburg, 102 So.2d 714, 719 (Fla. 1958) (recognizing an implied trust where the property was given to the local church at no

jurisdictions generally fit within the first group of jurisdictions but have recognized a limited number of circumstances where an implied trust will be recognized.[16]

One of the most common questions that arises in trust cases is how to approach a situation where the donor sets forth an intent that a property should be used for the propagation of a specific sect and the document of conveyance mentions specific doctrines of that sect, but in subsequent years the sect changes some of the relevant doctrines.[17] Most courts that address this issue have held that the donor understood that the sect might alter some doctrines in the future, and as long as the church is still a member of the specified sect, the grant of the

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cost from the parent church, there was an implied trust in favor of the faction that adhered to the beliefs of the parent church); *Fonken*, 339 N.W.2d at 818 (recognizing an implied trust in the parent church based on the church constitution); Presbytery of Bismarck v. Allen, 22 N.W.2d 625, 632 (N.D. 1946) ("Where real property is conveyed to a local religious association or corporation, which local society is a subordinate member of a general church organization, with superior ecclesiastical tribunals with ultimate power in some supreme judicatory, and the conveyance contains no special trust, then the property is not owned by the local congregation or the individuals thereof, but is held in trust for the general church body and it cannot be used in contravention of the decisions of the superior church judicatory."); Foss v. Dykstra, 342 N.W.2d 220, 223 (S.D. 1983) (finding that a local church's connection with a national church was not such as to create a trust and requiring an express trust for the national church to have a claim).

16. *See Carnes*, 222 S.E.2d at 328–29 (Ga. 1976) (stating that while an implied trust may not be recognized under certain circumstances, i.e., when the general church provided none of the funding, it may be recognized when a conveyance is made to the local church from the parent church in certain circumstances, such as where church documents provide for it); Fortin v. Roman Cath. Bishop of Worcester, 625 N.E.2d 1352, 1357–58 (Mass. 1994) ("Likewise the plaintiffs' claims of equitable ownership based on a theory of constructive trust were properly dismissed. Under Massachusetts law, a court will declare a party a constructive trustee of property for the benefit of another if he [or she] acquired the property through fraud, mistake, breach of duty, or in other circumstances indicating that he [or she] would be unjustly enriched.").

17. *See, e.g.*, Watson v. Jones, 80 U.S. 679, 722 (1871) (holding that when the trust designates the property for the "teaching, support, or spread of some specific form of religious doctrine or belief," the court will recognize the right to the property in those who still follow the doctrine in the trust); Smith v. Swormstedt, 57 U.S. 288, 294 (1853) (dealing with a question of whether the local church could retain the property that was in trust for the parent church if the parent church organization had been destroyed and reorganized); Episcopal Diocese v. Episcopal Church, 602 S.W.3d 417, 420 (Tex. 2020) (withdrawing faction of the church was held to have the right to the property against claims to the contrary by the national church in case involving trust questions).

property to that sect remains valid.[18] Another variation on this theme is where the sect itself merges with another sect or sects. In such situations, many courts look to whether the new entity reflects the faith specified in the trust, but they do so without determining ecclesiastical questions.[19] That is, they must determine if the new entity is consistent with the old but must often rely on the actions of the new entity to make such determinations.[20] Some jurisdictions use the concept of implied trust to deal with changes to church doctrine or polity that may not have been foreseen by the conveyor of an express trust.[21]

If there is no trust resolving the property dispute the question becomes whether the religious entity is hierarchical or congregational.

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18. *See* Trs. of Pencader Presbyterian Church v. Gibson, 22 A.2d 782, 789 (Del. 1941) (recognizing the principle that in a case where a church has deviated from the express trust, the court must inquire whether the deviation was "so far variant as to defeat the declared objects of the trust"); Partin v. Tucker, 172 So. 89, 93 (Fla. 1937) (holding that for a church to lose its property, which was dedicated to the Christian religion, it must have abandoned the fundamental principles of Christianity); *Todd*, 26 N.E.2d at 487 (holding that for a court to intervene, the changes "must be a real substantial departure from the purpose of the trust"); Davis v. Scher, 97 N.W.2d 137, 141 (Mich. 1959) ("The Michigan Supreme Court has held on numerous occasions that the membership of a congregation, which is one of several congregations belonging to a particular religious faith to which the local church property and practice is [sic] dedicated, does not have the right to effect, by vote of a momentary majority, a change in religious practice, not conformable with the origin and historic character of the faith of the church of which the local congregation is one member, as against those who faithfully adhere to the characteristic doctrine of the church, and thereby deprive the minority of the use of the church property."); Kenesaw Free Baptist Church v. Lattimer, 174 N.W. 296, 297 (Neb. 1919) ("When . . . property is given to a church which is a strictly congregational or independent organization . . . with no specific trust attached, other than that it is given for church purposes . . . the ordinary contributor to a particular church regards it as a living organism, subject to change and growth. He [or she] would not attach conditions to the contrary, if he [or she] could. So long as it continues by regular succession, retaining its identity as the church to which the donation was made, he [or she] will not complain, even though there are changes of doctrine or method which do not amount to an abandonment of the original purpose.").

19. *See Boyles*, 121 S.W. at 849–50 (dealing with a merger). *But see* Berkaw v. Mayflower Congregational Church, 170 N.W.2d 905, 907–08 (Mich. Ct. App. 1969) ("Where there is no agreement that a departure [from church doctrine] occurred, the ecclesiastical conflict destroys civil court jurisdiction to resolve the property dispute.").

20. *See Boyles*, 121 S.W. at 849 (finding the differences in the merging sects to be minimal).

21. *See* St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, 102 So. 2d 714, 719 (Fla. 1958) (recognizing an implied trust in the members of a church who were loyal to the parent church for which the original trust was created).

Depending on the structure of the religious entity one of two general approaches would apply. As will be explained in Part II, this entire inquiry embodies a somewhat Christocentric view of religious entity configurations (and is underinclusive even for a large number of Christian religious entities), since many religious entities do not fit neatly into one of these categories and jamming some entities into a category might itself involve answering religious questions or applying religious stereotypes. For now, a brief discussion of the *Watson* approach to hierarchical and congregational churches is helpful.

The general rule for determining who governs and controls property in congregational churches is to follow the decisions of the majority of the congregation[22] unless the congregation has created an alternative governance structure through a constitution, bylaws, or other governing document adopted by the congregation.[23] The majority of courts defer to congregational decisions or secular documents and will only get involved in questioning congregational decisions when the procedure used to reach those decisions is contrary to church governance documents[24] or, in some cases, state law

22. *See, e.g.*, Bouldin v. Alexander, 82 U.S. 131, 140 (1872) ("In a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church."); Crumbley v. Solomon, 254 S.E.2d 330, 333 (Ga. 1979) (recognizing that in a congregational church, the will of the majority rules); Graffam v. Wray, 437 A.2d 627, 632 (Me. 1981) (same); Cavalry Baptist Church of Port Huron v. Shay, 290 N.W. 890, 892 (Mich. 1940) (same); Smith v. St. John Baptist Church of Bozeman, 211 P.2d 975, 977 (Mont. 1949) (same); Cape v. Moore, 253 P. 506, 509 (Okla. 1927) (same); First Baptist Church of Paris v. Fort, 54 S.W. 892, 897–98, (Tex. 2009) (same).

23. *See* Weare Bible Baptist Church, Inc. v. Fuller, 172 N.H. 721, 728 (N.H. 2019) (stating that if a dispute involving congregational church dispute cannot be resolved under neutral principles, courts can defer to the decision of a majority of members or other church policies instituted by the church); Holiman v. Dovers, 366 S.W.2d 197, 200 (Ark. 1963) ("It is firmly settled that the controlling faction will not be permitted to divert the church property to another denomination or to the support of doctrines, usages, and practices basically opposed to those characteristic of the particular church."); *Boyles*, 121 S.W. at 843–44 (recognizing the right of the minority against a majority when they remain faithful to the trust); *Cape*, 253 P. at 509 (stating that the outcome, which recognized the will of the majority, may have been different had there been conditions attached to the deed).

24. *See Bouldin*, 82 U.S. at 140 ("In a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church."); Mount Olive Primitive Baptist Church v. Patrick, 42 So.2d 617, 618 (Ala. 1949) (recognizing the principle that courts will only intervene in congregational decisions when they are a "radical departure of doctrine to justify court action"); Elston v. Wilborn, 186 S.W.2d 662, 664 (Ark. 1945) (deferring to the decisions of the congregation and their governing structure regarding the election of trustees); Partin v. Tucker, 172 So. 89,

governing charitable and religious corporations.[25] When the dispute is over who constitutes the congregation, courts generally will defer to the body or faction that constitutes the majority of a congregational church.[26] This ostensibly enables courts to answer the civil law questions without making religious determinations. A small minority of jurisdictions, however, focus on which parties continue to follow the religious principles held by the congregational church prior to the schism or other events giving rise to the property dispute.[27] They do

92 (Fla. 1937) (deferring to congregational decisions unless they are a significant departure from church doctrine or principals); Christian Church of Tama v. Carpenter, 79 N.W. 375, 376 (Iowa 1899) (finding the decisions of the church leaders to be contrary to the primary governing document, the New Testament); Ennix v. Owns, 271 S.W. 1091, 1093 (Ky. Ct. App. 1925) (interpreting a trust narrowly to allow the majority of the church to join a different assembly); *Shay*, 290 N.W. at 892 (deferring to the congregation's decisions so long as they conformed with Baptist principles); Anderson v. Byers, 69 N.W.2d 227, 232 (Wis. 1955) ("The evidence in this case supports the trial court's finding that there has been no 'real and substantial' departure from the Baptist faith and doctrine by defendants, and under the law the property must remain in the majority.").

25. *See* Samoan Congregational Christian Church in the U.S. v. Samoan Congregational Christian Church of Oceanside, 135 Cal. Rptr. 793, 798 (Cal. Ct. App. 1977) (recognizing that state law could be used to help determine a property dispute in a congregational church); First Rebecca Baptist Church, Inc. v. Atl. Cotton Mills, 440 S.E.2d 159, 161 (Ga. 1993) (holding that a reverter clause under state law was enforceable against a congregational church); *Ennix*, 271 S.W. at 1093 (stating that the minority's remedy was a specific state law protecting the minority of a church in the case of a schism); *St. John Baptist Church of Bozeman*, 211 P.2d at 978 (using state law regarding whether or not a trustee of a congregation could sell the church property); Reid v. Johnston, 85 S.E.2d 114, 117 (N.C. 1954) (citing state law as support for the proposition that the majority of a congregation "is entitled to control its church property only so long as the majority remains true to the fundamental faith, usages, customs, and practices of this particular church, as accepted by both factions before the dispute arose").

26. *See Bouldin*, 82 U.S. at 140 ("In a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church."); *Crumbley*, 254 S.E.2d at 333 (recognizing that in a congregational church, the will of the majority rules); *Graffam*, 437 A.2d at 632 (recognizing that in a congregational church, the will of the majority rules); *Shay*, 290 N.W. at 892 (recognizing that in a congregational church, the will of the majority rules); *St. John Baptist Church of Bozeman*, 211 P.2d at 977 (recognizing that in a congregational church, the will of the majority rules); *Cape*, 253 P. at 508–09 (recognizing that in a congregational church, the will of the majority rules); *Fort*, 54 S.W. at 896–98 (recognizing that in a congregational church, the will of the majority rules).

27. *See Holiman*, 366 S.W.2d at 200 (citing Davis v. Scher, 97 N.W.2d 137, 141 (Mich. 1959)) ("It is firmly settled that the controlling faction will not be permitted to divert the church property to another denomination or to the support of doctrines, usages, and practices basically opposed to those characteristic of the particular church."); *Davis*, 97 N.W.2d at 141 (recognizing the right of a minority

so without determining the validity or nature of such principles, but in these jurisdictions the principles in place prior to the property dispute remain an important focus.[28]

In such jurisdictions, the courts do not claim to have jurisdiction over ecclesiastical matters but rather argue that religious doctrine may be explored to validate civil and property rights.[29] The courts do not analyze the doctrines for their religious significance but rather for what they say about the civil or property rights involved.[30] Thus, these courts leave the ecclesiastical doctrines as they found them, only using these doctrines as understood before the dispute began in order to determine civil or property rights.[31] It seems obvious that these jurisdictions come much closer to the secular–ecclesiastical dispute line than most jurisdictions and therefore increase the risk of impacting religious decisions and doctrines, albeit unintentionally.[32]

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when they remain faithful to the original religious practices); *Boyles*, 121 S.W. at 821, 826 (recognizing the right of the minority against a majority when they remain faithful to the trust); Hughes v. Grossman, 201 P.2d 670, 674 (Kan. 1949) (recognizing the right of the minority if they remain faithful to the beliefs of the religious society as it existed prior to the schism); *see also Cape*, 253 P. at 509 (saying that the outcome, which recognized the will of the majority, may have been different had there been conditions attached to the deed).

28. *See Holiman*, 366 S.W.2d at 200 (discussing how the principles in place prior to the dispute come into play); *Davis*, 97 N.W.2d at 141 (discussing the principles of Jewish Orthodox Law).

29. *See Holiman*, 366 S.W.2d at 199 (arguing that an inquiry into doctrine, protecting the minority is necessary in the case of congregational churches because "[t]here is no recourse within the denomination"); *Davis*, 97 N.W.2d at 140–41 (admitting that while the courts do not have jurisdiction over ecclesiastical matters, they may intervene to protect property rights and the freedom of religion of the minority).

30. *See Holiman*, 366 S.W.2d at 200–01 (avoiding comment on ecclesiastical matters and focusing on how the congregation's doctrine applies to the property involved); *Davis*, 97 N.W.2d at 141 (determining that because the congregation was an Orthodox Jewish congregation and that Orthodox Jews may not participate in services with mixed seating, this prevented members from participating in the services and placed in conflict a property right as it relates to the Orthodox doctrine).

31. *See Holiman*, 366 S.W.2d at 200–01 (using the church doctrine, as understood before the schism, to determine if the departures were significant enough for the court to intervene); *see also Davis*, 97 N.W.2d at 141 (applying the fundamental precepts of Jewish Orthodox doctrine to determine if a property right was involved and who remained faithful to the original doctrine).

32. *See Holiman*, 366 S.W.2d at 201 (looking to the church doctrines and determining that there had been a substantial departure from doctrine by the majority. While the court insisted that it did not delve into ecclesiastical matters, the inquiry, by its very nature, involved matters of religious doctrine). In this case there was an explicit question of whether the court had gone too far and was in fact determining ecclesiastical questions, but the court dismissed this argument in this particular case

Hierarchical churches are, as the term suggests, churches with formal hierarchies.[33] The most obvious examples include the Roman Catholic Church, Eastern Orthodox Churches, the Episcopalian Church, and the Presbyterian Church.[34] There are a number of others.[35] These churches share several traits that place them in this category. As will be seen, however, there are some churches that do not fit neatly into this category but have nonetheless been considered hierarchical by courts.[36]

"because of defendants' calculated risk of not offering proofs, no dispute exists as to the teaching of Orthodox Judaism as to mixed seating." *Davis*, 97 N.W.2d at 144.

33. *See* Watson v. Jones, 80 U.S. 679, 722–23 (1871).

34. *See* Jones v. Wolf, 443 U.S. 595, 597 (1979) (dealing with the hierarchy of the Presbyterian Church in the United States); *see also* Serbian E. Orthodox Diocese for the U.S. & Canada v. Milivojevich, 426 U.S. 696, 696 (1976) (dealing with the hierarchy of the Serbian Orthodox Church); Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 441–42 (1969) (dealing with the hierarchy of the Presbyterian Church); Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94, 100–01 (1952) (dealing with the hierarchy of the Russian Orthodox Church); Protestant Episcopal Church v. Barker, 115 Cal. App. 3d. 599, 604 (Cal. Ct. App. 1981) (dealing with the hierarchy of Protestant Episcopal Church); Bishop & Diocese of Colo. v. Mote, 716 P.2d 85, 87 (Colo. 1986) (dealing with the hierarchy of the Protestant Episcopal Church in the United States); Fonken v. Cmty. Church of Kamrar, 339 N.W.2d 810, 812 (Iowa 1983) (dealing with the hierarchy of the United Presbyterian Church); Fluker Cmty. Church v. Hitchens, 419 So.2d 445, 446–47 (La. 1844) (dealing with the hierarchy of the African Methodist Episcopal Church); Fortin v. Roman Cath. Bishop of Worcester, 625 N.E.2d 1352, 1353–54 (Mass. 1994) (dealing with the hierarchy of the Roman Catholic Church); Berthiaume v. McCormack, 891 A.2d 539, 545–46 (N.H. 2006) (dealing with the hierarchy of the Roman Catholic Church).

35. *See* Britton v. Jackson, 250 P. 763, 764 (Ariz. 1926) (dealing with the Church of God in Christ, a hierarchical church); *see also* E. Lake Methodist Episcopal Church, Inc. v. Trs. of Peninsula-Del. Ann. Conf. of the United Methodist, 731 A.2d 798, 810 (Del. 1999) (dealing with the United Methodist Church, a hierarchical church); Carnes v. Smith, 222 S.E.2d 322, 325 (Ga. 1976) (dealing with the United Methodist Church); Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc., 716 So.2d 200, 201 (Miss. 1998) (dealing with the Church of God Pentecostal, a hierarchical church); Harlem Church of Seventh Day Adventists v. Greater N.Y. Corp. of Seventh Day Adventists, 198 N.E. 615, 616 (N.Y. Ct. App. 1935) (dealing with the Seventh Day Adventists organization, which is structured hierarchically); Original Glorious Church of God in Christ, Inc. of the Apostolic Faith v. Myers, 367 S.E.2d 30, 31 (W. Va. 1988) (dealing with the Original Glorious Church of God in Christ, a hierarchical church).

36. *See* Emberry Cmty. Church v. Bloomington Dist. Missionary & Church Extension Soc'y, Inc., 482 N.E.2d 288, 293 (Ind. 1985) (paying money to Conference, elections in accordance with cannons, rules and regulations of Conference, and Conference's maintenance of records is sufficient to create hierarchical relationship).

The factors most often used by courts to determine that a given church is hierarchical include whether there are ecclesiastical courts that can bind churches and church members;[37] whether there is a general set of rules and procedures that purports to bind individual churches within the broader church;[38] whether a church has bound itself in some way to a national, regional, or international body;[39] and whether a centralized body has the authority to appoint or remove clergy.[40] Some churches share all these traits and thus are easily categorized as hierarchical,[41] whereas others may share only one or a few of these traits, therefore requiring courts to make the decision whether a church is hierarchical for civil law purposes based on all the relevant facts.[42]

37. *See* Kendysh v. Holy Spirit B.A.O.C., 683 F. Supp. 1501, 1509 (E.D. Mich. 1987) (holding that B.A.O.C. intended to be hierarchal because "the congregation which holds the property is subordinate to 'superior ecclesiastical tribunals with a general and ultimate power of control'"), *aff'd*, 850 F.2d 692 (6th Cir. 1988) (unpublished).

38. *See, e.g.*, *Milivojevich*, 426 U.S. at 708–09; *Kendysh*, 683 F. Supp. at 1506–07.

39. *See* Shirley v. Christian Episcopal Methodist Church, 748 So.2d 672, 677 (Miss. 1999) (holding that the facts show clear intent by the church that it be considered a part of the CME national organization); Harris v. Apostolic Overcoming Holy Church of God, Inc., 457 So.2d 385, 388 (Ala. 1984) (holding that a local church was hierarchical because the local congregation was required to affirm ownership by a hierarchal religious organization before purchasing property); *Fonken*, 339 N.W.2d at 817 (holding that a local church voluntarily submitted to a system of church government); Fluker Cmty. Church, 419 So.2d at 446 (holding that acts of a local church fully affiliated it with A.M.E.); *see also,* Etlingville Lutheran Church v. Rimbo, 108 N.Y.S.3d 39, 43 (N.Y. App. Div. 2019) (stating that courts may resolve property disputes through neutral principles of law, but where a local congregation unites with a denominational body it consents to be bound by that body's religious determinations).

40. *See* Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94, 116 (1954); S. Ohio State Exec. Off. of Church of God v. Fairborn Church of God, 573 N.E.2d 172, 175 (Ohio Ct. App. 1989).

41. *See, e.g.*, Mt. Olive Afr. Methodist Episcopal Church of Fruitland, Inc. v. Bd. of Incorporators of Afr. Methodist Episcopal Church, Inc., 703 A.2d 194 (Md. Ct. App. 1997) (holding that AME is hierarchical); *S. Ohio State Exec. Off. of Church of God*, 573 N.E.2d at 180 (holding that Church of God is hierarchical); Bennison v. Sharp, 329 N.W.2d 466 (Mich. Ct. App. 1982) (holding that Protestant Episcopal Church is hierarchical); Carnes v. Smith, 222 S.E.2d 322 (Ga. 1976) (holding that United Methodist Church is hierarchical).

42. *See* Trs. of Pencader Presbyterian Church in Pencander Hundred v. Gibson, 22 A.2d 782, 790–91 (Del. 1941) (holding that the Presbyterianism occupies "an intermediate position between episcopacy and congregationalism").

If a church is hierarchical, courts generally defer to the decisions of the highest authority within the church hierarchy.[43] This ostensibly prevents civil courts from having to make ecclesiastical determinations in property dispute cases.[44] Courts do, however, sometimes determine whether church hierarchies have followed their own procedural rules in determining property disputes, but these courts do not pass judgment on the substantive correctness of those decisions.[45] Some commentators have suggested that this sort of deference to hierarchical bodies may itself interfere with First Amendment rights.[46]

If the case requires the determination of ecclesiastical matters the courts generally find that they have no jurisdiction or cannot

43. *See Milivojevich*, 426 U.S. at 709; Paradise Hills Church, Inc. v. Int'l Church of the Foursquare Gospel, 467 F. Supp. 357, 361 (D. Ariz. 1979); *Fonken*, 339 N.W.2d at 816.

44. *See Milivojevich*, 426 U.S. at 696; Watson v. Jones, 80 U.S. 679, 729 (1871); *Harris*, 457 So.2d at 387.

45. *See Milivojevich*, 426 U.S. at 713 (stating that a determination of the issue depends on which procedure validly selects the ruling hierarch for the American churches, the evidence shows no abdication of power by Russian Orthodox Church, and church rule controls).

46. *See, e.g.*, Arlin M. Adams & William R. Hanlon, Jones v. Wolf*: Church Autonomy and the Religion Clauses of the First Amendment*, 128 U. PA. L. REV. 1291, 1294–95 (1980).

decide the case due to constitutional constraints.[47] If not, the analysis generally continues.[48]

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47. *See* Kreshik v. Saint Nicolas Cathedral, 363 U.S. 190, 190–91 (1960) (finding that the question of who had the right to the position of archbishop of the North American Archdiocese of the Russian Orthodox Greek Catholic Church was an ecclesiastical matter and should be left up to the ecclesiastical authorities); *Watson*, 80 U.S. at 726–27 (finding that this case involved a hierarchical church and that the courts should defer the matter, due to its ecclesiastical nature, to the church authority); *see also* Gonzalez v. Roman Cath. Archbishop of Manila, 280 U.S. 1, 8 (1929) (holding that Gonzalez was not entitled to the position of chaplain); *Milivojevich*, 426 U.S. at 709 (finding that the lower courts detailed inquiry into the defrockment of a bishop was improper); Foster v. St. John's Baptist Church, 406 So.2d 389, 392 (Ala. 1981) (holding that a pastor's removal through a congregational election was an ecclesiastical matter that the court could not resolve); Kedrovsky v. Burdikoff, 146 A. 613, 614 (Conn. 1929) (upholding a lower court's determination that there was no evidence to show that Kedrovsky was the archbishop and that even if he were found to be the archbishop, there was nothing that said he had a right to summarily dismiss the priest); Sanders v. Edwards, 34 S.E.2d 167, 168 (Ga. 1945) (holding that where a pastor has been legally removed through church procedures, the courts may enter an order to support that action when needed); Pierce v. Iowa-Mo. Conf. of Seventh-Day Adventists, 534 N.W.2d 425, 427 (Iowa 1995) (finding that the First Amendment prohibits the court's inquiry into a minister's relationship with the church because it related to an employment dispute); LeBlanc v. Davis, 432 So.2d 239, 242–43 (La. 1983) (finding that the court did have subject-matter jurisdiction and would not be improperly delving into ecclesiastical matters with regard to entertaining the question of whether a pastor had been dismissed by a majority of church members and refused to leave); Blauert v. Schupmann, 63 N.W.2d 578, 583 (Minn. 1954) (holding that where nothing under the church's constitution or the pastor's contract specified a definite term, the employment was at will, and as such, the majority of the congregation could terminate his employment at any time); Daniels v. Union Baptist Church, Inc., 55 P.3d 1012, 1014 (Okla. 2001) (holding that the question of the pastor's employment involved ecclesiastical matters that the court could not delve into); Williams v. Wilson, 563 S.E.2d 320, 325 (S.C. 2002) (holding that the congregation in a congregational church, not the board of trustees, had the power to remove the pastor, so his removal by the board was "a nullity" and also holding that the congregation's vote to replace the trustees was not valid because the congregation failed to provide notice to the trustees in accordance with church bylaws); Cha v. Korean Presbyterian Church of Wash., 553 S.E.2d 511, 515 (Va. 2001) (holding that the court lacked jurisdiction to determine the pastor's claim for wrongful termination due to the ecclesiastical nature of the inquiry); Gillespie v. Elkins S. Baptist Church, 350 S.E.2d 715, 719 (W. Va. 1986) (holding that where a congregational church has authority to terminate a pastor and they exercise that authority to remove a pastor and provide adequate notice of the meeting, the court may go no further in their inquiry).

48. *See* Jones v. Wolf, 443 U.S. 595, 607–10 (remanding the case to determine whether the facts of the case would require delving into ecclesiastical matters; if not, the analysis may continue without impugning the First Amendment); Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368 (1970) (holding that because the Maryland Court of Appeals had not impermissibly delved into ecclesiastical matters, its judgment would be upheld).

As will be seen in Parts II and III some scholars have argued that the *Watson* inquiries were designed to prevent civil courts from answering ecclesiastical questions. Others have argued that the *Watson* inquiries were designed to defer to church structures. Both arguments have merit and while they are frequently cast as opposing positions they are not always in opposition.

Beginning in the late 1960s the Court began referring to another concept called "neutral principles of law," which seems a logical extension of the *Watson* Court's discussion of using trusts to determine outcomes in religious property disputes.[49] In essence, neutral principles are legal concepts that can be applied without determining religious questions. As discussed below examples include deeds, trusts, conveyances such as wills or gifts, entity bylaws, state corporate laws, etc.

In 1969, in *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, the Supreme Court referred to "neutral principles of law" that could be applied to church property disputes.[50] The language was basically dicta, but the Georgia Supreme Court, whose decision was at issue in that case, as well as some other state courts, began to apply neutral principles to church property disputes.[51] The next year, in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, the Court again approvingly referred to "neutral principles of law."[52] Finally, in 1979, in *Jones v. Wolf*, another case from Georgia, a state that had begun applying neutral principles after the Court's decision in *Mary Elizabeth Hull*, the Court formally acknowledged that a neutral

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

50. *See id.*

51. *See id.* at 444; Presbyterian Church in the U.S. v. E. Heights Presbyterian Church, 159 S.E.2d 690, 695 (Ga. 1968); Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc., 552 S.W.2d 865, 870 (Tex. Civ. App. 1977); Clough v. Wilson, 368 A.2d 231, 234 (Conn. 1976); Carnes v. Smith, 222 S.E.2d 322, 326 (Ga. 1976); Bd. of Church Extension v. Eads, 230 S.E.2d 911, 918 (W. Va. 1976); Bangor Spiritualist Church, Inc. v. Littlefield, 330 A.2d 793, 794 (Me. 1975); Fairmount Presbyterian Church, Inc. v. Presbytery of Holston of the Presbyterian Church of the U.S., 531 S.W.2d 301, 304 (Tenn. Ct. App. 1975); Adickes v. Adkins, 215 S.E.2d 442, 444 (S.C. 1975); Norfolk Presbytery v. Bollinger, 201 S.E.2d 752, 756 (Va. 1974); St. Michael & Archangel Russian Orthodox Greek Cath. Church v. Uhniat, 301 A.2d 655, 659 (Pa. 1973); Polen v. Cox, 267 A.2d 201, 204 (Md. 1970).

52. *See Md. & Va. Eldership of Churches of God*, 396 U.S. at 370 (Brennan, J., concurring).

principles approach was both constitutional and beneficial in deciding church property disputes.[53]

Neutral principles are a mechanism courts can use to ostensibly avoid getting involved in ecclesiastical questions, including those related to the governance of religious entities.[54] In fact, the *Jones* Court held that neutral principles are consistent with the long-standing principle that civil courts cannot determine ecclesiastical issues without running afoul of the Free Exercise and Establishment Clauses,[55] and that a neutral principles approach will better avoid the boundary between secular and ecclesiastical matters than would the traditional approach.[56] Moreover, a neutral principles approach that relies on deeds, state corporations law, trust documents, church bylaws, and so on would allow hierarchical as well as congregational churches to spell out the ownership of church property before disputes arise, thus essentially predetermining the outcomes in religious property cases.[57]

Since *Jones v. Wolf* was decided, more and more courts have adopted a neutral principles approach either by itself,[58] or in conjunction with the categories set forth in *Watson v. Jones*.[59] Today, most jurisdictions rely on a neutral principles of law approach to some degree or another. Still, some jurisdictions have rejected the neutral

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53. *See* Jones v. Wolf, 443 U.S. 595, 602–03 (1979).

54. *See id.* at 605.

55. *See id.* at 605–06.

56. *See id.* at 604–07.

57. *See id.* at 603–04.

58. *See, e.g.*, Episcopal Diocese v. Episcopal Church, 602 S.W.3d 417, 420 (Tex. 2020); Pure Presbyterian Church v. Grace of God, 817 S.E.2d 547, 553 (Va. 2018); New Hope Lutheran Ministry v. Faith Lutheran Church, Inc., 328 P.3d 586, 595 (Mont. 2014), *overruled on other grounds by* Warrington v. Great Falls Clinic, LLP, 467 P.3d 567 (Mont. 2020); Masterson v. Diocese of Nw. Tex., 422 S.W.3d 594, 596 (Tex. 2013); Church of God Pentecostal, Inc. v. Freewill Pentecostal, Inc., 716 So.2d 200, 206 (Miss. 1998); Bishop & Diocese of Colo. v. Mote, 716 P.2d 85, 96 (Colo. 1986); Presbytery of Beaver-Butler v. Middlesex, 489 A.2d 1317, 1321–22 (Pa. 1985); Harris v. Apostolic Overcoming Holy Church, Inc., 457 So.2d 385, 387 (Ala. 1984); Graffam v. Wray, 437 A.2d 627, 634 (Me. 1981); Etlingville Lutheran Church v. Rimbo, 174 A.D.3d 856, 858 (N.Y. App. Div. 2019).

59. *See* Bd. of Trs. v. Culver, 614 N.W.2d 523, 528 (Wis. Ct. App. 2000); S. Ohio State Exec. Offs. v. Fairborn Church, 573 N.E.2d 172, 180–81 (Ohio Ct. App. 1989); Aglikin v. Kovacheff, 516 N.E.2d 704, 707 (Ill. App. Ct. 1987); Fonken v. Cmty. Church of Kamrar, 339 N.W.2d 810, 816 (Iowa 1983); Bennison v. Sharp, 329 N.W.2d 466, 474–75 (Mich. Ct. App. 1982); Protestant Episcopal Church v. Graves, 417 A.2d 19, 24 (N.J. 1980).

principles approach because it was not mandated by the Court.[60] As noted earlier, a large number of jurisdictions have combined the traditional approach from *Watson v. Jones* with the neutral principles of law approach.[61] There is language from *Jones v. Wolf* that directly supports deference to an "authoritative ecclesiastical body" in cases where church documents or other "instruments of ownership" incorporate religious concepts.[62] The reason for this is that, as noted earlier, civil courts cannot determine ecclesiastical matters without running afoul of the First Amendment,[63] but this leaves open a range of situations where no civil or religious authority has jurisdiction to decide a matter.[64]

Over the years a number of neutral principles of law have been used to decide property disputes. Courts using neutral principles will look at deeds,[65] trust documents,[66] other documents of conveyance

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60. *See* Southside Tabernacle v. Pentecostal Church of God, 650 P.2d 231, 235 n.2 (Wash. 1982) (noting that although there is confusion regarding whether to apply neutral principles, it need not be addressed because "Washington has adopted the Watson compulsory deference rule"); Schismatic & Purported Casa Linda Presbyterian Church in Am. v. Grace Union Presbytery, Inc., 710 S.W.2d 700, 705 (Tex. App. Dallas 1986) (noting that the "intermediate appellate courts have consistently followed the deference rule in deciding hierarchical church property disputes"); N.Y. Ann. Conf. of United Methodist Church v. Fisher, 438 A.2d 62, 68 (Conn. 1980) ("The first amendment thus requires that civil courts defer to the highest court of the hierarchical church organization to resolve issues of religious doctrine or practice.").

61. *See, e.g.*, *Culver*, 614 N.W.2d at 526–27; *Fairborn*, 573 N.E.2d at 177–81; *Aglikin*, 516 N.E.2d at 707–08; *Fonken*, 339 N.W.2d at 813, 816; *Bennison*, 329 N.W.2d at 470–75; *Graves*, 417 A.2d at 22–24.

62. *See Jones*, 443 U.S. at 604.

63. *See id.* at 603–04.

64. *See* Helfand, *supra* note 6 at 495.

65. *See generally*, Church of God Pentecostal v. Freewill Pentecostal Church of God, Inc., 716 So.2d 200 (Miss. 1998) (reviewing deeds and bylaws); Berthiaume v. McCormack, 891 A.2d 539 (N.H. 2006) (examining statutes creating corporation and deeds); Presbytery of Hudson River of the Presbyterian Church (U.S.A.) v. Trs. of First Presbyterian Church & Congregation of Ridgeberry, 821 N.Y.S.2d 834 (2006) (reviewing deeds and church constitution); Foss v. Dykstra, 342 N.W.2d 220 (S.D. 1983) (reviewing deeds, mortgage, and church constitution).

66. *See* Cal.-Nev. Ann. Conf. of United Methodist Church v. St. Luke's United Methodist Church, 17 Cal. Rptr. 3d 442, 451 (Cal. Ct. App. 2004) (discussing creation and revocation of trust); *cf. Foss*, 342 N.W.2d at 220 (reviewing mortgage, deed, and church constitution).

such as wills,[67] church constitutions,[68] church bylaws,[69] or state corporation laws relevant to church incorporation (assuming that the church is incorporated).[70] This list is not exhaustive given the many varying factual scenarios in these cases, but it does represent factors that have been considered in the vast majority of cases applying neutral principles of law. The idea, as noted earlier, is that civil courts can use these neutral principles to determine church property disputes in the same manner as most other property disputes without delving into ecclesiastical concerns.[71]

There are also a small number of cases that rely exclusively on state incorporation laws without addressing neutral principles or any other constitutionally driven test.[72] These cases are arguably de facto neutral principle cases even if they never raise the issue.[73] Most cases looking at state incorporation laws do so in the context of neutral principles analysis, where the state laws are used to determine who controls church property and other assets.[74] As with other neutral principles, the state laws serve as a mechanism for helping to determine church property disputes without delving into ecclesiastical

67. *See* Wis. Province of Soc'y of Jesus v. Cassem, 486 F.Supp.3d 527, 546 (D. Conn. 2020); Mundie v. Christ United Church of Christ, 987 A.2d 794, 800 (Pa. Super. Ct. 2009); Orthodox Church of Am. v. Pavuk, 538 A.2d 632, 634 (Pa. Comm. Ct. 1986); Bd. of Church Extension v. Eads, 230 S.E.2d 911, 918 (W. Va. 1976).

68. *See Presbytery of Hudson River*, 821 N.Y.S.2d at 838 (reviewing the church constitution, the Book of Order, and deeds); *Foss*, 342 N.W.2d at 223 (reviewing the church constitution, mortgage, and deed).

69. *See Church of God Pentecostal*, 716 So.2d at 210 (reviewing bylaws and deeds).

70. *See Berthiaume*, 891 A.2d at 545 (examining statutes creating corporation and deeds); *St. Luke's*, 17 Cal. Rptr. 3d at 455 (examining provisions of California Corporations Code).

71. *See* Jones v. Wolf, 443 U.S. 595, 603 (1979).

72. *See In re* Roman Cath. Archbishop of Portland in Or., 335 B.R. 842, 854 (Bankr. D. Or. 2005) (relying on bankruptcy and state incorporation statutes to determine ownership); *St. Luke's*, 17 Cal. Rptr. 3d at 854 (relying on California Corporations Code provisions regarding trusts); *see also* Protestant Episcopal Church v. Barker, 171 Cal. Rptr. 541, 555–54 (Cal. Ct. App. 1981) (relying on church articles of incorporation but also discussing neutral principles).

73. Under *Jones*, articles of incorporation of the church, deeds to the disputed property, and relevant state statutes are all neutral principles on which a state court can rely. *See St. Luke's*, 17 Cal. Rptr. 3d at 449–50 (citing *Barker*, 171 Cal. Rptr. at 553).

74. *See* Bd. of Trs. v. Culver, 614 N.W.2d 523, 529 (Wis. Ct. App. 2000) (using statutory definitions of "dissolved" or "defunct" in conjunction with other neutral principles).

questions.[75] In the end, this is the primary goal of a neutral principles approach regardless of which specific principle or principles courts rely on.

II. CONTEXTUAL USE OF NEUTRAL PRINCIPLES

This Article advocates a contextual use of neutral principles. This means that neutral principles may be particularly helpful for resolving religious property disputes but may not be as helpful for schism cases and some other kinds of cases. Before turning to why this is so, it is helpful to set forth some of the criticisms of the neutral principles approach. As will be seen each of these criticisms has some validity, but as will explained in Part III, the alternatives to using neutral principles in property disputes such as leaving property disputes unresolved, relying on church hierarchies, or having civil courts answer ecclesiastical questions are all more problematic than using neutral principles to resolve religious property disputes.

A. Criticisms of the Neutral Principles Approach

There are several persuasive criticisms of the neutral principles approach. The first criticism is shared by the dissenters in *Jones v. Wolf* and several scholars, namely, that applying neutral principles may cause courts to answer ecclesiastical questions either implicitly or explicitly.[76] The idea is that neutral principles may simply serve as a mechanism to bypass the decisions of religious authorities or answer

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75. *See id.* at 527 (noting that the "neutral principles of law" doctrine requires the court to not address which group was more "doctrinally pure" to the religion but rather to "look from a secular perspective to the authorities and documents that inform us on the issue," including Wisconsin statutes); Protestant Episcopal Church v. Barker, 171 Cal. Rptr. 541, 548 (Cal. Ct. App. 2d Dist. 1981) ("[N]eutral principles of law promise to free a court from the necessity of inquiry into church doctrine . . . and allow[s] it to rely on objective, well-established concepts of trust and property law."); Harris v. Apostolic Overcoming Holy Church of God, Inc., 457 So.2d. 385, 387 (Ala. 1984) (stating that neutral principles such as deeds and state statutes governing the holding of church property keep courts from deciding property disputes on the basis of religious doctrine and practice).

76. *See* Jones v. Wolf, 443 U.S. 595, 610–12, 613–14, 621 (1979) (Powell, J., dissenting); Adams & Hanlon, *supra* note 46; Louis J. Sirico, Jr., *Church Property Disputes: Churches as Secular and Alien Institutions*, 55 FORDHAM L. REV. 335, 339 (1986).

questions that are inseparable from their ecclesiastical underpinnings.[77]

This criticism raises important concerns. After all, it is possible that neutral principles could be used as a proxy for deciding religious questions even as courts claim not to be doing so.[78] This criticism may be especially true in cases that focus on schisms or family law questions.[79] As will be explained below this is less of a concern in property disputes, but it does remain a concern.[80]

The second criticism dovetails with the second concern within the first criticism; namely, that neutral principles can interfere with or usurp the powers of religious authorities which itself might be a constitutional violation.[81] This argument posits that courts can use neutral principles to bypass the claimed authority of religious hierarchies and interfere with the principle of church autonomy,[82] thus interfering with the rights of religious institutions.[83] This is not, however, a necessary outcome from using neutral principles, at least in property disputes. Moreover, as will be explained below and in Part III, sometimes deferring to the religious hierarchy is itself answering an ecclesiastical question and often in a manner that can squelch minority voices within a given religious entity. Because neutral principles open the possibility of religious hierarchies and individual congregations predetermining outcomes in religious property disputes by creating legally enforceable documents that spell out what should happen if there is a dispute over religious property, neutral principles are perhaps a better option.

A third criticism is that courts should not be prevented from answering ecclesiastical questions, so the neutral principles approach is unnecessary.[84] This criticism takes several forms. One is that courts

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77. *See Jones*, 443 U.S. at 610–12, 613–14, 621 (Powell, J., dissenting); Adams & Hanlon, *supra* note 46; Sirico, *supra* note 76.

78. *See Jones*, 443 U.S. at 610–12, 613–14, 621 (Powell, J., dissenting); Adams & Hanlon, *supra* note 46; Sirico, *supra* note 76.

79. BORIS BITTKER, SCOTT IDLEMAN & FRANK S. RAVITCH, RELIGION AND THE STATE IN AMERICAN LAW (Cambridge Univ. Press 2015).

80. *See infra* Section II.B.

81. *See Jones*, 443 U.S. at 610–12, 613–14, 621 (Powell, J., dissenting); Helfand *supra* note 6..

82. *See Jones*, 443 U.S. at 610–12, 613–14, 621 (Powell, J., dissenting); Helfand *supra* note 6; Adams & Hanlon *supra* note 46.

83. *See* Perry Dane, *The Maps of Sovereignty: A Meditation*, 12 CARDOZO L. REV. 959, 969 (1991).

84. *See* Helfand, *supra* note 6, at 532; *see also* Samuel J. Levine, *Rethinking the Supreme Court's Hands-Off Approach to Questions of Religious Practice and Belief*, 25 FORDHAM URB. L. J. 85, 91 (1997).

should be able to answer religious questions generally. This argument is inconsistent with every case going back to *Watson v. Jones*, except perhaps one case that has since been distinguished.[85] It is also problematic at both a practical and theoretical level for the reasons pointed out by several prominent scholars and for the reasons discussed in Part III.[86] There is, however, a more nuanced version of this argument that is more persuasive. The argument is that the *Watson* approach was focused on deference to religious authorities and not on ecclesiastical abstention.[87] Therefore, the singular focus on ecclesiastical abstention is wrong, and there are some cases where courts should decide religious questions (at least when they need not take sides in theological disputes to do so).[88] This is especially important where a matter might not be resolved by any authority if a civil court cannot answer the question.[89] These concerns are particularly important in some family law and tort situations.[90] There is some validity to this critique, but this Article will argue in Part III that, whatever the merits of this critique, it is not as strong in religious property disputes where even the *Watson* Court would have looked to trust documents before deferring to religious authorities (had trust documents been helpful in deciding the case).

None of these criticisms are inherently incorrect. In fact, each has its own merits. In property disputes, however, neutral principles are less problematic under each of these concerns and the alternatives to neutral principles may be far worse than applying neutral principles.

85. *See* Gonzalez v. Roman Cath. Archbishop of Manila, 280 U.S. 1, 1–19 (1929), *abrogated by* Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich, 426 U.S. 696 (1976).

86. *See* Paul Horwitz, *Churches as First Amendment Institutions: Of Sovereignty and Spheres*, 44 HARV. C.R.-C.L. L. REV. 79, 116–18 (2009); *see also* Ira C. Lupu & Robert W. Tuttle, *Courts, Clergy, and Congregations: Disputes Between Religious Institutions and Their Leaders*, 7 GEO. J. L. & PUB. POL'Y 119, 134–37 (2009) (discussing "the Theory of 'Neutral Principles'"). *See generally* Kent Greenawalt, *Hands Off! Civil Court Involvement in Conflicts over Religious Property*, 98 COLUM. L. REV. 1843 (1998) (discussing a variety of reasons as to why the neutral principles approach is problematic).

87. *See* Helfand, *supra* note 6, at 494.

88. *See id.* ("[I]t is far from clear why a doctrine requiring deference to religious institutions should also entail judicial abstention from any and all claims implicating religious questions.").

89. *See id.* at 505.

90. *See id.* at 513–19.

B. Contextual Use of Neutral Principles

Contextual use of neutral principles means that in some situations, such as religious property disputes, neutral principles may be particularly useful. Yet, in other situations, such as religious schisms that do not focus on property disputes, neutral principles may be more problematic, and the critiques of neutral principles may have more persuasive force. This Article focuses on property disputes, but the contextual approach suggests that neutral principles may be the best approach in some other contexts as well. Importantly, each context would need to be addressed separately to determine whether neutral principles are better than the alternatives.

To be clear, I am not advocating that neutral principles cannot be used as a general approach to situations involving religious entities and individuals. I am simply arguing that some contexts lend themselves particularly well to a neutral principles approach, and property disputes are one of these contexts. Therefore, by arguing for a contextual approach, this Article is not advocating that neutral principles would be unconstitutional or even ill-advised in contexts in which they may not be as helpful. This Article asserts that all of the solutions to the vexing question of what civil courts should do in cases involving religious disputes are bad.[91] Neutral principles is the least bad approach in some contexts, which is the best that can be hoped for.

The contextual approach treats religious property disputes as a distinct context of religious disputes just as it treats religious schisms as a distinct context, family law cases as a distinct context, etc. The fact that property disputes often involve underlying schisms does not change this calculus because if the property dispute is the central dispute in the case, it is a property dispute case. If the primary dispute in the case is about the right to an accounting,[92] a decision about who has other rights or holds positions within the religious entity,[93] or a question about governance more generally, it is a schism case.[94] Again, this does not mean neutral principles are irrelevant, but as explained in Part III, neutral principles are particularly well suited to resolve property disputes.

91. *See* McConnell & Goodrich, *supra* note 5, at 327 and accompanying text.
92. *See* BITTKER, IDLEMAN & RAVITCH, *supra* note 79, at 386–90.
93. *See id.* at 378–86.
94. *See id.* at 386–88.

An obvious critique of the contextual approach is that it begs the question of whether one can coherently determine in what contexts neutral principles are most helpful. After all, suggesting that neutral principles can or should be used contextually implies that there are contexts where neutral principles should not be used and therefore something closer to the *Watson* approach or simply abstaining from hearing a case would be better. Moreover, another critique might be whether neutral principles can be used in some situations and not others without violating the First Amendment.

The answer to these critiques is that courts have been using a contextual approach, without analyzing it as such, for years. There are a good number of cases where courts try to apply neutral principles and if they can find none either defer to a church hierarchy or congregational majority,[95] or abstain from deciding the case.[96] By openly advocating a contextual approach this Article in some ways is simply acknowledging what is already happening in some jurisdictions, but the key is that this Article explains why property disputes are a particularly good context for neutral principles and advocates using neutral principles for religious property disputes generally.

Moreover, a one size fits all approach to cases involving potential ecclesiastical questions, such as always deferring to religious authorities unless doing so would require a civil court to answer ecclesiastical questions,[97] or always using neutral principles unless doing so would require a civil court to answer ecclesiastical questions, is not a panacea. While these one-size-fits-all approaches have been found constitutional,[98] they have frequently led to civil courts coming exceedingly close to, or even crossing the boundary, between resolving ecclesiastical questions and not doing so. One of the great benefits to a contextual approach is that it suggests areas where neutral principles may be easier to use without answering ecclesiastical questions and also demonstrates where the *Watson* approach may be more risky and/or judicial abstention may be unnecessary.

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95. *See id.* at 363–64, 367–71.

96. *See id.* at 377.

97. *See* Watson v. Jones, 80 U.S. 679, 727 (1871). For a powerful argument against the deference approach for some of the reasons discussed below in this Article, see McConnell & Goodrich, *supra* note 5, at 327.

98. *See* Jones v. Wolf, 443 U.S. 595, 604 (1979); Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich, 426 U.S. 696, 709 (1976).

III. Why Neutral Principles are Particularly Useful in the Context of Religious Property Disputes

Whether a religious entity is hierarchical, congregational, or doesn't fit into these dualistic and stereotypical categories, neutral principles provide a useful mechanism to resolve property disputes. Documents like deeds, trusts, bylaws, titles, and contracts can resolve disputes without the need to take sides on ecclesiastical questions.[99] Of course, if there is a debate over who represents the "real" religious entity when there is a property dispute,[100] documentation that sets forth what should happen in that situation would be particularly helpful, but there may be cases where a court would need to abstain even given neutral principles. Importantly, using neutral principles in the property dispute context enables religious entities to preplan what would happen were a dispute over property to arise, and to predetermine outcomes by using traditional property, trust, or nonprofit legal mechanisms.[101]

This does not mean that neutral principles are a panacea. Nor does it mean they pose no risk of courts entangling themselves in religious questions, albeit unintentionally. Section II.A addressed some of the criticisms of neutral principles. As explained there, some of these criticisms have merit, but the alternatives may be far more problematic than neutral principles in the property dispute context. This Article's argument is not that neutral principles are a perfect or even a good solution to an intractable problem. Rather, this Article argues that neutral principles are the least bad option in the property dispute context. That is, neutral principles are a far better approach than deferring to religious hierarchies or refusing to hear cases in the religious property dispute context. This may not be so in other contexts, but that is a topic beyond the scope of this Article.

Importantly, deference to a religious hierarchy when there is a religious property dispute would be to favor a dominant religious power over a smaller group that might have a better claim to the property given the history and evolution of the specific church, synagogue, mosque, temple, etc.[102] If the hierarchy wants to be sure to have the right to control the property in case of a dispute, it can make this right clear in advance through documents such as deeds, titles, etc.

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99. *See Jones*, 443 U.S. at 604.
100. *See* McConnell & Goodrich, *supra* note 5, at 340.
101. *See Jones*, 443 U.S. at 604.
102. *See* McConnell & Goodrich, *supra* note 5, at 330.

The same would be true for congregational entities because they could set forth specific rights to the property based on any factors they choose.

In fact, deferring to a hierarchy or congregational structure may itself be a religious decision since many religious groups do not fit neatly into either of these Christocentric and dualistic categories.[103] Trying to pigeonhole the many diverse religious structures that exist in the U.S. into "hierarchical" or "congregational" categories is itself deciding something ecclesiastical because it redefines the way in which many religious entities view themselves and their governance structures.[104] Even for religions that neatly fit into one of these categories deferring to a church hierarchy or majority decision where there are legal documents that can be applied based on property or contract law without requiring religious interpretation is to favor the dominant religious structure.[105] In fact, even under the *Watson* approach trusts can be used to decide cases without deferring to religious hierarchies or majority rule.[106]

Importantly, property disputes are more likely to implicate potential neutral legal documents such as titles, trusts, contracts, or church bylaws.[107] Still, what happens when there are no neutral documents available? Should courts just refuse to hear the case?

There is an interesting dialogue about this in the literature. Some have argued that deference to religious entities is preferable to neutral principles or that courts should hear cases involving religious questions because it was a mistake to read *Watson* to require ecclesiastical abstention in the first place.[108] Therefore, courts should decide cases that cannot be decided by religious authorities.[109] Others have argued that deference is the best approach, and if there is no way to answer a question without deferring to a religious entity, courts can

103. *See id.* at 337–38.

104. *See id.* at 340; Greenawalt, *supra* note 5, at 1878–81.

105. Of course, this assumes that the legal documents actually can be applied without requiring interpretation of religious questions. This may not always be possible, *see supra* Part II.

106. *See* Watson v. Jones, 80 U.S. 679, 725 (1871).

107. *See* McConnell & Goodrich, *supra* note 5, at 311.

108. *See* Helfand, *supra* note 6, at 494; *see also* Levine, *supra* note 84, at 88; Adams & Hanlon, *supra* note 46, at 1297.

109. *See* Helfand, *supra* note 6, at 494; *see also* Levine, *supra* note 84, at 88; Adams & Hanlon, *supra* note 46, at 1297.

abstain from answering the question.[110] Still, others have argued that neutral principles are the best approach and may give courts the best chance to decide legal disputes without deciding religious questions.[111] As should be clear by now, this Article agrees with the latter group at least in the context of property disputes.

As Michael Helfand has pointed out, however, ecclesiastical abstention can lead to there being no venue to hear a dispute when no religious authority is available to hear it.[112] From a neutral principles' perspective (and in fact from a strong deference perspective) the answer may simply be that this is better than entangling civil courts in ecclesiastical matters.[113] This Article generally supports this perspective as well as the reading of *Watson* supporting ecclesiastical abstention.[114]

Yet, Helfand's argument about the problems that arise when no forum is available to hear a claim still resonates. He raises the question of what should happen when the only issue is enforcing a noncontroversial religious term in a trust, marriage agreement, or other type of contract?[115] Some courts have refused to enforce contracts when religious terminology must be applied or interpreted even when there is a readily available definition/understanding of the terminology and no controversy over its meaning.[116] This is an important point. Why should a court abstain from enforcing a term that has religious meaning if there is no disagreement over the religious content of the term?

Here too neutral principles could be helpful. If the religious term can be interpreted in a manner similar to other noncontroversial technical terms in legal documents, even a robust understanding of ecclesiastical abstention need not preclude enforcement of the terms of the document nor need it prevent the court from applying the meaning of the religious term since it is not in dispute. Of course, if

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110. *See generally, e.g.*, Adams & Hanlon, *supra* note 46; Richard W. Garnett, *A Hands-Off Approach to Religious Doctrine: What are We Talking About?*, 84 NOTRE DAME L. REV. 837, 861–63 (2009).

111. *See generally, e.g.*, McConnell & Goodrich, *supra* note 5 (discussing how deference risks freezing the development of religious entities or forcing them into categories that many entities do not fit within); Greenawalt, *supra* note 5 (acknowledging that neutral principles are not without their own risk but are a better option than pure deference).

112. *See* Helfand, *supra* note 6 at 500.

113. *See* Greenawalt, *supra* note 5; Lupu & Tuttle, *supra* note 86, at 138.

114. *See* Greenawalt, *supra* note 5, at 1847–89.

115. *See* Helfand, *supra* note 6, at 515, 517, 561.

116. *See id.* at 554–55.

there is a dispute over the meaning of the religious term enforcement by a civil court would be problematic and abstention may be necessary.[117]

While civil courts can answer complex questions in fields in which the court has little experience or knowledge with the help of expert testimony,[118] this is not without its problems.[119] Importantly, in the religion context there are no scientific standards that can enable courts to decide whether something is "good religion."[120] There may be disagreement within a religion over the meaning of a religious term. Therefore, expert testimony would not resolve the "correct" meaning of the religious term and would not enable the court to decide the case without defining a religious term that is disputed within the religion.

The task of asking a civil court to decide religious questions or define religious terms when their meaning is disputed may be an impossible one given that the validity of religious traditions or ideas often cannot be judged based on commonly accepted criterion.[121] In the property dispute context, neutral principles may help courts fill this void without answering religious questions, but neutral principles will not always be available to do so. As mentioned above, however, a great benefit of the neutral principles approach to resolving property disputes is that legal documents can be signed long before any dispute arises. These documents could then be used to resolve a property dispute should one later arise.

CONCLUSION

"Neutral principles of law," while far from perfect, are the best mechanism civil courts can use to decide religious property disputes. None of the current approaches to religious property disputes are great, but a neutral principles approach is the least bad option. Deferring to religious entities based on whether they are hierarchical or congregational is to apply a dualistic, Christocentric categorical approach to many religious entities that do not fit into either category, and to situations where the deferral is itself taking sides in a religious

117. *See id.*

118. *See generally* Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

119. *See* Daubert v. Merrell Dow Pharms., Inc., 43 F.3d 1311, 1317 (9th Cir. 1995).

120. *See Daubert*, 509 U.S. at 579.

121. *See generally* WINNIFRED FALLERS SULLIVAN, THE IMPOSSIBILITY OF RELIGIOUS FREEDOM (Princeton Univ. Press 2005).

dispute. This can be avoided by carefully crafted documentation such as deeds, titles, trusts, bylaws, and contracts. Relying on neutral principles allows courts to decide religious property disputes in many situations without answering ecclesiastical questions.

While the criticisms of the neutral principles approach discussed in this Article have some merit, they do not outweigh the benefits of the contextual neutral principles approach for which this Article advocates. Neutral principles are particularly useful in property disputes but may not be as useful in some other contexts. In fact, some courts have long applied a combination of neutral principles, the deference approach from *Watson v. Jones*, or judicial abstention depending on the situation involved in a given case.