Rel: April 5, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0158

Rex Sails, Sharonda Sails, Dazella Peoples, Chaz Davis, individually and on behalf of Union Baptist Church No. 2

v.

Orlando Weeks, The Word Christian Center International, and State of Alabama

Appeal from Chilton Circuit Court
(CV-22-900104)

COOK, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

Parker, C.J., and Shaw, Wise, Bryan, Stewart, and Mitchell, JJ., concur.

Mendheim, J., concurs specially, with opinion.

Sellers, J., dissents, with opinion.

MENDHEIM, Justice (concurring specially).

I agree with the Court's decision to affirm the Chilton Circuit Court's judgment dismissing the plaintiffs' complaint in this case. I write separately to discuss how the United States Supreme Court and this Court have discussed and decided church disputes like this one and to clarify what I believe is the proper analytical approach to such disputes.

This case involves a complaint filed by Rex Sails, Sharonda Sails, Dazella Peoples, Chaz Davis, individually on behalf of Union Baptist Church No. 2 ("the Sails plaintiffs"), against Orlando Weeks and The Word Christian Center International ("the Weeks defendants") and the State of Alabama in Chilton Circuit Court. The Sails plaintiffs alleged that the Weeks defendants have converted some church property and have used other church property for nonchurch purposes, and they sought an injunction to stop those alleged abuses to church property. The Weeks defendants filed a motion to dismiss in which they contended, among other things, that the Sails plaintiffs are not members of the church and that the circuit court lacked subject-matter jurisdiction to determine if they were because, they say, church membership is a

"fundamental ecclesiastical concern." Subject to the caveats I express herein, I agree with the Weeks defendants.

In arguing that our courts have jurisdiction to decide the dispute presented in this case, the Sails plaintiffs cited Abyssinia Missionary Baptist Church v. Nixon, 340 So. 2d 746, 748 (Ala. 1976), in which this Court stated: "As is the case with all churches, the courts will not assume jurisdiction, in fact [have] none, to resolve disputes regarding their spiritual or ecclesiastical affairs. However, there is jurisdiction to resolve questions of civil or property rights." The Abyssinia Court cited Williams v. Jones, 258 Ala. 59, 61 So. 2d 101 (1952), another case cited by the Sails plaintiffs, in support of that proposition. The Sails plaintiffs also cited St. Union Baptist Church, Inc. v. Howard, 211 So. 3d 804, 812 (Ala. 2016), which quoted Abyssinia for the same proposition.

Although Howard, Abyssinia, and Williams did not directly do so, many of our recent cases have linked the foregoing proposition stated in Abyssinia to the First Amendment to the United States Constitution. For example, in Ex parte Bole, 103 So. 3d 40, 53 (Ala. 2012), this Court quoted the same passage from Abyssinia, but it introduced the quote with the following preface: "With regard to a state court's jurisdiction over a

church in the face of a First Amendment challenge, this Court has stated: …." Likewise, in Lott v. Eastern Shore Christian Center, 908 So. 2d 922, 928 (Ala. 2005), this Court proclaimed:

> "Courts are constrained by the First Amendment of the United States Constitution from 'intrud[ing] into a religious organization's determination of ... ecclesiastical matters such as theological doctrine, church discipline, or the conformity of members to standards of faith and morality.' Singh v. Singh, 114 Cal. App. 4th 1264, 1275, 9 Cal. Rptr. 3d 4, 12 (2004) (emphasis added)."

Our Court has followed the lead of the United States Supreme Court by ascribing to the First Amendment the proposition that courts will not exercise jurisdiction over ecclesiastical matters. For example, in Jones v. Wolf, 443 U.S. 595, 602 (1979), the United States Supreme Court stated:

> "It is also clear, however, that 'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.' [Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440,] 449 [(1969) ('Presbyterian Church I')]. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710 (1976); Maryland & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 368 (1970); Presbyterian Church I, 393 U.S., at 449."

It is understandable for courts to allude to the First Amendment in church-dispute cases because the Free Exercise Clause and the Establishment Clause therein[1] constitute our nation's most prominent declarations about religious freedom. Nonetheless, it is inaccurate to attribute the genesis of the ecclesiastical-abstention doctrine to the First Amendment. The delicacy with which courts approach church-dispute cases arose more organically from America's history of seeking to disentangle church denominations from state governance, a movement that occurred because of a steadfast belief that religious freedom is best preserved by keeping government out of ecclesiastical matters. See, e.g., Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C., 565 U.S. 171, 182, 183-84 (2012) ("Seeking to escape the control of the national church, the Puritans fled to New England, where they hoped to elect their own ministers and establish their own modes of worship." "It was against this background that the First Amendment was adopted. Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church. … By

[1]The Religion Clauses of the First Amendment state: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; …." U.S. Const. amend. I.

forbidding the 'establishment of religion' and guaranteeing the 'free exercise thereof,' the Religion Clauses ensured that the new Federal Government -- unlike the English Crown -- would have no role in filling ecclesiastical offices."); Note, Judicial Intervention in Disputes over the Use of Church Property, 75 Harv. L. Rev. 1142, 1148 (1962) ("Quite apart from matters of theological abstruseness, it is surprising that the [Attorney-General ex rel. Mander v.] Pearson[, 3 Mer. 353, 36 Eng. Rep. 135 (Ch. 1817),[2]] opinion evinces no awareness of a public interest in the autonomy of religious associations -- a salutary freedom from judicial intervention. The existence of an established church may explain this inadvertence. In a country [England] where the majority of worshippers

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[2]Pearson was the seminal case involving church disputes in the English courts. The United States Supreme Court in Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872), stated that in Pearson

> "the proposition is laid down by Lord Eldon, and sustained by the peers, that it is the duty of the court in [church-property-dispute] cases to inquire and decide for itself, not only what was the nature and power of these church judicatories, but what is the true standard of faith in the church organization, and which of the contending parties before the court holds to this standard."

80 U.S. (13 Wall.) at 727. In other words, Lord Eldon decreed that church-property disputes should be decided based on which part of a church congregation represented that church's original religious principles.

belong to a state-supervised religious body, the notion of religious associations as private bodies standing outside the state -- quasi-sovereignties which enhance the people's effective opportunity for self-government and independence -- was unlikely to have made great headway." (footnotes omitted)).

In line with that history, the United States Supreme Court's first major decision in this area, Watson v. Jones, 80 U.S. (13 Wall.) 679 (1872), was brought before it through diversity jurisdiction, and, notably, that opinion never invoked the First Amendment.

> "The opinion itself [Watson v. Jones] did not turn on either the establishment or the prohibition of the free exercise of religion. …
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> "….
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> "Watson v. Jones, although it contains a reference to the relations of church and state under our system of laws, was decided without depending upon prohibition of state interference with the free exercise of religion. It was decided in 1872, before judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action. It long antedated the 1938 decisions of Erie R. Co. v. Tompkins and Ruhlin v. New York Life Ins. Co., 304 U.S. 64 and 304 U.S. 202, and, therefore, even though federal jurisdiction in the case depended solely on diversity, the holding was based on general law rather than Kentucky law. The opinion radiates, however, a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for

> themselves, free from state interference, matters of church government as well as those of faith and doctrine."

Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 110, 115-16 (1952) (footnotes omitted). "In Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94 (1952), the Court converted the principle of Watson[v. Jones, 80 U.S. (13 Wall.) 679 (1872),] as qualified by Gonzalez[v. Roman Catholic Archbishop of Manila, 280 U.S. 1 (1929),] into a constitutional rule." Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 447 (1969) ("Hull"). See Kedroff, 344 U.S. at 116 (concluding that "[f]reedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference" (footnote omitted)). Thus, for roughly the first 150 years of this country's jurisprudence, the First Amendment was not the inflection point for discussing the judiciary's role in settling church disputes, but, by the time the Court decided Hull, it was comfortable asserting that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." 393 U.S. at 449. Cf. Puri v. Khalsa, 844 F.3d 1152,

1162 (9th Cir. 2017) (acknowledging that ecclesiastical abstention was "grounded originally in common law but later in the First Amendment").

The lack of discussion about the First Amendment is also reflected in Alabama's early cases concerning church disputes. In Hundley v. Collins, 131 Ala. 234, 244, 32 So. 575, 578 (1902), this Court quoted with approval from Shannon v. Frost, 42 Ky. (3 B. Mon.) 253, 258 (Ct. App. 1842), the observation that "'[t]his court, having no ecclesiastical jurisdiction, can not revise or question ordinary acts of church discipline or exclusion,'" without referencing the First Amendment. In Williams, 258 Ala. at 61, 61 So. 2d at 102, this Court noted that "[i]t is firmly established that courts decline to assume any jurisdiction as regards the purely ecclesiastical or spiritual feature of the church," again without any reference to or reliance upon the First Amendment. Indeed, it was not until a church-property dispute that came before this Court in First Methodist Church of Union Springs v. Scott, 284 Ala. 571, 226 So. 2d 632 (1969), that this Court invoked the First Amendment with respect to such cases. See 284 Ala. at 580, 226 So. 2d at 640 (declaring that an Alabama legislative act that purported to award church property to a local church

body in contradiction to the Methodist Church hierarchy "violate[d] the First Amendment guarantee of religious freedom").

I emphasize that the ecclesiastical-abstention doctrine existed before the adoption of the First Amendment first because its prior legal existence is the reason the First Amendment dictates only the broad outlines of the doctrine and not the details of how state courts should apply it. As the United States Supreme Court noted in Wolf:

> "[T]he First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, 'a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'"

443 U.S. at 602 (quoting Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368 (1970) (Brennan, J., concurring)). In other words, we need not exalt the United States Supreme Court's varied pronouncements on this subject above our own commonsense understanding of what our courts should and should not resolve with respect to church disputes.

Moreover, the United States Supreme Court's invocation of the First Amendment in church-dispute cases arose during the same period that the Court began perpetuating the idea that "the clause against

establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" Everson v. Board of Educ. of Ewing Twp., 330 U.S. 1, 16 (1947) (quoting Reynolds v. United States, 98 U.S. (8 Otto) 145, 164 (1878)[3]). By the 1970s, particularly through a test promulgated in Lemon v. Kurtzman, 403 U.S. 602 (1971),[4] the United States Supreme Court set up a paradigm of "secular" jurisprudence that relied upon the idea that religious ideas taint or infect government and, thus, that religion must be kept as far away from the civil sphere as possible. In recent years, however, the United States Supreme Court has slowly recognized that such a view is a distortion of the importance religious freedom played in the establishment and growth of the country, to the point that the Court abrogated the so-called Lemon test in

[3]Reynolds quoted from Thomas Jefferson's letter to the Danbury Baptist Association on January 1, 1802. Jefferson's metaphor of a "wall of separation" was "largely unknown" until its use in Reynolds, and it did not become a staple of constitutional law until Everson. Scott U. Schlegel, The "Separation of Church and State," 56 La. B.J. 118, 118 (2008).

[4]Succinctly stated, the so-called Lemon test required three things of any government action: first, "a secular legislative purpose," second, the "principal or primary effect must be one that neither advances nor inhibits religion," and third, it "must not foster 'an excessive government entanglement with religion.'" Lemon, 403 U.S. at 612-13 (quoting Walz v. Tax Comm'n, 397 U.S. 664, 674 (1970)).

Kennedy v. Bremerton School District, 597 U.S. 507, 534 (2022).[5] See also Groff v. DeJoy, 600 U.S. 447, 460 (2023) (recognizing abrogation of Lemon test).

Notably, the period that ushered in the Lemon test also introduced the idea that "civil courts may play [a role] in resolving church property disputes" as long as "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." Hull, 393 U.S. at 449. The Court extolled that approach in Wolf:

> "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice."

443 U.S. at 603 (emphasis added).

Our Court unwittingly adopted the neutral-principles-of-law approach in Trinity Presbyterian Church of Montgomery v. Tankersley, 374 So. 2d 861, 866 (Ala. 1979), without recognizing its underlying lack

[5]In Kennedy, the Court described the Lemon test as an "abstract, and ahistorical approach to the Establishment Clause." 597 U.S. at 534.

of respect for religious ideas. I believe that our invocation of the ecclesiastical-abstention doctrine should come from a desire to protect religious freedom rather than an unfounded fear that religious ideas might taint our civil jurisprudence.

Moreover, the neutral-principles-of-law approach hinges on what sources a court decides to consider in reaching a decision. Does it consider a church's constitution, membership rolls, the minutes of church-committee meetings, a hierarchical church's book of discipline, and other church-generated documents or does it just consider "legal" documents such as articles of incorporation, contracts, and deeds? Wolf seemed to indicate that "[t]he neutral-principles method, at least as it has evolved in Georgia," may include consideration of a "Book of Church Order," a "Book of Discipline," "the terms of the local church charters, … and the provisions in the constitution of the general church concerning the ownership and control of church property."[6] Wolf, 443 U.S. at 604, 600,

[6]In keeping with the idea that the First Amendment has dictated only the broad outlines of how courts should address church disputes, some state courts have not so readily agreed with considering church documents when applying the neutral-principles-of-law approach. See, e.g., Oklahoma Annual Conf. of the United Methodist Church, Inc. v. Timmons, 538 P.3d 163, 168 (Okla. 2023) (concluding that because "the Book of Discipline is a governing church document, its interpretation is

603. But the Court tried to caution that "a civil court must take special care to scrutinize the document in purely secular terms." Id. at 604. However, I would posit that a "secular" interpretation of such documents is often not possible or neutral. See Theodore G. Lee, Reframing Church Property Disputes in Washington State, 96 Wash. L. Rev. 241, 264-65 (2021) (recognizing that "[t]he neutral-principles approach requires civil courts to examine all relevant documents and events regarding the disputed church property. In doing so, courts can interpret religious governing rules and documents through a secular lens. Secular interpretations of religious matters can and do distort a church's intent on how it wants to organize or what powers it vests to each of its unit[s].

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an ecclesiastical issue"); Berthiaume v. McCormack, 153 N.H. 239, 248, 891 A.2d 539, 547 (2006) (stating that, in a church-property dispute, the New Hampshire Supreme Court "will first consider only secular documents such as trusts, deeds, and statutes. Only if these documents leave it unclear which party should prevail will we consider religious documents, such as church constitutions and by-laws, even when such documents contain provisions governing the use or disposal of church property."); Solid Rock Baptist Church v. Carlton, 347 N.J. Super. 180, 195, 789 A.2d 149, 158 (App. Div. 2002) (concluding that "the method of neutral principles does not allow for construction of church documents if their interpretation is the focus of dispute and if such documents are not so clear, provable, and express that the civil courts could enforce them without engaging in a searching, and therefore impermissible, inquiry into church polity").

Hence, civil courts sometimes fail to respect the provisions that church members or units voluntarily and mutually agreed to.").[7]

However, one potential advantage of viewing our ecclesiastical-abstention jurisprudence through a First Amendment lens is that it can help us better conceptualize the doctrine's contours. Several of our previous church-dispute cases have imprecisely addressed the ecclesiastical-abstention doctrine's relationship with subject-matter jurisdiction.[8] For example, in Ex parte Bole, this Court concluded that

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[7]I also note that, although it is not implicated in this case, the so-called "hierarchical-deference" approach that is often invoked in property disputes involving hierarchically structured churches has its own problems. "[A]pplying the deference approach requires civil courts to factually conclude whether the disputing parties are members of a hierarchical or congregational church. Such a conclusion necessarily involves secular analysis and interpretation of the structure or polity of the disputing parties -- an indisputable secular entanglement into a purely religious matter." Lee, 96 Wash. L. Rev. at 262 (footnote omitted). In other words, a church's governing structure is not always purely hierarchical or purely congregational, so how is a court to know whether hierarchical deference should be applied? Moreover, employing the hierarchical-deference approach necessarily favors the findings of the highest body in a hierarchical church, while congregational churches are not given the same deference in their decision-making. See id. at 263.

[8]The lack of precision should not surprise us. The most quoted case in this area of the law observed: "There is, perhaps, no word in legal terminology so frequently used as the word jurisdiction, so capable of use in a general and vague sense, and which is used so often by men learned

"the trial court did not have subject-matter jurisdiction over Higgs's claims against Bole by virtue of the First and Fourteenth Amendments to the United States Constitution."[9] 103 So. 3d at 72. In Taylor v. Paradise Missionary Baptist Church, 242 So. 3d 979 (Ala. 2017), this Court concluded that "[t]he trial court was correct in its initial determination here that it lacked subject-matter jurisdiction to adjudicate the matter of Taylor's removal as the pastor at [Paradise Missionary Baptist Church]." 242 So. 3d at 987.

But the application of the ecclesiastical-abstention doctrine does not involve a lack of subject-matter jurisdiction. Understanding that fact requires keeping in mind what "subject-matter jurisdiction" means:

> "Jurisdiction is '[a] court's power to decide a case or issue a decree.' Black's Law Dictionary 867 (8th ed. 2004). Subject-matter jurisdiction concerns a court's power to decide certain types of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) ('"By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought."' (quoting Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316, 19 L. Ed. 931 (1870))). That power is derived from the Alabama Constitution and the Alabama Code. See United

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in the law without a due regard to precision in its application." Watson v. Jones, 80 U.S. (13 Wall.) 679, 732 (1872).

[9]Ex parte Bole concerned claims by Lawton Higgs, Sr., formerly a pastor and pastor emeritus at the Church of the Reconciler, against Tom Bole, a lay member of the Church of the Reconciler.

> States v. Cotton, 535 U.S. 625, 630-31, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002) (subject-matter jurisdiction refers to a court's 'statutory or constitutional power' to adjudicate a case)."

Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006).

A court either lacks subject-matter jurisdiction from the outset of a case or it does not. Because of this, "[l]ack of subject-matter jurisdiction may be raised at any time by a party or by a court ex mero motu." Ryals v. Lathan Co., 77 So. 3d 1175, 1179 (Ala. 2011). In contrast, our courts only consider the potential application of the ecclesiastical-abstention doctrine when a party argues that deciding an issue would require delving into ecclesiastical matters. That is because invoking the ecclesiastical-abstention doctrine involves the invocation of rights to religious freedom, and rights, like defenses, can be waived. Our courts do not raise the ecclesiastical-abstention doctrine on our own accord.

Admittedly, some church-dispute cases cannot be considered by the courts because of a lack of subject-matter jurisdiction. When a case solely concerns matters of church doctrine, no jurisdiction is conferred by the United States Constitution, the Alabama Constitution, or the Alabama Code. However, cases that solely involve disputes over church doctrine are rarely ever filed in courts of law. Most lawsuits that implicate church

matters -- including this one -- contain a mixture of legal and church issues. This is why such cases are brought into courts of law: because the cases contain some element that is legally cognizable, i.e., such as a dispute about who controls church property or about whether a church has failed to pay an employee under contract. Such cases do not implicate a lack of subject-matter jurisdiction because our courts ostensibly have jurisdiction over such disputes; rather, such cases entail the prudential exercise of legal jurisdiction. In other words, in a case such as this one, we are not deciding whether the court can exercise jurisdiction over the dispute, but whether it should exercise jurisdiction.[10]

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[10]The Kentucky Supreme Court (among others) uses the term "ecclesiastical abstention" when discussing that prudential determination:

> "To aid in our determination of whether ecclesiastical abstention prevents general-jurisdiction courts from hearing a broad 'kind of case' or 'this case' specifically, it is instructive to contemplate the analysis relevant to assessing the pertinence of ecclesiastical abstention. When addressing whether to invoke the doctrine, '[c]ourts must look not at the label placed on the action but at the actual issues the court has been asked to decide.' [Quoting Kirby v. Lexington Theological Seminary, 426 S.W.3d 597, 619 (Ky. 2014).] This analytical process makes clear that courts must look past the type of case presented and to the case-specific issues presented when contemplating the application of the ecclesiastical-abstention doctrine. There is no one type of case

> that Kentucky courts are universally unable to hear as a result of ecclesiastical abstention. Instead, when religious issues permeate distinct cases of a traditionally-recognized type, such as employment disputes, tort suits, or business-association conflicts, Kentucky courts are without authority to adjudicate that specific case.
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> "That all cases where ecclesiastical abstention applies have similar characteristics, namely that they involve ecclesiastical issues, does not render them a type of case any more than cases invoking qualified governmental immunity are a case type for purposes of precluding circuit-court jurisdiction. We, therefore, conclude that ecclesiastical abstention does not divest Kentucky courts of subject-matter jurisdiction because it does not render our courts unable to hear types of cases, only specific cases pervaded by religious issues."

St. Joseph Cath. Orphan Soc'y v. Edwards, 449 S.W.3d 727, 736-37 (Ky. 2014). See also Winkler v. Marist Fathers of Detroit, Inc., 500 Mich. 327, 337, 901 N.W.2d 566, 572-73 (2017) (concluding that, "[a]s its origins and operation make clear, the ecclesiastical abstention doctrine informs how civil courts must adjudicate claims involving ecclesiastical questions; it does not deprive those courts of subject matter jurisdiction over such claims"). Accord Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C., 565 U.S. 171, 195 n.4 (2012) (concluding that the "ministerial exception" to employment discrimination lawsuits based on Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., "operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar. That is because the issue presented by the exception is 'whether the allegations the plaintiff makes entitle him to relief,' not whether the court has 'power to hear [the] case.' Morrison v. National Australia Bank Ltd., 561 U.S. 247, 254 (2010) (internal quotation marks omitted)."). But see Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc., 531 S.W.3d 146, 159 (Tenn. 2017) (concluding that, despite its label as "the ecclesiastical abstention doctrine," "where [the doctrine] applies, [it] functions as a subject matter jurisdictional bar that precludes civil courts

Invariably, that prudential decision comes down to what this Court has called "'the nature of the underlying dispute.'" Taylor, 242 So. 3d at 995 (quoting McGlathery v. Richardson, 944 So. 2d 968, 975 (Ala. Civ. App. 2006) (Murdock, J., concurring specially)). Accord Bruss v. Przybylo, 385 Ill. App. 3d 399, 409, 895 N.E.2d 1102, 1112, 324 Ill. Dec. 387, 397 (2008) (persuasively explaining that "the ecclesiastical abstention doctrine fulfills its aim only if subject-matter deference is considered the controlling principle behind the doctrine. Where the subject matter of a church dispute is not appropriate for secular adjudication, courts must abstain even if the church has not itself taken formal action on the dispute.").

The Sails plaintiffs argued that the heart of this dispute concerns the alleged mismanagement or misuse of church property. However, I believe that the Sails plaintiffs' property allegations are a proxy for asking the courts to decide who controls the church -- an issue our courts lack the means and expertise to decide.

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from adjudicating disputes that are 'strictly and purely ecclesiastical' in character and which concern 'theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.' Watson[v. Jones], 80 U.S. [(13 Wall.)] at 733 [(1872)].").

It could be argued that we should exercise jurisdiction in this dispute because the church became incorporated in 1976. Support for that proposition seemingly would come from Tankersley, in which this Court stated:

> "In this case, the issues involved clearly dealt with property; there was no need to decide any ecclesiastical issues in order to decide the property issues. The basic question in the case was: who were the members of the corporation; in other words, who owned the corporation and thus owned the church property? This was a legal question because it involved issues of property rights and the constituency of a legal entity created by statute. The courts in this state have long recognized the concept that, whenever there is an incorporated church, there exist two entities. Williams v. Jones, [258 Ala. 59, 61 So. 2d 101 (1952)]; Hundley v. Collins, 131 Ala. 234, 32 So. 575 (1901). Stated otherwise, there is a spiritual church and a secular legal corporation, each separate though closely connected. Each entity has a separate purpose. Questions involving the spiritual church are ecclesiastical in nature, and civil courts cannot decide any questions concerning this entity. In contrast, the secular corporate entity is formed by the state and performs civil functions, e.g., holding title to church property, and is in no sense ecclesiastical in its function; therefore, civil courts can decide questions concerning the corporation."

374 So. 2d at 866. Based on the foregoing passage, the logic would be that the question before us concerns the corporate entity, i.e., the incorporated church, not "the spiritual church," because the corporate entity is the one that holds property.

But that argument would have validity only if there was a clear declaration of who are the members of the incorporated church. However, the record on appeal is devoid of information about who are the members of the incorporated church or, for that matter, what are the criteria for being a member of either the incorporated church or the spiritual church.

Moreover, that viewpoint misunderstands the distinction our courts seek to make between the incorporated church and the spiritual church. The distinction is not explicated in Tankersley, but a robust discussion of it is in Blount v. Sixteenth Street St. Baptist Church, 206 Ala. 423, 90 So. 602 (1921):

> "It is not contradicted, and is assumed as true, that the Baptist Church is a congregation of believers, united for the purpose of religious worship, and that it is independent of all other organizations, and is self-governing. The incorporated body is nothing more or less than an incorporated board of trustees of such organization, made up generally of members of the ecclesiastical body, holding title to property, having certain or limited control thereof, and subject to direction over its control, transfer, or incumbrance, under the guidance and direction of its congregation; and it may be, in some instances, the care and management of the physical properties is with them. The courts take judicial knowledge of general religious matters. 23 C.J. p. 117, § 1926, p. 160, § 1983; Malone v. Lacroix, 144 Ala. 648, 41 South. 724 [(1905)]; Humphrey v. Burnside, 4 Bush. (Ky.) 215 [(1868)].
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> "In the first place, speaking generally, the membership in the corporation is in no sense the same as membership in

the Baptist Church, as a religious congregation of believers. This distinction is brought out by Judge Cooley, in the case of Hardin v. Trustees of the Second Baptist Church, 51 Mich. 137, 16 N.W. 311, 47 Am. St. Rep. 555 [(1883)], where the action was by a member in good standing to recover damages for expulsion from the church. In that case, among other things, it was said:

> "'Connected with the corporation the statute contemplates that there will be a church, though possibly this may not be essential. In this case there is one. The church has its members who are supposed to hold certain beliefs and subscribe some covenant with each other if such is the usage of the denomination to which the church is attached. The church is not incorporated, and has nothing whatever to do with the temporalities. It does not control the property of the trustees; it can receive nobody into the society and can expel nobody from it. On the other hand, the corporation has nothing to do with the church except as it provides for the church wants. It cannot alter the church faith or covenant, it cannot receive [members], it cannot expel members, it cannot prevent the church receiving or expelling whomsoever that body shall see fit to receive or expel. This concise statement is amply sufficient to show that this suit has no foundation.'

"The same position was elaborated by Mr. Justice Lurton (Nance v. Busby, 91 Tenn. 303, 18 S.W. 874, 15 L.R.A. 801 [(1892)]), in a case it is true, of the Primitive Baptist Church; but the organization of that church is analogous, if not identical, with what are commonly called Missionary Baptist Churches, of which church was the complainant. He reviewed the authorities to great extent, cited Hardin v. Baptist Church, supra, saying in the course of his opinion:

> "'Where a society has become incorporated for the purpose of maintaining religious worship, the rights of a member of the incorporation are one thing, and his rights as a member of the church worshipping in the building owned by the corporation may be quite another thing. His rights in the corporation and as a corporator will depend exclusively upon the law creating the corporation.'

"These two opinions and the authorities collected amply support the proposition that the corporation is the mere invention of a means of holding title for the benefit of the members of the corporation, and to facilitate its transfer or incumbrance of property, as may be desired for the business of the corporation, when duly authorized and directed by its membership, pursuant to the rules of its church government.

"….

"This case, in line with the evidence adduced on the trial, distinctly declares the democratic character of the Baptist Church, and determines where the most vital power -- the power of excommunication -- rests.

"Coming to our own cases, it has been observed that each religious denomination has its own distinct form of government, and the courts refrain, as far as possible, from interfering when the office or function is purely ecclesiastical or spiritual. Hundley v. Collins, 131 Ala. 234, 32 South. 575, 90 Am. St. Rep. 33 [(1902)]. To the end that church property may be the better conserved and transferred, it is provided by statute that churches may incorporate. Gen. Acts 1919, p. 117; Code, §§ 3613, 3614; Walker v. McPherson, 199 Ala. 486, 74 South. 449 [(1916)]. There is nothing in our decisions and the statutory provisions obtaining which in any way stipulates that the incorporated religious bodies or churches shall be governed otherwise than by their particular form of church government. The fact of incorporation is not a surrender of

> anything to another or different entity; but it is simply the creation of a legal entity to hold its property, convey or incumber the same pursuant to the due authorization of its membership -- the rules of the church made and provided for the expression of the will and judgment of its members after due notice."

206 Ala. at 425-26, 90 So. at 603-04 (emphasis added).

In an earlier case, the Court explained:

> "The incorporation of an existent religious body being that of the members thereof, it is a consequence that the selection, by the body, of trustees to effect the incorporation thereof is but an authoritative act of the body looking to the consummation of the incorporation -- an agency which, when afforded, and when the major purpose is attained, is subject to change in personnel without the control or revision of civil tribunals. It follows, of course, that such trustees are not, at any time, the tenants of offices in a corporation created by authority of this state, within the purview of the quoted provision of section 5453. So far as mere tenure of the place of trustee is concerned, such officers (trustees) are the creatures alone of the active spiritual phase of the religious body's existence, and are hence without the jurisdiction of the civil courts."

Dismukes v. State ex rel. Hill, 176 Ala. 616, 619, 58 So. 195, 196 (1912) (second to last emphasis added). See also Hundley, 131 Ala. at 240, 244, 32 So. at 577, 578 (admitting that "church membership was a condition of membership of the corporation," but stating that incorporation does not bring within the civil courts the issue of "'who ought to be members of the church,'" and emphasizing that "'[t]he only and primary object of

the corporation is the acquisition and taking care of property. The rules of the church as to the discipline of members have no relation to the corporate property or corporate matters.'" (quoting Shannon, 42 Ky. (3 B. Mon.) at 258, and Sale v. First Regular Baptist Church, 62 Iowa 26, 17 N.W. 143, 144-45 (1883))).

The point of the distinction between the spiritual church and the incorporated church is that the fact of incorporation does not bring the issue of who is a member of a church within the jurisdiction of the courts because the courts are not supposed to delve into such spiritual matters. See Blount, 206 Ala. at 426, 90 So. at 604; Taylor, 242 So. 3d at 995 (stating that this Court had held in Ex parte Board of Trustees/Directors &/or Deacons of Old Elam Baptist Church, 983 So. 2d 1079, 1093 (Ala. 2007), that "the trial court cannot inquire into or assess the substantive criteria upon which terminations of church memberships are based").

The Sails plaintiffs alleged in their complaint that they "are members of Union Baptist Church #2" even though they each admitted in affidavits that they "have not attended services … in several years." The Weeks defendants contended in their motion to dismiss that the Sails plaintiffs "voluntarily disassociated from the church several years ago."

Whether the Sails plaintiffs' absences from the church for several years caused their memberships to lapse is an ecclesiastical matter.

It is true that, on the surface, this case concerns the disposition of church property and that church property is held by the incorporated church. But the complaint, the motion to dismiss, and the affidavits of the parties make it clear that "the nature of the underlying dispute" is whether the Sails plaintiffs, who stopped attending the church several years ago, are still members of the spiritual church, who are the ones that ultimately control the incorporated church and the property it holds. In short, there is no way around the fact that, in this case, a decision concerning the use of the church property implicates the spiritual church because church membership is a spiritual concern.

It is also true that several of our previous cases have stated that one circumstance in which our courts will review the actions of a church expelling members is "when a church member challenges whether her 'expulsion was the act of the authority within the church having the power to order it.'" Old Elam Baptist Church, 983 So. 2d at 1092 (quoting Nixon, 340 So. 2d at 748) (emphasis omitted). However, our cases no longer endorse that principle. In Lott, 908 So. 2d at 930, this Court

discussed at length the United States Supreme Court's decision in Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich, 426 U.S. 696 (1976), stating:

> "Milivojevich involved the discipline of a bishop, rather than a church member such as Lott. Nevertheless, '[f]or essentially the same reasons that courts have refused to interfere with the basic ecclesiastical decision of choosing the minister ..., this Court must not interfere with the fundamental ecclesiastical concern of determining who is and who is not [a Church] member.'[4] Burgess v. Rock Creek Baptist Church, 734 F. Supp. 30, 33 (D.D.C. 1990). See also Kral v. Sisters of the Third Order Regular of St. Francis, 746 F.2d 450 (8th Cir. 1984); Nunn v. Black, 506 F. Supp. 444, 448 (W.D. Va.) ('the fact that the local church may have departed arbitrarily from its established expulsion procedures in removing the plaintiffs is of no constitutional consequence, whether one appeals the First, Fifth, or Fourteenth Amendments'), aff'd, 661 F.2d 925 (4th Cir. 1981); Caples v. Nazareth Church of Hopewell Ass'n, 245 Ala. 656, 660, 18 So. 2d 383, 386 (1944) ('"we have no power to revise or question ordinary acts of church membership, or of excision from membership"').
>
> "_____
>
> "[4]It is generally held that the same considerations apply, regardless of whether the church has a congregational, rather than a hierarchical, form of government. First Baptist Church of Glen Este v. Ohio, 591 F. Supp. 676 (S.D. Ohio 1983); Heard v. Johnson, 810 A.2d 871 (D.C. 2002); Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 808 N.E.2d 301 (2004); Tubiolo v. Abundant Life Church, Inc., 167 N.C. App. 324, 605 S.E.2d 161 (2004)."

(Emphasis added.) Following that pronouncement in Lott, this Court observed in Taylor:

> "Justice Parker noted in his special concurrence in Ex parte Tatum, 185 So. 3d 434 (Ala. 2015), that this Court's recognition of Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976), in Lott signaled a modification in those authorities recognizing the subject-matter jurisdiction of the trial court to determine whether church procedure or law had been followed in church proceedings in which a church decides an ecclesiastical matter. … [A] trial court lacks subject-matter jurisdiction to determine whether church procedure or law had been followed in a church proceeding in which the church decided an ecclesiastical matter."

242 So. 3d at 995 (emphasis added).

In other words, this Court has ended the practice of exercising jurisdiction to determine whether a competent church authority terminated church membership, even if property rights are involved. The manner in which a member is expelled is an ecclesiastical matter. Churches are not required to follow forms of legal due process with respect to the expulsion of members because church membership is not a civil right, and so "'[w]e cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church.'" Hundley,

131 Ala. at 244, 32 So. at 578 (quoting Shannon, 42 Ky. (3 B. Mon.) at 258).

In sum, on the surface, this case presents a property dispute, but the nature of the underlying dispute concerns whether the Sails plaintiffs are members of the church who would have an interest in the church property. That underlying dispute is an ecclesiastical matter over which our courts should abstain from exercising jurisdiction. Therefore, I believe the circuit court's dismissal of the Sails plaintiffs' complaint is due to be affirmed.

SELLERS, Justice (dissenting).

I respectfully dissent, because I do not believe that all of the claims asserted by Rex Sails, Sharonda Sails, Dazella Peoples, Chaz Davis, individually and on behalf of Union Baptist Church No. 2 ("the plaintiffs"), are purely ecclesiastical in nature so as to warrant dismissal of the plaintiffs' complaint. As background, in 1957, the State of Alabama deeded to Union Baptist Church No. 2 ("Union Baptist") a parcel of real property located at 11 John Street in Thorsby, retaining a reversionary interest if the property ceased to be used for church purposes. In 1976, Union Baptist incorporated under the laws of Alabama. In 2017, certain members of Union Baptist, excluding the plaintiffs, filed paperwork with the office of the Alabama Secretary of State to formally change Union Baptist's registered name to The Word Christian Center International ("The Word"). The property that had been deeded to Union Baptist was thereafter rented to another church, and its pews and pulpit were donated to other churches.

The plaintiffs commenced this action seeking declaratory and injunctive relief concerning ownership and use of the real property that had been deeded to Union Baptist, as well as damages for conversion of

personal property belonging to Union Baptist. Defendants Orlando Weeks and The Word moved to dismiss the complaint, arguing, in part, that the plaintiffs lacked standing to bring an action on behalf of Union Baptist because, they claimed, Union Baptist was no longer a recognized legal entity under Alabama law because of the official name change that occurred in 2017. In opposition to the motion to dismiss, the plaintiffs contended that Union Baptist still exists as a legal entity because, they said, the certificate of incorporation of Union Baptist and the articles of amendment thereto "only grant a Board of Directors certain limited authority to deal with the church's real and personal property" and that nothing in Union Baptist's governing documents "authorizes a Board to change the church's name, amend the existing certificate of incorporation, sell or transfer the existing corporate entity, or determine that status of existing members of [Union Baptist]." Rather, the plaintiffs claimed that "only a majority vote of the membership of [Union Baptist] could authorize such activities or changes and that no such vote occurred." I believe that the trial court had jurisdiction in this case to decide whether those members of Union Baptist who filed the paperwork with the Secretary of State's office purporting to amend the church's

certificate of incorporation had the legal authority to do so. Our civil legal system anticipates that, to be properly enforced, filings for organizations must have a legal-enforcement mechanism to confirm that documents filed within the system are done so with the appropriate vote to approve such action. In my view, once those members of Union Baptist used the civil legal system to file organizational documents, amendments, or deeds, they consented to have civil law applied to their activities. If the question presented in this case involved a vote on theological matters or the approval of a doctrinal test for membership, that would be another story. However, changing the name of a corporation, amending an organizational document, or reforming a deed involves the use of our civil legal system that by its very nature is not ecclesiastical. The issue in this case then is who has the authority to act on behalf of the organization? And, after identifying that issue, the question then becomes whether secular courts can decide that issue or whether that decision should be left to some ecclesiastical authority? Because we have no ecclesiastical courts with enforcement authority, I am uncertain how the issue can be decided without court intervention. Any organization desiring to be recognized and to receive benefits as an entity under Alabama law is

required to make certain representations to secular officials in order to validate the actions taken. Most critically, only secular courts can inquire as to whether the actions taken were duly authorized and whether the person signing any documents for public filing had the requisite authority to put everyone on notice that the actions subject to public filing were properly taken and in accord with the laws governing the organization and the operation of the entity and can confirm that the laws were properly applied, duly followed, and that the public filing is accurate. And, should a court determine that the organizational documents were improperly amended or that a deed must be reformed, secular courts are the only forums that can provide relief by requiring amendment, alteration, or reformation. Accordingly, I would reverse the judgment of the trial court dismissing the plaintiffs' complaint.