



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

BRUCE D. WHITE, CHIEF JUDGE

- RANDY I. BELLOW
ROBERT J. SMITH
BRETT A. KASSABIAN
MICHAEL F. DEVINE
JOHN M. TRAN
GRACE BURKE CARROLL
DANIEL E. ORTIZ
PENNEY S. AZCARATE
STEPHEN C. SHANNON
THOMAS P. MANN
RICHARD E. GARDINER
DAVID BERNHARD
DAVID A. OBLON
DONTAE L. BUGG

JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

- THOMAS A. FORTKORT
J. HOWE BROWN
F. BRUCE BACH
M. LANGHORNE KEITH
ARTHUR B. VIEREGG
KATHLEEN H. MACKAY
ROBERT W. WOOLDRIDGE, JR.
MICHAEL P. McWEENEY
GAYLORD L. FINCH, JR.
STANLEY P. KLEIN
LESLIE M. ALDEN
MARCUS D. WILLIAMS
JONATHAN C. THACHER
CHARLES J. MAXFIELD
DENNIS J. SMITH
LORRAINE NORDLUND
DAVID S. SCHELL
JAN L. BRODIE

RETIRED JUDGES

June 30, 2021

J. Chapman Petersen, Esq.
Won Y. Uh, Esq.
CHAP PETERSEN & ASSOCIATES, PLC
3970 Chain Bridge Road
Fairfax, Virginia 22030
Counsel for Plaintiffs

Scott J. Ward, Esq.
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, Ste. 140
Fairfax, Virginia 22102
Counsel for Defendant

Re: Rosa Howard, et al. v. Heritage Fellowship Church, CL-2021-6564

Dear Counsel:

Pending before the Court is Defendant's Demurrer/Motion to Dismiss for Lack of Subject Matter Jurisdiction. Defendant argues for dismissing this action because it is barred by the Free Exercise Clause and the Establishment Clause of the First Amendment to the U.S. Constitution. Upon consideration of the pleadings, oral arguments, and relevant legal authorities, the Court denies Defendant's Motion.

BACKGROUND

Defendant, Heritage Fellowship Church ("HFC"), is a nonstock corporation operating as a non-denominational Christian church in Reston, Virginia. Compl. ¶ 6. HFC is governed by its members, Bylaws, and Constitution. Id. ¶¶ 10, 14. Its leadership consists of a Board of Directors ("BOD") and a Board of Deacons ("Deacons Board"). Id. ¶¶ 15-17. The BOD serves as HFC's executive/policy making body and the Deacons Board manages HFC's membership. Id. The Senior Pastor appoints members of the BOD and the Deacons Board, who are then affirmed by

majority vote of the congregation. *Id.* ¶¶ 22-24, 27-29. The Senior Pastor position lasts for an indefinite term and must be confirmed by two-thirds of HFC’s membership. *Id.* ¶ 20.

In 2017, HFC’s Senior Pastor announced his retirement. *Id.* ¶ 31. During service on February 18, 2018, the Pastoral Search Committee announced the candidacy of Reverend Sullivan for Senior Pastor. *Id.* ¶¶ 32-33. Because two-thirds of the congregation must affirm the Senior Pastor, the BOD determined that a vote would take place in March 2018, that HFC would hire a third-party vendor to count the votes, and that the Deacons Board would curate a list of members eligible to vote in the election. *Id.* ¶¶ 34-35. The BOD also determined that members who did not have certain membership records would be deemed eligible to vote, and members for whom HFC lacked contact information would be permitted to vote only if they appeared in person. *Id.* ¶ 35.

At the start of the election, the Deacons Board curated a list of 1,302 active members eligible to vote. *Id.* ¶ 38. In reaching that number, the Deacons Board struck 347 members from the voter rolls because they were missing certain records. *Id.* This conflicted with the BOD’s earlier decision to deem those persons eligible to vote. *Id.* ¶ 39. Regardless, on March 27, 2018, after the polls closed, the Deacons Board issued a letter to the general membership, notifying them that Reverend Sullivan had not received sufficient votes to be confirmed as Senior Pastor. *Id.* ¶ 43.

After voting concluded and Reverend Sullivan had not been confirmed, the Deacons Board met again to audit HFC’s membership rolls. *Id.* ¶ 46. Based upon this post-election audit, the Deacons Board removed more members from the list of active members which resulted in lowering the threshold for the two-thirds vote. *Id.* ¶¶ 45-46. In accordance with the new threshold, Reverend Sullivan was confirmed as Senior Pastor. *Id.* ¶ 45.

On April 30, 2021, Plaintiffs (five members of HFC) filed suit against HFC, alleging three counts. Count I for Declaratory Judgment asks the Court to declare that the Deacons Board’s alteration of the membership rolls after the election violated HFC’s governing documents and, therefore, the confirmation of Reverend Sullivan is invalid. *Id.* ¶ 74-75. Count II seeks to enjoin HFC from holding another election without first determining appropriate rules and parameters. *Id.* ¶ 85. Lastly, Count III requests appointment of a receiver, “who can protect the interest, assets and other values... until such time new leadership is formally determined [by another election].” *Id.* ¶ 89.

ANALYSIS

Standard of Review

When a motion to dismiss comes before the court on a record that consists only of the initial complaint, the court applies the demurrer standard to the facts alleged in the complaint. *Bragg v. Bd. of Supervisors*, 295 Va. 416, 423 (2018). That is, the court must “accept as true all facts properly pled, as well as reasonable inferences from those facts.” *Friends of the Rappahannock v. Caroline Cty. Bd. of Sup’rs*, 286 Va. 38, 44 (2013) (quoting *Steward v. Holland Family Props., LLC*, 284 Va. 282, 286 (2012)). Nonetheless, the court “may ignore a party’s factual allegations contradicted by the terms of authentic, unambiguous documents that properly are a part of the pleadings.” *Ward’s Equip., Inc. v. New Holland N. Am., Inc.*, 254 Va. 379, 382-83 (1997) (citing *Fun v. Va. Military Inst.*, 245 Va. 249, 253 (1993)). Accordingly, this Court

accepts the facts alleged in Plaintiff's Complaint as true except where they are contradicted by the exhibits attached to the Complaint.

Subject Matter Jurisdiction

Subject matter jurisdiction differs from "other 'jurisdictional' elements" in several significant respects. *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 49-50 (2018). First, subject matter jurisdiction is "conferred by statute according to the *subject* of the case, ... rather than according to a particular proceeding that may be one part of [the] case." *Mohamed v. Commonwealth*, 56 Va. App. 95, 99-100 (2010) (emphasis in original) (quoting *In re Commonwealth*, 278 Va. 1, 11 (2009)). Second, subject matter jurisdiction "cannot be waived or conferred on the court by agreement of the parties." *Morrison v. Bestler*, 239 Va. 166, 169-70 (1990) (citing *Lucas v. Biller*, 204 Va. 309, 313 (1963)). Third, a "defect in subject matter jurisdiction cannot be cured by reissuance of process, passage of time, or pleading amendment." *Id.* at 170. The moving party carries the burden of proving the absence of jurisdiction. *Winston v. Commonwealth*, 26 Va. App. 746, 752 (1998) (citing *Shelton v. Sydnor*, 126 Va. 625, 633-34 (1920)).

The issue Defendant brings forth, is whether the Court is barred from hearing this action by the Free Exercise Clause and the Establishment Clause of the First Amendment to the U.S. Constitution. Def.'s Mem. 1, 3. Defendant argues that deciding this case will require the Court to enter the "religious thicket" and consider issues pertaining to church governance by reviewing HFC's appointment of Reverend Sullivan. *Id.* at 1, 3. Further, because this case involves the confirmation of a pastor, Defendant argues the Court is barred by the ministerial exception. *Id.* at 3. However, Plaintiffs argue that this Court is not barred. Plaintiffs posit that the Court has subject matter jurisdiction because they are merely asking the Court to apply neutral principles of law to determine whether HFC violated its own governing documents and basic democratic principles. Pls.' Opp. 8-10. For the reasons stated below, the Court agrees with Plaintiff and holds that it has subject matter jurisdiction over this case.

I. As a Threshold Matter, the Court Finds that HFC is a Congregational Church.

Before engaging in a subject matter jurisdiction analysis, the Court must determine whether HFC is a hierarchical or congregational church. *See Reid v. Gholson*, 229 Va. 179, 188 (1985). Hierarchical churches have their own disciplinary rules, internal governments, and internal tribunals for the resolution of disputes. 229 Va. at 188. Decisions made by such tribunals "may be promulgated as matters of faith and are entirely independent of civil authority." *Id.* at 188-89 (noting that civil courts "will treat a decision by a governing body or internal tribunal of an hierarchical church as an ecclesiastical determination constitutionally immune from judicial review."). On the other hand, "congregational churches are governed by the will of the majority." *Id.* at 189. These institutions "are free to adopt constitutions, by-laws, and internal rules which will alter or regulate their proceedings, but even these must be enacted by majority vote." *Id.* The First Amendment does narrowly allow members of such congregations to seek "the protection of the court for the purpose of obtaining a fairly-conducted meeting," and "in protecting civil and property rights." *Id.* (reasoning that it is in response to the frequent calls to civil courts to resolve such disputes). However, even in a congregational church, "[w]hen the majority has spoken in a fairly-conducted congregational meeting held after proper notice to the membership, then the

governing body of the church has expressed its will and, as in the case of a hierarchical church, its decision is constitutionally immune from judicial review.” *Reid*, 229 Va. at 189.

HFC is a congregational church. Although HFC has bylaws and a constitution, the Church is still governed by majority vote, just as the church in *Reid* is. Compl. ¶ 3; see also *Reid*, 229 Va. at 181. Applying the congregational rule in *Reid*, HFC is also governed by the will of the majority. This is evident in HFC’s bylaws which state that the “governing body of HFC shall be the Membership assembled at HFC congregational meetings.” Compl. Ex. B. at 8. Further, the bylaws and Constitution provide that “a two-thirds vote of the entire [Church’s] membership in good standing,” is needed to affirm Senior Pastor candidates and the BOD members are called by the Senior Pastor. *Id.* ¶¶ 10, 17-20, Ex. B art. 9. The Senior Pastor and BOD members are elected by the members; thus, the members govern HFC – not a tribunal or other hierarchical church institution.

II. The Court has Subject Matter Jurisdiction Over the Case at Hand Because it Does Not Require the Court to Resolve an Ecclesiastical Dispute Regarding Questions of Faith or Doctrine.

The First Amendment provides, *inter alia*, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. art. I, § 1. In particular, the First Amendment protects religious institutions’ right “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*, 344 U.S. 94, 116 (1952).¹ On the other hand, “where church property rights and civil rights disputes can be decided without reference to questions of faith and doctrine, there is no constitutional prohibition against their resolution by the civil courts.” *Reid*, 229 Va. at 187.²

The *Reid* case is controlling here because both the *Reid* church and HFC are congregational churches facing civil rights disputes. In *Reid*, the Supreme Court of Virginia affirmed the trial court’s order “grant[ing] a petition for appointment of a Special Commissioner to ‘run and oversee’ the [church’s] annual meeting, to take an accurate count of the voting, and to make a report to the court of the results....” *Id.* at 185, 193. The Court found that “the trial court’s action was fully justified by the record” which demonstrated that (1) there existed no doctrinal dispute between plaintiffs and defendants; (2) the church was run by its congregation and had no internal tribunal to resolve disputes; and (3) the church had suppressed unfavorable votes and called meetings without giving proper notice to its members. *Id.* at 188-90. Here, Plaintiffs bring suit in concern

¹ The Supreme Court of Virginia has also recognized this principle. See *Bowie v. Murphy*, 271 Va. 126, 132 (2006) (“As a general rule, courts lack subject matter jurisdiction to resolve issues of church governance and disputes over religious doctrine.”); see also *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 51 (2018) (“[C]ivil courts are not a constitutionally permissible forum for a review of ecclesiastical disputes,” and constitutional principles “prohibit the civil courts from resolving ecclesiastical disputes which depend upon inquiry into questions of faith or doctrine.”).

² The notion that a court may intervene to apply neutral principles of law is so strong, that it even permits courts to intervene in hierarchical churches, so long as the matter does not touch on religious doctrine. See *Falls Church v. Protestant Episcopal Church in U.S.*, 285 Va. 651, 658, 664-65 (2013) (exercising subject matter jurisdiction over a property dispute between a hierarchical church and its local congregations); see also *Protestant Episcopal Church in Diocese of Virginia v. Truro Church*, 280 Va. 6, 17 (2010) (exercising subject matter jurisdiction over a trust case between two hierarchical churches under Va. Code § 57-9(A)).

of whether “the Deacons Board’s decision to finalize the membership roll after the results of the 2018 election was in compliance with Bylaws, Constitution and other applicable policies.” Compl. ¶ 74. Contrary to Defendant’s claims, none of this request requires the Court to delve into a religious thicket by reviewing religious principles of membership. *Contra* Def.’s Mem. 6. Moreover, just like in *Reid*, there is no allegation in Plaintiffs’ Complaint of a doctrinal dispute between two factions, HFC also lacks an internal tribunal to decide conflicts, and Plaintiffs have alleged an undemocratic proceeding. *See* 229 Va. at 184. Since HFC lacks internal tribunals to rule on such matters, civil court action is necessary to resolve this dispute.

Furthermore, this Court finds Plaintiffs’ arguments and presented case law compelling. Plaintiffs seek judicial review of HFC’s compliance with its own Constitution and Bylaws. Compl. ¶¶ 15-18, 20-21, 22-30; *see also* Pls.’ Opp. 9 (“Specifically, the dispute is whether the Church complied with its own requirement [that] at least two-thirds of the entire Congregation... confirmed the call of Reverend Sullivan.”). Plaintiffs argue that the instant case is akin to *Pure Presbyterian Church of Washington v. Grace of God Presbyterian Church*, where the Supreme Court of Virginia affirmed the trial court’s judgment enforcing a merger agreement between two churches following a jury verdict that the churches had contracted to merge. 296 Va. 42, 46 (2018). Specifically, the Supreme Court held that the trial court had subject matter jurisdiction to decide the underlying action for declaratory judgment, injunction, and breach of contract. *Id.* at 48. *Grace of God*, is an example of a purely secular issue that the Court properly heard. However, Defendant cautions that in the instant case, the Court is likely to enter the “religious thicket” because, in order to determine whether the vote was conducted fairly, the Court will need to examine HFC’s good standing criteria, and this requires delving into what makes a good Christian. Def.’s Mem. 7. This is simply not so. Nowhere in the Complaint do Plaintiffs challenge the substantive matter of whether a member was in good standing. Rather, Plaintiffs argue that the Board of Directors manipulated the voter rolls after the election, and that Reverend Sullivan was not confirmed by a two-thirds vote as required by the Bylaws and Constitution. Compl. ¶¶ 66-77. Deciding this case will therefore merely involve the application of basic democratic election principles. Accordingly, the Court may decide this case.

Defendant claims *Cha v. Korean Presbyterian Church* is the controlling case law to apply to this action because Plaintiffs issues concern church governance. Def.’s Mem. 2, 5; *see also* 262 Va. at 604. However, this Court finds that *Cha* is distinguishable from the facts and issues presented in the underlying case. In *Cha*, the court declined to exercise subject matter jurisdiction where the plaintiff, an educational pastor, sued his church after he was fired by the church’s governing body. 262 Va. at 608-10. There, the case concerned issues of an allegedly wrongful termination and the plaintiff asked the court to question a church’s doctrine regarding church policy and employee scope. 262 Va. at 607-08. In contrast, here, Plaintiffs are not asking the Court to consider whether Reverend Sullivan was a proper pastor, only whether he was properly elected. *See Smith v. Wade*, Record No. 140113, 2014 WL 11398619, at *1-2 (Va. Oct. 10, 2014) (distinguishing the facts of *Smith* from the facts of *Cha* by noting that the plaintiff in *Cha* “argued that the reason he was terminated was improper; he made no argument regarding whether the church followed the proper procedure in terminating him.”). In *Smith*, the court held that the circuit court did have subject matter jurisdiction when the pastor filed a suit against his church, alleging that he was removed from his position as pastor by a vote that had been held in violation of the church’s constitution. *Id.* Although *Smith* is not binding, this Court finds that the underlying matter

is distinguishable from *Cha* for the same reasons as those set forth in *Smith*. In the present action, Plaintiffs seek a court declaration that the confirmation of Reverend Sullivan and the Deacons Board's decision to modify the membership roster after the election had concluded, violated HFC's governing documents and policies. Compl. 16. Importantly, Plaintiffs do not ask the Court to inquire into Reverend Sullivan's "administrative pastor fitness to perform duties," but rather Plaintiffs ask for "the protection of the court for the purpose of obtaining a fairly conducted meeting," and "in protecting civil and property rights." Pls.' Opp. 9; Def.'s Mem. 5; see Compl. 16. Accordingly, *Cha* is not controlling in this matter.

III. The Ministerial Exception Does Not Apply in this Context.

Defendant additionally argues that this Court lacks subject matter jurisdiction under the Ministerial Exception of the First Amendment because Plaintiffs are asking the Court to judicially review HFC's ministerial appointments. Def.'s Mem. 3. To protect the free exercise of religion, the United States Supreme Court has recognized a "'ministerial exception' to laws governing the employment relationship between a religious institution and certain key employees." *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2055, 2060 (2020). The ministerial exception protects religious institutions from secular interference with the selection of ministers. *Id.* at 2060. In *Morrissey-Berru*, the Court considered two employment discrimination cases, brought by religious schoolteachers against their Catholic school employers. *Id.* at 2055. In holding that the ministerial exception barred the Court from hearing the case, the Court opined that without the power "to select, supervise, and if necessary, remove a minister without interference by secular authorities... a wayward minister's preaching, teaching and counseling could contradict the church's tenets and lead the congregation away from the faith." *Id.*

In applying federal caselaw regarding the ministerial exception, the Supreme Court of Virginia has recognized that the First Amendment prohibits "judicial intervention" where it "would have limited the church's right to select its religious leaders. *Cha*, 262 Va. at 612; see also *Denny v. Prince*, 68 Va. Cir. 339, 374 (Portsmouth 2005) (noting that the "Virginia Supreme Court has recognized a limited 'ministerial exception' to the neutral principles doctrine."). As previously discussed, in *Cha*, the court declined to exercise subject matter jurisdiction over a case where the plaintiff, an educational pastor, sued his church after he was fired by the church's governing body. *Id.* at 608-10. Because deciding the plaintiff's claim for tortious interference with his employment contract would involve the court "becom[ing] entangled in issues regarding the church's governance as well as matters of faith and doctrine," both federal and Virginia constitutional law prohibited the circuit court from "decid[ing] whether the plaintiff had a valid contractual relationship or business expectancy to serve as a pastor" of the church. *Id.* at 613.

This Court finds that deciding the underlying case against HFC would not interfere with HFC's right to select its Senior Pastor. First, the underlying case is distinguishable from *Morrissey-Berru* in that it is not an action being brought by a minister (or other key religious member) against the church alleging employment discrimination. See 140 S. Ct. at 2055. Instead, this action is brought by five members of HFC's congregation who, on the face of the Complaint, do not appear to hold any role in HFC other than that of a general member. Additionally, there is no allegation that HFC fired any of the Plaintiffs from a religious position. Here, Plaintiffs merely seek judicial review of HFC's compliance with its own Constitution and Bylaws pertaining to the 2018 election. Compl. 16. Further, there is no mention of employment discrimination within the four corners of

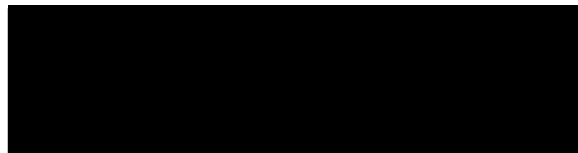
this Complaint. Although the language of the ministerial exception does not explicitly state it cannot be applied to other scenarios, that silence does not mean it may extend to election issues. Here, Plaintiffs only ask for democratic, neutral principles of law to be enforced. The Court is not asked to determine whether Reverend Sullivan would make a good Pastor, or if he may stay within said position. Accordingly, the ministerial exception is inapplicable to the case at hand.

Defendant further argues that Plaintiffs step over the line of the ministerial exception by asking the Court to “install a receiver with ‘all powers,’ including overseeing the ‘determinat[ion]’ of ‘new leadership.’” Def.’s Mem. 9. However, this characterization misconstrues Plaintiffs’ actual request. In the Complaint, Plaintiffs seek the appointment of “a receiver to protect the Church’s assets until the Court fully adjudicates all issues raised herein.” Compl. 16. The “all powers” referred to in the Complaint is “all powers to protect the assets of the corporation until such time as new leadership is determined.” *Id.* ¶ 89. Under *Reid*, it is well-within constitutional bounds for a court to appoint a commissioner “to oversee a congregational meeting, and actually to preside, if necessary.” 229 Va. at 192. Here, Plaintiffs ask for much less. There is no request that the receiver will lead the church in doctrinal matters, or even that they will oversee the vote. Accordingly, this Court denies Defendant’s motion.³

CONCLUSION

For the reasons provided herein, the Court denies Defendant’s Motion. An appropriate Order is attached.

Sincerely,



Bruce D. White
Chief Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

³ Plaintiff additionally argues that an “improper methods” exception exists to the ministerial exception. Pls.’ Opp. 10. However, because this Court finds that the ministerial exception does not apply to the instant case, the Court sees no need to consider the improper methods exception.

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

ROSA HOWARD, et al.)
Plaintiffs,)
v.) CL-2021-6564
HERITAGE FELLOWSHIP CHURCH)
Defendant.)

ORDER

This cause came before the Court on Defendant's Demurrer/Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Upon the matters presented to the Court, it is hereby:

ADJUDGED, ORDERED, and DECREED that Defendant's Motion is **DENIED**. Defendant shall file an Answer to Plaintiff's Complaint within twenty-one (21) days from entry of this order.

ENTERED this 30th day of June, 2021.



CHIEF JUDGE BRUCE D. WHITE

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT, PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA.