

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Jeremiah Burke, et al.,

Plaintiffs,

v.

McLean Bible Church,

Defendant.

Case No. CL-2022-12576

Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint

HOLLAND & KNIGHT LLP

Brandon H. Elledge (VSB No. 45349)
Timothy J. Taylor (VSB No. 84529)
Caitlin A. Eberhardt (VSB No. 94182)

1650 Tysons Boulevard, Suite 1700
Tysons, Virginia 22102
t. 703.720.8600 f. 703.720.8610
brandon.elledge@hklaw.com
timothy.taylor@hklaw.com
caitlin.eberhardt@hklaw.com

Defendant McLean Bible Church (the Church) moves to dismiss Plaintiffs' First Amended Complaint (the FAC) under Rule 3:8 because its resolution, as a whole and as to each of its counts, would require the Court to exceed its jurisdiction by weighing religious judgments in violation of the U.S. and Virginia constitutions. (The Church also denies any breach or other liability.)

1. *Background.* Plaintiffs, current or former members¹ of the Church, allege that the Church is governed by a constitution stating that “this Church shall not, and cannot, be affiliated with any denomination, but shall remain independent.” FAC ¶ 13 (quoting FAC Ex. A at 3 in part); *see id.* ¶¶ 1–6, 12. They then allege the Church “applied for an affiliation with” and “became formally affiliated with” the Southern Baptist Convention (SBC). *See id.* ¶¶ 25, 27. The Church allegedly “was expected to share the same confession of faith” as the SBC and also allegedly transferred funds to the Convention’s Virginia organization and a related church-planting organization. *See id.* ¶¶ 29–32. And the Church allegedly affiliated with the SBC according to emails from SBC representatives. *See id.* ¶¶ 36–37 (citing FAC Exs. B & C).

2. *Legal standards.* Courts lack jurisdiction to resolve purely religious controversies within a church body. Doing so violates the Free Exercise and Establishment Clauses of the First Amendment to the U.S. Constitution and section 16 of the Bill of Rights of the Virginia Constitution. *See, e.g., Cha v. Korean Presbyterian Church*, 262 Va. 604, 610 (2001). A narrow class of property and what are called civil-rights disputes involving churches may be entertained by courts, but only when they courts can resolve the matter strictly by use of “neutral principles” of law. *See, e.g., Bowie v. Murphy*, 271 Va. 126, 135 (2006). Under this rubric, courts “must avoid any religious inquiry . . . and they may do so by deferring to the highest authority within the church.” *Dixon v.*

¹ See the Church’s demurrer, also filed today, January 6, 2023, explaining how the Burke plaintiffs are not members.

Edwards, 290 F.3d 699, 714 (4th Cir. 2002). This applies when a document like a “church constitution” is at issue: “If . . . the interpretation of the instruments of ownership”—or, equally applicable, governance—“would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.” *Jones v. Wolf*, 443 U.S. 595, 604 (1979).

Argument

3. “*Affiliation*” is a religious question in this case. As framed by Plaintiffs, this is a dispute solely over the Church’s alleged improper affiliation with the SBC. Plaintiffs have brought breach-of-contract and declaratory-judgment counts to that effect, and their other count seeks access to Church records simply in aid of their affiliation allegation. There is no property dispute in this case. See FAC ¶ 99–100 (alleging “misuse” of funds but conceding “[t]he only remedy” is disclosure). Nor could there be under the Church’s constitution, as “no member or group of members shall have any individual property rights in the assets of the church.” FAC Ex. 3 at 20.

4. The Court is without jurisdiction to resolve the alleged “affiliation” controversy because, under these particular allegations, it is an inextricably religious issue. Specifically, it turns solely upon an interpretation of the ecclesiastical-structure standards in the Church’s constitution. Plaintiffs note the Church’s standard that “[t]his Church shall not, and cannot, be affiliated with any denomination, but shall remain independent.” FAC ¶ 13 (quoting FAC Ex. A at 3 in part). But they omit the crucial second half of that standard: that the Church “remain independent *for the promotion of the Gospel of our Lord Jesus Christ*.” FAC Ex. A at 3 (omitted portion emphasized). The Church’s constitution thus defines the restriction on affiliation by reference to the Church’s requirement to “remain independent for the promotion of the Gospel of our Lord Jesus Christ.” Thus in this context, determining whether the Church is independent (and non-affiliated) is clearly a

religious question to be answered by ecclesiastical authorities. Indeed, the Court could not determine whether the Church is sufficiently independent for its mission of promoting the Gospel without asking and answering questions like these:

- What does it mean to promote the Gospel of our Lord Jesus Christ?
- What does “independence” toward that aim mean?
- What kinds of relationships or activities would so stultify the Church’s independence that it can no longer independently promote the Gospel?
- Can the Church donate to other religious organizations without becoming “affiliated” or losing its independence? How much? Why that much but not more or less?
- Can the Church cooperate with other organizations without becoming “affiliated” or losing its independence? Are some relationships too close? Which ones? How can we tell?

5. Those questions are especially fraught under the unique facts alleged here. Plaintiffs’ allegations regarding the Church’s relationship with the SBC include the following: the Church’s alleged ability to send voters to the SBC’s annual convention; the Church’s sharing the same confession of faith as the SBC, namely, the Baptist Faith and Message 2000; the Church’s financial support of the SBC; and the Church’s financial support of an SBC-chartered organization for planting churches. *See* FAC ¶¶ 28–32.

6. Each of these alleged actions is not only tied up with, but *is* itself religious exercise—and indeed could be considered “promotion of the Gospel.” The Court cannot meaningfully determine whether those actions have eroded, enhanced, or have no bearing on the Church’s own standard of independence to promote the Gospel without crossing into unconstitutional religious territory. Doing so would commit the Court to the same constitutional error reversed by the Supreme Court in *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*,

where a court had made its rule of decision in a property dispute whether a church had made a “‘substantial departure’ from the tenets of faith and practice” existing beforehand. 393 U.S. 440, 449–50 (1969). Such an inquiry “requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion.” *Id.* at 607. The same is true here. The Court would need to determine whether one set of religious activities—those under the Church’s cooperation with the SBC—has resulted in a departure from the Church’s religious standard of non-affiliation or independence to promote the Gospel. “Plainly, the First Amendment forbids civil courts from playing such a role.” *Id.*

7. It is no answer to argue that the Court can substitute neutral principles to determine whether the Church affiliated with the SBC. While affiliation might sometimes be determinable by applying dictionary definitions or regulations, *see, e.g.*, 13 C.F.R. § 121.103, the Church has chosen—as a religious matter—to define affiliation in terms of its ability to independently promote the Gospel (and, implicitly, regardless of how other entities might view the Church’s affiliation status). *Cf. Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 53 (2018) (“a dispute over the existence or effect of a merger agreement could turn on questions of church doctrine” though that was “not the case here”); *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 27 (2010) (no religious question when a court determines whether a “division” has occurred in a church and a congregation is a “branch” of a church, but those were statutory terms). The Court cannot employ a different, purportedly neutral definition (including one that would render relevant Plaintiffs’ allegations and exhibits about the SBC’s statements and forms) without erasing the doctrinal “independence” language from the Church’s constitution.

8. *The Court cannot override the Church’s religious determinations.* The Court should dismiss this action for a second reason: the Church has already determined that it is not affiliated. The

Church's governing body, its Board of Elders, is its "sole authoritative interpreter of the Scripture and the final authority on its application to practices, policies, and discipline." FAC Ex. A at 10. That would include their doctrinal determinations as to the interpretation of the ecclesiastical-structure requirements of the Church's constitution, and Plaintiffs concede that the Church denies affiliation with the SBC. *See* FAC ¶¶ 26, 38, 45, 79.

9. On such doctrinal questions, the Court must defer to the decisions of a Church's highest authority. The Court would violate the First Amendment if it "substituted its interpretation of the . . . *Church constitutions* for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721 (1976) (emphasis added); *see also Wolf*, 443 U.S. at 604; *Dixon*, 290 F.3d at 714 (4th Cir. 2002); *Cha*, 262 Va. at 612 ("courts must defer to the decisions of religious organizations 'on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law'" (quoting *Bell v. Presbyterian Church*, 126 F.3d 328, 331 (4th Cir. 1997) (in turn quoting *Milivojevich*, 426 U.S. at 713))).

WHEREFORE, the Church respectfully requests that the Court enter an order sustaining this Motion to Dismiss and dismissing this action with prejudice, and granting such other relief that the Court may deem just and proper.

Dated: January 6, 2023

Respectfully submitted,

HOLLAND & KNIGHT LLP



Brandon H. Elledge (VSB No. 45349)

Timothy J. Taylor (VSB No. 84529)

Caitlin A. Eberhardt (VSB No. 94182)

1650 Tysons Boulevard, Suite 1700

Tysons, Virginia 22102

t. 703.720.8600 f. 703.720.8610

brandon.elledge@hkllaw.com

timothy.taylor@hkllaw.com

caitlin.eberhardt@hkllaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 6th 2023, the foregoing was served on the counsel of record listed below by U.S. Mail and electronic mail.

J. Chapman Petersen
Won Y. Uh
Chap Petersen & Associates, PLC
3970 Chain Bridge Road
Fairfax, Virginia 22030
jcp@petersenfirm.com
wyu@petersenfirm.com



Timothy J. Taylor