

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

JEREMIAH BURKE,

Plaintiffs,

v.

MCLEAN BIBLE CHURCH,

Defendant.

Case No. CL-2022-12576

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT**

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Counsel for Plaintiffs

Plaintiffs Jeremiah Burke, Laura Burke, Caroline Hiban, Michael Hiban, Salvador Cordova, and Judith M. Strother (collectively “Plaintiffs”), by counsel, hereby state the following in opposition to Defendant’s Motion to Dismiss Plaintiffs’ First Amended Complaint (“Motion to Dismiss”):

RELEVANT FACTS AND PROCEDURAL HISTORY

Defendant McLean Bible Church (“MBC” or the “Church”) is a Virginia nonprofit entity operating as a Christian church. First Amended Complaint (“FAC”) ¶ 7. Plaintiffs are members of the Church. *Id.* ¶¶ 2-6, n. 1. The Church is governed by the Constitution. *Id.* ¶ 12, Exh. A. The Board of Elders is the ruling body of the Church. *Id.* ¶ 18. The officers of the Board of Elders include the Treasurer and the Secretary. *Id.* Exh. A, Article VI, Section 6(C)-(D). The Treasurer is responsible for keeping proper financial records and the Secretary for keeping the minutes of all congregational meetings. *Id.* Plaintiffs, and other members, do not know who the Treasurer and Secretary are, and therefore cannot make direct requests for records. FAC at 4, n. 3.

The Constitution strictly prohibits MBC’s affiliation with any denomination. *Id.* ¶ 13. Based on this assurance that MBC would remain non-denominational, Plaintiffs joined and made financial contributions to MBC. *Id.* ¶ 14. Notwithstanding, MBC became affiliated with the Southern Baptist Convention (“SBC”), the biggest Protestant denomination in the United States, sometime in September 2017. *Id.* ¶¶ 23-27. As a part of that affiliation, MBC transferred large amount of funds to SBC (and related entities) without disclosing those transfers to its congregation. *Id.* ¶¶ 30-34. The total amount transferred is currently unknown but estimated to range between \$375,000.00 to \$500,000.00. *Id.* ¶ 31; *see also* Affidavit of Craig Proulx, former Treasurer of MBC, a copy of which is attached hereto as Exhibit A.

Plaintiffs each raised questions with the Church pertaining to such transfers, but to no avail. FAC ¶¶ 35-62. While leaving the questions unanswered, MBC invited Plaintiffs to meetings

purportedly to “restore” its relationship with them. *Id.* ¶¶ 41, 50, 55-56, 60. For years, MBC avoided answering the topic of its SBC affiliation during congregational meetings. *Id.* ¶¶ 63-73. In October 2022, Plaintiffs made written demand for the congregational meeting minutes and financial records, but MBC refused to provide those records. *Id.* ¶¶ 74-75. To that end, Plaintiffs initiated this matter to seek answers to their questions and access to requested records.

The operating pleading, FAC, consists of Count I – Declaratory and Injunctive Relief (SBC Affiliation), Count II – Declaratory and Injunctive Relief (Meetings and Records), and Count III – Breach of Contract. In response, the Church filed three motions including the Motion to Dismiss seeking dismissal of the FAC in its entirety.

LEGAL STANDARD

When “no evidence has been taken with regard to a motion to dismiss,” the court applies the demurrer standard. *Bragg v. Bd. of Supervisors*, 295 Va. 416, 423 (2018) (quoting *Virginia Marine Res. Comm’n v. Clark*, 281 Va. 679, 686 (2011)). The court assumes that all material facts, expressly or impliedly alleged, and reasonable inferences from those facts are true. *Id.*

The First Amendment to the Constitution of the United States provides, *inter alia*, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Specifically, the First Amendment protects religious entities’ right to “decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952). This principle, often referred to as the church autonomy doctrine or the ecclesiastical abstention doctrine, was also recognized by the Supreme Court of Virginia. *See Bowie v. Murphy*, 271 Va. 126, 133 (2006) (“As a general rule, courts lack subject matter jurisdiction to resolve issues of church governance and disputes over religious doctrine.”)

Nonetheless, religious entities, especially those of non-hierarchical bodies, are not above the law. Whether the court has subject matter jurisdiction over a religious body turns on whether the subject dispute can be adjudicated using “neutral [or secular] principles” without depending “upon inquiry into questions of faith or doctrine.” *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 53 (2018); *Jae-Woo Cha v. Korean Presbyterian Church*, 262 Va. 604, 611 (2001). In other words, if subject 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 v. Gholson*, 229 Va. 179, 187 (1985).

This “neutral principles” exception is not limited to “narrow class of property and what are called civil-rights disputes”¹ as MBC contends. See *Serbian E. Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 710 (1976) (“This principle applies with equal force to church disputes over church polity and church administration.”); see also *Howard v. Heritage Fellowship Church*, 108 Va. Cir. 260 (Fairfax 2021) (holding that the ministerial exception, which derived from the church autonomy doctrine, is not applicable to a suit seeking judicial review of the church’s compliance with its Constitution and Bylaws in election of pastor).

ARGUMENT

I. Determining Affiliation Is Not Judicial Interference with Ecclesiastical Matters

Sometime in 2017, MBC became affiliated with SBC, the largest Protestant denomination.

FAC ¶¶ 23-27. The relevant clause, Article I, Section 2, of the Constitution provides that:

SECTION 2. AFFILIATION

This church shall not, and cannot, be affiliated with any denomination, but shall remain independent for the promotion of the Gospel of our Lord Jesus Christ.

¹ Motion to Dismiss at 1.

MBC places a great emphasis on the “crucial second half[,]” i.e., “remain independent for the promotion of the Gospel of our Lord Jesus Christ.” Motion to Dismiss at 2. In doing so, MBC argues that its affiliation with SBC necessarily entails determining whether it is “sufficiently independent for its mission[,]” and therefore “it is an inextricable religious issue.” *Id.* at 2-3. MBC then lists five hypothetical “religious” questions necessary for the Court’s determination. Such questions will not have to be asked or answered; rather neutral principles prevail. The determination here simply entails **whether MBC submitted a formal request to join the denomination and whether SBC approved that request by assigning an ID number to MBC.** In other words, the Court can determine affiliation without addressing questions of faith and doctrine, much as it can find a couple to be legally married by a pastor without examining the theological basis of that union. In fact, this Court made a similar finding that “a division has occurred within” the Protestant Episcopal Church in the United States, another Christian denomination. *In re Multi-Circuit Episcopal Church Prop. Litig.*, 76 Va. Cir. 785, 870 (Fairfax 2008).

II. Counts II and III Are Not Dependent on Affiliation Issue

Regardless of whether the affiliation is a religious question, Counts II and III should survive. Count II seeks MBC to comply with its Constitutional obligations by producing meeting minutes and financial records and Count III seeks accounting of funds transferred to denominational organizations in violation of the Constitution. FAC at 13-16. Both claims are based on the Secretary’s and Treasurer’s obligations unambiguously spelled out in the Constitution. *See* Article VI, Section 6(C)-(D) of the Constitution. Each of the Plaintiffs became a member of MBC and remain members to date. FAC ¶¶ 1-7; n. 1. MBC is a Virginia nonprofit, which is subject to the requirements of Title 13.1. *Id.* ¶ 8. In October 2022, all of the Plaintiffs made written demand for copies of the meeting minutes and financial records but received no response from MBC. *Id.*

¶¶ 74-75. Hence, Plaintiffs are entitled to inspect MBC's corporate documents. See Virginia Code § 13.1-933.² Plaintiffs' rights should not be affected by religious nature of corporate documents.

III. Judicial Deference Is Not Applicable.

MBC next argues the Court must defer to its determination that it is not affiliated with SBC. Motion to Dismiss 4-5. MBC correctly notes that the Board of Elders is its ruling body and it simply yet consistently denied affiliation with SBC. However, Article VI, Section 8 of the Constitution provides a mechanism for decisions of the Board of Elders. Specifically, any "decision" requires two-third (2/3) majority vote on an issue. FAC, Exh. A at 13. The Board of Elders never voted on the issue of affiliation. In fact, when Mr. Burke made a motion to remove David Platt (MBC's pastor-teacher) for affiliating with SBC, the Board of Elders did not make any decisions. *Id.* ¶¶ 39-41. Instead, MBC effectively retaliated against the Burkes. *Id.* ¶¶ 40, 43. There are no "decisions" that deserve judicial deference.

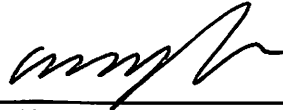
Assuming arguendo that simple denial constitutes MBC's decisions, the rule of judicial deference is inapplicable. As stated *supra*, the affiliation issue does not involve answering religious questions but rather involves simple disclosure. See *Watson v. Jones*, 80 U.S. 679, 727 (1871) (holding that judicial deference applies to "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories[.]") (emphasis added). Further, MBC provided no response to Plaintiffs' repeated requests to review the corporate minutes of congregational meetings and financial records. *Id.* ¶¶ 48, 61, 74-75. Irrespective of the affiliation issue, MBC was obligated to keep those records and make them available to its members upon request. See Va. Code § 13.1-932 *et seq.*

² Upon information and belief, MBC is not formally registered with the Virginia State Corporation Commission.

WHEREFORE Plaintiffs respectfully request that this Court deny Defendant's Motion to Dismiss.

Dated: March 10, 2023.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I certify that on March 10, 2023, a true and accurate copy of the foregoing was served *via* first class mail and electronic mail to:

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Counsel for Defendant



Won Y. Uh

Exhibit A

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

<hr/>		
JEREMIAH BURKE, <i>et al.</i> ,)	
)	
Plaintiffs)	Case No. CL-2022-12576
v.)	
)	
MCLEAN BIBLE CHURCH,)	
)	
Defendant.)	
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AFFIDAVIT OF CRAIG PROULX

1. My name is Craig Proulx, and I am over eighteen years of age.
2. I became a member of McLean Bible Church (“the Church”) in the year 1980 and continued as a member until the year 2020. During my time as a member, I was active in the Church affairs, including in its leadership.
3. On or about 1996, the congregation elected me as a member of the Board of Elders, which is the lay leadership of the Church.
4. Sometime between the years 1998 and 1999, I became the Treasurer of the Board of Elders. One of my responsibilities as the Treasurer was to review and sign the Church’s expense checks, since the church staff was not allowed to sign any check.
5. Beginning sometime around 2016, the Church began using a system of electronic funds transfer (named “Concur”) for its financial transactions. From that time forward, I would receive email requests to sign off on the Church’s electronic checks.
6. Starting in the year of 2017, I began receiving requests to sign Church checks made payable to “the Southern Baptist Convention” or similarly-named entities.

7. Such checks were relatively large in amount, such as five thousand dollars (\$5,000.00), ten thousand dollars (\$10,000.00), or even fifty thousand dollars (\$50,000.00). The memo line and the backup information for such checks were blank. Nor was there an attached invoice and, therefore, I did not know the reasons why these checks were written.

8. I communicated with two individuals at the Church to address my concerns about signing these checks, which lacked any explanation. The two individuals I spoke with were Larry Cooper and Bill Steele.

9. Larry Cooper was the Chairman of the Board of Elders at that time. He provided no explanation and instead told me "don't worry about it."

10. Bill Steele was the Director of Central Operations and Finance at the Church and a paid employee. He explained that the checks reflected the Church's contributions to "New City Network," an organization chartered by the Southern Baptist Convention for church planting. I was told that similar checks were coming into McLean Bible Church from the Southern Baptist Conventions and being funneled back to New City Network for church planting.

11. I never saw evidence of any checks from the Southern Baptist Convention to the Church and, to this date, I have no evidence of that.

12. I left the Church in October 2020 when I retired and moved out of state. At that time, I also resigned from my position as a member of the Board of Elders and Treasurer.

13. Between the years of 2017 to 2020, I estimate the total amount of all checks the Church issued payable to Southern Baptist Convention and its affiliates such as New City Network to be approximately five-hundred thousand dollars (\$500,000.00).

14. To my knowledge, the Church did not make any disclosure or announcement to its members relating to its affiliation with Southern Baptist Convention or transfer of the funds.

I, Craig Proulx, hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1 day of March, 2023.

Craig Proulx
Craig Proulx

STATE OF North Carolina :
COUNTY OF Pender :

The foregoing instrument was subscribed and sworn before me this 1 day of March 2023 by Craig Proulx.

Theresa S Freer
Notary Public

My commission expires: March 7, 2024

