# COURT INTERVENTION IN CHURCH ELECTION DISPUTES: AN ACT OF TYRANNY, OR A WEAPON AGAINST IT?

**Elizabeth Grieco**[*]

ABSTRACT

*This Article concerns whether the First Amendment permits courts to resolve certain types of ministerial election disputes involving congregational churches. After surveying the Supreme Court's jurisprudence regarding the church autonomy doctrine and the ministerial exception, I conclude that intervention is permissible in certain circumstances. Where the church has a congregational structure and there is a question of whether the majority has in fact spoken, a court can rely on the "neutral principles of law" doctrine to resolve the dispute. However, where a church has a hierarchical structure, the majority of the church has definitively acted, or the court must apply theological principles to resolve the dispute, the court cannot intervene. In reaching this conclusion, I discuss trends across various lower courts on this issue, as well as how allowing intervention promotes and secures key First Amendment values while avoiding negative side effects.*

[*] Elizabeth Grieco is currently an Assistant Corporation Counsel at the New York City Law Department, where she handles civil rights cases alleging police misconduct under state and federal law. In 2022, she obtained her J.D. from George Mason University Antonin Scalia Law School, where she graduated cum laude. Prior to law school, Elizabeth attended McGill University in Montreal, Canada, where she obtained her B.A. in Political Science and History.

## INTRODUCTION

In the summer of 2021, the Circuit Court of Fairfax County, Virginia, heard a very peculiar case: one that brought together several lines of free exercise jurisprudence that rarely share the same stage.[1] The case involved the election of a new minister by the members of Heritage Fellowship Church, a congregational church ruled by the will of the majority and without an internal tribunal to resolve disputes.[2] Before the start of the election, the Deacons Board had created a list of "active members" who were eligible to vote.[3] However, upon the close of the election, the recommended minister did not secure a sufficient number of votes to be elected.[4] Following this news, the Deacons Board conducted a post-election audit where they removed several voters from the active members list.[5] Based on the newly

1. *See* Howard v. Heritage Fellowship Church (*Heritage I*), 108 Va. Cir. 260 (Va. Cir. Ct. 2021).
2. *Id.* at 261–63.
3. *Id.* at 261.
4. *Id.*
5. *Id.*

drawn list, the recommended minister passed the two-thirds vote threshold and won the election.[6] Various members of the congregation then filed suit against the church alleging that alteration of the membership rolls after the election violated the church's constitution and bylaws—making the election of the recommended minister invalid.[7]

As would be expected, the contours of this case brought forth important free exercise concerns.[8] The church alleged that court involvement in the matter would violate the church autonomy doctrine and, in particular, the ministerial exception[9] outlined in Parts I.B and C.[10] The plaintiffs countered that, absent the decision of an internal church tribunal, the court was permitted to apply the *neutral principles of law* doctrine—which will be outlined in Part I.A[11]—to determine whether the Deacons violated the church's governing documents.[12]

The court found that its involvement did not violate the First Amendment.[13] The court gave three reasons for this decision: (1) there was no internal church tribunal for the court to defer to; (2) the dispute could be resolved based on the neutral principles of law doctrine rather than religious doctrine; and (3) the court was not asked to substitute its secular judgment for the church's religious judgment and decide whether the minister was the "proper pastor," but was instead asked to determine whether the Deacons followed the church's election procedures.[14] Three months later, the court found that the election violated the church's governing documents and ordered the church to hold a new election.[15]

Though *Heritage* mainly involved applying Virginia precedents,[16] it raises novel constitutional questions about the crossroads between the neutral principles of law doctrine, the church autonomy doctrine, and the ministerial

6. *Id.*
7. *Id.*
8. *Id.* at 262.
9. *Id.*
10. *See* discussion *infra* Parts I.B–C.
11. *See* discussion *infra* Part I.A.
12. *See id.*; *see also Heritage I*, 108 Va. Cir. at 262.
13. *Heritage I*, 108 Va. Cir. at 264–67.
14. *Id.*
15. Howard v. Heritage Fellowship Church (*Heritage II*), 108 Va. Cir. 268, 274 (Va. Cir. Ct. 2021). In particular, the court ordered the church to conduct the new election in "an open and transparent manner that provides . . . reasonable notice prior to the removing or changing a status to inactive," rather than by modifying the voter pool after the fact. *Id.*
16. The court heavily relied on its interpretation of the Supreme Court of Virginia cases. *See, e.g.*, Reid v. Gholson, 327 S.E.2d 107, 115 (Va. 1985); Pure Presbyterian Church v. Grace of God Presbyterian Church, 817 S.E.2d 547 (Va. 2018); Cha v. Korean Presbyterian Church, 553 S.E.2d 511 (Va. 2001).

exception. The central question is whether a court is permitted to intervene under the First Amendment when a party alleges that congregational church leadership has violated its own constitution and bylaws in conducting the election of a new minister. Siding with the Virginia Circuit Court and the plaintiffs in *Howard v. Heritage Fellowship Church* (*Heritage I*), this Article answers *yes*.

The church autonomy doctrine—and the ministerial exception specifically—is designed to prevent a court from forcing a religious body to make a particular governance decision against its will.[17] However, where the church leadership has violated the congregation's own constitution and bylaws in conducting an election, the court is merely relying on neutral legal principles to ensure the congregation has actually made a "decision" at all.[18] The "solution" the court would offer is not to impose a particular minister on the church, but to give the congregation the opportunity to reelect its minister without the influence of corruption. Where a congregation has no internal tribunal to resolve these disputes, the governing majority has no recourse from the church leadership's undemocratic and invalid actions. The court is therefore permitted to act without violating the First Amendment, provided the central issue in the constitution and bylaws is purely secular and does not depend on evaluation of religious principles.[19]

Part I will provide background on the neutral principles of law doctrine, the church autonomy doctrine, and the ministerial exception. Part II.A.1 will argue that the ministerial exception is limited to situations where the court is forcing an unwanted minister on a church after it has made a definitive decision. Part II.A.2 will argue that the church autonomy doctrine prevents intervention in hierarchical church disputes, but not congregational church disputes because of their different organizational features. Part II.A.3 will argue that the neutral principles of law doctrine can extend to election disputes without threatening religious freedom. Finally, Part II.B will argue that the court must still limit its scope and remedies to avoid diving into

17. As will be discussed in Part II, the doctrine also applies where the court attempts to use the *neutral principles of law* doctrine to force the church to accept a particular minister it does not want, such as in wrongful termination suits. *See infra* Part II. Where the church has definitively "spoken on" or "decided" a matter of church governance, the court cannot second-guess that judgment. *Id.*; *see also* Bouldin v. Alexander, 82 U.S. (1 Wall.) 131, 139–40 (1872) ("It may be conceded that we have no power to revise or question ordinary acts of church discipline . . . . But we may inquire whether [the act of church discipline] was the act of the church, or of persons who were not the church and who consequently had no right . . . ."). But, as this paper will argue, where the issue is whether the church has actually "spoken" or "decided" at all (as is the case with many election procedure disputes) there is a valid distinction which renders the exception inapplicable. *See infra* Part II.

18. *See infra* Part II.

19. *See infra* Part II.

religious disputes or forcing the congregation to act contrary to its beliefs and judgment.

## I. BACKGROUND

The Religion Clauses of the First Amendment contain simple language: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[20] However, this seemingly simple language has since sparked the development of a complex variety of doctrines covering a multitude of disputes, including disputes within the church itself.

The church autonomy doctrine reflects the general principle that religious bodies are given great autonomy concerning core matters of church governance.[21] Under the neutral principles of law doctrine—which has been used in church property disputes—courts can intervene where the matter can be decided based on purely neutral and secular principles and without delving into theological matters.[22] The ministerial exception, by contrast, requires that courts not intervene in employment discrimination suits involving the selection of ministers.[23] The following Parts will describe the history and contours of these doctrines and how they interact with one another.

### *A. The Beginnings of First Amendment Church Autonomy: Property Dispute Cases*

The church autonomy doctrine has its origins in church property disputes going back to the post-Civil War period.[24] The earliest case, *Watson v. Jones*,[25] concerned the breakup of a local congregation of a hierarchical church into pro-slavery (majority) and anti-slavery (minority) factions, which caused a dispute over ownership of the church property.[26] As a result, the national church body declared that the minority faction was the true representative of the church, and therefore the rightful owner of the local

20. U.S. CONST. amend. I.

21. Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2061 (2020); *Church Autonomy Doctrine*, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY (Stephen M. Sheppard ed., Desk ed. 2012) ("The church autonomy doctrine is a constitutional and prudential rule by which courts will not hear litigation based on a dispute of church faith, doctrine, means of governance, and other internal matters that are inherently within the discretion of the ecclesiastical corporation.").

22. Jones v. Wolf, 443 U.S. 595, 602–03 (1979).

23. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 188 (2012).

24. *See, e.g.*, Watson v. Jones, 80 U.S. (1 Wall.) 679 (1871).

25. *Id.*

26. *Id.* at 690–92.

church property.[27] A member of the majority faction then sued, claiming that the majority faction was the rightful owner of the property.[28]

The Court first outlined how the organizational structure of the church impacted the propriety of court intervention.[29] Where property is held by a congregational church—that is, a church without superior ecclesiastical tribunals—the court can decide the property rights of various factions based on "ordinary principles which govern voluntary associations."[30] Where the church operates under a "majority rules" system, the majority faction holds the property rights.[31] Because courts are not required to inquire into religious opinion in any fashion, courts are permitted to intervene.[32]

By contrast, where property is held by a hierarchical church with superior ecclesiastical tribunals, courts cannot intervene and must defer to the decision of the superior tribunal.[33] Court intervention challenging church authorities on matters of theological controversy was an attack on free exercise that was common under the English establishment.[34] Under the American vision of free exercise, "[t]he law knows no heresy," and individuals have a right to organize themselves into religious associations and create tribunals to resolve internal disputes.[35]

By choosing to join itself to a larger religious organization, the local congregation willingly subjected itself to the government, control, and judgment of that larger organization.[36] Allowing recourse to the secular courts, which are less competent in ecclesiastical law and matters of faith, to reverse the decisions of those bodies would in turn lead to "total subversion" and injustice.[37] Therefore, "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories . . . the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."[38] Applying these principles to the case at hand, the church in *Watson* was hierarchical, and therefore, the Court lacked jurisdiction and had to defer

27. *Id.* at 692–93.
28. *Id.* at 693.
29. *Id.* at 725–27.
30. *Id.* at 725.
31. *Id.*
32. *Id.* at 726.
33. *Id.* at 727.
34. *Id.* at 728.
35. *Id.* at 728–29.
36. *Id.* at 729.
37. *Id.*
38. *Id.* at 727.

to the church tribunal's determination that the minority faction controlled the property.[39]

Despite this early deferential, non-interventionist approach in hierarchical cases, the Court later expanded opportunities for court involvement in *Jones v. Wolf*.[40] Like *Watson*, *Jones* concerned the ownership of church property after a hierarchical church broke into factions.[41] Prior to the suit, a superior ecclesiastical tribunal determined that the minority faction constituted the "true congregation" and controlled the property.[42] The Georgia Supreme Court had held that the trial court correctly adjudicated the case under the "'neutral principles of law' approach."[43] Under this approach, a court is permitted to intervene where it could resolve the dispute through reliance on purely secular principles of law and without delving into theological controversies.[44]

The Supreme Court held that the "'neutral principles of law' [doctrine]" was a permissible method for evaluating court jurisdiction over church property disputes, even where a superior ecclesiastical tribunal had already spoken on the issue.[45] The doctrine was permissible because it completely relied on objective, well-established legal concepts lawyers and judges were already familiar with, and therefore avoided entanglement in religious questions.[46] The doctrine also allowed for flexibility in the private ordering of church rights and obligations, emphasizing the importance of the religious body's intent.[47] The Court did note, however, that trial courts had to be careful when examining documents like church constitutions to ensure they only relied on secular terms rather than religious precepts.[48] If any aspect of the case required the court to delve into religious controversies, courts were still required to defer to ecclesiastical tribunals.[49] Resolving the case itself,

39. *Id.* at 732–34.

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

41. *Id.* at 598.

42. *Id.*

43. *Id.* at 599.

44. *Id.*

45. *Id.* at 602.

46. *Id.* at 603.

47. *Id.* at 603–04.

48. *See id.* at 604 (discussing the "special care" civil courts must take when scrutinizing church documents under the "neutral-principles method").

49. *Id.*; Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709 (1976); *see also* Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969). The Court noted:

> [T]here are neutral principles of law . . . which can be applied without "establishing" churches . . . . But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to

the Supreme Court chose to remand the case to determine whether a finding that one faction of the church was the "true congregation" relied on religious doctrine rather than neutral legal principles.[50]

Thus far, the Supreme Court has only ever applied the neutral principles of law doctrine to church property disputes. However, Part II.A.3 will argue that the neutral principles of law doctrine is suitable not only for property disputes, but for ministerial elections as well.[51]

### *B. Disputes over Church Governance and Excommunication*

Along with the foundational property cases establishing the rules of deference and the neutral principles of law doctrine, the Court also addressed a line of property cases concerning church governance and excommunication. Over time, the Court would give church governance issues unique treatment while also continuing to rely on the distinction between hierarchical and congregational forms of organization.

The first case to tackle court intervention in a church governance dispute was *Bouldin v. Alexander*[52] in 1872. In *Bouldin*, a congregational church divided into factions, and a minority of the church voted to excommunicate the current trustees of the church property and elect new trustees in their stead.[53] The ousted trustees sued, claiming that they were not validly removed and were still the rightful owners of the church property.[54] The Court held that the trustees were improperly removed and were the rightful property owners.[55]

The decision hinged on the congregational, "majority rules" structure of the church.[56] The church itself had no internal superior tribunal to resolve the dispute, and the excommunication proceedings were conducted without a majority vote and using unusual procedures.[57] The Court found these procedural deficiencies sufficient to show that the trustees were not in fact removed from their positions of authority over the property:

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> resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.

*Id.*

50. *Jones*, 443 U.S. at 606–10.
51. *See infra* Part II.A.3.
52. *See* Bouldin v. Alexander, 82 U.S. (1 Wall.) 131 (1872).
53. *Id.* at 131.
54. *Id.* at 132.
55. *Id.*
56. *Id.*; Watson v. Jones, 80 U.S. (1 Wall.) 679, 725 (1871).
57. *Bouldin*, 82 U.S. (1 Wall.) at 137.

> Even if it be assumed that it was in the power of the church to substitute other trustees for those named in the deed, it may not be admitted that a small minority of the church, convened without notice of their intention, in the absence of trustees, and without any complaint against them, or notice of complaint, could divest them of their legal interest and substitute other persons to the enjoyment of their rights.[58]

Importantly, the Court noted that it had no general right to decide who was and was not a member of the church, or to question whether an act of excommunication by the church was "regular[] or irregular[]."[59] However, the Court found that it had the right to "inquire whether the resolution of expulsion was the act of the church, or of persons who were not the church and who consequently had no right to excommunicate others."[60] Because the act of excommunication was not performed by a majority of the congregational church, it was not "the action of the church, and . . . it was wholly inoperative."[61]

This decision reveals two important principles. First, once a church has made a decision, it is improper for a court to second-guess that decision even where certain procedural irregularities exist.[62] Yet, despite this general prohibition, a court is still allowed to intervene when there is a question as to whether the decision was in fact an "action of *the church*" at all, based on ordinary democratic principles and the church's organizational structure.[63] In other words, a court can intervene when the case concerns whether the majority of the congregation has in fact acted, or whether a decision was made by an improper minority vote.[64] However, as will be discussed in Part II.A.2, some scholars and courts question *Bouldin*'s continued applicability based on the cases that follow.[65]

The next foundational church governance case addressed by the Court was *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church*.[66] In *Kedroff*, a hierarchical church was occupied by an archbishop appointed

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58. *Id.* at 137–38.
59. *Id.* at 140.
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.* (emphasis added) (emphasizing an action of a minority of the Third Colored Baptist Church to remove a large number of its members was inoperative because the majority represents a congregational church).
64. *Id.*
65. *See* discussion *infra* Part II.A.2.
66. *See* Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church, 344 U.S. 94 (1952).

by the head authority of the Russian Orthodox Church in Moscow.[67] Relying on a state law that required all churches formally ruled by the Russian branch to now be ruled by the American branch, the church corporation that owned the property sued so that the North American archbishop could control the cathedral instead.[68] The Supreme Court held that the state law improperly interfered with a matter of church governance.[69] The Court described:

> [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. Freedom to select the clergy . . . [has] federal constitutional protection as a part of the free exercise of religion against state interference.[70]

Applying these principles, the Court found that the state's decision to pass the control of ecclesiastical matters from one church authority to another was conclusively an intrusion of religious freedom.[71]

The general theme echoed in *Kedroff* was further strengthened and morphed in *Serbian Eastern Orthodox Diocese v. Milivojevich*.[72] That case involved the removal of a bishop in a hierarchical church by a superior ecclesiastical tribunal, who claimed the bishop violated several substantive canons.[73] The bishop then sued, claiming that his removal proceedings were procedurally and substantively defective under the church's internal regulations.[74] The Supreme Court held that courts had to defer to the superior ecclesiastical tribunal.[75] Courts do not have the right to substitute in "concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives" for the judgment of an ecclesiastical tribunal on religious determinations about church governance, even if the tribunal's decision was "not rational" or "arbitrar[y]."[76] Thus, where religious

67. *Id.* at 96–97.
68. *Id.* at 95.
69. *Id.* at 120–21.
70. *Id.* at 116.
71. *Id.* at 119.
72. *See* Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).
73. *Id.* at 697–98.
74. *Id.* at 706–07.
75. *Id.* at 715–20.
76. *Id.* at 714–15.

controversies involving hierarchical church governance are concerned, deference to ecclesiastical tribunals is required.[77]

### *C. The Ministerial Exception*

Though the previous cases began to touch on issues of church governance, each still lay in the realm of property disputes. That would soon change with the Court's adoption of the ministerial exception in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*.[78] The central question in *Hosanna* was whether employment discrimination laws could be applied against churches for ministerial employment decisions.[79] The Court ultimately held that the First Amendment prohibited such an action.[80] In doing so, the Court highlighted the English establishment's practice of appointing church officials and thwarting the free election of ministers.[81] The Court also relied on its previous property decisions like *Watson*, *Kedroff*, and *Milivojevich* in finding that "it is impermissible for the government to contradict a church's determination of who can act as its ministers."[82]

According to the majority in *Hosanna*, the violation at the center of this prohibition is the handing over of church control over the selection of ministers to secular authorities:

> Requiring a church to accept or retain an unwanted minister . . . interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes on the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According

77. *Id.*; *see also* Gonzalez v. Roman Cath. Archbishop, 280 U.S. 1, 16 (1929). The Court explained:

> [I]t is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. . . . [T]he decisions of proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

*Id.* (footnote omitted). *Jones*, which came after *Milivojevich*, clarified that a certain level of inquiry into church documents was permissible, so long as the court did not become involved with issues of religious controversy. *See* Jones v. Wolf, 443 U.S. 595, 604 (1979) (citing *Milivojevich*, 426 U.S. at 709).

78. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 188 (2012).

79. *Id.* at 176–77.

80. *Id.* at 188.

81. *Id.* at 182.

82. *Id.* at 185–87.

> the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.[83]

Thus, despite the state's strong interest in preventing employment discrimination, the substantial invasion of church autonomy that would result created an impenetrable First Amendment barrier.[84] However, the majority also noted that the decision only explicitly covered employment discrimination suits, and the applicability of the exception to other circumstances would need to be handled in future cases.[85]

The ministerial exception was further developed in *Our Lady of Guadalupe School v. Morissey-Berru*.[86] Though the case mainly involved the scope of the term "minister," it also shed additional light on the purposes behind the ministerial exception.[87] The ministerial exception was designed to safeguard independence in matters of church government, and especially autonomy concerning internal management decisions like the selection of ministers.[88] Keeping courts out of employment discrimination matters concerning ministers ensured that the church retained the power to select, supervise, and remove the people in charge of teaching its tenets.[89] The ministerial exception therefore secured "the general principle of church autonomy . . . : independence in matters of faith and doctrine and in closely linked matters of internal government."[90]

The extensive journey from *Watson* to *Guadalupe* reveals a complicated and rich progression of the church autonomy doctrine over time. From the doctrine's origins, the organizational structure of a church impacted a court's involvement: congregational property disputes could be decided based on ordinary majoritarian principles, but deference was required for hierarchical churches.[91] Even in hierarchical cases, however, courts were eventually permitted to resolve internal church property disputes—even against the ruling of a hierarchical body—so long as they relied on the neutral principles of law doctrine and did not delve into religious questions.[92] Despite this

83. *Id.* at 188–89.
84. *Id.* at 196.
85. *Id.*
86. *See* Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049 (2020).
87. *Id.* at 2061–64.
88. *Id.* at 2060.
89. *Id.*
90. *Id.* at 2061.
91. Watson v. Jones, 80 U.S. (1 Wall.) 679, 727 (1871).
92. Jones v. Wolf, 443 U.S. 595, 602 (1979).

general rule, *Milivojevich* indicated that, where governance issues are involved, superior tribunals in hierarchical churches are to be given complete deference, even where procedural deficiencies are alleged.[93] However, in congregational churches, procedural deficiencies that question whether the church has actually "acted" at all may permit court scrutiny under *Bouldin*.[94] Finally, the ministerial exception cases show that court involvement removing the church's ability to decide which ministers to accept or retain—mainly by forcing an unwanted minister upon them—categorically violates the First Amendment.[95]

93. Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 717–20 (1976); Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 187 (2011). *Hosanna* recounted *Milivojevich* explaining:

> [T]he First Amendment "permit[s] hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters." When ecclesiastical tribunals decide such disputes . . . " the Constitution requires that civil courts accept their decisions as binding upon them."

*Id.* (quoting *Milivojevich*, 426 U.S. at 724–25).

94. Bouldin v. Alexander, 82 U.S. (1 Wall.) 131, 137–39 (1872).

95. *Hosanna*, 565 U.S. at 190–96.

## II. ANALYSIS

The precedents just described open many questions relating to whether a court may involve itself in the election dispute of a congregational church. Is the ministerial exception so broad as to exclude court involvement in any dispute even touching on ministerial selection? Does the *Milivojevich* rule of deference to hierarchical church tribunals in internal governance cases foreclose involvement in a congregational case? Has the *Bouldin* rule, which allows courts to review certain procedural deficiencies in congregational property or excommunication disputes, lost authority over time? Can the neutral principles of law doctrine extend beyond property disputes into election disputes? These questions will be explored more deeply in the following Parts.

### *A. Both Precedent and Underlying First Amendment Values Justify Court Involvement in Congregational Church Election Disputes*

#### 1. The Ministerial Exception Does Not Prohibit Court Involvement in Church Election Disputes

As noted in *Hosanna* and *Guadalupe*, the fundamental harm the ministerial exception targets is secular authorities forcing unwanted ministers onto churches, thereby revoking the church's autonomy in the selection of its leaders.[96] However, resolving church election disputes in cases like *Heritage* does not force an unwanted minister upon a church or revoke the church's authority to make ministerial decisions.

Congregational churches traditionally make ministerial decisions through majority rule.[97] When a procedural infirmity questions whether the

96. *Id.* at 188–89; Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2060 (2020).

97. Watson v. Jones, 80 U.S. (1 Wall.) 679, 724–25 (1871); *see also* REV. DR. D. ELIZABETH MAURO, NAT'L ASS'N OF CONGREGATIONAL CHRISTIAN CHURCHES, THE ART AND PRACTICE OF THE CONGREGATIONAL WAY: A CHURCH GUIDE 25–31 (2019), https://www.naccc.org/wp-content/uploads/2021/04/the_art_and_practice_of_the_congregational_way_v8.2_booklet.pdf (discussing the member-based, democratic method of congregational church decision-making). The use of majority rule can be seen in the constitution of various congregational churches. *See, e.g.*, CONSTITUTION OF THE FIRST CONGREGATIONAL CHURCH OF THE UNITED CHURCH OF CHRIST BOULDER, COLORADO art. V, § V.1.B. (2014), https://firstcong.net/wp-content/uploads/2018/04/constitution.pdf (requiring a majority vote for election of church officers); CONSTITUTION AND BY LAWS OF THE CONGREGATIONAL CHURCH, INCORPORATED, OF PUTNAM, CONNECTICUT art. XII, § 12.3 (2005), https://putnamcong.com/Putnam_Cong_By-Laws_Rev_10-2-05.pdf (requiring a majority vote for the election of church council members).

majority has actually spoken on an issue—as was the case with the changed membership rolls in *Heritage I*[98]—there is no second-guessing of the congregation's decision-making. The court is not evaluating whether the church has made an unwise or unlawful decision based on secular law. Rather, the court is simply determining whether the church in fact *decided* who should be a minister in the first place through its agreed upon procedures.[99] The relevant remedy is not to force an unwanted minister on the church or to replace the church's judgment with the court's own. Instead, the court will simply give the congregation the opportunity to vote again under the protection of its own pre-established rules.[100] The church therefore still has full autonomy to "choos[e] who will preach [its] beliefs, teach [its] faith, and carry out [its] mission" despite the court's involvement.[101]

The ministerial exception—at least in its current form—is designed to be used in employment discrimination cases.[102] Though the Court "express[ed] no view" on whether other types of suits were also barred,[103] applying it to church election disputes would clearly require an extension of the doctrine. Such an extension would not be warranted given the great differences between employment discrimination and election disputes. Employment discrimination involves the application of a generally applicable secular law against a religious body. Election disputes, by contrast, enforce the church's own agreed upon procedures, not any secular statute. Without any additional impact on church autonomy—which, as argued above, is not present—extension of the doctrine is not appropriate given these differences.[104]

98. *Heritage I*, 180 Va. Cir. 260, 260–61 (Va. Cir. Ct. 2021).

99. *Id.* at 265 ("Plaintiffs are not asking . . . whether [the] Reverend . . . was a proper pastor, only whether he was properly elected.").

100. *Heritage II*, 108 Va. Cir. 268, 274 (Va. Cir. Ct. 2021).

101. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 196 (2012).

102. *Id.* ("The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church's decision to fire her. Today[,] we hold only that the ministerial exception bars such a suit. We express no view on whether the exception bars other types of suits . . . .").

103. *Id.*

104. *Id.* One could argue that applying the church's own rules could trigger the ministerial exception in specific types of disputes that more deeply threaten church autonomy. Say an employment contract for a minister included a "good cause" hiring provision. If a court enforced that provision, it would impose an unwanted minister on the church and potentially resolve a religious question: what qualifies as "good cause." *Compare Hosanna*, 565 U.S. at 190–96 ("There will be time enough to address the applicability of the exception to other circumstances if and when they arise."), *with* Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2060 (2020) ("The independence of religious institutions in matters of 'faith and doctrine' is closely linked to independence in what we have termed 'matters of church government.'" (quoting *Hosanna*, 565 U.S. at 186)), *and* Jones v. Wolf, 443 U.S. 595, 602 (1979) ("[C]ivil courts defer to the resolution of issues of religious doctrine or polity by the highest

As will be discussed in Part II.B, courts will still have to carefully limit the scope of election disputes they cover and the remedies they offer in order to stay within the proper bounds of the First Amendment.[105] However, where a procedural infirmity questions whether the majority has elected a minister, and the appropriate remedy is to re-conduct the election,[106] the ministerial exception is not a bar.

### 2. Though Deference to Hierarchical Tribunals Is Required, Courts Can Determine Whether a Congregational Church Has *Acted* Based on Ordinary Majoritarian Principles

If the ministerial exception does not categorically bar an election dispute, the next question is whether the First Amendment broadly prohibits any interference in matters of congregational church governance. The answer for hierarchical churches is clear from *Milivojevich*: the court must defer to the decision of an internal tribunal on a matter of church governance, even where procedural violations are alleged.[107] However, *Milivojevich* does not tell us whether congregational churches also require non-intervention. Should congregational churches receive similar treatment? Or is there a reason to differentiate between churches of different organizational structures?

*Bouldin*, the only Supreme Court case that touches on procedural violations in a congregational church setting,[108] indicates the latter. *Bouldin* involved the application of election procedures, specifically the procedures for the ousting of the current trustees and the election of new trustees.[109] Though a clear vote by the majority (were it to exist) would have been "conclusive" evidence, the Court was permitted to decide whether the majority, as opposed to a minority, had in fact acted.[110] In doing so, the Court looked to both irregular procedures as dictated by internal church rules and ordinary principles of governance like majority rule.[111] The ultimate result

court of a hierarchical church organization."). Importantly, the same issues do not exist for most election disputes, as will be described more in Part II.A.3. *See infra* Part II.A.3.

105. *See infra* Part II.B.

106. *See Heritage I*, 180 Va. Cir. 260, 265–66 (Va. Cir. Ct. 2021).

107. Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 717–20 (1976).

108. *See* discussion *supra* Part I; *see also* David J. Young & Steven W. Tigges, *Into the Religious Thicket—Constitutional Limits on Civil Court Jurisdiction over Ecclesiastical Disputes*, 47 OHIO STATE L.J. 475, 492 (1986) ("*Bouldin* has been the Supreme Court's only occasion to decide a case involving a congregational church.").

109. Bouldin v. Alexander, 82 U.S. (1 Wall.) 131, 137–38 (1872).

110. *Id.* at 140.

111. *Id.*

was the Court's invalidation of the excommunication and election due to its procedural infirmities—a minority, not the majority, of the church had taken the action, making it void.[112]

It is therefore clear from *Bouldin* that procedural disputes involving congregational churches are reviewable, at least insofar as they question whether a majority vote occurred, and they involve interpretation of purely secular procedures.[113] Election disputes, which by nature depend on whether a majority vote has been reached, often implicate that exact type of question. Some common election situations that would raise majority threshold issues are: (1) when the church has broken into factions voting exclusively and unilaterally; (2) when the membership rolls were improperly tampered with; or (3) when an election was performed without providing notice to all members.

Many state courts have since read *Bouldin* to permit intervention in congregational cases involving church governance.[114] Virginia, where the *Heritage* case took place, has also adopted a pro-intervention stance.[115] Some academics have turned in this direction as well, including Ira Ellman.[116] According to Ellman, *Bouldin* "seems to stand for the proposition that courts need no special 'religion rules' when deciding cases involving congregational churches."[117] Ellman also cites *Watson* as contemplating "courts performing the contract function in [congregational] cases, and performing it by application of ordinary contract rules."[118]

Though *Bouldin* articulates a path towards intervention, some academics and lower courts have questioned its continued authority.[119] The main challenge to Ellman comes from David Young and Steven Tigges who argue that there is no reason to treat hierarchical and congregational churches differently when it comes to the propriety of interpreting church

112. *Id.*

113. *Id.*

114. *See, e.g.*, Abyssinia Missionary Baptist Church v. Nixon, 340 So. 2d 746, 748 (Ala. 1977); Providence Baptist Church v. Superior Ct., 251 P.2d 10, 14 (Cal. 1952); Miller v. McClung, 145 N.W.2d 473, 476–77 (Mich. Ct. App. 1966); Baugh v. Thomas, 265 A.2d 675, 677–78 (N.J. 1970); Zimbler v. Felber, 445 N.Y.S.2d 366, 374 (N.Y. Sup. Ct. 1981); David v. Carter, 222 S.W.2d 900, 906 (Tex. Civ. App. 1949); Reid v. Gholson, 327 S.E.2d 107, 114 (Va. 1985).

115. *See Reid*, 327 S.E.2d at 111–14.

116. Ira Mark Ellman, *Driven from the Tribunal: Judicial Resolution of Internal Church Disputes*, 69 CALIF. L. REV. 1378, 1387 (1981).

117. *Id.*

118. *Id.*

119. *See, e.g.*, Young & Tigges, *supra* note 108, at 490–93; First Baptist Church v. Ohio, 591 F. Supp. 676, 681–82 (S.D. Ohio 1983); Nunn v. Black, 506 F. Supp. 444, 448 (W.D. Va. 1981).

documents.[120] The criteria churches must employ in selecting spiritual leaders is seen as a purely doctrinal matter that courts should *not touch* no matter how the church is organized.[121] *Milivojevich* therefore supplants *Bouldin* and prevents courts from getting involved in hierarchical and congregational cases alike.[122] In both types of cases, so the argument goes, deference is required.[123]

However, several problems exist with these arguments. The first is the explicit reasoning underlying *Milivojevich* and the deference principle more generally. The Supreme Court could have easily decided *Milivojevich* by broadly stating that all disputes over church governance were outside of a civil court's purview. However, the Court instead based its resolution of the case on a narrower ground: the hierarchical nature of the church.[124] As described in *Milivojevich* and *Watson*, deference to internal tribunals is based on the right of religious organizations to freely organize themselves as they wish and voluntarily consent to the authority of internal tribunals.[125] Internal tribunals also have a stronger understanding of ecclesiastical law than civil tribunals, especially in matters of church governance.[126]

These notions of consent and expertise that underlie deference in hierarchical cases are not present in congregational cases. By purposeful design, congregational churches have chosen not to consent to the authority of any internal tribunal and to instead be ruled by the majority.[127] As such, court interference does not undermine the congregational church's right to freely organize or contract. Internal tribunals are also often designed to develop and interpret ecclesiastical law over long periods of time,[128] whereas

120. Young & Tigges, *supra* note 108, at 493; *see also* Kent Greenawalt, *Hands Off! Civil Court Involvement in Conflicts over Religious Property*, 98 COLUM. L. REV. 1843, 1866 (1998) (calling the hierarchical/congregational distinction "an anomaly that is so evidently impossible to justify, it will almost certainly not survive").

121. Young & Tigges, *supra* note 108, at 493.

122. *Id.* at 492.

123. *Id.* at 492–93.

124. Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 708 (1976) ("The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry . . . ."); *see also* Ellman, *supra* note 116, at 1387 n.27 ("Although the Supreme Court has not decided any other cases involving congregational churches, it has explicitly relied on the hierarchical nature, rather than congregational nature, of the churches involved in the cases it has decided.").

125. *Milivojevich*, 426 U.S. at 711.

126. *Id.* at 711–12.

127. Reid v. Gholson, 327 S.E.2d 107, 113 (Va. 1985).

128. *Id.* ("[T]ribunals may be guided by a body of internally-developed canon or ecclesiastical law, sometimes developed over a period of centuries.").

congregational churches lack that specific "expert" body (outside of the congregation as a whole).[129]

This reveals another problem in applying *Milivojevich* to congregational church cases: if the court is supposed to give deference, *who* does it give deference *to*? Supporters of this interpretation often point to the majority of the congregation.[130] This may very well be sound—the ministerial exception alone indicates that forcing an unwanted minister on a congregation that struck him down by majority vote would trigger flashing lights.[131] *Bouldin* seems to accept this premise as well, noting that a majority vote for excommunication would have been "conclusive proof."[132]

Unfortunately, deference towards the majority does not make sense when the controversy concerns whether the majority has spoken at all, as is the case with many election disputes. Instead, the court is left to either intervene or defer to the decision of a sub-body that, unlike a hierarchical church tribunal, has not been delegated interpretative authority. In *Heritage*, this would mean deferring to the Board of Deacons[133] and, paradoxically, allowing a body that is supposed to be constrained by the church's constitution to freely bend that constitution's requirements to its will. For this reason, even academic Kent Greenawalt—who strongly supported eliminating the hierarchical and congregational distinction—accepted that "[t]o some extent, greater review of congregational church decisions than hierarchical ones is inevitable to decide what counts as a majority vote."[134]

Thus, unlike in hierarchical cases, where the court attempts to honor the religious organization's intent and freedom to submit to a tribunal's authority, in congregational cases, the court ignores the religious organization's intent and freedom to "avoid" such submission. The majority, which by design represents the "voice" of the church, is then without consent forced under the thumb of a small faction. A faction that now unreservedly controls that majority's ability to vote them out. In this situation, non-interference does not protect the organizational autonomy of a congregational church—it actively undermines it.

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129. *Id.*

130. Young & Tigges, *supra* note 108, at 492 n.91 (citing First Baptist Church v. Ohio, 591 F. Supp. 677, 682 (S.D. Ohio 1983)) ("[I]n congregational churches the civil courts must defer to the majority decision . . . ."). State cases that have leaned towards intervention have also acknowledged this limitation. *See Reid*, 327 S.E.2d at 113 ("When the majority has spoken . . . 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.").

131. *See* discussion *supra* Part II.A.1.

132. Bouldin v. Alexander, 82 U.S. (1 Wall.) 131, 140 (1872).

133. *Heritage I*, 108 Va. Cir. 260, 261 (Va. Cir. Ct. 2021).

134. Greenawalt, *supra* note 120, at 1867.

Considering the relevant differences and interests of congregational churches and hierarchical churches, a "principled distinction"[135] remains that justifies the opposing rules in *Milivojevich* and *Bouldin*. As *Milivojevich* continued to expressly rely on the hierarchical design of the church in its holding,[136] its deference principle cannot be read to apply to congregational churches. Though *Bouldin* and *Watson* are older cases, they are the only authorities we have explaining the propriety of court interference in congregational cases.[137] *Bouldin*—which specifically involved an election dispute questioning whether the majority had acted—clearly supports intervention in cases like *Heritage*.[138] Of course, a remaining block may still exist if the case would require the court to decide a religious question of faith and doctrine, as the following Part will outline.[139]

### 3. The Neutral Principles of Law Doctrine Can Extend Beyond Property Disputes and Be Successfully Applied in Procedural Disputes over the Election of Ministers

As remarked upon in *Jones*, civil courts are prohibited from resolving church disputes "on the basis of religious doctrine and practice."[140] However, civil courts are permitted to resolve disputes where they are exclusively applying the "neutral principles of law" doctrine, at least where property is concerned.[141] Whether the neutral principles of law doctrine can be applied to election disputes raises two questions. First, can election disputes in fact be decided based on neutral principles? Second, can the neutral principles of law doctrine be extended beyond property disputes and to ministerial elections?

The answer to the first question is "yes." Certain types of election procedures can be decided based on neutral legal principles. As the majority in *Watson* noted, courts are competent to examine and apply "the ordinary principles which govern voluntary associations."[142] Courts are also clearly familiar with interpreting and applying contractual provisions, including the

135. *Contra* Young & Tigges, *supra* note 108, at 493 ("It is difficult to discern any principled distinction between a court interpreting a congregational church's organic documents . . . and the Illinois courts' impermissible review of the constitution . . . of the Serbian Orthodox Church in *Serbian Eastern Orthodox*.").

136. Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713 (1976).

137. Young & Tigges, *supra* note 108, at 492.

138. Bouldin v. Alexander, 82 U.S. (1 Wall.) 131, 137–40 (1872).

139. *See* Jones v. Wolf, 443 U.S. 595, 602 (1979).

140. *Id.*

141. *Id.*

142. Watson v. Jones, 80 U.S. (1 Wall.) 679, 725 (1871).

governing documents of associations.[143] *Jones* recognizes this, acknowledging the propriety of interpreting a church's constitution and bylaws so long as the court is careful to scrutinize in "purely secular terms, and not to rely on religious precepts . . . [or] resolve a religious controversy."[144] Many election disputes involve interpretation of entirely secular election procedures. In *Heritage I*, the relevant question was whether the church constitution allowed revision of the membership rolls after the election was completed.[145] Simple procedural rules of timing, notice, voter thresholds, and the like do not touch on any religious questions. As described by the Supreme Court of Virginia, "[c]ourts must apply them every day, and can do so without any danger of entering a 'religious thicket.'"[146]

The answer to the second question, however, is more complicated. So far, the Supreme Court has only applied the neutral principles of law doctrine in property disputes. However, the extension of the neutral principles of law doctrine to congregational election disputes is justifiable considering the important interests at stake and the lack of negative impact on First Amendment rights.

By refusing to intervene where the bylaws of a congregational church are violated, a court places a church at a grave disadvantage. Unlike hierarchical churches, congregational churches lack an internal tribunal to ensure that the bylaws are being followed despite the court's lack of involvement.[147] Instead, when a court refuses to intervene, it renders the bylaws completely unenforceable against rogue leadership and therefore lacking authority. Congregational churches in turn are denied the security and stability offered by enforceable governance documents. Depending on the structure of the individual church, it could become subject to a completely unaccountable Board of Deacons. The congregation is thus forced into one of three options: (1) accept the Deacons' expanded authority; (2) further break up the church to trigger court involvement; or (3) take on a new hierarchical form with internal tribunals to resolve the dispute.

In a ministerial election dispute, the consequences of "giving in" are especially severe—the majority is forced to take on a minister it does not want, who has been unilaterally thrust upon them by the church leadership. As *Hosanna* and *Guadalupe* highlight, unwanted ministers take away the majority's ability to guide the church in its chosen theological direction, an

143. *See* 1 HUGH K. WEBSTER, THE LAW OF ASSOCIATIONS § 2.06 (2023).
144. *Jones*, 443 U.S. at 604.
145. *Heritage I*, 108 Va. Cir 260, 261 (Va. Cir. Ct. 2021).
146. Reid v. Gholson, 327 S.E.2d 107, 113 (Va. 1985).
147. *Watson*, 80 U.S. (1 Wall.) at 722–23.

interest at the heart of the Religion Clauses.[148] Extending the neutral principles of law doctrine to ministerial election disputes is in turn necessary to preserve this critical religious liberty interest. This is not to mention the even more serious problems that election disputes can spurn after the fact—potentially threatening irreconcilable schisms[149] comparable to those of *Watson* and *Jones*.[150]

Such a limiting and unbalanced result is not necessary when considering the low impact that court involvement in procedural election disputes would have on First Amendment interests. As previously mentioned, many election disputes can be decided based on entirely secular principles of contract and democratic government.[151] Where a religious controversy is involved, *Jones* permits the court to freely deny jurisdiction.[152] Liability and remedies can also be limited to ensure that the court does not overturn the will of the congregational majority on a matter of church governance.[153] As such, many state courts have already adopted a rule that the neutral principles of law doctrine—the general right for the court to intervene—applies beyond property disputes to allegations of procedural violations concerning important issues like elections and excommunication.[154] Given the valuable interests protected and the low threat of thwarting First Amendment goals, the neutral principles of law doctrine should be read to extend beyond property and into procedural election disputes.

This extension of the neutral principles of law doctrine is proper even where ministerial appointments are involved. As previously discussed, congregational election disputes do not concern religious questions like the qualifications or *propriety* of a specific minister.[155] Such a question would clearly delve beyond neutral principles and contravene the strict lines formed by the ministerial exception.[156] Instead, application of neutral principles would simply secure the majority's choice of minister against the procedurally infirm acts of rogue leadership.[157]

148. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 188–89 (2011); Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2060 (2020).

149. *See, e.g.*, Peter Wehner, *The Evangelical Church Is Breaking Apart*, ATLANTIC (Oct. 24, 2021), https://www.theatlantic.com/ideas/archive/2021/10/evangelical-trump-christians-politics/620469.

150. *See Watson*, 80 U.S. (1 Wall.) at 726; Jones v. Wolf, 443 U.S. 595, 613 (1979).

151. *See* discussion *supra* Part II.A.3.

152. *Jones*, 443 U.S. at 602.

153. *See* discussion *infra* Part II.B.

154. *See, e.g.*, cases cited *supra* note 114.

155. *See* discussion *supra* Part II.A.1.

156. *Id.*

157. *Id.*

The question in each case would be whether the majority has in fact spoken, and not whether the majority's choice of a specific minister was the substantively *right* one.[158] This preservation of the majority's right to select a minister—which applying neutral principles would serve—was one key goal the ministerial exception was designed to achieve.[159] Courts would also not impose the dictates of a secular law—such as a discrimination statute—against the church, like in a traditional ministerial exception case.[160] Instead, courts would apply the neutral election provisions created by the church itself.[161] Finally, courts can further ensure they respect the bounds of *Hosanna* and *Guadalupe* by limiting the issues they explore and the remedies they grant, as will be discussed in the following Part.[162] Extension of the neutral principles of law doctrine to the ministerial election of a congregational church is therefore permissible, even in light of the ministerial exception.

### *B. To Avoid Implicating the First Amendment, Courts Must Limit the Specific Issues They Decide and the Remedies They Provide in Congregational Election Disputes*

Though permissible, court intervention in congregational church election disputes should be limited to specific situations and remedies to avoid thwarting religious liberty. First, courts cannot intervene based on procedural violations where the majority of a congregation has definitively "spoken" on a particular issue. Second, courts cannot resolve electoral questions that delve into religious doctrine, such as who "qualifies" as an eligible voting member of the church. Finally, courts must limit available remedies to re-conducting an election as opposed to granting a ministerial position to a particular candidate.

When the majority of the congregation has without question made a decision, that decision must be deemed final and untouchable by the court even if other procedural issues are involved. *Bouldin* acknowledged this limitation by holding that an act of excommunication would normally be conclusive absent a question of whether it was an act of the majority.[163] The

158. *Id.*
159. *Id.*
160. *See* discussion *supra* Part II.A.1.
161. *Id.*
162. *See* discussion *infra* Part II.B.
163. Bouldin v. Alexander, 82 U.S. (1 Wall.) 131, 140 (1872).

majority opinion accepted this possibility even if inquiries revealed that members were "irregularly cut off."[164]

This principle is justified by religious liberty interests. When the majority of the congregation makes a decision, it represents a decision by the church as a whole.[165] The majority is also the body that creates, amends, and by nature interprets its own constitution and bylaws.[166] Were a court to overturn a clear act by the majority to accept or deny a particular minister, it would be using ecclesiastical law to control a church's religious decision, which undermines church autonomy. This also directly implicates the ministerial exception: a court cannot impose its secular judgment to force the church to accept a minister the church has definitively decided it does not want.[167]

Courts are also forbidden from getting involved in theological disputes,[168] even when reviewing election decisions. While many election disputes will concern purely secular procedures, there are certain election rules that cross into theological territory. For example, in *Howard v. Heritage Fellowship Church* (*Heritage II*), determinations of who qualified as "active members" of the church were based on theological criteria like closely following church tenets and participating in certain religious activities.[169] If the plaintiffs had argued that certain members were improperly deemed "inactive" based on an incorrect interpretation of that theological criteria, that would be a religious issue that the court could not entangle itself in. Fortunately, the plaintiffs did not argue that theological question; they instead focused on the improper timing of the membership changes.[170] Still, this hypothetical highlights how important it is for courts to take care not to fall into theological traps while interpreting church constitutions and bylaws.

Finally, courts will likely also need to contain the scope of available remedies to avoid implicating the ministerial exception. The ministerial exception prohibits a court from taking over the church's authority to select its ministers.[171] If a court's chosen remedy in an election dispute is to designate a specific person as the winner or loser, there is a high chance the court is improperly taking control of the church's governance responsibility.

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164. *Id.*

165. Watson v. Jones, 80 U.S. (1 Wall.) 679, 724–25 (1871).

166. *Id.*

167. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171, 188–89 (2011).

168. Jones v. Wolf, 443 U.S. 595, 602 (1979).

169. *Heritage II*, 108 Va. Cir. 268, 269–70 (Va. Cir. Ct. 2021).

170. *Heritage I*, 108 Va. Cir. 260, 265 (Va. Cir. Ct. 2021) ("Nowhere in the Complaint do Plaintiffs challenge the substantive matter of whether a member was in good standing.").

171. *Hosanna*, 565 U.S. at 188–89.

While a court may claim that it is simply following the true majority's wishes, the use of direct compulsion through an injunction edges too close to the line of undermining church autonomy.

To avoid this risk of impropriety, the appropriate remedy upon a finding that election procedures were improperly followed would be to re-conduct the election. Such was the chosen course of action in *Heritage II*, where the court chose to require the church to conduct a new election rather than to declare that the proposed minister had lost and was no longer eligible.[172] Under this remedy, the congregational majority is certain to have the final say on who should and should not—and who in fact does and does not—become a minister. There is then no opportunity for the court to wrongfully substitute its judgment on the matter, even unconsciously, which is essential to preserving church autonomy.

## CONCLUSION

At the center of the church autonomy doctrine are concerns that courts will entangle themselves in theological disputes, improperly take on a church's governance duties, or undermine a church's freedom to organize and lead itself as it sees fit. However, none of these concerns are implicated when a court conducts a limited review of an alleged procedural violation in a congregational church election. Many election procedures involve purely secular concepts that courts are competent to interpret. In taking these cases, courts are not forcing an unwanted minister onto a church; courts merely evaluate whether the majority of the church has actually made an election decision. Courts are also not disregarding—but empowering—a congregational church's decision to organize itself under majority rule rather than subject itself to an internal hierarchy. In turn, courts are not making a governance decision *for* the majority but are in fact giving the majority a true opportunity to make that decision free of corruption. So long as courts properly limit the scope and remedies, court intervention in election disputes is not only *proper*, but *helpful* in preserving the congregation's authority and control over its internal leadership.

172. *Heritage II*, 108 Va. Cir. at 274.