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JONES V. WOLF: NEUTRAL PRINCIPLES STANDARD OF REVIEW FOR INTRA-CHURCH DISPUTES

In *Jones v. Wolf*¹ the United States Supreme Court held that civil courts are not required to defer to church hierarchical decisions awarding control of local church property to one faction in a congregational schism. The Court approved use of any “neutral principle of law” that does not require judicial consideration of ecclesiastical matters in settling the property dispute.² The decision in *Jones v. Wolf* provides an alternative to the traditional standard of judicial deference established in *Watson v. Jones*.³ The decision represents a definite shift away from mandatory judicial deference in church property disputes by allowing civil courts to resolve such disputes irrespective of church decisions that would otherwise determine control of the property.⁴

In *Jones* the Court was faced with the task of enforcing ostensibly secular property rights within the context of an intra-church dispute. The dispute involved a schism in a local congregation of the Presbyterian Church in the United States (PCUS), a national hierarchical organization. The majority faction voted to join another Presbyterian denomination, while the minority remained loyal to the PCUS. A regional judicatory of the PCUS reviewed the schism and declared the minority faction of the congregation to be the true representative of the Presbyterian Church. The minority then sought to assert its right to possession of the local church building, based on the declaration of the PCUS judicatory. The state court awarded control of the property to the majority faction on the basis of neutral principles of law, ignoring the traditional approach of judicial deference to hierarchical church decisions established in *Watson v. Jones*.⁵ The United States Supreme Court in *Jones* approved the use by the state court of any “neutral principle of law” that does not require direct judicial consideration of church doctrine or policy.⁶

The existence of an alternative to the traditional *Watson v. Jones* approach of judicial deference will facilitate and consequently encourage both judicial intervention in church property disputes and the

1. 99 S. Ct. 3020 (1979).

2. *Id.* at 3025-26.

3. 80 U.S. (13 Wall.) 679 (1871).

4. See note 20 *infra*.

5. 99 S. Ct. at 3022-23.

6. *Id.* at 3025-26.

use of courts by dissatisfied church factions to obtain civil review of church hierarchical decisions. In its decision the Court failed to confront the fundamental reality of church property disputes: property is merely an incident of ecclesiastical authority and, therefore, church property disputes are merely manifestations of doctrinal disputes, over which civil courts have no authority.⁷ This critical failure of the Court to examine the relationship between religious doctrine and control of church property will undermine the ostensibly clearly drawn line of the neutral principles rationale, causing it to become a source of more infringement of religious freedom, rather than a source of protection from such infringement.

I. EVOLUTION OF JUDICIAL REVIEW OF CHURCH PROPERTY DISPUTES

A. *The Watson v. Jones Standard of Judicial Deference*

The adoption of the neutral principles standard in *Jones v. Wolf* is in large part a reaction to both the standard of judicial deference established in *Watson v. Jones* and the failure of *Watson* to abolish the implied trust doctrine.⁸ The holding in *Jones v. Wolf* does not merely alter the nomenclature or methodology of civil court review of church property disputes; rather, it changes the basic relationship between church and state by allowing civil courts to engage in a much more active, independent review of ecclesiastical disputes than was possible under the restraints of *Watson*. The holding of *Watson v. Jones*, however, retains significance for several reasons. First, *Watson* remains a judicially accepted alternative to the neutral principles standard after *Jones v. Wolf*.⁹ Second, *Watson* provides an appropriate referent for

7. See, e.g., *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 121 (1952) (Frankfurter, J., concurring) ("What is at stake here is the power to exercise religious authority. That is the essence of this controversy. It is that even though the religious authority becomes manifest and is exerted through authority over the Cathedral as the outward symbol of a religious faith.").

8. The first reference to the neutral principles rationale in the context of an intra-church property dispute came in *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. 440, 449, *on remand sub nom. Presbyterian Church v. Eastern Heights Presby. Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied*, 396 U.S. 1041 (1970) in which the Court effectively abolished the use of the implied trust doctrine. "Since the Georgia courts on remand may undertake to determine whether petitioner is entitled to relief on its cross claims, we find it appropriate to remark that the departure-from-doctrine element of Georgia's implied trust theory can play *no* role in any future judicial proceedings." *Id.* at 450 (emphasis in original). The implied trust doctrine simply asserts that church property is held in trust for those who remain faithful to the original tenets of the religion. See text accompanying notes 30-33 *infra*.

9. The *Watson* standard of deference may be used if, under state law, the process of

analyzing the neutral principles approach because the perceived inadequacies of the *Watson* standard were used to justify the acceptance of the neutral principles alternative. Finally, *Watson* retains significance because its facts are very similar to those of *Jones v. Wolf*, yet the Court in these cases reached disparate conclusions.

This disparity illuminates the differing concerns that served as the bases of analysis for the respective courts. While the Court in *Jones* focused narrowly on the standard of review to be used by civil courts without considering the effects of that standard on the free exercise of religion, the Court in *Watson* fashioned a standard of review based on its desire to minimize the effect on freedom of religion. The decision in *Watson* was based on the fundamental philosophical conviction that persons should be free to unite in voluntary religious organizations and to establish internal governing bodies sovereign as to the affairs of the religious society.¹⁰ Given such a philosophical orientation, the question facing the *Watson* Court was not merely which faction should prevail, but rather, under what conditions and to what degree civil courts should be allowed to review church decisions in order to decide property disputes.¹¹ The Court was aware that any standard of judicial review that would allow a civil court effectively to reverse the decision of an authoritative church body would infringe on the free exercise of religion of that church.¹²

In *Watson*, the congregation involved in the property dispute was a member of a national organization of presbyterian churches that was organized in a hierarchical manner.¹³ The general assembly, the highest church judicatory, issued instructions in 1865 that inquiry should be made of any Southerner applying as minister or member to the church

identifying which faction represents a particular church does not "appear to require a civil court to pass on questions of religious doctrine . . ." 99 S. Ct. at 3028.

10. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

80 U.S. (13 Wall.) at 729.

11. *Id.* at 733-34.

12. *Id.*

13. The national organization to which the congregation belonged was the Presbyterian Church in the United States of America. This was not the same church involved in *Jones v. Wolf*, which is the Presbyterian Church in the United States. Both, however, are national hierarchical organizations. See note 17 *infra* for a discussion of the structure of the organization.

about his views on slavery. The Louisville presbytery, a regional governing body, denounced the general assembly's action. In turn, division arose among the members of the Walnut Street Church in Louisville, with the majority of the congregation siding with the general assembly. The general assembly recognized the majority as the true congregation, but a split among the trustees holding title to the local church led to a suit in federal court to determine which faction would be awarded the use and control of the local church property.¹⁴ Thus, the Court in *Watson* was faced with a congregational split within the context of a hierarchical organization that had rendered a decision on doctrinal issues that necessarily determined the control of local property.

In affirming the decree of the circuit court awarding control of the property to the faction loyal to the general assembly, the Supreme Court enunciated a broad rule of judicial deference to authoritative church decisions.¹⁵ The Court enumerated three basic ways in which civil courts could determine beneficial use of the disputed property without reviewing church decisions regarding doctrinal or ecclesiastical matters. The first method involves the enforcement of an express trust,¹⁶ which dedicates the property to or for specific uses or groups of people. The second method of determining control of church property is used when a congregation, which is not a member of a national church organization,¹⁷ becomes divided over a doctrinal issue that re-

14. Because the first amendment had not yet been applied to the states, the only basis of jurisdiction was diversity of citizenship within the congregation itself. See text accompanying notes 34-35 *infra*.

15. 80 U.S. (13 Wall.) at 723-27.

16. In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual . . . may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles And it would seem to be the obvious duty of the court, in a case properly made, to see that property so dedicated is not diverted from the trust which is thus attached to its use.

Id. at 723.

There is some question as to whether courts may now enforce an express trust in favor of a set of religious principles, as opposed to a particular group of people defined in non-religious terms: "Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. at 449. Creating an express trust in favor of certain religious tenets would involve the same impermissible judicial determinations required by the implied trust doctrine. See note 32 *infra* and accompanying text.

17. A local congregation consists of all of the active members of a particular parish or church and can be a self-governing body. It may be connected to other local congregations through national conventions, but such conventions usually have only advisory power. A congregation may also become a member of a national hierarchical organization, such as the

sults in a struggle for control of the local church property. In such cases, a court is to defer to any decision made according to the usual mode of congregational rule that necessarily awards the control of the property to one of the factions.¹⁸ If the congregation is governed by majority rule, then the majority faction shall prevail, but if the congregation is governed by a board of elders, its decision is final.¹⁹ The last method of settling church property disputes is applied to congregational splits within a national hierarchical organization. In such situations, the *Watson* Court required civil courts to defer to the highest church judicatory to rule on the dispute to the extent that the ecclesiastical decision determined control of the local property.²⁰ Thus, judicial

Presbyterian Church in the United States, of which the Vineville congregation in the *Jones* case was a member. The congregation is then bound by the doctrine of the national church and the congregational property is subject to the control of the general church, either through an express clause in the deed or through provisions in the national church constitution. The local congregation is governed through a series of ascending bodies called judicatories, with the general assembly having final authority over all congregations. See Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 HARV. L. REV. 1142, 1143 (1962).

18. 80 U.S. (13 Wall.) at 725.

If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to use of the property. The minority in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation.

Id. The Court in *Watson* recognized that not all independent congregations would be governed according to majority rule, and therefore required civil courts to determine the decision-making structure of the congregation before resolving the dispute. Compare the approach of *Watson* with the approach approved by the Court in *Jones v. Wolf*. In *Jones* the Court approved the use of a presumption of majority representation that must be rebutted by the local congregation if some other mode of self-government is used. 99 S. Ct. at 3027. Such a presumption appears to infringe on the autonomy of local congregations to determine their own organizational structure. However, the Court did provide that the presumption of majority representation could always be overcome "either by providing in the corporate charter or the Constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it." *Id.* at 3028. See text accompanying notes 98-99 *infra*.

19. 80 U.S. (13 Wall.) at 725.

20. In this class of cases we think the rule of action which would govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Id. at 726-27. Thus, the approach of *Watson* did not preclude all judicial review in church property disputes, nor did it require absolute deference to church resolutions of such dis-

review under *Watson* was limited to an inquiry into the mode of church government and a determination of the existence of a decision by an authorized judicatory. The court would then be required to defer to that decision to the extent that it determined the rights of the parties to control church property.²¹

It is important to note that the question presented to the Court in *Watson* was not the validity of the general assembly's resolution of doctrinal issues. Rather, the question presented was which faction was legally entitled to beneficial use of the local church property.²² The Court recognized, however, that a dispute over church property is not merely an action to quiet title, divorced from doctrinal disputes,²³ and that when a judicatory of the church has decided doctrinal questions that necessarily determine control of the property, civil courts must defer to the church decision in order to maintain the separation of church and state.²⁴ It is significant that the *Jones* Court cited *Watson* as authority for the proposition that civil courts must defer to church deci-

putes. Under *Watson*, church decisions are to be considered as binding to the extent that those decisions necessarily decide issues in the dispute before the court. In *Watson*, the deeds named the Walnut Street Presbyterian Church or its trustees as grantees. The decision of the national church hierarchy that the faction remaining faithful to the national church constituted the Walnut Street Presbyterian Church therefore precluded judicial inquiry as to which faction represented the grantee named in the deed. *Id.* at 727.

21. *Id.*

22. *Id.* at 699-700. The Court was reviewing the decree of the Circuit Court of Kentucky, which had awarded the control and use of the property to the faction that had remained faithful to the general assembly.

23. The Court stated:

[P]roperty [is] acquired . . . for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination with which [the congregation] is more or less intimately connected by religious views and ecclesiastical government.

. . . [The] property is purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property.

Id. at 726. The Court also characterized the dispute as "essentially ecclesiastical." *Id.* at 713.

24. *Id.* at 727. *See* note 20 *supra*. It is significant that the Court in *Watson* held that the property dispute in that case was a matter of "discipline, or of faith, or ecclesiastical rule, custom, or law." *Id.* at 727. It is difficult to imagine any church dispute that would not fall into one of the categories listed by *Watson* as requiring judicial deference. The holding also refers to the "sound view of the relations of church and state under our system of laws," *id.*, which has been viewed as a reference to the first amendment underpinnings of the *Watson* rationale. However, because *Watson* predated the application of the first amendment to the states by the fourteenth amendment due process clause, it was not a constitutional decision binding on the states. The language, however, had "a clear constitutional ring." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. at 446. *See* text accompanying notes 36-42 *infra* regarding discussion in subsequent cases of *Watson's* underlying principles as constitutional requirements.

sions on doctrinal matters,²⁵ while concurrently stating that civil courts are not bound by church decisions regarding control of local church property.²⁶ Such a distinction is an unwarranted limitation of the holding in *Watson* and fails to acknowledge the reality of judicial review of hierarchical church decisions; church property remains intimately connected to ecclesiastical authority regardless of a civil court's unwillingness to acknowledge the relationship. *Watson* is a pragmatic decision in that it faces the fundamental question of separation of church and state without totally abrogating the inevitable role of the judiciary in church property disputes.²⁷ The real task of civil courts is not to resolve property disputes without referring to questions of church doctrine but to ensure that, in resolving property disputes, civil courts do not in effect reverse doctrinal decisions of church hierarchical organizations.²⁸

B. The Failure of Watson: The Implied Trust Doctrine and the Evolution of the Neutral Principles Standard

The decision in *Watson* was intended by the Court to abolish the use of the implied trust doctrine²⁹ and to create a functional alternative to maintain the separation of church and state. The failure of *Watson* to abolish the implied trust doctrine, however, led to the inception of the neutral principles standard and a consequential weakening of the judicial deference requirement.

The implied trust doctrine asserts that church property donated by the congregation is subject to an implied trust of use for the propagation of the religious tenets of the faith as they existed at the time of the donation.³⁰ The implied trust doctrine had required not only a determination of tenets of the past congregational beliefs but an interpreta-

25. 99 S. Ct. at 3025. Although the Court in *Jones* stated that civil courts must defer to the judgment of the "highest" tribunal of ecclesiastical authority, *id.*, *Watson* did not require that the highest tribunal act before civil courts must defer to ecclesiastical judgments. 80 U.S. (13 Wall.) at 727. See *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-25 (1976).

26. 99 S. Ct. at 3025.

27. *Watson* has been the subject of much criticism, however. See C. ZOLLMAN, *AMERICAN CHURCH LAW* 291 (1933).

28. The Court in *Watson* was keenly aware of the effect that civil court review could have on church authority and therefore fashioned a method of review that minimized intrusions into church affairs. See 80 U.S. (13 Wall.) at 734.

29. *Id.* at 725, 727-29.

30. The implied trust doctrine was first articulated in *Craigdallie v. Aikman*, 3 Eng. Rep. 601, 606 (H.L. 1813) (Scot.) and was more fully developed in *Attorney General ex rel. Mander v. Pearson*, 36 Eng. Rep. 135 (Ch. 1817).

tion of the present beliefs of the opposing factions in the dispute.³¹ While such an endeavor may have been acceptable for an eighteenth century English court, it is clearly impermissible under modern constitutional requirements.³² The ultimate effect of the implied trust doctrine was to discourage evolution of church doctrine by awarding property to those members, no matter how few, who had remained unswerving in their beliefs.³³

Although the use of the doctrine by American courts was forcefully criticized in *Watson v. Jones*, two major factors combined to limit the effect of the *Watson* decision on the implied trust doctrine. *Watson* was a federal diversity case that predated the landmark case of *Erie Railroad v. Tompkins*³⁴ and, although the fourteenth amendment had been enacted, its provisions had not been held to apply the protections of the Bill of Rights to the states.³⁵ As a result, the decision in *Watson* was merely general federal common law and, as such, was not binding on the states, leaving the state courts free to continue their use of the implied trust doctrine.

The principle of judicial deference to church hierarchical decisions relating to church doctrine, as articulated in *Watson*, was later recognized as constitutionally required³⁶ in *Kedroff v. Saint Nicholas Cathe-*

31. The subtleties of religious doctrine are often incomprehensible to the lay judge. See *Craigdallie v. Aikman*, 4 Eng. Rep. 435 (H.L. 1820) (Scot.), in which Lord Eldon admitted, after the second appeal of the case to the House of Lords, that his attempt to understand even the basic controversy was "hopeless."

32. Modern courts have agreed that, when matters of church doctrine must be examined in order to resolve church property disputes, civil courts have no jurisdiction over questions of religious doctrine or polity. See *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. at 724-25; *Jones v. Wolf*, 99 S. Ct. at 3025. While courts have been diligent in reciting this principle of law, the difficulties faced in its application have resulted in holdings that appear to belie the statement of the principle. The implied trust doctrine is difficult to apply for practical reasons: church property is often purchased with money collected over a long period of time from many different sources. It is difficult to identify donors, much less discern their intent at the time of the donation.

The implied trust doctrine originated in England at a time when the Anglican Church was the established state church. The close relationship between church and state made judicial interpretation of religious doctrine at least more acceptable, if not less arduous. However, the peculiar relationship that gave birth to the doctrine made it singularly incompatible with the American heritage of separation of church and state.

33. See, e.g., *General Assembly of Free Church of Scotland v. Overtoun*, [1904] A.C. 515 (Scot.), in which a small group of congregations was awarded over 800 churches.

34. *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

35. The first amendment was applied to the states in *Hamilton v. Regents*, 293 U.S. 245, 248 (1934), *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) and *Zorach v. Clauson*, 343 U.S. 306, 310 (1952).

36. Although the three-tiered holding of *Watson* has not subsequently been applied as a constitutional requirement, the Court has viewed the *underlying principle* of judicial defer-

*dra*³⁷ and *Kreshik v. Saint Nicholas Cathedral*.³⁸ In both cases, the Supreme Court reversed attempts by New York to divest the Russian Orthodox Church of control of St. Nicholas Cathedral, the See of the Bishop of the American archdiocese of the Church.³⁹ The Supreme Court recognized that the controversy over beneficial use of the cathedral was "strictly a matter of ecclesiastical government"⁴⁰ and refused to sustain what it viewed as interference by New York in the free exercise of religion of the Russian church. The Court in *Kedroff* subscribed to the same basic assumption that underlay the rationale of *Watson*—that control of church property is an incident of ecclesiastical authority, which is governed by church law,⁴¹ and that to ignore this relationship is to infringe upon the right of free exercise of religion of the members of the church.⁴² The control of church property in the wake of a schism was viewed as an inherently ecclesiastical concern, a manifestation of ecclesiastical authority beyond the review of civil courts. Thus, after seventy-five years, *Watson* was finally recognized as a decision that was based on the requirements of the first amendment.

Against this background, the Supreme Court again considered the implied trust doctrine nearly one hundred years after the Court first had rejected it. In *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*⁴³ (*Hull Church*), the

ence as a constitutional requirement. *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. at 447.

The Court in *Kedroff* stated that "[e]ven in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion." 344 U.S. at 120-21 (footnote omitted). *Kedroff* provided a clear indication that the Court viewed the requirements of *Watson* as constitutionally mandated. See Note, "And of your law, look ye to it"—*The State's Role in Ecclesiastical Property Disputes*, 1977 UTAH L. REV. 138, 140.

37. 344 U.S. 94 (1952).

38. 363 U.S. 190 (1960) (per curiam).

39. *Kreshik* involved the same parties as *Kedroff*. The trial court in *Kedroff* based its decision on a statute that transferred control of the cathedral, N.Y. RELIG. CORP. LAW §§ 105-107 (McKinney 1952), which was intended to divest the Moscow Patriarch of control of the cathedral because of fears that the Patriarch was under the control of the communist government in Russia. On remand of *Kedroff* to the New York courts, the same result was reached on common law grounds, as opposed to the statutory grounds of the decision in the first trial. On appeal under the name of *Kreshik v. Saint Nicholas Cathedral*, the United States Supreme Court again reversed, holding that the same protections that had prohibited New York from infringing religious freedom by statute also precluded infringement through judicial action. 363 U.S. at 191.

40. 344 U.S. at 115.

41. *Id.* at 120-21. See notes 23 & 24 *supra* and accompanying text.

42. See note 7 *supra*.

43. 393 U.S. 440 (1969).

Court rejected Georgia's use of the implied trust doctrine to award control of local church property to two secessionist congregations from the Presbyterian Church in the United States, a hierarchical church organization.⁴⁴ The local congregations asserted that the general church had departed from the doctrines of the faith by becoming involved in a series of political issues and by denying that the doctrine of foreordination was required in the reformed theology.⁴⁵ These doctrinal differences led to the separation of the local congregation from the national church. The United States Supreme Court reversed and remanded the case to the Georgia Supreme Court⁴⁶ in an opinion that is significant for its dualistic approach to the dispute. The Court acknowledged that the holding in *Watson* had a "clear constitutional ring"⁴⁷ and that it had been elevated to constitutional status by *Kedroff* and *Kreshik*.⁴⁸ The Court in *Hull Church*, however, said that neutral principles of law⁴⁹ existed that could be used to resolve church property disputes without establishing the churches to which the church property is awarded. The Court offered no justification for its failure to apply the *Watson* standard of judicial deference, but it is apparent that the Court was displeased with the direct judicial review of church doctrine required by the Georgia implied trust doctrine.⁵⁰ The reference to "neutral principles of law" may have been designed to emphasize the deficiencies of the implied trust doctrine rather than to establish a new standard of judicial review.⁵¹ The Court's oblique reference to the neu-

44. The organizational form of the church involved in the dispute is often critical in determining the appropriate standard of judicial review. The significance of church organizational structure is discussed in the text accompanying notes 17-20 *supra*.

45. *Presbyterian Church v. Eastern Heights Presby. Church*, 224 Ga. 61, 71-72, 159 S.E.2d 690, 697-98 (1968), *rev'd sub nom. Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. 440 (1969). Foreordination is the belief that some persons are destined for hell even before they are born. The political issues ranged from urging an end to the bombing in Vietnam to refusing to endorse a constitutional amendment designed to allow Bible reading in public schools.

46. 393 U.S. at 452.

47. *Id.* at 446.

48. "In *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), the Court converted the principle of *Watson* as qualified by *Gonzales* into a constitutional rule." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. at 447.

49. 393 U.S. at 449.

50. *Id.* at 449-52.

51. Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is

tral principles standard in *Hull Church*, however, was to serve as the basis for development and acceptance of the doctrine in later cases. The assertion that property disputes could be resolved according to neutral principles of law represented an abandonment of the *Watson* assumption that church property disputes following a schism were manifestations of ecclesiastical disputes over which civil courts have no jurisdiction.

On remand of *Hull Church* to the Georgia Supreme Court, the implied trust doctrine was abandoned completely, and the Georgia court again awarded beneficial use of the local church property to the congregation on the basis of legal title.⁵² The Georgia court declared that the body holding legal title was entitled to beneficial use of the property. This approach seems to be in conflict with *Watson* because the formal title approach in effect reversed the decision made by the general assembly that the minority was the legitimate successor of the original congregation.⁵³

The United States Supreme Court, however, denied certiorari to the appeal challenging the formal title approach of the Georgia court⁵⁴ on the same day it tacitly accepted the formal title approach as a "neu-

awarded. 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 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. at 449. The Court's reference to neutral principles at first appears to be an innocuous statement of fact, rather than the creation of a new judicial standard of review in church property disputes.

The neutral principles language precedes language criticizing civil courts that decide property disputes based on court interpretation of church doctrine, a clear reference to the dangers of the implied trust doctrine and not a criticism of the *Watson* judicial deference standard. In the absence of any judicially noted deficiency in the *Watson* judicial deference standard, the Court in *Hull Church* would have no reason for intentionally creating a new standard of review. However, the statement that courts do not inhibit freedom of religion merely by opening their doors to church property disputes may indicate the Court's underlying rationale. This statement follows the Court's discussion of *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952). In *Kedroff*, the Court twice reversed New York's award of control of the Cathedral to the American Russian Orthodox Diocese because of New York's failure to follow the judicial deference rule. The Court's language implies that applying the judicial deference rule fails to "open the court's doors" to the claimants. The Court expressed dissatisfaction with the limited review available to a court under the *Watson* judicial deference standard. In this light the reference to neutral principles appears to be a more calculated statement by the Court, rather than simply an innocuous statement of fact.

52. *Presbyterian Church v. Eastern Heights Presby. Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied*, 396 U.S. 1041 (1970).

53. For a discussion of the shortcomings of the formal title approach, see note 96 *infra*.

54. 396 U.S. at 1041.

tral principle of law" in *Maryland & Virginia Eldership of the Churches of God v. Church of God*⁵⁵ (*Sharpsburg*). In *Sharpsburg*, the Court dismissed an appeal from a decision awarding control of local church property to secessionist congregations. The Court held in a per curiam opinion that, because the Maryland court's resolution of the dispute involved no inquiry into issues of religious doctrine, the appeal failed to raise a substantial federal question.⁵⁶ In both the majority opinion of *Hull Church* and the per curiam opinion of *Sharpsburg*, the Court did not analyze the relationship between church property disputes and underlying problems of doctrine and ecclesiastical authority as it had in *Watson* and *Kedroff*.

The last Supreme Court case to address the neutral principles standard before its explicit acceptance in *Jones v. Wolf* was *Serbian Eastern Orthodox Diocese v. Milivojevich*⁵⁷ (*Serbian*) in which the Court rejected application of the neutral principles standard in a dispute over the validity of a defrockment of a bishop, which in turn determined control of diocesan property. The Court believed the issue of the reorganization of the diocese to be a matter of church government that was exempt from civil court review.⁵⁸ The Court in *Serbian* also explicitly stated that the control of church property was an ecclesiastical matter determined by church decisions regarding spiritual leadership.⁵⁹ It is unclear why the Court in *Serbian* viewed church property as an incident of ecclesiastical authority while the Court in *Hull Church* and *Sharpsburg* was able to divorce the question of property from ecclesiastical control.⁶⁰ In this rather confused state of affairs, the Court accepted the case of *Jones v. Wolf*⁶¹ for review.

55. 396 U.S. 367 (1970) (per curiam).

56. Brennan, Douglas, and Marshall concurred in an opinion that implied that the neutral principles approach was valid so long as the application of such principles involved no consideration of church doctrine. *Id.* at 368. Both the per curiam and concurring opinions confirmed the shift away from the *Watson* concern for the actual effect of civil court review on ecclesiastical authority. *Id.* at 368-70 (Brennan, J., concurring).

57. 426 U.S. 696 (1976).

58. *Id.* at 721-22.

59. *Id.* at 709. In reaching its conclusion, the Court rejected *Gonzalez v. Archbishop*, 280 U.S. 1 (1929), which had held that the *Watson* judicial deference standard could be circumvented in cases of fraud, collusion, or arbitrariness. *Id.* at 16.

60. The differing standards of review may be explained by the Court's desire to intervene in those cases in which a local unified congregation stands to be divested of its church property by a national organization. See text following note 102 *infra*.

61. 99 S. Ct. 3020 (1979).

II. *JONES V. WOLF*A. *Facts*

The fact situation presented to the Court in *Jones v. Wolf* provided an appropriate vehicle for review of the *Watson* judicial deference standard because both cases involved the split of a local congregation and a subsequent ruling by a church judicatory on the true identity of the local congregation. The Vineville Presbyterian Church of Macon, Georgia, was organized in 1904 and in that year was established as a member of the Augusta Macon Presbytery of the Presbyterian Church in the United States, which has a hierarchical form of government.⁶² The government of the local church was controlled by its session, and in ascending order by the presbytery, the synod, and the general assembly of the Presbyterian Church in the United States (PCUS). The authority of each governing body is set forth in the Book of Church Order, which serves as the constitution of the PCUS.⁶³

At a congregational meeting of the Vineville Church, a majority voted to separate from the PCUS. The minority remained on the church rolls but ceased to participate in church affairs and conducted services elsewhere. Because the schism resulted from a dispute over church doctrine, the minority sought review of the majority's actions by the Augusta Macon Presbytery as provided by the Book of Church Order.⁶⁴ The Book of Church Order subjects the session to the review and control of the presbytery in all matters and authorizes the presbytery to replace the leadership of the local congregation, to winnow its membership, and to take control of the congregation. Under this authority, the Presbytery appointed a commission to investigate the schism. This commission issued a written ruling declaring that the minority faction constituted the true congregation and divesting the majority faction of all authority to exercise office derived from the PCUS. The minority then brought a class action suit in state court to establish their right to exclusive possession and use⁶⁵ of the Vineville church property. It is

62. For a discussion of the structure and significance of church hierarchical government, see note 18 *supra* and accompanying text.

63. 99 S. Ct. at 3023.

64. *Id.* at 3022-23.

65. The case did not present a question of legal title, which was held by the trustees of the Vineville Presbyterian Church or their successors in office. *Id.* at 3022. The Court in *Jones* recognized that the true question presented was one of use of the property. *Id.* at 3024-25. It is apparent that in a congregational split, in which no question of legal title is involved, the dispute cannot be resolved on the basis of the formal title doctrine. In a congregational split, the formal title doctrine begs the question as to which faction of the formerly united congregation is entitled to beneficial use of the property.

significant that both *Watson* and *Jones* dealt with doctrinal disputes in which a church judicatory had resolved the underlying doctrinal dispute, which in turn necessarily decided control of the local church property.⁶⁶ The disparate conclusions reached in *Watson* and *Jones* illustrate the significance of the differences between the neutral principles and judicial deference approaches.⁶⁷

B. Rationale of the Decision

In *Jones*, the Court held that civil courts are no longer required to defer to church decisions affecting the use and control of church property following a schism.⁶⁸ The Court approved the use of any neutral principle that would allow civil courts to decide church property disputes without considering matters of church doctrine; civil courts are still required to use the judicial deference standard, however, in cases in which resolution of the dispute cannot be made without reference to church doctrine.⁶⁹

The clarity of the holding in *Jones* is belied by the Court's failure to distinguish the factually similar precedent of *Watson v. Jones*.⁷⁰ Rather than squarely addressing the implications of the holding in *Watson*, the Court in *Jones* limited its view of *Watson* and the issues involved in church property disputes. By ignoring the fact that the Vineville property dispute was based on a doctrinal dispute, the Court was able to circumvent the concern in *Watson* and *Kedroff* for the ef-

66. The facts in *Watson* present an almost identical situation. In response to an edict by the general assembly, a local congregation of the PCUS suffered an internal split. The general assembly recognized the majority as the true congregation, but the minority retained effective control of the local church. The majority then sought declaratory relief to regain control of the local church, basing their claim on the decision of the general assembly that the majority constituted the true congregation.

67. The neutral principles rationale developed in the context of a unified congregation seceding from a national organization, as in *Hull Church* and *Sharpsburg*. The neutral principles rationale appears to work best when the dispute is between a local congregation and a national hierarchical organization because, if no express trust is controlling, legal title will be held by one of the parties in the dispute, and beneficial use of the property can be awarded on that basis. *Watson* and *Jones*, however, present a very different situation because they involved a split within the congregation itself. If a civil court is to decide such a dispute, it must consider factors other than legal title, including matters affecting church doctrine, especially when title is in the name of the (unified) local congregation. For this reason, *Watson* requires deference on the part of civil courts in such situations.

68. The Court, however, found that the "formal title" approach employed by the Georgia courts was inapplicable in the context of a congregational schism. See text accompanying notes 92-106 *infra*.

69. 99 S. Ct. at 3028.

70. 80 U.S. (13 Wall.) 679 (1871). See text accompanying notes 13 & 14 *supra*.

fect of civil review of property disputes that have been resolved by church judicatories.

The dual phrasing of the question to be decided indicates inconsistencies in the Court's analysis. At first the Court stated: "The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church."⁷¹ Later in the case, the Court presented the question as "which faction of the formerly united Vineville congregation is entitled to possess and enjoy the property There can be little doubt about the general authority of civil courts to resolve this question."⁷²

The first phrasing acknowledges an essential fact about the case: a hierarchical church decision *has resolved* the dispute. The second phrasing ignores the fact of the church decision—an omission that is carried through the remainder of the opinion. By ignoring the hierarchical decision of the presbytery of the PCUS and focusing only on the method of civil court review, the Court avoided addressing the first amendment considerations of interference with freedom of religion that often attend civil court review of church disputes.⁷³

The thrust of the Court's support for the neutral principles doctrine began with the assertion that states have general authority to re-

71. 99 S. Ct. at 3022.

72. *Id.* at 3024-25.

73. The dissent noted the majority's failure to consider the effect of civil court review on religious freedom:

The Georgia courts, as a matter of state law, granted control to the schismatic faction, and thereby *effectively reversed the doctrinal decision of the church courts*. This *indirect interference* by the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice.

Id. at 3030 (Powell, J., dissenting) (emphasis added). The dissent went on to point out that the first amendment freedom of religion clause is meant to protect churches from civil law interference, not to protect courts from having to resolve religious disputes that involve doctrinal questions. *Id.* at 3030-31 n.2.

The dissent also characterized the neutral principles analysis as a restrictive evidentiary rule: civil courts may examine church documents for an express trust only if such documents do not require courts to consider religious terms or precepts. *Id.* at 3030. As the dissent pointed out, most church organizations define their internal structure in terms of religious authority. The effect of such a rule is to limit a court's ability to examine any church documents; in the absence of such evidence, a court will presumably have to impose some rule of church law derived from state law. While the majority took the position that such a limited review will free civil courts from religious entanglement, *id.* at 3025, the minority argued that the effect of such an evidentiary rule is to allow a civil court effectively to ignore a previous adjudication of a church dispute by an authoritative church body. *Id.* at 3030. See text accompanying note 85 *infra*.

solve church property disputes because of the legitimate state interest in peacefully resolving such disputes and in providing a civil forum for the conclusive determination of such rights.⁷⁴ While such a proposition may be true as a general description of state power, the state interest must be balanced with the uniquely protected freedom of religion, and at times the private interest in freedom of religion must prevail over the state interest of providing a civil forum.⁷⁵ The Court did recognize that the "First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes,"⁷⁶ but quickly dispensed with this limitation. The majority asserted that, although the first amendment prohibits civil courts from resolving church property disputes on a doctrinal basis, and although the first amendment requires civil courts to defer to hierarchical decisions regarding doctrine and polity, a state may adopt any method of settling church property disputes, so long as it does not undertake any consideration of doctrinal matters.⁷⁷

This reasoning, which is central to the Court's conclusion, is weak in two respects: first, the Court failed to analyze the relation between

74. *Id.* at 3025.

75. In *Kedroff*, the Court suggested that in certain cases the balancing mechanism must give way to church decisions:

Ours is a government which by the "laws of its being" allows no statute, state or national, that prohibits free exercise of religion. There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. Even in those cases where the property right follows as an incident from decisions of the church custom or law or ecclesiastical issues, the church rule controls.

344 U.S. at 121.

76. 99 S. Ct. at 3025 (citing *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. at 449).

77. It is also clear, however, that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." . . . [*Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church (Hull Church)*, 393 U.S. at 449]. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich*, . . . [426 U.S. at 710]; *Md. & Va. Churches v. Sharpsburg Church*, . . . [396 U.S. at 368]; . . . [*Hull Church*, 393 U.S. at 449]. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. *Serbian Orthodox Diocese*, 426 U.S. [at] 724-25 . . . ; cf. *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733-34 . . . (1871). Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Md. & Va. Churches*, 396 U.S. at 368 . . . (Brennan, J., concurring) (emphasis in original).

99 S. Ct. at 3025.

the control of church property and ecclesiastical authority, and second, the Court took an unnecessarily limited view of the holding in *Watson*.

To paraphrase the dissent's discussion of the first flaw, the first amendment is not designed merely to protect courts from having to acknowledge the existence of doctrinal disputes, but is designed to protect churches from direct review or indirect interference with religious freedom.⁷⁸ The key to the neutral principles approach appears to be to decide the property dispute without directly alluding to the underlying doctrinal issue. But civil courts cannot abrogate the relationship between church property and ecclesiastical authority simply by pretending that the relationship does not exist.⁷⁹ While such an approach may obviate the need for direct judicial review of church doctrine,⁸⁰ it does not diminish the inhibiting effects on the freedom of religious organizations to govern their internal affairs. The nature of the relationship between ecclesiastical authority and control of property is well illustrated by the facts in *Jones*. According to the provisions of the Book of Church Order, the congregation consists of those admitted to the Lord's Table who are active in the church's life and work. The congregation is subject to the review and control of the presbytery as part of the presbytery's general authority to order whatever pertains to the spiritual welfare of the church under its control.⁸¹ As a consequence of the presbytery's resolution of the religious dispute within the congregation, it awarded possession of the local property to the faction representing the true congregation, which by definition consists of those admitted to the Lord's Table. In reversing the award of the property to the minority faction, the Court effectively reversed the presbytery's rul-

78. See note 73 *supra*.

79. The majority asserted that "[t]he neutral principles approach . . . obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes." 99 S. Ct. at 3026. It is questionable how a court can examine "language of the deeds, the terms of the local church charters, . . . and the provisions in the constitution of the general church concerning the ownership and control of church property," *id.* at 3025, without touching upon doctrinal issues. Under *Watson*, however, there is no need for analysis of doctrine: "This rule admits of no inquiry into the existing religious opinions of those who compromise the legal or regular organization." 80 U.S. (13 Wall.) at 725. Contrary to the majority's assertion, the neutral principles approach not only requires an examination of religious polity in certain cases, but stands to benefit from such an inquiry. See text accompanying notes 100-02 *infra*.

80. Every case cited as support for the majority's position involved an underlying doctrinal dispute that in turn resulted in a fight for control of local church property: *Watson* concerned a dispute over the propriety of forcing southerners to repent their views on slavery before entering ministry; *Kedroff* questioned the authority of the Moscow Patriarch over churches in the United States; *Hull Church* discussed violations of the original tenets of faith; *Serbian* disputed the authority of the synod to suspend a bishop.

81. 99 S. Ct. at 3028 n.7.

ing on the true identity of the congregation. Thus, without addressing the underlying doctrinal issues, the Court seriously compromised the authority of the PCUS to resolve congregational disputes involving religious doctrine by depriving the PCUS of its control over the temporal manifestation of spiritual authority, *viz.*, property.

The second flaw in the Court's reasoning is its limited view of the *Watson* and *Kedroff* precedents. The Court stated that "the First Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization" and cited *Watson* as authority for this proposition.⁸² While it is clear that *Watson* stands for at least that proposition, it stands for much more. The Court in *Watson* was faced with a fight for control of church property in a hierarchical organization that had already resolved the underlying doctrinal issue. It is in that context that the *Watson* Court declared that, whenever questions of faith, discipline, or ecclesiastical rule, custom, or law have been decided by the church, "the legal tribunals must accept such decisions as final, *and as binding on them, in their application to the case before them.*"⁸³ Because the Court in *Watson* accepted the essential relationship between church property and ecclesiastical authority, it also understood that church decisions in congregational property disputes *must* be considered in order to preserve the separation between church and state.⁸⁴ Thus, *Watson* does not stand for the mere proposition that civil courts are bound by ecclesiastical resolutions of issues of doctrine and polity; rather, it stands for the broader proposition that civil courts are also bound by ecclesiastical decisions that determine control of church property.⁸⁵

82. *Id.* at 3025.

83. 80 U.S. (13 Wall.) at 727 (emphasis added).

84. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

80 U.S. (13 Wall.) at 729. It is apparent that the Court in *Watson* was concerned with the effect of civil review on ecclesiastical authority, and not merely with the role of civil courts in such disputes.

85. Although *Serbian* did not resolve the dispute over control of church property directly, the Court declared that "[r]esolution of the religious disputes [over the bishop's defrockment] here affects the control of church property." 426 U.S. at 709. The majority in *Jones* failed to explain why the doctrinal resolution of the Vineville split was not controlling; rather, the neutral principles approach allowed the court to disregard the church decision as a matter of "church polity."

The acceptance in *Jones* of any method of settling church property disputes that does not consider matters of doctrine ignores the effect of civil review on ecclesiastical authority and freedom of religion. Although the fact situations in *Jones* and *Watson* are very similar, the Court in *Jones* failed to distinguish the precedent of *Watson*; it is as if the Court in *Jones* had changed the nature of the controversy, which the *Watson* Court viewed as ultimately ecclesiastical in nature, by viewing the dispute through the new theory of neutral principles.⁸⁶ By narrowly focusing its view on the question of property use, the Court was able to avoid the first amendment considerations of *Watson* and *Kedroff*.⁸⁷

The justification offered by the Court for adoption of the neutral principles standard was twofold: first, the standard had been "approved" by previous Supreme Court decisions and, second, the standard would result in less entanglement of church and state.⁸⁸ The previous approval of the neutral principles standard was ambivalent at best and failed to offer compelling support for its adoption. The majority also referred to *Sharpsburg* as approving the use of the neutral principles standard, but, as the dissent in *Jones* points out, the decision in *Sharpsburg* involved a review of many of the same factors used in a *Watson*-type analysis to determine the church structure involved.⁸⁹ The majority also classified *Serbian* as a case that contains approving reference to the neutral principles standard, when in fact *Serbian* rejected the application of that standard to matters of church polity.⁹⁰ *Jones v. Wolf* is the first United States Supreme Court case to expressly

86. It is perhaps redundant to describe laws as neutral, because in theory laws are supposed to operate in a neutral or impartial manner. Civil courts do not necessarily become less neutral by acknowledging the religious nature of the dispute before them. See McKeag, *The Problem of Resolving Property Disputes in Hierarchical Churches*, 48 PENN. B.A.Q. 281, 285 n.13 (1977). The use of the word "neutral" implies that the judicial deference standard is somehow unjust or unfair. For a discussion of the Court's motivation for adopting a neutral principles standard, see text accompanying note 98 *infra*.

87. By avoiding the questions presented by the more searching analyses of *Watson*, *Kedroff*, and *Serbian*, the Court in *Jones* allowed those decisions to stand as alternatives to the neutral principles approach. However, the Court in *Jones* acknowledged that, in situations in which the courts are compelled to consider church documents in order to identify the faction entitled to beneficial use of the property, civil courts are required to use judicial deference. 99 S. Ct. at 3026. *Watson* was not decided in such a limited context, but its requirement of judicial deference must now be seen as limited to those situations in which courts must consider church polity in order to award beneficial use of the property. Civil courts remain free to use the judicial deference standard if they so desire. *Id.*

88. *Id.* at 3025.

89. *Id.* at 3030 n.1 (Powell, J., dissenting). See also notes 52-54 *supra*.

90. 426 U.S. at 721.

approve of the neutral principles standard of review in church property disputes.

The Court also attempted to justify acceptance of the neutral principles standard on the ground that it should result in less entanglement of church and state. The Court characterized the neutral principles standard as an objective method of review, based on the familiar concepts of trust and property law, which thereby promises to free civil courts completely from consideration of religious doctrine and polity.⁹¹ Again, it can be seen that the Supreme Court was more concerned with freeing civil courts from having to refer to doctrinal issues than with the effect of such decisions on the churches involved.

Curiously, the Court stated that the neutral principles approach is most effective when civil courts are able to discern an express trust provision in church documents, such as the church constitution, which is then to be enforced by the courts.⁹² This approach corresponds exactly to the first tier of review prescribed in *Watson* and is in fact a standard of mandatory judicial deference based on an ecclesiastical determination.⁹³ When the search for an express trust encounters religious concepts in the definition of the beneficiary of the trust, the courts are to defer to the authoritative ecclesiastical resolution of the issue.⁹⁴ Under such a method of review, the identity of the Vineville congregation, that is, those admitted to the Lord's Table, should be determined exclusively by the ecclesiastical courts. Regardless of the outcome, however, it is clear that the first step in the neutral principles analysis involves just as much consideration of church polity and doctrine as does the *Watson* judicial deference standard. It is clear from the *Jones* majority's own description of the neutral principles trust inquiry that the neutral principles approach *does not* "[obviate] entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes."⁹⁵ Having established the framework for the neutral principles approach, the Court in *Jones* proceeded to examine the Georgia Supreme Court's award of beneficial use of the property to

91. 99 S. Ct. at 3025.

92. *Id.* at 3025-26.

93. See notes 15-16 *supra* and accompanying text. The majority in *Jones* dismissed *Watson* as a common law decision that in fact supported the neutral principles approach of express trusts; the *Jones* Court failed to take into consideration the language of *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. at 115-16, *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presby. Church*, 393 U.S. at 446, and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. at 709-10, all of which apply the principles of *Watson* based on first amendment considerations.

94. 99 S. Ct. at 3026.

95. *Id.*

the formal title holder.⁹⁶

C. *Inapplicability of the Georgia Formal Title Approach*

Having endorsed the use of the neutral principles standard by civil courts, the *Jones* Court concluded that the neutral principles standard as developed by Georgia was inapplicable to the Vineville congregational split.⁹⁷ The Supreme Court in *Jones* recognized the inapplicability of the formal title doctrine in a congregational split, but it speculated that Georgia may have adopted a presumptive rule of majority representation, which the Court approved as being consistent with both the first amendment and the neutral principles standard.⁹⁸ It is rather startling that the Court was able to approve the proposition that civil courts can impose upon churches a rule of self-government that provides a "presumptive"⁹⁹ method of determining the identity of

96. *Jones v. Wolf*, 241 Ga. 208, 211, 243 S.E.2d 860, 863-64 (1978), *vacated and remanded*, 99 S. Ct. 3020 (1979).

97. 99 S. Ct. at 3027-28. Georgia requires an examination of church documents for an express trust; if none is found, beneficial use of the property is awarded to the individuals or corporation holding legal title. Georgia's formal title approach, however, was developed in situations involving the split of a unified congregation from the national organization. See *Presbyterian Church v. Eastern Heights Presby. Church*, 225 Ga. 259, 167 S.E.2d 658 (1969), *cert. denied*, 396 U.S. 1041 (1970); *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976). In *Eastern Heights*, the Georgia court awarded beneficial use to the local congregation on the basis of formal title, while in *Carnes* the court found an express trust in favor of the general church in the church constitution. While the formal title approach can determine property rights between a local congregation and the national organization, it is incapable of determining beneficial use when the local congregation itself has split, because title is usually held for the benefit of the entire congregation. In such situations the award of beneficial use to the congregation holding title would be a meaningless act because the real issue is which *faction* of the congregation is entitled to beneficial use. Having failed to find an express trust in favor of the national church, the Georgia Supreme Court held that the Vineville congregation was entitled to the beneficial use of the property. Without further analysis, the Georgia court decreed that the secessionist majority was the representative of the local congregation. 241 Ga. 208, 212, 243 S.E.2d 860, 864 (1978), *vacated and remanded*, 99 S. Ct. 3020 (1979). The failure of the Georgia Supreme Court to offer any rationale for its decision to award beneficial use of the property to the majority faction rendered the application of the neutral principles doctrine meaningless.

98. The Court noted that the Georgia Code contains a provision providing a means of identifying the true congregation in a schism. "The majority of those who adhere to its organization and doctrines represent the church. The withdrawal by one part of a congregation from the original body, or uniting with another church or denomination, is a relinquishment of all rights in the church abandoned." GA. CODE ANN. § 22-5504 (1977). Adherence to the language of the statute can, however, produce contradictory results. The first sentence requires an award of the property to the majority faction, while the second sentence can require an award of the property to the minority faction, because, *e.g.*, in *Jones* it was the majority who abandoned the original body and joined another denomination.

99. The majority in *Jones* referred to a "presumption" of majority rule, indicating that such a presumption can be overcome by way of an express trust or any method that "does

a local congregation. In the case of the PCUS, the general assembly is vested with final spiritual authority over the membership, and therefore the identity, of local congregations.¹⁰⁰ The neutral principle of presumptive majority rule defeats the purpose of a hierarchical organization and consequently infringes upon the freedom of religious organizations to govern their internal affairs. The presumptive majority representation rule also presents a serious threat to the authority of hierarchical organizations. The majority representation rule has its roots in the *Watson* trichotomy. Decisions of the majority in independent congregations are to receive the deference of the courts.¹⁰¹ But congregations that are members of a national hierarchical organization, such as the Vineville congregation, are *not* governed by congregational majority rule, and civil courts may not properly impose such a criterion upon them.

In addition to requesting a clarification of the Georgia court's rationale for declaring the majority faction to be the recipient of the beneficial use of the property, the Court in *Jones* also noted that, if Georgia law requires courts to consider matters of church polity in resolving the dispute, "then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity."¹⁰² Thus, the Court in *Jones* viewed

not impair free exercise rights or entangle the civil courts in matters of religious controversy." 99 S. Ct. at 3028. Such a rule itself seems to infringe upon free exercise rights by requiring churches to defeat a civil presumption about the mode of self-government in the church. The Court was impressing democratic notions of government on institutions that are founded on principles of religious faith. The language of the Court in *Serbian* is cogent:

Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objects, are therefore hardly relevant to such matters of ecclesiastical cognizance.

426 U.S. at 714-15 (footnote omitted).

100. 99 S. Ct. at 3028.

101. The Court in *Jones* cited *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131 (1872), for the proposition that majority rule is generally employed in the governance of religious societies. 99 S. Ct. at 3027. However, *Bouldin* involved an *independent* congregation that used majority rule prior to the congregational split and therefore represents an application of the *Watson* judicial deference standard.

102. 99 S. Ct. at 3028 (footnote omitted). Georgia law also stated that church property be held according to the terms of the church government and that a local church affiliated with a hierarchical association is subject to the higher authority of the organization. *Carnes v. Smith*, 236 Ga. at 33, 38, 222 S.E.2d at 325, 328. The Court in *Jones* stated that requiring a civil court to identify church structure "would appear to require a civil court to pass on questions of religious doctrine, and to usurp the function of the commission appointed by the Presbytery, which already has determined that petitioners represent the 'true congregation' of the Vineville church." 99 S. Ct. at 3028 (emphasis added) (footnote omitted).

the *Watson* rule of judicial deference as mandatory in those situations in which civil courts must consider church organization in order to resolve the controversy. The inapplicability, however, of the formal title approach and the religious infringement of the presumptive majority rule indicate that *Jones* is a case in which the resolution of a property dispute requires determination of the church structure and judicial deference to a hierarchical decision. Indeed, the majority failed to explain how church property disputes can ever be resolved without infringing upon religious freedom when civil courts are free to ignore hierarchical decisions of authoritative church bodies. The major effect of *Jones v. Wolf* appears to be to free civil courts from the necessity of considering the effect of civil review of property disputes over which ecclesiastical authority has been exercised. Such freedom, however, appears to invert the intent of the first amendment.

III. CONCLUSION

The decision of *Jones v. Wolf* establishes an alternative standard of judicial review in church property disputes, but its failure to distinguish *Watson v. Jones* could lead to an inconsistent application of the neutral principles and judicial deference standards. The use of inconsistent standards in what appears to be identical fact situations may lead to the use of the neutral principles standard as an interventionist tool by civil courts. The standard of review used by the courts will be determined by a court's desire to intervene on behalf of a particular party without regard to the effect of such review on first amendment freedoms. Such an interventionist pattern of review can be discerned in the few cases decided since the articulation of the neutral principles rationale. The cases of *Hull Church, Sharpsburg*, and *Jones*, all of which approved of the neutral principles standard, involved local congregations who sought to secede from national organizations while retaining control of local church property. *Kedroff, Kreshik* and *Serbian*, which applied the *Watson* judicial deference standard, involved attempts by an entire diocese led by their bishops to secede from international church organizations. The inconsistent application of a standard of review may be due to a judicial willingness to allow a unified congregation to secede and retain control of its local church because of the Court's belief that a local congregation should not be divested of its church building by a national organization no longer having a congregation in the community.

When a schism is led by a bishop who seeks to assert control of all property in a diocese, however, courts are not faced with the possibility

of divesting local congregations of use of their churches. Regardless of how the bishop's secessionist attempt is resolved, local congregations will retain use of their property, either as members of the original church or as members of a schismatic diocese. Thus, courts may be more willing to defer to hierarchical decisions when a local congregation retains control of local property, regardless of hierarchical struggles for control of the local property. This analysis suggests that the neutral principles doctrine will be used as a device to ensure that, when local congregations secede from national organizations, the congregation will be able to retain control of local property. Such a result could pose a serious threat to the authority of hierarchical organizations, which depend on control of church property to complement their spiritual authority. The Supreme Court in *Jones* has suggested that churches can circumvent the effect of the neutral principles doctrine by providing for an express trust in the church constitution in favor of the general church. When such a trust does not exist, it is incumbent on the national organization to add this provision in order to protect and maintain its effective control over local congregations.

The success or failure of the neutral principles standard should be measured by the effect of civil court review on religious freedom. If the neutral principles standard fails in its stated objective of decreasing church-state entanglement, it will be due to the *Jones* Court's failure to acknowledge the relationship between church property and ecclesiastical authority, a relationship that falls within the first amendment's protections. The Court in *Watson* was able to accept the paradox inherent in church-state relations: in order to maintain the separation of church and state, it is necessary to consider ecclesiastical decisions in civil trials in order to ensure that civil courts do not infringe upon the authority of religious organizations. The Court in *Jones*, however, has attempted to avoid this paradox by focusing its attention solely on the function of civil courts in intra-church property disputes. In the process, the Court has increased the likelihood that civil review of church property disputes will infringe upon the rights of hierarchical church organizations.

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