

NOTES

HOLIMAN V. DOVERS: AN ARGUMENT FOR A MORE IN-DEPTH ANALYSIS OF RELIGIOUS DISPUTES

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INTRODUCTION

Members of religious congregations often disagree amongst themselves over matters of religious doctrine and practice.¹ Local religious congregations that are affiliated with national religious organizations also frequently disagree with the national organization over religious issues.² These disagreements can cause a schism within the religious group, leading one faction to separate from the group.³ The faction that decides to leave often attempts to take ownership of the religious real property in order to either start its own organization or join another organization that has doctrines and practices with which it more fully agrees.⁴ As

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1. See, e.g., *Holiman v. Dovers*, 366 S.W.2d 197, 199-201 (Ark. 1963) (discussing a dispute amongst members of a congregation over the doctrines taught by the church's pastor); Electa Draper, *Episcopal Church's Last Rites in Englewood Fueled by Gay Divide*, THE DENVER POST, August 28, 2009, available at http://www.denverpost.com/commented/ci_13219779?source=commented-business (discussing a dispute amongst members of an Episcopal congregation over "ordination of gay and lesbian priests" that "disintegrate[d]" the nearly-100-year-old church).

2. See, e.g., Sean D. Hamill, *After a Theological Split, a Clash Over Church Assets*, N.Y. TIMES, October 6, 2008, at A17 (discussing the Pittsburgh Episcopal diocese's split from its denomination over issues such as ordination of openly gay and women bishops and "whether Jesus is the son of God and the only way to salvation."); Robert W. Tuttle, *Question and Answer: Courts Will Decide Church Property Disputes*, THE PEW FORUM ON RELIGION & PUBLIC LIFE, June 12, 2008, <http://pewforum.org/events/?EventID=188> (highlighting several disputes across the U.S. between local congregations and national religious organizations over theological issues).

3. See, e.g., Greg Mellen, *Former Episcopal Church Takes Suit to High Court*, LONG BEACH PRESS-TELEGRAM, May 7, 2009, at 2A (discussing an Anglican congregation that left the Episcopal Church because the congregation disagreed with the national organization's stance on several social issues).

4. See, e.g., Ann Rodgers, *Presbytery Says it, Not Court, Should Decide Property Dispute*, PITTSBURGH POST-GAZETTE, May 9, 2008, available at <http://www.post-gazette.com/pg/08130/880357-85.stm> (discussing "a property dispute between Washington Presbytery and most

of June 2008, “about 100 pending lawsuits involving a national denomination and a local congregation fighting over who owns the church property used by the congregation” were making their way through U.S. courts.⁵

The U.S. Supreme Court has provided two different methods for U.S. courts to use when adjudicating disputes over religious property: The deference approach and the neutral principles of law approach.⁶ When employing the deference approach, U.S. courts must adjudicate religious property disputes in different ways depending on the type of religious property dispute at issue.⁷ In some cases, courts must determine the intent of the original property donor, decide which members of the congregation have been faithful to that original intent, and then decide which members have deviated from the religious doctrines that the original donor intended.⁸ In other cases, courts must defer to the decision made by the majority of the current congregation.⁹ In the final category of cases, courts must defer to the decision made by the adjudicative body of the larger denominational organization.¹⁰

The U.S. Supreme Court has also held that, when deciding religious property disputes, it is constitutionally permissible for U.S. courts to use a “neutral principles of law” approach.¹¹ Such an approach may involve an examination of “the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.”¹²

The problem with using different methods to adjudicate religious disputes is that courts are inconsistent in the amount of scrutiny they give religious doctrine and practice.¹³ A series of decisions by the Arkansas Supreme Court is evidence

former members of Peters Creek United Presbyterian Church, who voted . . . to leave the Presbyterian Church (USA) for the more theologically conservative Evangelical Presbyterian Church.”).

5. Tuttle, *supra* note 2.

6. *See* Jones v. Wolf, 443 U.S. 595, 602-03 (1979) (describing “the ‘neutral principles of law’ approach” to adjudicating religious property disputes); Watson v. Jones, 80 U.S. 679, 722-27 (1871) (setting out the deference approach to adjudicating religious property disputes).

7. *Watson*, 80 U.S. at 722-27.

8. *Id.* at 723.

9. *Id.* at 724-25.

10. *Id.* at 726-27.

11. *Wolf*, 443 U.S. at 604.

12. *Id.* at 603.

13. *Compare* Holiman v. Dovers, 366 S.W.2d 197, 200-01 (Ark. 1963) (examining traditional church doctrines in order to determine whether the teachings of the church’s pastor differed from those traditional doctrines), *with* Calvary Christian Sch., Inc. v. Huffstutler, 238 S.W.3d 58, 66-67 (Ark. 2006) (refusing to examine a religious school’s secularly-worded dispute-resolution policy in order to determine whether a student’s disenrollment for his family’s failure to comply with the policy was tortious), *El-Farra v. Sayyed*, 226 S.W.3d 792, 796-97 (Ark. 2006) (refusing to determine whether the Islamic Center of Little Rock breached an employment contract with its

of this inconsistency.¹⁴ In 1963, the court decided *Holiman v. Dovers*,¹⁵ a case where the court delved deeply into doctrinal issues to determine which group in a disagreeing congregation constituted the true members of the church.¹⁶ In several more recent cases, however, the court determined that it did not have subject matter jurisdiction to adjudicate controversies involving religious questions.¹⁷

The Arkansas Supreme Court can greatly diminish the level of inconsistency in its adjudication of religious disputes by adopting an approach akin to the neutral principles of law analysis outlined by the U.S. Supreme Court¹⁸ to adjudicate most religious disputes. Part I of this Note gives a brief overview of the U.S. Supreme Court's decisions regarding religious property disputes. Part II of this Note introduces and analyzes some of the arguments and policy considerations that should be taken into account when deciding between the application of either the *Watson* deference approach¹⁹ or the *Wolf* neutral principles of law approach.²⁰ Part III of this Note analyzes the Arkansas Supreme Court's decision in *Holiman*. Part IV of this Note analyzes the Arkansas Supreme Court's decisions in *Calvary Christian Sch. Inc. v. Huffstuttler*,²¹ *El-Farra v. Sayyed*,²² *Belin v. West*,²³ and *Gipson v. Brown II*.²⁴ Part V of this Note recommends that, in a legal regime where the inquiry into religious doctrines and practices found in *Holiman* is acceptable, Arkansas courts should, as much as is constitutionally allowable, inquire into religious questions in other types of religious disputes. Part V further argues that, because of the in-depth inquiry

Imam because such a decision would have involved inquiry into religious matters in violation of the First Amendment of the U.S. Constitution), *Belin v. West*, 864 S.W.2d 838, 842 (Ark. 1993) (refusing to examine a church's Book of Discipline in order to determine whether someone could reasonably rely on a promise by a church bishop that he would be given a position within the church because such an examination would violate the First Amendment of the U.S. Constitution), and *Gipson v. Brown*, 749 S.W.2d 297, 301 (Ark. 1988) (refusing to examine church members' claims that, pursuant to state statutes, they were entitled to inspect the church's books and to elect a new board of directors, because such an inquiry would have involved the court in "purely ecclesiastical concerns").

14. See cases cited *supra* note 13.

15. 366 S.W.2d at 199.

16. *Id.* at 200-01.

17. See *Huffstuttler*, 238 S.W.3d at 66-67; *El-Farra*, 226 S.W.3d at 796-97; *Belin*, 864 S.W.2d 842; *Gipson II*, 749 S.W.2d at 301; see also *Viravonga v. Samakitham*, 279 S.W.3d 44, 49-50 (Ark. 2008) (noting that in *Huffstuttler*, *El-Farra*, *Belin*, and *Gipson II*, the court "lack[ed] subject-matter jurisdiction to hear [a] religious dispute.").

18. *Jones v. Wolf*, 443 U.S. 595, 603 (1979).

19. *Watson v. Jones*, 80 U.S. 679, 726-27 (1871).

20. *Wolf*, 443 U.S. at 603.

21. 238 S.W.3d 58 (Ark. 2006).

22. 226 S.W.3d 792 (Ark. 2006).

23. 864 S.W.2d 838 (Ark. 1993).

24. 749 S.W.2d 297 (Ark. 1988).

allowed in the first category of *Watson* religious property disputes,²⁵ American courts should at least adopt the arguably more in-depth *Wolf* neutral principles of law approach over the *Watson* deference approach and should undertake adjudication of other types of religious disputes whenever constitutionally allowed.

I. THE U.S. SUPREME COURT'S TREATMENT OF RELIGIOUS PROPERTY DISPUTES

This section gives a brief overview of the U.S. Supreme Court's treatment of religious property disputes. *Watson v. Jones* provided a framework for U.S. courts to use when determining how to adjudicate religious property disputes.²⁶ *Jones v. Wolf* updated this original framework by giving courts another method to use when adjudicating religious property disputes: the neutral principles of law approach.²⁷

A. *Watson v. Jones*

Watson originated from a dispute among members of a Presbyterian Church over the issue of slavery.²⁸ In determining that the church at issue belonged to the church members who were loyal to the national Presbyterian Church in the United States,²⁹ the U.S. Supreme Court enumerated three types of religious property disputes and mandated that courts adjudicate each type of dispute using a different method.³⁰

The first category of disputes involve property given in trust to a congregation, and, "by the express terms of the [trust document] devoted to the teaching, support, or spread of some specific form of religious doctrine or belief."³¹ In this class of cases the court must determine the intent of the original donor, decide which members of the congregation have been faithful to that original intent, and decide which members have deviated from the religious doctrines that the original donor intended.³² The second category of disputes involve the property of congregations that are not affiliated with a larger religious organization.³³ In this class of cases, the court must defer to any decision made by the majority of the current congregation.³⁴ The third category of disputes involve property of congregations that are a part of larger denominations which have "superior ecclesiastical tribunals with a general and ultimate power" to make

25. *Watson v. Jones*, 80 U.S. 679, 723-24 (1871).

26. *Id.* at 722-27.

27. *Jones v. Wolf*, 443 U.S. 595, 602-03 (1979).

28. *Watson*, 80 U.S. at 684.

29. *Id.* at 734.

30. *Id.* at 722-27.

31. *Id.* at 722.

32. *Id.* at 723-24.

33. *Id.* at 722.

34. *Id.* at 724-26.

decisions that are binding upon all member congregations.³⁵ In this class of cases, the court must defer to the decision made by the adjudicative body of the larger denominational organization.³⁶

B. Jones v. Wolf

The Court revisited a state adjudication of a religious property dispute in *Jones v. Wolf*. In *Wolf*, the Court decreed that, when deciding religious property disputes, courts may examine documents such as “the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.”³⁷ After *Wolf*, American courts were no longer bound to defer to a decision made by the adjudicative body of a hierarchical church,³⁸ as they were under *Watson*.³⁹

The Court tempered its allowance of this seemingly-more-intrusive method of adjudicating religious property disputes with the caveat that, “[i]f in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.”⁴⁰

II. DEFERENCE OR NEUTRAL PRINCIPLES OF LAW?

It is necessary to briefly consider the many arguments and policy considerations⁴¹ that counsel both for and against the *Watson* deference approach

35. *Id.* at 722-23.

36. *Id.* at 727.

37. *Jones v. Wolf*, 443 U.S. 595, 603 (1979).

38. *Id.* at 604 (holding that it is constitutionally permissible for U.S. courts to decide disputes over religious property using a “neutral principles of law” approach). *See also* Louis J. Sirico, Jr., *Church Property Disputes: Churches as Secular and Alien Institutions*, 55 *FORDHAM L. REV.* 335, 335 (1986) (citing *Wolf*, 443 U.S. at 602-06) (noting that, in *Wolf*, “the Supreme Court made clear that courts have at their disposal more than one method for resolving [religious property disputes]”).

39. *Watson*, 80 U.S. at 727.

40. *Wolf*, 443 U.S. at 604 (citing *Serbian E. Orthodox Diocese for the U.S. and Canada v. Milivojevich*, 426 U.S. 696, 709 (1976)).

41. *See* Kent Greenawalt, *Hands Off! Civil Court Involvement in Conflicts Over Religious Property*, 98 *COLUM. L. REV.* 1843, 1865 (1998), who argues that, from a policy standpoint, the best approach to adjudicating church property disputes:

would: (1) accord churches significant autonomy of governance; (2) afford individuals freedom of religious worship; (3) give effect to the intent of people who donate money for the purchase of church property and who pay for its upkeep; (4) treat different religious groups in an evenhanded way, without favoring any particular doctrine or form of organization; (5) replicate the standards used in respect to other charitable and nonprofit organizations; and (6) keep courts out of determining ecclesiastical matters for which they are ill-suited.

and the *Wolf* neutral principles of law approach in order to determine which of these seemingly-irreconcilable approaches U.S. courts should adopt. Because the neutral principles of law approach best addresses the concerns of both deference proponents and neutral principles proponents, this Note advocates for the adoption of the neutral principles approach by all U.S. states.⁴²

Any analysis of the relationship between religious organizations and the state must begin with the religion clauses of the First Amendment to the United States Constitution, which reads, in pertinent part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”⁴³ A detailed analysis of the First Amendment issues implicated by judicial resolution of religious property disputes is beyond the scope of this Note. It is important to acknowledge, however, that some legal thinkers believe that the *Watson* deference approach is constitutionally preferable to the neutral principles of law approach, or at least represents “the lesser of two constitutional evils,”⁴⁴ because it arguably involves less inquiry into religious questions.⁴⁵

Much of the support for the deference approach stems from a conclusion that a major purpose of the Establishment Clause is to protect religious organizations from the state and vice versa.⁴⁶ According to Justice Black, the Establishment Clause’s “first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion.”⁴⁷ Justice Black stated that “[t]he Establishment Clause thus stands as an expression of principle on the part of the Founders . . . that religion is too personal, too sacred, too holy, to permit its ‘unhallowed perversion’ by a civil magistrate.”⁴⁸ Because the deference approach only requires an inquiry into a religious organization’s governmental structure to determine whether the organization’s decision controls,⁴⁹ the deference approach arguably alleviates Justice Black’s

42. See discussion *infra* Part V.B.

43. U.S. CONST. amend. I.

44. Nathan Belzer, *Deference in the Judicial Resolution of Intrachurch Disputes: The Lesser of Two Constitutional Evils*, 11 ST. THOMAS L. REV. 109, 139 (1998); see also *Wolf*, 443 U.S. at 610 (Powell, J., dissenting) (arguing that application of the neutral principles of law approach “is more likely to invite intrusion into church polity forbidden by the First Amendment.”).

45. See, e.g., *Wolf*, 443 U.S. at 611 (Powell, J., dissenting) (stating that allowing the neutral principles of law analysis “inevitably will increase the involvement of civil courts in church controversies”).

46. See, e.g., *Engel v. Vitale*, 370 U.S. 421, 431-32 (1962); *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969); Eric G. Andersen, *Protecting Religious Liberty Through the Establishment Clause: The Case of the United Effort Plan Trust Litigation*, 2008 UTAH L. REV. 739, 777 (2008) (noting that “[a] strand of Establishment Clause policy with venerable origins is that, whatever harm establishing a religion may do to the state, it may also have the effect of corrupting religion itself.”).

47. *Engel*, 370 U.S. at 431; see also Andersen, *supra* note 46 (quoting *id.*).

48. *Engel*, 370 U.S. at 431-32 (citations omitted); see also *Mary Elizabeth Blue Hull*, 393 U.S. at 449; Andersen, *supra* note 46 (quoting *Engel*, 370 U.S. at 431-32).

49. *Watson v. Jones*, 80 U.S. 679, 727 (1871).

concerns.

Proponents of the deference approach argue that it is necessary to defer to decisions made by a religious organization's adjudicatory body because further inquiry into the controversy would involve civil judges in an area in which they are not competent.⁵⁰ Neutral principles opponents argue that civil court scrutiny of the determinations of religious adjudicatory bodies allows such determinations to move "from the more learned tribunal in the law which should decide the case, to one which is less so."⁵¹ Further, deference proponents argue that civil court judges start from completely different baselines than church tribunals, and are therefore incapable of coming to an informed conclusion on the merits of a religious dispute.⁵² In *Serbian Eastern Orthodox Diocese for the U.S. and Canada v. Milivojevich*,⁵³ Justice Brennan wrote "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 objectives, are . . . hardly relevant to such matters"⁵⁴

Another reason proponents of deference argue courts should stay out of religious conflicts as much as possible is because, when civil courts adjudicate religious controversies, there is a danger that civil decision-makers will allow their political leanings to affect the adjudication of a dispute.⁵⁵ Courts located near the area where the religious dispute is taking place may feel intense pressure

50. See, e.g., Arlin M. Adams & William R. Hanlon, *Jones v. Wolf: Church Autonomy and the Religion Clauses of the First Amendment*, 128 U. PA. L. REV. 1291, 1291-92 (1980) (noting that "[c]hurch controversies that are perceived to involve purely ecclesiastical matters ordinarily are dismissed by civil courts as beyond their competence, without inquiry into the merits"); Michael G. Weisberg, *Balancing Cultural Integrity Against Individual Liberty: Civil Court Review of Ecclesiastical Judgments*, 25 U. MICH. J.L. REFORM 955, 964 (1992) (citations omitted) (arguing that "[c]ivil courts not only lack authority to resolve religious conflicts, but they are also incompetent to do so"). But see Sirico, Jr., *supra* note 38, at 350 (arguing that the deference approach "assumes that courts are competent to determine where a church's decisionmaking authority lies, whether it has made a decision, and what the decision is").

51. *Watson v. Jones*, 80 U.S. 679, 729 (1871); see also Adams & Hanlon, *supra* note 50, at 1293 n. 8 (quoting *id.*).

52. See *Serbian E. Orthodox Diocese for the U.S. and Canada v. Milivojevich*, 426 U.S. 696, 714-15 (1976); Andersen, *supra* note 46, at 774-75 (quoting *id.*).

53. 426 U.S. at 697.

54. *Id.* at 714-15 (footnote omitted); see also Andersen, *supra* note 46, at 774-75 (quoting *id.*).

55. Greenawalt, *supra* note 41, at 1851; see also Alvin J. Esau, *The Judicial Resolution of Church Property Disputes: Canadian and American Models*, 40 ALBERTA L. REV. 767, 783 (2003) (noting that, when analyzing a particular Canadian religious property dispute, "[o]ne may question whether the politics of the judges—particularly in regard to pro- or anti-Catholic bias—had as much to do with the determination of the trusts, as did the actual conflicting evidence as to what the original purpose of the congregations were in terms of the affiliation issue.").

to side with the faction whose political stances the court most agrees with.⁵⁶ This danger seems particularly relevant in situations where a “conservative” faction of a religious organization breaks from a more “liberal” local congregation or national religious organization, or vice versa.⁵⁷ Furthermore, Professor Eric G. Andersen notes that “[r]eligious groups who operate at the margins of society and who refuse to abide by conventional social and moral norms typically generate fear and loathing within mainstream society.”⁵⁸ It is easy to envision a scenario where a court feels pressure to rule against one of these politically unpopular groups.

Deference proponents also argue its merits from a “contractual” standpoint.⁵⁹ Justice Powell’s dissent in *Wolf* stated that civil courts should do no more than determine “where within the religious association the rules of polity, *accepted by its members before the schism*, had placed ultimate authority over the use of the church property.”⁶⁰ Because members of a religious group accept the rules of the organization when they join the group they are, essentially, at the mercy of the organization’s adjudicative body.⁶¹ Members of religious organizations accept the rules of the organization when they become members because, deference proponents argue, “[r]eligious organizations come before [courts] in the same attitude as other voluntary associations . . . and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints.”⁶² Therefore, according to deference proponents, it is important that religious associations are able to partner with other religious associations without fear of civil court meddling.⁶³

Finally, deference proponents argue that the deference approach has two important virtues: it is predictable, and it is relatively easy to apply.⁶⁴ When two factions acknowledge the organization’s structure and admit that a group within the organization has been given the power to decide property disputes “[t]he major difficulties occasioned by [the deference] approach . . . are the identification of the authoritative decisionmaking body within the hierarchy and

56. Greenawalt, *supra* note 41, at 1851.

57. See, e.g., Kathleen E. Reeder, *Whose Church Is It, Anyway? Property Disputes and Episcopal Church Splits*, 40 COLUM. J.L. & SOC. PROBS. 125, 126 (2006) (analyzing a rift within the American Episcopal Church over the ordination of an openly gay bishop); Tuttle, *supra* note 2 (discussing religious property disputes in California, Colorado, New York, and Virginia, all arising from disagreements among “conservative” and “liberal” members of religious organizations over various theological issues).

58. Andersen, *supra* note 46, at 785.

59. For an in-depth discussion of this “contractual” theory of the religious organization/member relationship, see Weisberg, *supra* note 50, at 986-96; see also Adams & Hanlon, *supra* note 50, at 1299 (citation omitted).

60. *Jones v. Wolf*, 443 U.S. 595, 618-19 (1979) (Powell, J., dissenting) (emphasis added).

61. See *id.*

62. *Watson v. Jones*, 80 U.S. 679, 714 (1871).

63. See, e.g., Adams & Hanlon, *supra* note 50, at 1299-1300.

64. *Id.* at 1294; see also Reeder, *supra* note 57, at 133.

the determination of what that body has decided.”⁶⁵ Because this relatively easy inquiry results in a determination that is “utterly predictable,”⁶⁶ religious organizations may be able to organize their affairs in such a way that the expectations of all parties involved are met with regard to the ownership and use of the property.⁶⁷

Although, as stated earlier, a detailed analysis of all First Amendment issues implicated by civil court adjudication of religious property disputes is beyond the scope of this Note, it is important to point out that some neutral principles proponents believe application of the deference approach raises serious First Amendment issues.⁶⁸ Judge Arlin M. Adams and William R. Hanlon believe that application of the deference approach raises Free Exercise Clause concerns.⁶⁹ Judge Adams and Hanlon argue “[t]ying control of a local church to a hierarchical organization, regardless whether the local church in fact has relinquished control, effectively limits the ability of local church congregations to establish the terms of their association with more general church organizations.”⁷⁰ Furthermore, Judge Adams and Hanlon argue that the specter of forfeiting its land and its religious building to a national organization would chill the local religious body from associating itself with a national organization, even if it was the congregation’s wish to do so.⁷¹ Additionally, presuming local congregation approval of a national organization’s primacy with regard to property matters places legal hurdles in front of the congregation that limit its ability to create relationships with other religious organizations.⁷² Because of this collection of potential issues, Judge Adams and Hanlon argue that civil court deference to the decision of a national religious organization regarding a dispute over religious property leads to Free Exercise concerns.⁷³

Judge Adams and Hanlon further argue the deference approach is in conflict with the Establishment Clause because the deference approach incentivizes religious groups to organize hierarchically.⁷⁴ Judge Adams and Hanlon argue that this preference for hierarchical organization violates the Establishment Clause because the Establishment Clause stands for the principle that “judicial support

65. Adams & Hanlon, *supra* note 50, at 1294; *see also* Reeder, *supra* note 57, at 133 (noting that “[a] principle advantage of [the deference] approach is that it gives lower courts a bright-line rule to apply while allowing them to avoid adjudicating questions of faith.”).

66. Reeder, *supra* note 57, at 133.

67. *See, e.g.*, Jones v. Wolf, 443 U.S. 595, 603-04 (1979). *But see* Weisberg, *supra* note 50, at 999 (arguing that “the neutral-principles approach provides religious societies with the flexibility to structure their internal relationships according to their own beliefs and administrative needs”).

68. *See, e.g.*, Adams & Hanlon, *supra* note 50, at 1337-38.

69. *Id.* at 1337-38.

70. *Id.* at 1337.

71. *Id.*

72. *Id.*

73. *Id.* at 1337-38.

74. *Id.*

of one institutional form of church polity over another is prohibited”⁷⁵ Judge Adams and Hanlon believe that deference essentially amounts to an unconstitutional “presumption” in favor of national religious organizations over smaller local bodies.⁷⁶ Rather than resorting to this unconstitutional “presumption” in favor of the national religious organization, U.S. courts should be required to examine the available evidence and conclude, on the merits of the case, whether the national organization or the local congregation is legally entitled to ownership of the disputed property.⁷⁷ Because they are concerned with both the Free Exercise and Establishment issues raised by application of the deference approach to disputes over religious property, Judge Adams and Hanlon believe U.S. courts should adopt the neutral principles of law approach.⁷⁸

Justice Rehnquist argued that the deference approach raises First Amendment issues because, by deferring to a determination made by the highest adjudicatory body of a national religious organization, courts risk treating religious organizations differently than non-religious organizations, thus implicating the Establishment Clause.⁷⁹ In his dissenting opinion in *Milivojevich*, Justice Rehnquist argued “[t]o make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchical religious associations, when such deference is not accorded similar acts of secular voluntary associations, would, in avoiding [Free Exercise issues], itself create far more serious problems under the Establishment Clause.”⁸⁰ Justice Rehnquist believed that the lower courts should have answered the legal question at issue “by application of the canon law of the church, just as they would have attempted to decide a similar dispute among the members of any other voluntary association.”⁸¹ Justice Rehnquist argued that, because courts would not “rubber-stamp” the decision of a non-religious organization, courts should not afford a higher level of deference to religious organizations.⁸²

One criticism of the neutral principles approach is that, more so than the deference approach, neutral principles allows civil courts to delve deeply into

75. *Id.*; see also Weisberg, *supra* note 50, at 969 (footnotes and citations omitted) (arguing that “the Establishment Clause requirement that government not prefer some religious groups over others must be understood to prohibit civil courts from extending greater deference toward hierarchical religious authorities than toward congregational tribunals”).

76. Adams & Hanlon, *supra* note 50, at 1337-38.

77. *Id.*

78. *Id.* at 1338.

79. *Serbian E. Orthodox Diocese for the U.S. and Canada v. Milivojevich*, 426 U.S. 696, 734 (1976) (Rehnquist, J., dissenting); see also Andersen, *supra* note 46, at 769 (quoting *id.*).

80. *Milivojevich*, 426 U.S. at 734. (Rehnquist, J., dissenting); see also Andersen, *supra* note 46, at 769 (quoting *id.*).

81. *Milivojevich*, 426 U.S. at 726; see also Andersen, *supra* note 46, at 769 (quoting *id.*).

82. *Milivojevich*, 426 U.S. at 734; see also Andersen, *supra* note 46, at 769 (quoting *id.*, and noting that Justice Rehnquist’s stance was “that the necessary neutrality was to be achieved by treating religious organizations evenhandedly with non-religious ones”).

religious questions in order to adjudicate a religious property dispute.⁸³ This line of thinking ignores, however, the *Wolf* Court's mandate that civil courts *not* intimately involve themselves in religious questions in order to adjudicate religious property disputes.⁸⁴ When this mandate is taken into account, it becomes evident that the main criticism of the neutral principles approach largely falls by the wayside.

Moreover, should a religious property dispute ever arise that would require a civil court to examine something other than "the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property,"⁸⁵ a civil court is constitutionally bound to "defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body."⁸⁶ In other words, if a religious property dispute cannot be adjudicated without making a searching inquiry into religious issues a court must employ the deference approach.⁸⁷ Deference proponents, then, appear to be able to have their cake and eat it too.

Although both the deference and neutral principles approaches are flawed, the neutral principles of law approach best addresses the legitimate concerns of the proponents of both neutral principles and deference. Therefore, this Note advocates for the adoption of the neutral principles of law approach by all states.

III. THE THIRD *WATSON* CATEGORY: *HOLIMAN V. DOVERS*

In order to determine how U.S. civil courts should approach the adjudication of religious disputes, it is helpful to first analyze the Arkansas Supreme Court's *Holiman* decision, a case where a civil court delved deeply into questions of religious doctrine and practice in order to determine which faction of a feuding church was entitled to possession and use of the religious real property at issue.⁸⁸ Despite the concerns that arise when civil courts decide religious questions,

83. See, e.g., *Jones v. Wolf*, 443 U.S. 595, 618 (Powell, J., dissenting) (arguing that the deference approach allows courts to "refrain[] from direct review and revision of decisions of the church on matters of religious doctrine and practice that underlie the church's determination of intrachurch controversies, including those that relate to control of church property").

84. *Id.* at 604 (majority opinion) (citing *Milivojevich*, 426 U.S. at 709) (holding that "[i]f in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body"); see also *Adams & Hanlon*, *supra* note 50, at 1327-28 (noting that civil court dependence on religious laws in the examination and interpretation of ecclesiastical instruments "might abridge the distinct constitutional rule . . . that civil adjudication of church-property disputes must avoid modes of decision that require inquiry into ecclesiastical matters of faith and doctrine").

85. *Wolf*, 443 U.S. at 603.

86. *Id.* at 604 (citing *Milivojevich*, 426 U.S. at 709).

87. *Wolf*, 443 U.S. at 604 (citing *Milivojevich*, 426 U.S. at 709).

88. *Holiman v. Dovers*, 366 S.W.2d 197, 200-01 (Ark. 1963).

Holiman was properly decided, not only because the approach taken by the court was authorized by the U.S. Supreme Court,⁸⁹ but because the intentions of the relevant parties involved were vindicated.

A. *Analysis of the Arkansas Supreme Court's Decision in Holiman v. Dovers*

In a line of cases exemplified by *Holiman v. Dovers*, U.S. civil courts have involved themselves intimately in matters of religious doctrine in order to decide which faction in a religious dispute constitutes the "true" church and, thus, the true owners of the religious real property at issue.⁹⁰ In *Holiman*, the disputed religious property was originally granted for use as a Landmark Missionary Baptist Church.⁹¹ The minority faction sued the majority faction and the church's pastor, A.Z. Dovers, to stop Dovers from espousing doctrines the minority believed were "fundamentally contrary" those held by the church throughout its history.⁹² The minority group called to the stand nine ministers of the Landmark Missionary Baptist faith "whose total ministerial experience exceeded 230

89. This Note maintains that *Holiman* is a case that falls under the first category of *Watson* religious property disputes: Disputes that involve property given in trust to a congregation, and, "by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief." *Watson v. Jones*, 80 U.S. 679, 722 (1871). This Note takes this stance because, as the *Holiman* dissent points out, the religious property at issue was granted for use as the home of a particular faith. *Holiman*, 366 S.W.2d at 202 (McFaddin, J., dissenting). In this class of cases, the U.S. Supreme Court has mandated that U.S. courts determine the intent of the original donor, decide which members of the congregation have been faithful to the donor's original intent, and decide which members have deviated from the religious doctrines that the original donor intended. *Watson*, 80 U.S. at 723-24. This is exactly the kind of inquiry the *Holiman* majority undertook. *Holiman*, 366 S.W.2d at 199-201 (majority opinion).

Interestingly, commentators disagree as to how to categorize *Holiman*. One commentator cites *Holiman* as an example of a case where "property was . . . awarded . . . to the majority in a local church dispute." Giovan Harbour Venable, *Courts Examine Congregationalism*, 41 STAN. L. REV. 719, 726 (1989) (citing *Holiman*, 366 S.W.2d at 197). However, in *Holiman*, it was actually the minority that was victorious. *Holiman*, 366 S.W.2d at 201. Another commentator cites *Holiman* as an example of a case where a court "prohibited religious factions from using church buildings for 'purposes constituting a fundamental departure from the traditional faith, customs, usages, and practices of the church.'" Weisberg, *supra* note 50, at 1000 n.189 (quoting *Holiman*, 366 S.W.2d at 206-07). Yet another commentator cites *Holiman* as an example of state law application of "the departure-from-doctrine test." Sirico, Jr., *supra* note 38, at 338-39 n.12 (citing *Holiman*, 366 S.W.2d at 206-07). Neither of these commentators, however, identify the *Watson* Court's express authorization of the *Holiman* court's approach. See *Watson*, 80 U.S. at 723-24; *Holiman*, 366 S.W.2d at 199-201. Regardless how *Holiman* is categorized, for the purposes of this Note it is the court's approach to adjudicating the dispute, compared to the approach the court took in other cases implicating religious issues, that is truly important. See cases cited *supra* note 13.

90. *Id.*

91. *Id.* at 202 (McFaddin, J., dissenting).

92. *Id.* at 199 (majority opinion).

years.”⁹³ These ministers all testified as to the fundamental beliefs of the Landmark Missionary Baptist faith, including the beliefs “that a person who has been saved cannot later become lost [and] the belief that the unpardonable sin (the rejection of Christ) can be committed only by the unsaved”⁹⁴ Dovers, the defendants’ sole witness, had very little formal or theological education.⁹⁵ Dovers admitted to the court that he did, in fact, espouse doctrines that were different than those traditionally held by the church.⁹⁶ He preached, for example “that a person who has been saved can later be lost, [and] that the saved can be guilty of the unpardonable sin.”⁹⁷ Because Dovers did not deny that he professed doctrines different than those the church had traditionally held⁹⁸ the court barred him from continuing to lead the church.⁹⁹

It is important to note that in, in this case, it was the minority group who was successful in stopping the majority.¹⁰⁰ Prior to the minority’s lawsuit, the group supporting Dovers was able to use its majority position to defeat a motion by the minority group to fire Dovers.¹⁰¹ After this vote took place the members of the minority group were told that they would no longer have a say in church matters until they apologized for their campaign to have Dovers dismissed.¹⁰²

The *Holiman* religious property dispute is an excellent example of a situation deference opponents fear: “[N]onintervention” by civil courts in religious disputes “subject[ing] dissident church groups to ‘unbounded domination by oppressive religious authorities.’”¹⁰³ Unfettered deference to the decision of a majority faction in a local religious organization would leave the minority faction vulnerable to utter “domination” by the majority in all facets of religious decision-making, up to and including decisions regarding the disposition of the organization’s religious real property.¹⁰⁴ Civil court adjudication of religious disputes allows a minority “dissident” faction, such as the one in *Holiman*,¹⁰⁵ a forum in which to have their rights vindicated rather than leaving the minority faction exposed to “domination” by the rival majority faction.¹⁰⁶

93. *Id.* at 200.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 201.

100. *Id.* at 199.

101. *Id.*

102. *Id.*

103. Adams & Hanlon, *supra* note 50, at 1297-98 (quoting L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 14-12, at 880 (1978)).

104. *See, e.g., id.* (quoting TRIBE, *supra* note 103, AMERICAN § 14-12, at 880).

105. 366 S.W.2d at 199 (noting that the anti-Dovers faction had forty-seven members, whereas the pro-Dovers faction had fifty-four members).

106. *See* Adams & Hanlon, *supra* note 50, at 1297-98 (quoting TRIBE, *supra* note 103, AMERICAN § 14-12, at 880).

In many ways, once the Arkansas Supreme Court decided it was going to adjudicate this dispute, *Holiman* was an easy case. Dovers admitted he was preaching doctrines that were different from those typically taught in a Landmark Missionary Baptist Church,¹⁰⁷ the type of church the real property at issue was originally granted to be.¹⁰⁸ The complaining faction countered the majority faction with a group of apparently credible witnesses who attested to their opinions as to what the basic doctrines of the church were and should be.¹⁰⁹ If a civil court finds that one faction produces a group of very credible witnesses, whereas the other faction produces a single witness whose credibility to espouse on the beliefs and practices of the church is questionable (which is the situation that occurred in *Holiman*¹¹⁰), then the court should not have a problem determining what the fundamental doctrines of the religious group are and which of the feuding factions is staying true to those doctrines.

Furthermore, this type of decision must be distinguished from a decision as to which faction is following doctrines that are in some way “better” than those of the other faction. As the *Holiman* court wrote, “we have no concern whatever with the merits of the theological differences between these parties. The majority . . . are of course at liberty to adopt any religious belief they choose [and] to engage a pastor who will preach the doctrines of their choice.”¹¹¹ The court stressed, however, that “the majority are not entitled to devote the property of the [church] to a faith contrary to that for which it was dedicated.”¹¹² It is easy to imagine a situation that would be much more difficult to adjudicate than *Holiman*. Both sides may produce a series of equally credible witnesses who testify as to different fundamental church doctrines, or the distinctions drawn by the witnesses could be too fine or esoteric for civil court judges to effectively grasp.¹¹³ However, in a situation where a court is able to distinguish between the credibility of different witnesses, and the differences in the doctrines expounded are so large that the court can easily understand what is at issue, then the court can and should decide which faction represents the “true” followers of the religion and, consequently, which faction should control the religious real property at issue.

It is also significant that the *Holiman* court did not undertake the task of parsing fine theological distinctions that only interested the church’s clergy.¹¹⁴

107. The court noted that it was “substantially undisputed that Elder Dovers’ beliefs were contrary to the accepted doctrines and usages of the church.” *Holiman*, 366 S.W.2d at 200.

108. *Id.* at 202 (McFaddin, J., dissenting).

109. *Id.* at 200 (majority opinion) (noting that the “leading clergymen” had “total ministerial experience exceed[ing] 230 years”).

110. *Id.*

111. *Id.* at 201.

112. *Id.*

113. See, e.g., Adams & Hanlon, *supra* note 50, at 1291-92 (noting that courts often believe disputes over religious doctrine to be “beyond their competence”); see also Weisberg, *supra* note 50, at 964-65.

114. *Holiman*, 366 S.W.2d at 200-01.

Rather, the court said that, as a prerequisite to deciding the dispute between the feuding factions, the court first had to determine “whether the differences are so important as to justify the intervention of a court of equity.”¹¹⁵ According to the court, the differences between the factions had to be “fundamental” in order to require civil court adjudication.¹¹⁶ In determining whether a disputed doctrinal point is “fundamental,” the court said it would look only at the offered evidence as to the doctrines the church has taught and followed throughout its history.¹¹⁷ The court noted that multiple clergymen of the Landmark Missionary Baptist faith testified that the doctrines at issue were, in fact, fundamental, and that a churchgoer who did not believe such doctrines as traditionally taught by the church was not a true church member.¹¹⁸ Some members of the minority faction were so convinced as to the centrality of these beliefs to the church’s faith that, after Dovers’s arrival, they left the church.¹¹⁹ The court intervened in this controversy because it was so important to the congregation that it was tearing apart the nearly-sixty-year-old church.¹²⁰ If courts limit themselves to adjudicating such vitally important issues, civil court intervention in religious disputes will likely be exceedingly rare and will be limited to situations that could potentially end up much worse without civil court intervention.

IV. INCONSISTENCIES IN ARKANSAS’S APPROACH TO ADJUDICATING RELIGIOUS PROPERTY DISPUTES

In subsequent cases that have come before the Arkansas Supreme Court, the fact that the court did not apply an approach similar to the approach taken in *Holiman* led to outcomes that were inconsistent with *Holiman*.¹²¹ These inconsistencies could be alleviated if Arkansas courts would apply similar methods used in *Holiman*, a religious property dispute, to more cases involving religious issues, even those that do not fall under the category of religious property disputes.

A. Analysis of *Calvary Christian School, Inc. v. Huffstuttler*

In *Calvary Christian School, Inc. v. Huffstuttler*,¹²² the Arkansas Supreme Court decided a dispute regarding a student’s dismissal from a parochial

115. *Id.* at 200.

116. *Id.* (citations omitted).

117. *Id.* at 200-01.

118. *Id.*

119. *Id.*; see also *Parker v. Harper*, 175 S.W.2d 361, 365 (Ky. Ct. App. 1943) (noting that, in a religious property dispute, the doctrines at issue were “vital and substantial” enough to justify the intervention of a civil court to vindicate the rights to the church property of the faction who was hewing most closely to the doctrines of the church founders).

120. *Holiman*, 366 S.W.2d at 199.

121. See cases cited *supra* note 13.

122. 238 S.W.3d 58 (Ark. 2006).

school.¹²³ While attending the Calvary Christian School, Preston Huffstuttler noticed that a video camera had been surreptitiously placed in the duct work of one of the school's classrooms.¹²⁴ Preston informed his teacher and his parents about his discovery.¹²⁵ At a gathering attended by other parents of Calvary Christian schoolchildren, Preston's family confronted school leaders about the hidden camera.¹²⁶ At the meeting, a Calvary Christian principal confirmed the parents' accusations and blamed a member of the school's board.¹²⁷ Because the school was concerned about the effect of the family's complaints, the school requested that the Huffstuttlers sign an agreement with the school stating that the family would "support the policies, procedures, staff, and administration of the school."¹²⁸ The family agreed to comply with the school's requirements.¹²⁹ The school board, however, later removed Preston from the school because of possible "defamatory" statements the family allegedly made about the school after the camera incident, and because the family failed to follow the school's Matthew 18 Principle of "reconciling differences" using "the proper, progressive chain of authority."¹³⁰

Because of Preston's disenrollment, the family sued the school "for breach of contract, intentional interference with contractual relationships, outrage, and defamation."¹³¹ A jury sided with the Huffstuttlers and awarded damages to the family.¹³² The school appealed, and, citing *Watson*, argued that the Huffstuttlers' claims fell outside the court's subject matter jurisdiction because "religious, educational institutions have a constitutionally protected right to be free from civil court interference."¹³³

The Arkansas Supreme Court found that courts disagreed as to whether to intervene in breach of contract and tort claims that in some way implicate religious questions.¹³⁴ Some U.S. courts determined that civil courts should refuse to intervene at all in such controversies.¹³⁵ Other courts, however, like the circuit court in *Drevlow v. Lutheran Church*,¹³⁶ refused to hear claims that implicated religious questions but agreed to adjudicate any claim that did not involve religious questions.¹³⁷ The *Huffstuttler* court agreed with *Drevlow* and

123. *Id.* at 61.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* at 66-67.

131. *Id.* at 61.

132. *Id.*

133. *Id.* at 62.

134. *Id.* at 64.

135. *Id.*

136. 991 F.2d 468 (8th Cir. 1993).

137. *Huffstuttler*, 238 S.W.3d at 64.

held that it would only refuse to hear allegations that would have involved the court too closely in religious questions.¹³⁸

The court found that Preston was removed from school because his parents did not follow the school's Matthew 18 Principles, which were the steps that families of the school's students had to follow in order to resolve a dispute with the school.¹³⁹ The court found further that adjudicating the Huffstuttlers' contract claims against the school would have necessitated an examination by the court of the family's faithfulness to the Matthew 18 Principles in handling the camera conflict.¹⁴⁰ Because the court believed such an inquiry would have involved the court in ecclesiastical matters, the court held that Arkansas civil courts did not have subject matter jurisdiction over the family's claims.¹⁴¹

Despite the fact that the lower court applied a neutral principles approach,¹⁴² the Arkansas Supreme Court in *Huffstuttler* wrote that "the judiciary cannot inquire into church matters—it is simply without jurisdiction to do so."¹⁴³ The court's holding seems particularly curious when one actually looks at the language of the Matthew 18 Principles as found in the Calvary Christian handbook.¹⁴⁴ The rule in question stated that families whose children attend the school must agree "[t]o carefully determine to use the Matthew 18 principle of reconciling differences by first conferring with the most immediate staff member related to the incident in question, and then only pursuing the proper, progressive chain of authority when matters are not acceptably resolved."¹⁴⁵ It does not seem that the court would have had "to determine whether the Huffstuttlers did, or did not, comply with Matthew 18"¹⁴⁶ in order to adjudicate this dispute because the school, in its handbook, went to the trouble of spelling out exactly what the school believed it meant to comply with Matthew 18 in a clear, secular manner. The court did not have to consult the text of the *Bible*; all the court had to do was determine whether the Huffstuttlers attempted to reconcile their difference with the school "by first conferring with the most immediate staff member related to the incident" with Preston.¹⁴⁷ Because the Huffstuttlers did not believe that the matter was "acceptably resolved," the court would then have had to determine whether the Huffstuttlers followed "the proper, progressive chain of authority" within the school in order to resolve the issue.¹⁴⁸ The court, it seems, could have

138. *Id.* at 66.

139. *Id.*

140. *Id.* at 67.

141. *Id.*

142. *Id.* at 62.

143. *Id.* Ironically, this is the same court that decided *Holiman* less than fifty years earlier, a case where the court determined that it did have jurisdiction to inquire into church matters. 366 S.W.2d 197, 199 (Ark. 1963).

144. *Huffstuttler*, 238 S.W.3d at 66-67.

145. *Id.*

146. *Id.* at 67.

147. *Id.* at 66.

148. *Id.* at 66-67.

accomplished this feat rather easily. The court would not have had to “inquire into church matters”¹⁴⁹ in any way in order to determine whether the Huffstuttlers had followed the method prescribed the school’s handbook. All the court had to do was inquire into the school’s chain of command and into the actions the family took in order to settle the dispute, just as if this dispute had arisen in a secular school.¹⁵⁰

Justice Glaze’s strong dissenting opinion pointed out the deficiencies in the majority’s opinion.¹⁵¹ First, he wrote that the court should have realized what was really going on in this case:

[The school] placed a hidden video camera in the ventilation system of a classroom that doubles as a dressing room for . . . students. The Huffstuttlers became aware of the camera and, like any reasonable parents, demanded an explanation from the school. At first, [the school] denied the camera’s existence . . . [but later] voted to disenroll Preston Huffstuttler in retaliation for his parent’s continued inquiries.¹⁵²

Justice Glaze stated that it should have been evident that the school’s contentions were “nothing more than a ploy to avoid liability,” and a “charade” that the court’s majority did not detect.¹⁵³ As a consequence of deciding that the court did not have subject-matter jurisdiction to adjudicate the family’s claims against the school, Justice Glaze wrote that “the majority has allowed [the school] and its . . . board to hide behind a religious cloak.”¹⁵⁴ The school was able, it appears, to disenroll a student and retaliate against his family because the family blew the whistle on a school board member’s disturbing behavior.¹⁵⁵ It is important that

149. *Id.* at 62.

150. It is instructive to compare the language of the Matthew 18 Principles in *Huffstuttler* with the language of the United Effort Plan Trust of the Fundamentalist Church of Jesus Christ of Latter Day Saints (“FLDS Church”), discussed extensively by Professor Andersen. The Trust was established, according to the Trust document, “to preserve and advance the [FLDS Church’s] religious doctrines and goals” and “to provide for Church members according to their wants and their needs, insofar as their wants are just.” Andersen, *supra* note 46, at 774 (footnotes and citations omitted). As Professor Andersen notes, “[t]he former statement obviously cannot be interpreted and applied except in terms of religious doctrine. . . . [and] the latter [statement], taken in context, requires a religious interpretation, especially in relation to the meaning of ‘just’ wants.” *Id.* The Matthew 18 Principles, however, required no such religious interpretation because the school used secular language to explain exactly what it meant to comply with the Principles. *Huffstuttler*, 238 S.W.3d at 66-67. See also Weisberg, *supra* note 50, at 1000 (citations omitted) (noting that “sometimes a religious document may not be amenable to secular interpretation”).

151. *Huffstuttler*, 238 S.W.3d at 71-72 (Glaze, J., dissenting).

152. *Id.* at 71.

153. *Id.*

154. *Id.* at 72.

155. *Id.* at 61 (majority opinion) (noting that a school principal acknowledged to a group of parents that the video camera was hidden in the ventilation system by a member of the school’s board).

religious institutions in this country enjoy a great deal of privacy and autonomy.¹⁵⁶ However, religious organizations should not be allowed to get away with criminal or tortious actions simply by asserting their First Amendment rights.¹⁵⁷ It appears that the Calvary Christian School may have gotten away with tortious actions because of the Arkansas Supreme Court's refusal to intervene in the school's dispute with the Huffstuttlers.

B. Analysis of El-Farra v. Sayyed

In *El-Farra v. Sayyed*,¹⁵⁸ Monir El-Farra was an Islamic minister, or Imam.¹⁵⁹ Prior to this controversy, El-Farra agreed to an employment contract with the Islamic Center of Little Rock ("ICLR") which stated that he could be fired by the ICLR "on valid grounds according to Islamic Jurisdiction (Shari'a) upon sixty-days notice."¹⁶⁰

Less than two years after El-Farra signed his contract, the parties took part in an arbitration hearing because some ICLR members complained about El-Farra's sermons and because it was alleged that El-Farra disrupted the ICLR's governance.¹⁶¹ After the arbitration hearing, El-Farra received a correspondence from the ICLR President informing him "that his behavior was 'un-Islamic.'"¹⁶² This "warning letter" provided El-Farra with a number of conditions he had to meet in order to avoid being removed from his position.¹⁶³ The ICLR, not satisfied that El-Farra had met the conditions the President set out for him, later sent El-Farra an additional letter putting him on probation for further behavior that the ICLR believed violated Islamic tenets.¹⁶⁴ Eventually, the ICLR fired El-Farra.¹⁶⁵

El-Farra sued the ICLR and its leadership for "defamation, tortious interference with a contract, and breach of contract."¹⁶⁶ The ICLR claimed that an Arkansas court did not have subject matter jurisdiction over its dispute with El-Farra because civil court intervention in the dispute would involve the court

156. See, e.g., Sirico, Jr., *supra* note 38, at 335 (citations omitted) (arguing that "[p]rotecting the autonomy of churches is a primary goal of the first amendment's religion clauses").

157. Alternatively, it could very well have been the case that the school was in the right and that the Huffstuttlers had failed to pursue their dispute by using the proper methods and going through the proper channels. However, because of the court's refusal to make a decision on the merits, we will never know.

158. 226 S.W.3d 792, 793 (Ark. 2006).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

in religious issues in violation of the First Amendment.¹⁶⁷ The lower court sided with the ICLR, and El-Farra appealed to the Arkansas Supreme Court.¹⁶⁸

In its *El-Farra* decision, the Arkansas Supreme Court said that U.S. Supreme Court precedent mandated that U.S. courts are barred by the First Amendment from exercising jurisdiction over religious disagreements.¹⁶⁹ El-Farra, however, maintained that his dispute with the ICLR would not entangle the court in a disagreement over religious law, but instead was a mere breach of contract action that required nothing more than an examination of his interactions with the ICLR and its leadership.¹⁷⁰ Thus, El-Farra contended the court should apply a neutral principles of law approach in order to adjudicate the dispute.¹⁷¹ Discussing the *Wolf* neutral principles approach, the court found that Arkansas had approved neutral principles as an allowable method only in disagreements over ownership and use of religious property.¹⁷² The court decreed that the dispute between El-Farra and the ICLR was not a disagreement over religious property, but was, as El-Farra contended, merely a dispute over El-Farra's employment contract.¹⁷³ The court refused to assert its subject matter jurisdiction over El-Farra's claim of defamation because the allegedly defamatory statements occurred as a result of the ICLR's belief that El-Farra had not acted appropriately in his position as the ICLR's religious leader.¹⁷⁴ The justices believed they could not adjudicate the ICLR's alleged defamation of El-Farra "without an examination of religious doctrines, laws, procedures, and customs regarding who is and is not fit to be [an] Imam," an inquiry the court believed would violate the First Amendment.¹⁷⁵ The court determined that adjudicating El-Farra's breach of contract claim would require the court to decide whether the ICLR fired El-Farra for reasons that were appropriate under Islamic law, an examination that would, the court believed, impermissibly require an inquiry into a religious question.¹⁷⁶ The court held the same as to El-Farra's tortious interference claim.¹⁷⁷

El-Farra appears to have been a more difficult case than *Huffstuttler*. In *Huffstuttler*, it appeared fairly clear that the school acted wrongfully.¹⁷⁸ In *El-Farra*, however, the ICLR had a long list of allegations against El-Farra¹⁷⁹ that, if found to be true, would likely have led to the conclusion that El-Farra's

167. *Id.*

168. *Id.*

169. *Id.* at 793-94 (citations omitted).

170. *Id.* at 794-95.

171. *Id.* at 795.

172. *Id.* (citing *Kinder v. Webb*, 396 S.W.2d 823, 824 (Ark. 1965)).

173. *El-Farra*, 226 S.W.3d at 795.

174. *Id.* at 796.

175. *Id.* at 796-97.

176. *Id.* at 795-96.

177. *Id.* at 797.

178. See *Calvary Christian Sch., Inc. v. Huffstuttler*, 238 S.W.3d 58, 71 (Ark. 2006) (Glaze, J., dissenting).

179. *El-Farra*, 226 S.W.3d at 793.

allegations against the ICLR were baseless. Moreover, the court could easily have interpreted the Matthew 18 Principles in *Huffstuttler*,¹⁸⁰ whereas it may have been impossible for a civil court to determine what it meant for an employee to be terminated ““on valid grounds according to Islamic Jurisdiction (Shari’a).””¹⁸¹

What is striking about the court’s decision in *El-Farra*, however, is how the court’s language and reasoning were so inconsistent with the language and reasoning the *Holiman* court used. First, the court refused to apply the neutral principles approach because *El-Farra* involved a contractual dispute rather than a dispute over real property.¹⁸² The logical grounds for this distinction are unclear. *El-Farra*’s rights were no less important because they pertained to his employment contract rather than some real property in which he had an interest. His livelihood and reputation were at stake.¹⁸³ It may very well be the case that he did not have meritorious claims. However, to preclude *El-Farra* from having his claims adjudicated on the merits simply because they did not fall under the category of real property disputes is troublesome.

The court stated that it was inappropriate to adjudicate the dispute between *El-Farra* and the ICLR because “any determination of this claim would involve ecclesiastical issues.”¹⁸⁴ However, in *Holiman* the Arkansas Supreme Court delved deeply into religious issues in order to determine which feuding faction were the true members of the local religious organization.¹⁸⁵ Furthermore, the court in *El-Farra* found that it was inappropriate to adjudicate *El-Farra*’s defamation claim because the “allegedly defamatory statements . . . were made in the context of a dispute over [*El-Farra*’s] suitability to remain as Imam.”¹⁸⁶ The court believed that such an inquiry into the ICLR’s statements could only be made by investigating Islamic principles in order to determine whether *El-Farra*’s actions were appropriate for an Imam, and that such an inquiry was barred by the First Amendment.¹⁸⁷ This is, however, essentially the same inquiry that the court

180. *Huffstuttler*, 238 S.W.3d at 66-67.

181. *El-Farra*, 226 S.W.3d at 793. In this way, the language of *El-Farra*’s contract with the ICLR was akin to the religiously-based language of the United Effort Plan Trust of the FLDS Church, which Professor Andersen notes “cannot be interpreted and applied except in terms of religious doctrine.” Andersen, *supra* note 46, at 774; *see also* Weisberg, *supra* note 50, at 1000 (citations omitted) (noting that “sometimes a religious document may not be amenable to secular interpretation”).

182. *El-Farra*, 226 S.W.3d at 795; *see also* Weisberg, *supra* note 50, at 971 (citations omitted) (arguing that “civil courts should have authority to award damages for breach of contract because this secular remedy protects the cleric’s contract right without interfering with the congregation’s freedom to repudiate the cleric’s authority”).

183. *See, e.g.*, Weisberg *supra* note 50, at 969 (arguing that “[i]n cases where religious and secular rights are linked, civil courts must strive to protect the endangered secular rights without intruding into the religious realm”).

184. *El-Farra*, 226 S.W.3d at 796.

185. *Holiman v. Dovers*, 366 S.W.2d 197, 200-01 (Ark. 1963).

186. *El-Farra*, 226 S.W.3d at 796.

187. *Id.* at 796-97.

undertook in *Holiman*.¹⁸⁸ In *Holiman*, the court did not have a problem tackling the issue of whether or not Dovers was fit to be the pastor of a Landmark Missionary Baptist Church.¹⁸⁹ Although *El-Farra* may have turned out to be a much more difficult case for the court to adjudicate than *Holiman*, the inconsistencies in the court's statements and approach cannot be ignored.¹⁹⁰

C. Analysis of *Belin v. West*

In 1990, at the Annual Conference of the African Methodist Episcopal Church ("A.M.E. Church"), Bishop Henry Belin, Jr., did not grant Reverend G. Edward West a pastorship position within the A.M.E. Church.¹⁹¹ West claimed that, prior to the Conference, Belin promised him an appointment to a particular position, and West further alleged that he detrimentally relied on Belin's alleged assurance.¹⁹² West sued Belin, alleging promissory estoppel, and a jury awarded West \$30,000.¹⁹³ Belin appealed to the Arkansas Supreme Court.¹⁹⁴

The Arkansas Supreme Court found that the A.M.E. Church was organized hierarchically and had in place a decision-making body to mediate disputes.¹⁹⁵ West argued that an examination of the A.M.E. Church's Book of Discipline would reveal that his reliance on Belin's promise to appoint him to a pastorship was reasonable.¹⁹⁶ The court found that "[t]he Book of Discipline contains the law, statutes, historical statements, and guidelines for behavior for all positions in the church."¹⁹⁷ The court also found that the Book of Discipline set out policies and procedures concerning resolution of intrachurch disagreements, and set up an appeals process wherein the parties to the dispute could appeal a decision to the church's ultimate decision-makers.¹⁹⁸ Finally, the court found that the Book of Discipline mandated that an A.M.E. Church bishop consult with the church elders in order to select who should be given pastorship positions within

188. *Holiman*, 366 S.W.2d at 200-01.

189. *Id.*

190. The *El-Farra* court even cited *Jenkins v. Trinity Evangelical Lutheran Church*, 825 N.E.2d 1206 (Ill. App. Ct. 2005), "in which the Illinois Appellate Court extended the neutral-principles exception to a minister's discharge where the minister resigned with the agreement that he would be paid a certain guaranteed benefit for his resignation." *El-Farra*, 226 S.W.3d at 795. The *El-Farra* court, then, was aware of at least one court in another jurisdiction that applied a neutral principles of law analysis to an employment dispute between a religious leader and religious organization, but the court refused to follow suit.

191. *Belin v. West*, 864 S.W.2d 838, 839 (Ark. 1993).

192. *Id.* at 839.

193. *Id.* at 839-40.

194. *Id.*

195. *Id.* at 841.

196. *Id.*

197. *Id.* (italics omitted).

198. *Id.* at 841-42.

the organization.¹⁹⁹

The justices found that “[i]n order to prove promissory estoppel, [West] must prove reasonable reliance on the alleged promise by Bishop Belin to appoint him to the pastorship of” a specific congregation.²⁰⁰ The court believed that a determination of whether West’s reliance on Belin’s alleged promise was reasonable would involve the court in a deciding whether the church’s beliefs and governmental structure showed that such reliance was not misplaced.²⁰¹ The court believed that an examination into A.M.E. Church tenets in order to determine whether bishops were allowed to promise placement in pastorship positions would violate the First Amendment.²⁰² The court therefore reversed the previous judgment in favor of West and dismissed his action against Belin.²⁰³

Belin was tailor-made for the application of an analysis akin to the neutral principles of law approach. The court had a document it could have examined: The A.M.E. Church’s Book of Discipline.²⁰⁴ Although the *Wolf* Court discussed the neutral principles approach in the context of religious property disputes,²⁰⁵ which *Belin* was not,²⁰⁶ it seems that the A.M.E. Church Book of Discipline²⁰⁷ was, in some ways, similar to the documents the U.S. Supreme Court enumerated when describing the neutral principles of law approach.²⁰⁸ Had the Arkansas Supreme Court examined the passages in the Book of Discipline regarding appointment of pastors by bishops, the court may have been able to adjudicate *Belin* similarly to how it would have adjudicated a religious property dispute. It may have been the case that the Book of Discipline was very clear on the issue of whether a bishop had the authority to promise someone a specific pastorship. If so, the court could have determined the issue without undertaking an interpretation of A.M.E. Church doctrine. If the plain language of the document stated whether a bishop could promise someone a specific pastorship, then *Belin* would not have been a case in which the court lacked the necessary competence to determine the dispute.²⁰⁹ Therefore, the court should not have precluded itself from making an inquiry into the Book of Discipline. It may have been the case,

199. *Id.* at 842.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* at 841.

205. *Jones v. Wolf*, 443 U.S. 595, 602-03 (1979).

206. *Belin*, 864 S.W.2d at 839.

207. *See id.* at 841-42 (describing the contents of the A.M.E. Church Book of Discipline).

208. *Wolf*, 443 U.S. at 603.

209. *See, e.g., Adams & Hanlon, supra note 50, at 1291-92; Weisberg, supra note 50, at 964-65.* Furthermore, the court even cites *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990), “in which the D.C. Circuit Court said it would not be improper for the trial court to decide a contract claim based on the allegation that the church district superintendent made an oral promise to find appellant a more suitable congregation so long as no inquiry into ecclesiastical matters are required.” *Belin*, 864 S.W.2d at 842.

however, that the Book of Discipline did not address the issue of whether a church bishop was able to promise someone a specific pastorship. Or, it could have been the case that the Book of Discipline did address the issue, but only in vague, overtly religious terms.²¹⁰ If the Book of Discipline did not address the issue or addressed it in such a way that would have necessitated interpretation of religious doctrine, the court could have declined to decide the issue.

D. Analysis of Gipson v. Brown II

Gipson v. Brown II involved a rift between the congregation and elders of the Sixth and Izard Church of Christ, Inc.²¹¹ At the time of this litigation the church operated as a nonprofit corporation.²¹² The appellants belonged to the nonprofit's board, and were also church elders.²¹³ The appellants used their status as church elders and board members to deny the church members information regarding the church's financial situation.²¹⁴ Furthermore, the elders did not allow the church members to choose a new board.²¹⁵ The church members wanted access to the church's financial information and wanted to vote on a new board of directors because the members believed there were "discrepancies and inconsistencies" in the records of the church's finances maintained by the board members.²¹⁶

The church members sued the elders in order to gain access to the church's books and in order to establish the right of the church members to elect a new board.²¹⁷ The members' suit relied on two Arkansas statutes, one which stated: "All books and records of a corporation may be inspected by any member for any proper purpose at any reasonable time,"²¹⁸ and another which provided: "Each member shall be entitled to one (1) vote in the election of the board of directors."²¹⁹ The church elders wanted "exemption" from these statutes because, they argued, the statutes were "in direct conflict with the scriptural duties of the elders as overseers of the flock responsible for harmony within the church."²²⁰ The elders further argued that applying the statutes to the religious nonprofit corporation would violate the First and Fourteenth Amendments of the U.S.

210. See, e.g., Andersen, *supra* note 46, at 774 (noting that the religiously-based language of the FLDS Church's United Effort Plan Trust "cannot be interpreted and applied except in terms of religious doctrine"); Weisberg, *supra* note 50, at 1000 (citations omitted) (noting that "sometimes a religious document may not be amenable to secular interpretation").

211. *Gipson v. Brown*, 749 S.W.2d 297, 302 (Ark. 1988) (Purtle, J., dissenting).

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.* at 298 (majority opinion).

218. *Id.* at 300 (citing Ark. Code Ann. § 4-28-218(e) (West 2009)).

219. *Gipson II*, 749 S.W.2d at 300 (citing Ark. Code Ann. § 4-28-212(a) (West 2009)).

220. *Gipson II*, 749 S.W.2d at 300.

Constitution and certain provisions of the Arkansas Constitution.²²¹

When this controversy initially came before the Arkansas Supreme Court in *Gipson v. Brown I*,²²² the court reversed a decision by the trial court ordering the elders to produce the church's financial records pursuant to the church members' discovery requests.²²³ The case was remanded to the trial court because the Arkansas Supreme Court found that an evidentiary hearing was needed in order to decide whether the application of Arkansas nonprofit corporation statutes to the dispute between the elders and members would conflict with Church of Christ doctrine in violation of the U.S. Constitution and the Arkansas Constitution.²²⁴ The trial court appointed a special master to determine whether the elders should provide the members with the desired financial records and allow the members to vote on a new board of directors.²²⁵ The special master recommended to the trial court that the elders provide the members with access to the records and allow the board member election, and the trial court accepted this recommendation.²²⁶ The elders appealed to the Arkansas Supreme Court.²²⁷

On appeal, the court found that the elders' contention that they should not be forced to comply with the Arkansas nonprofit corporations statutes was based on the elders' understanding of Church of Christ doctrine and practice.²²⁸ The elders believed that, according to the New Testament, it was their job to govern the church and its members, that this Biblically-based responsibility applied to every facet of church governance, that their authority over every facet of church governance would create "harmony and unity" within the church, and that it was the duty of the members of the congregation to "obey and submit" to the elders' authority over them.²²⁹ The court further found that the conflict between the elders and members was "essentially religious in nature," and that the court should not decide the dispute; instead, the court believed the church members and elders should resolve the dispute amongst themselves.²³⁰ The court decreed that civil court involvement in religious matters necessitates an inquiry "into the customs, usages, written laws, and the fundamental organization of religious denominations," and that such an inquiry by a civil court "deprives [religious] bodies of the right to interpret their own . . . laws and opens the door to all sorts of evils."²³¹ Finding that the state's interest in administering its nonprofit corporation laws to the controversy did not override the constitutional issues inherent in intervening in a religious dispute, the court held that adjudication of

221. *Id.* at 298.

222. 706 S.W.2d 369, 371 (Ark. 1986).

223. *Id.*

224. *Id.* at 373.

225. *Gipson II*, 749 S.W.2d at 298.

226. *Id.*

227. *Id.*

228. *Id.* at 300-01.

229. *Id.*

230. *Id.* at 298.

231. *Id.* at 299. The court did not enumerate the "evils" it was referring to.

the disagreement by a civil court would unconstitutionally involve the Arkansas courts in religious issues.²³²

The court's decision is curious in that the justices determined to dismiss the church members' claims because the members' claims involved what the justices deemed to be "purely ecclesiastical concerns"²³³ The court's decision in *Holiman* belies the court's claim in *Gipson II* that it will not adjudicate disputes that "implicate purely ecclesiastical concerns."²³⁴ It is equally curious that the justices were not able to find "a compelling state interest" in the adjudication of the church members' claims.²³⁵ The church members wanted to examine the church's financial records because they believed there were "discrepancies and inconsistencies" in the elders' recordkeeping.²³⁶ Surely a state has an interest in seeing that assets of its religious organizations are not being squandered, or that donations made to religious organizations by the state's citizens are used for the proper purposes. The church members may not have been able to prevail on the merits of their claims. However, because the court determined that the state's interest in the dispute was not strong enough to warrant inquiry into what it deemed a "purely ecclesiastical" issue,²³⁷ the church members' claims never received an adjudication on the merits by the Arkansas Supreme Court.

In his strong dissenting opinion, Justice Purtle accused the *Gipson II* court's majority of "evad[ing] the basic issue"²³⁸ Justice Purtle pointed out that "[t]he church voluntarily incorporated itself under secular laws," and, in doing so, "open[ed] the door to examination in a legal setting of the dispute within the church concerning adherence to those state laws."²³⁹ Because the majority refused to recognize this fact, Justice Purtle wrote, "[h]ereafter, a nonprofit corporation may decide it does not agree with the laws under which it is incorporated and simply refuse to abide by the law under the pretext of 'religious freedom.'"²⁴⁰ *Gipson II* is another case where the Arkansas Supreme Court

232. *Id.* at 298-99.

233. Compare *id.* at 301 (finding that the issues involved in the dispute were "purely ecclesiastical"), with *Holiman v. Dovers*, 366 S.W.2d 197, 200 (Ark. 1963) (determining that the fundamental beliefs of the church at issue included the tenets "that a person who has been saved cannot later become lost, [and] the belief that the unpardonable sin (the rejection of Christ) can be committed only by the unsaved").

234. *Gipson II*, 749 S.W.2d at 301.

235. *Id.* at 300. Although the court says that the church members' provided "no evidence . . . as to a compelling state interest," (*Id.*) it seems that the court could have inferred a compelling state interest from the situation itself. See also *Jones v. Wolf*, 443 U.S. 595, 602 (citation omitted) (noting that, in the religious property dispute context, "[t]he State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively").

236. *Gipson II*, 749 S.W.2d at 302 (Purtle, J., dissenting).

237. *Id.* at 301 (majority opinion).

238. *Id.* at 302 (Purtle, J., dissenting).

239. *Id.* at 302-03.

240. *Id.* at 302.

allowed a religious organization “to hide behind a religious cloak.”²⁴¹ The court did not need to make any sort of theological interpretation in order to adjudicate the dispute. It merely had to interpret and apply the language of Arkansas state statutes. The statutes seem very clear on the issue. Members of nonprofit corporations were entitled to access to the corporation’s records,²⁴² and members were entitled to elect their own board of directors.²⁴³ It is unlikely that the board of a non-religious nonprofit corporation could have gotten away with evading these requirements. However, because this church’s board was able to put on its “religious cloak,”²⁴⁴ the board could seemingly get away with whatever it wanted.

V. RECOMMENDATIONS FOR U.S. COURTS IN DEALING WITH RELIGIOUS DISPUTES

A. Recommendations for Arkansas Courts

Arkansas courts must achieve a greater level of consistency in their approach to dealing with disputes that implicate religious issues. In *Holiman*, the Arkansas Supreme Court decided a religious property dispute by examining two feuding factions’ understanding of Christian doctrine in order to determine which faction constituted the true members of a Landmark Missionary Baptist Church.²⁴⁵ In several other more recent disputes, however, the court determined that it did not have subject matter jurisdiction to adjudicate disputes involving religious questions.²⁴⁶ There is the potential that the court’s inconsistency in its approach to deciding disputes involving religious questions could undermine Arkansas’s citizens’ faith in the judicial system by making it appear that the court decides at random whether to intervene in religious disputes (or, even worse, that the court “plays favorites”).²⁴⁷ Arkansas must find a middle ground between the policy of non-intervention the court expressed in *Huffstuttler*, *El-Farra*, *Belin*, and *Gipson II*, and civil court interpretation of religious doctrine.

The Arkansas Supreme Court has already adopted the neutral principles of law approach when dealing with religious property disputes,²⁴⁸ a crucial first step

241. *Calvary Christian Sch., Inc. v. Huffstuttler*, 238 S.W.3d 58, 72 (Ark. 2006) (Glaze, J., dissenting).

242. ARK. CODE ANN. § 4-28-218(e) (West 2009).

243. *Id.* § 4-28-212(a).

244. *Huffstuttler*, 238 S.W.3d at 72 (Glaze, J., dissenting).

245. *Holiman v. Dovers*, 366 S.W.2d 197, 201-02 (Ark. 1963).

246. *See cases cited supra* note 17.

247. For example, it would be difficult to explain to the Huffstuttlers why the court would refuse to interpret the Calvary Christian School’s secularly-worded Matthew 18 Principles when, in deciding *Holiman*, the court heard testimony regarding eternal salvation and “the unpardonable sin.” *Compare* *Calvary Christian Sch., Inc. v. Huffstuttler*, 238 S.W.3d 58, 66-67 (Ark. 2006), *with* *Holiman*, 366 S.W.2d at 200 (Ark. 1963).

248. *See* *Ark. Presbytery of the Cumberland Presbyterian Church v. Hudson*, 40 S.W.3d 301, 306 (Ark. 2001) (adopting expressly the neutral principles of law approach to decide religious

in achieving a consistent method of adjudicating religious disputes. Next, it is important that Arkansas courts develop and apply a form of the neutral principles approach to other types of cases involving disputes among members of religious organizations. Developing a general neutral principles of law standard should not be a difficult task for the Arkansas Supreme Court. The court can simply use its existing neutral principles property dispute cases as a blueprint of for developing a more general standard. Additionally, *Wolf* provided a blueprint²⁴⁹ for Arkansas, and all other states, to follow in developing a general neutral principles approach.

In the context of religious property dispute adjudication, the *Wolf* Court allowed a civil court to examine “the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property.”²⁵⁰ The *Wolf* Court further mandated that, if examining such documents “would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.”²⁵¹ In light of the fact that the *Wolf* Court decreed that the *Watson* three-tiered approach is constitutionally allowable,²⁵² and in light of the fact that the *Watson* Court allowed the type of analysis the *Holiman* court undertook,²⁵³ the language “require the civil court to resolve a religious controversy”²⁵⁴ likely means something akin to “require the civil court to interpret religious doctrine.” If, in adjudicating a religious dispute, a civil court would have to make some sort of theological interpretation, or if a religious document was so theologically-based as to make a “secular” interpretation impossible,²⁵⁵ then the Arkansas Supreme Court could mandate that Arkansas courts refuse to intervene in the dispute. If, however, the adjudication did not require the court to engage in theological interpretation, the court could allow Arkansas courts to examine evidence akin to “the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property”²⁵⁶ in order to adjudicate religious disputes of all kinds.

For example, the Arkansas Supreme Court could have applied a general

property disputes).

249. See *Jones v. Wolf*, 443 U.S. 595, 602-03 (1979) (describing the neutral principles of law approach).

250. *Id.* at 603.

251. *Id.* at 604.

252. See *id.* at 602 (holding that “the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes”).

253. See *Watson v. Jones*, 80 U.S. 679, 723 (1871); *Holiman v. Dovers*, 366 S.W.2d 197, 200-01 (Ark. 1963).

254. *Wolf*, 443 U.S. at 604.

255. See, e.g., Andersen, *supra* note 46, at 774; Weisberg, *supra* note 50, at 1000 (citations omitted).

256. *Wolf*, 443 U.S. at 603.

neutral principles approach in order to adjudicate *Huffstuttler*. In *Huffstuttler*, school families were required “[t]o carefully determine to use the Matthew 18 principle of reconciling differences by first conferring with the most immediate staff member related to the incident . . . and then only pursuing the proper, progressive chain of authority when the matters are not acceptably resolved.”²⁵⁷ Applying a general neutral principles approach, the court could have examined this document because it seems similar to the writings mentioned in *Wolf*.²⁵⁸ Once the court examined the document, the justices likely would have been able to see that interpreting this section of the Matthew 18 Principles would not have required the court to interpret religious doctrine because the Matthew 18 Principles said exactly what they meant in plain, secular language.²⁵⁹ If, however, the document said that the family agreed to “follow *Matthew* 18 in all of its dealings with school staff,” any adjudication of the dispute would have required the court to interpret the text of the *Bible*.²⁶⁰ The court could have correctly found that interpretation of the text of the Bible is inappropriate for American courts and thus refused to assert subject matter jurisdiction over the dispute.

In *El-Farra*, El-Farra’s contract enabled the ICLR to fire him ““on valid grounds according to Islamic Jurisdiction (Shari’a).””²⁶¹ If the contract at issue defined the terms used in the contract, and ““Islamic Jurisdiction (Shari’a)””²⁶² was one of the defined terms, the court could have utilized its general neutral principles approach and looked to the contract to see what was meant by the phrase. If the contract defined ““Islamic Jurisdiction (Shari’a)””²⁶³ in a completely secular fashion, the court could have determined whether El-Farra was unfairly terminated. If, however, the document did not define the term, or, if the document did define the term, but used religious language in order to do so, then the court could have easily seen that adjudicating the dispute “would require the civil court to resolve a religious controversy.”²⁶⁴ The court then could have declined to assert its subject matter jurisdiction over the dispute.

The court could also have applied its new general neutral principles of law approach to *Belin*. In *Belin*, the court found that “determin[ing] whether it is reasonable to rely on the promise of an A.M.E. Church bishop that he is going to appoint one to a specific pastorship” would have required an examination into the church’s Book of Discipline.²⁶⁵ The justices determined this inquiry would

257. *Calvary Christian Sch., Inc. v. Huffstuttler*, 238 S.W.3d 58, 66-67 (Ark. 2006).

258. *See Wolf*, 443 U.S. at 603.

259. *Huffstuttler*, 238 S.W.3d at 66-67.

260. *See e.g.*, *Andersen*, *supra* note 46, at 774; *Weisberg*, *supra* note 50, at 1000 (citations omitted).

261. *El-Farra v. Sayyed*, 226 S.W.3d 792, 793 (Ark. 2006).

262. *Id.*

263. *Id.*

264. *Wolf*, 443 U.S. at 604; *see also Andersen*, *supra* note 46, at 774; *Weisberg*, *supra* note 50, at 1000 (citations omitted).

265. *Belin v. West*, 864 S.W.2d 838, 842 (Ark. 1993).

violate the First Amendment.²⁶⁶ What if, however, the court read the Book of Discipline and found language stating: “A bishop may not promise anyone future appointment to a specific pastorship?” Or, the court could have found language that read: “A bishop’s promise of an appointment to a specific pastorship results in a binding commitment by the Church to that person.” Although it is unlikely that the Book of Discipline contained such pronouncements, there was no reason for the court not to look. It was more likely the case that the Book of Discipline was silent on the subject, or that it addressed the subject indirectly using language that was religious in nature.²⁶⁷ If so, then the court could have recognized the limitations of its general neutral principles of law approach and refused to assert its subject matter jurisdiction.

In *Gipson II*, the church members likely felt their suit had a good chance of success, given that there were Arkansas statutes which mandated that members of a nonprofit corporation were entitled both to a corporation’s records²⁶⁸ and to a vote in an election for the corporation’s board of directors.²⁶⁹ Because, however, the court found that “[t]he underlying dispute between the elders and the members of the church [was] essentially religious in nature,” the court refused to assert its subject matter jurisdiction.²⁷⁰ The *Wolf* Court wrote that courts could use “state statutes governing the holding of church property”²⁷¹ in order to decide disputes over religious property; the statutes at issue in *Gipson II*, however, governed the operation of corporations. The Arkansas Supreme Court could have easily expanded its general neutral principles approach to encompass the state statutes upon which the members relied. If the court had decided to assert subject matter jurisdiction over the controversy using a general neutral principles approach, *Gipson II* would have been an easy case. Because the statutes unambiguously stated that the church members were right to demand access to the corporation’s records and to demand an election for a new board, the members would likely have prevailed.

B. Recommendations for U.S. Courts

This Note’s recommendations for the courts of all other states is similar. First, any state that has not adopted the neutral principles of law approach to adjudicating religious property disputes should do so.²⁷² Adopting the neutral

266. *Id.*

267. *See, e.g.*, Andersen, *supra* note 46, at 774; Weisberg, *supra* note 50, at 1000 (citations omitted).

268. *Gipson v. Brown*, 749 S.W.2d 297, 300 (Ark. 1988) (citing Ark. Code Ann. § 4-28-218(e) (West 2009)).

269. *Gipson II*, 749 S.W.2d at 300 (citing Ark. Code Ann. § 4-28-212(a) (West 2009)).

270. *Gipson II*, 749 S.W.2d at 298.

271. *Jones v. Wolf*, 443 U.S. 595, 603 (1979).

272. For example, Florida (*Mills v. Baldwin*, 377 So. 2d 971, 971 (Fla. 1979)), Iowa (*Fonken v. Cmty. Church of Kamrar*, 339 N.W.2d 810, 819 (Iowa 1983) (holding that the court’s decision in the dispute would be the same under both the deference and neutral principles approach)),

principles approach is important for all states because it allows courts to both treat religious groups and secular groups similarly²⁷³ and to protect “dissident” minority factions from “unbounded domination” by a religious organization’s majority.²⁷⁴ Also, neutral principles is arguably the Court’s preferred method of adjudicating religious property disputes because it is the most recently adopted approach.²⁷⁵

After adopting the neutral principles approach, all states should develop and apply a form of the neutral principles approach to other cases that involve disputes amongst members of religious organizations. The *Wolf* Court has provided a blueprint for all states to follow in developing a general neutral principles approach.²⁷⁶ If deciding a religious dispute does not require a court to engage in theological interpretation, the court should examine evidence similar to “the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property”²⁷⁷ in order to adjudicate non-property religious disputes. The courts of all states should undertake an analysis of neutral religious documents and relevant state statutes in order to adjudicate disputes involving religious organizations and issues.

The neutral principles analysis does need limiting principles. It should exclude situations where a civil court would have to make any theological interpretation, as well as situations where a religious document is so theologically-based as to make a “secular” interpretation impossible.²⁷⁸ If courts

Michigan (*Bennison v. Sharp*, 329 N.W.2d 466, 474 (Mich. Ct. App. 1982) (holding that, although application of neutral principles of law may be appropriate in some religious property disputes, under Michigan Supreme Court jurisprudence application of the deference approach to this dispute was appropriate)), Nevada (*Tea v. Protestant Episcopal Church*, 610 P.2d 182, 184 (Nev. 1980) (citations omitted) (holding that Nevada courts “should defer to the decision of responsible ecclesiastical authorities, under the internal discipline of the organization to which the local congregation has voluntarily subjected itself.”)), New Jersey (*Protestant Episcopal Church v. Graves*, 417 A.2d 19, 24 (N.J. 1980) (holding that, “[i]n the absence of express trust provisions . . . the [deference] approach should be utilized in church property disputes”)), and West Virginia (*Church of God of Madison v. Noel*, 318 S.E.2d 920, 924 (W. Va. 1984) (holding that West Virginia courts were obligated to follow the decision of the “proper church authorities”)) all continue to apply the deference approach in at least some religious property disputes; *see also* 2 WILLIAM W. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW § 7:34 (2001) (stating that these states “have refused to follow the neutral principles approach”).

273. *See, e.g.*, *Serbian Eastern Orthodox Diocese for the U.S. and Canada v. Milivojevich*, 426 U.S. 696, 734 (1976) (Rehnquist, J., dissenting); *see also* Andersen, *supra* note 46, at 769.

274. *See* Adams & Hanlon, *supra* note 50, at 1297 (quoting TRIBE, *supra* note 103, AMERICAN § 14-12, at 880) (internal quotations omitted).

275. *See* Jones v. Wolf, 443 U.S. 595 (1979); Watson v. Jones, 80 U.S. 679 (1871).

276. *Wolf*, 443 U.S. at 603.

277. *Id.*

278. *See, e.g.*, Andersen, *supra* note 46, at 774; Weisberg, *supra* note 50, at 1000 (citations

follow these limiting principles, the civil courts of all states will, using neutral principles of law, not only decide disputes involving religious issues in a consistent fashion but will also resolve disputes involving religious issues utilizing the method that best takes into account the legitimate concerns of both those who argue for the adoption of the deference approach and those who argue for the adoption of the neutral principles approach.

CONCLUSION

As it stands, Arkansas civil courts take significantly different approaches to resolving disputes that involve religious issues and organizations. In some instances, the courts make a detailed inquiry into religious questions in order to determine the true owners of religious real property.²⁷⁹ In other instances,²⁸⁰ however, Arkansas civil courts refuse to intervene in disputes that involve religious questions for fear that doing so would require an inquiry that is inappropriate for civil courts to make. Such inconsistent approaches to adjudicating different types of disputes involving religious organizations makes no logical sense and serves only to undermine public faith in the judicial system.

Arkansas, however, can remedy this problem. Arkansas has adopted the neutral principles of law approach to adjudicating religious real property disputes,²⁸¹ an important first step. Next, Arkansas must expand its use of the neutral principles approach to adjudications of other types of disputes involving religious organizations. The state does not have to interpret theological questions in order to do this; Arkansas can leave the interpretation of theological questions to religious organizations. Arkansas courts can, however, adjudicate religious disputes by analyzing documents relevant to the dispute in the same way a court would when it adjudicates a dispute that involves any other organization.

The civil courts of the rest of the U.S. should do the same. All courts in the U.S. should adopt the neutral principles of law approach to adjudicating religious real property disputes. All states should then expand their use of the neutral principles approach to encompass the adjudication of other kinds of religious disputes. In doing so, the civil courts of all states will not only decide disputes involving religious issues in a consistent fashion, but will also resolve disputes involving religious issues using the most fair and effective tool at their disposal.

omitted).

279. *See, e.g.*, *Holiman v. Dovers*, 366 S.W.2d 197, 200-01 (Ark. 1963).

280. *See e.g.*, *Calvary Christian Sch., Inc. v. Huffstutler*, 238 S.W.3d 58, 66-67 (Ark. 2006); *El-Farra v. Sayyed*, 226 S.W.3d 792, 796-97 (Ark. 2006); *Belin v. West*, 864 S.W.2d 838, 842 (Ark. 1993); *Gipson v. Brown*, 749 S.W.2d 297, 301 (Ark. 1988).

281. *See Ark. Presbytery of the Cumberland Presbyterian Church v. Hudson*, 40 S.W.3d 301, 306 (Ark. 2001) (adopting expressly the neutral principles of law approach to decide religious property disputes).