REV. DAVID R. MELVILLE, ET AL.	*	**DOCKET NUMBER: C-729777 SECT.: 23**
VERSUS	*	**19TH JUDICIAL DISTRICT COURT**
BOARD OF TRUSTEES OF THE LOUISIANA ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, SOUTH CENTRAL JURISDICTION	*	**EAST BATON ROUGE PARISH**
	*	**STATE OF LOUISIANA**

MEMORANDUM OF AUTHORITIES IN SUPPORT OF DILATORY EXCEPTION OF PREMATURITY, DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION

MAY IT PLEASE THE COURT:

Plaintiffs, all voting members of the defendant Board of Trustees of the Louisiana Annual Conference of the United Methodist Church, South Central Jurisdiction ("CBOT"), have filed this action seeking both declaratory and injunctive relief and requesting a judgment (1) declaring that all ongoing disaffiliation proceedings of churches seeking to leave the United Methodist denomination are being conducted in violation of the denomination's *Book of Discipline (BOD)* (the book of church law setting forth the laws, plan, polity, and process by which United Methodists govern themselves); and (2) enjoining further disaffiliation proceedings at both the local church or annual conference level. As a ruling in this matter would necessarily entangle this court in matters which are distinctly and uniquely an ecclesiastical dispute; as plaintiffs have non-judicial, ecclesiastical remedies as to which they have not yet availed themselves; and as the church's highest judicial body has already ruled against the position advanced by petitioners; it is submitted that (a) this proceeding is premature, at least until plaintiffs have exhausted their non-judicial, ecclesiastical remedies; (b) this court does not have jurisdiction over the subject matter of this action; and (c) this court must, in any event, defer to the highest ecclesiastical court with jurisdiction in the matter, which court has ruled against the position raised by petitioners.

I. ECCLESIASTICAL ABSTENTION DOCTRINE

In the seminal case of **Watson v. Jones**, 80 U.S. (13 Wall.) 666, 20 L. Ed. 485 (1871), the U.S. Supreme Court ruled that civil courts have no jurisdiction over a matter "which concerns theological controversy, church discipline, ecclesiastical government, or conformity of the members of the church to the standard of morals required by them." **Watson v. Jones, Id,** at 666. While this ruling was grounded in the Free Exercise Clause of the First Amendment, the

decision also recognized the paramount authority of the church's own judicial body as an additional reason for abstention:

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.
>
> "Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal **[predecessor of the United Methodist Church]**, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so." **Id,** at 728-729.

Watson's ruling has been upheld in a long line of following decisions. In **Gonzalez v. Roman Cath. Archbishop of Manila**, 280 U.S. 1, 16, 50 S. Ct. 5, 7–8, 74 L. Ed. 131 (1929), the Court noted that "(i)n the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." In **Serbian Eastern Orthodox Diocese v. Milivojevich**, 426 U.S. 696, 711-715 (1976), the ecclesiastical extension doctrine of **Watson** was expanded by overruling that portion of the **Gonzales** decision that had suggested that civil courts might yet have authority to review the rulings of church tribunals for arbitrariness.

In **Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church,** 344 U.S. 94, 73 S. Ct. 143, 97 L.Ed. 120 (1952), the Court explained that the ecclesiastical abstention doctrine protects the rights of religious institutions and denominations "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." (See also **Kreshik v. St. Nicholas Cathedral,** 363 U.S. 190 (1960), which extended **Kedroff's**

prohibition against legislative impingement on internal church governance to judicial interference as well.)

An exception to this ecclesiastical abstention rule subsequently developed in cases involving property disputes between religious parties, when such disputes could be resolved based solely on "neutral principles of law," but those decisions were quick and careful to caution against judicial trespass into "religious doctrine or involvement in matters of internal ecclesiastical administration" or "matters of religious faith, doctrine or internal ecclesiastical administration." **Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,** 393 U.S. 440 (1969); **Jones v. Wolf,** 443 U.S. 595 (1979).

This "neutral principles" nuance, but with the same caution, was recognized by our Louisiana Supreme Court in **Bourgeois v. Landrum,** 396 So.2d 1275, 1277 (La. 1981), wherein the Court noted that:

> "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, **the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.** The First Amendment therefore commands civil courts to decide church property disputes **without resolving underlying controversies over religious doctrine. Id. This principle applies with equal force to church disputes over church polity and church administration.** Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). See also, Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). (Emphasis added.)

The ecclesiastical abstention doctrine has also been recognized in our own First Circuit, based on both U.S. and Louisiana constitutional grounds. In **Thomas v. Craig,** 424 So.2d 1090, 1091 (La. App. 1st Cir. 1982), the court ruled:

> "The First Amendment of the United States Constitution and Article I, Section 4 of the Louisiana Constitution prohibit courts from interfering in ecclesiastical matters of religious groups. *The Serbian Eastern Orthodox Diocese for the United States of America and Canada, et al. v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Katz v. Singerman,* 241 La. 103, 127 So.2d 515 (1961); *Wilkerson v. Battiste,* 393 So.2d 195 (La.App. 1st Cir.1980). These matters include religious discipline, faith, rules, custom or law and, constitutionally, have been left for the religious bodies to decide. *Id.* "

II. APPLICATION OF THE ECCLESIASTICAL ABSTENTION DOCTRINE TO THE MATTER UNDER CONSIDERATION

It is patently apparent from the allegations of plaintiffs' petition that this controversy is a dispute over the proper interpretation of church law--not secular law—set forth in the provisions of the United Methodist Book of Discipline (2016), which is the United Methodist book of law,

polity and doctrine. (See plaintiffs' petition, paragraph 13.) Indeed, the Book of Discipline and paragraphs thereof are cited and referenced no fewer than 31 times in the allegations of the petition. While there are allegations pertaining to the denominational trust which applies to local churches' property, the essence of this dispute can be found in Paragraph 31 of the petition, which states the following:

> "Upon information and belief, the Annual Conference is permitting Local Churches to disaffiliate from the United Methodist Church, **without following the dictates of ¶2553 to the *Book of Discipline*** and the Local Churches are voting to disaffiliate from the United Methodist Church for the reasons unrelated to the limited right afforded by ¶2553 to the *Book of Discipline.* To say it another way, Local Churches are voting to disaffiliation [sic] from the United Methodist Church whereby the Annual Conference has abdicated their duty to supervise the vote of the Local Church to ensure conformance to ¶2553 to the *Book of Discipline* and the Local Churches are voting to disaffiliate from the United Methodist Church **for reasons opposite of the intention of ¶2553 to the *Book of Discipline.*** The Defendant is violating its duty to its members under LSA-12:208A. In connection therewith the Plaintiffs have not at any time assented to the Ongoing Disaffiliation Proceedings, which the Defendants are allowing in Local Churches for disaffiliation from the United Methodist Church and in bringing this action have not colluded with the Defendant its officials in violation of ¶2553 to the *Book of Discipline.* " (Emphasis added.)

The paragraph in question, Paragraph 2553, is quoted in pertinent part in plaintiffs' petition at paragraph 19 thereof, but basically the paragraph allows a Local Church to disaffiliate from the United Methodist denomination pursuant to a 2/3 vote of the professing members of the local church present at a church conference, "...for reasons of conscience regarding a change in the requirements and provisions of the Book of Discipline related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals as resolved and adopted by the 2019 General Conference, **or the actions or inactions of its annual conference related to these issues which follow."** United Methodist *Book of Discipline* (2016), ¶2553. (Emphasis added.)

Like most other major protestant denominations, the United Methodist Church has been wrangling over issues of human sexuality for decades. As noted in plaintiffs' petition, Paragraph 2553 was added to the Book of Discipline to provide a way out of the denomination for those churches which could no longer abide the struggle, and who wished to become an independent church or perhaps join another denomination. However, in order to determine the validity of any church's vote to disaffiliate, a civil court would have to know or determine (as stated in plaintiffs' petition) "the intention of ¶2553 to the *Book of Discipline.*" (Plaintiff's petition, paragraph 29) Such an inquiry would of necessity require the court to entangle itself in matters of church doctrine and policy which have developed in the United Methodist Church over the past 51 years of wrangling over human sexuality issues, and to determine the intent of the United Methodist Church's General Conference by its requirement in ¶2553 that disaffiliation is only proper if it was based on "reasons of conscience" regarding the 2019 changes in the Book of Discipline over human sexuality issues, as well as the alternative, acceptable basis for disaffiliation stated as "the actions or inactions of its annual conference related to those issues." BOD ¶2553.1. Clearly, these are subjective issues of doctrine, membership, administration and internal policy as to which the ecclesiastical abstention doctrine unequivocally applies, and as to which this court is precluded from scrutinizing by both the Louisiana and United States Constitution.

However, there is another reason which makes the ecclesiastical abstention doctrine applicable in even greater force; and that is the fact that the United Methodist Church has its own judicial body, the Judicial Council, to hear and resolve matters of this type.

III. PREMATURITY FOR FAILURE TO EXHAUST (ECCLESIASTICAL) NON-JUDICIAL REMEDIES.

The Judicial Council, established by the United Methodist Constitution in Articles 55-58 of the *Book of Discipline*, is the final authority over those matters as to which it has jurisdiction. Such matters include, *inter alia,* passing upon and affirming, modifying, or reversing the decisions of law made by bishops in central, district, annual, or jurisdictional conferences upon questions of law submitted to them in writing in the regular business of an Annual Conference session. BOD ¶2609.6.

As an example of this process, attached as Exhibit A to this memorandum is a copy of United Methodist Judicial Council Decision Number 1422, which considered a ruling of law by the Bishop of the North Georgia Annual Conference on an issue strikingly similar to the one

before this court. In the 2021 session of the North Georgia Annual Conference, a lay member raised the following question of law: "Does a local church that identifies itself as Traditional in the current understanding of that word as it applies to whether or not a church supports the current language of the Discipline regarding the practice of homosexuality, the marriage of same sex persons, and the ordination and appointment of LGBTQIA people have recourse to ¶2553 which provides a mechanism for the local church to disaffiliate from The United Methodist Church?"

The Bishop of that conference had found that no ruling of law was required, because the North Georgia Annual Conference Board of Trustees had established a policy to not question "the reasons of conscience" behind a church's decision to disaffiliate. More specifically, if the church set forth ¶2553 in the call for the called church conference, and the church conference was held fairly and in conformance with the Book of Discipline, and the motion contained the language of the paragraph and was duly voted upon, the Board of Trustees in the North Georgia Annual Conference would by its policy not pursue any inquiry into the "reasons of conscience" behind the vote, and would accept the local church's vote to disaffiliate.

In its "Analysis and Rationale," the Judicial Council noted that the interested parties and *amicus curiae* "conceded in their briefs of record that the bishop's ruling was correct and should be affirmed," and that there being no question left to be decided, the Judicial Council ruled that "The bishop's decision of law is affirmed."

While no considered decision was thus required in this instance by the Judicial Council, the implicit result of its decision was that a "Traditionalist" church was allowed to disaffiliate in the North Georgia Annual Conference – a result that plaintiffs claim is unacceptable under their interpretation of the reason for and intent behind BOD ¶2553. If there was any doubt as to the thinking of the Judicial Council on this issue, however, such doubt was removed by the subsequent (March 1, 2023) decision of that body in Decision No. 1453. (Copy also attached hereto as Exhibit B.) In that case, a lay member of the Alabama-West Florida Annual Conference had submitted a Question of Law to the Bishop of that conference, as to whether the annual conference had violated the provisions of BOD ¶2553 in approving the disaffiliations of 5 churches. Apparently, a question had been raised about, among other things, the eligibility of those local churches to disaffiliate. Bishop Graves' ruling of law stated, in part: "Paragraph 2553 of *The Book of Discipline* does not require certification of eligibility based on reasons of

conscience and Conference policy is not to inquire into the specifics of a local church's reasons of conscience. Paragraphs 1.A of the GCFA template and previously approved Conference disaffiliation agreement (Exhibit 5) only requires documentation that evidences the result of the disaffiliation vote taken. ... The trustees of the Alabama-West Florida Conference do not require information about eligibility once that has been handled at the local level and voted on by the church. Based on the ruling in Judicial Council (Decision No.) 1422, I do not believe the Conference is required to require or produce additional evidence of eligibility. The Conference produced the disaffiliation agreement and evidence certifying the local church vote. The disaffiliation agreement sets forth a clear understanding of the reasons for disaffiliation. In addition, according to Paragraph 2553, the GCFA template, the approved disaffiliation agreement and Judicial Council Ruling 1420, the Conference trustees have the exclusive authority to establish terms and conditions of disaffiliation. ... Again, the Board of Trustees for the Conference has the exclusive authority pursuant to Paragraph 2553 to negotiate the terms and conditions of disaffiliation between the Annual Conference and the local church as long as they are consistent with the GCFA template. ... Our conference accepts the representations made by the local church in the disaffiliation agreements and communications with Conference leadership. ... Once again, Judicial Council Decision 1422 made it clear that if a Conference has a policy that it will not question reasons of conscience in connection with the decision of a local church choosing to disaffiliate then the Judicial Council will not question that policy." The Judicial Council affirmed Bishop Grave's ruling of law "for the reasons set forth therein." (Emphasis added.)

The Louisiana Annual Conference does not require churches or their members to state the "reasons of conscience" behind their disaffiliation decisions, but the conference's standard disaffiliation agreement clearly sets forth and quotes all requirements of *Book of Discipline* ¶2553 as the reason for the church's disaffiliation. Clearly, the highest adjudicatory body in the United Methodist Church has now ruled not once but twice on the issues raised by plaintiffs, and has definitively ruled against their claims. The Supreme Court in **Jones v. Wolf** reaffirmed its position that "the (First) Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. **Serbian Orthodox Diocese**, 426 U.S., at 724-725, 96 S.Ct., at 2387; cf. **Watson v. Jones**, 80 U.S. 679, 733-734, 13 Wall. 679, 733-734, 20 L.Ed. 666 (1872)." **Jones v. Wolf,** 99 S. Ct. 3020, at 3025.

However, if plaintiffs contended that the Judicial Council rulings nos. 1422 and 1453 did not apply for some reason, they clearly have the right (and have had the right before now) to raise a question of law, either at a church conference (BOD ¶¶419.10, 2718.1), or at an annual conference (BOD ¶2609.6&7), seeking a dispositive ruling on those issues from the Judicial Council. However, to that end, the United Methodist Judicial Council has just announced its spring docket and the cases that will be considered at that time, one of which includes the same issues petitioners are attempting to litigate. That case is described in the docket summary just published by the Judicial Council as follows:

"DOCKET 0423-08

In Re: Review of a Bishop's Ruling on a Question of Law on Whether Officials of the Alabama-West Florida Conference Negated, Ignored, or Violated ¶ 2553.1 of The 2016 *Book Of Discipline* by Presenting and Requesting a Vote on Disaffiliation of Churches that Have Failed to Establish Bona Fide 'Reasons Of Conscience' Regarding a Change in the Requirements and Provisions of The Book Of Discipline Related to the Practice of Homosexuality or the Ordination or Marriage of Self-Avowed and Practicing Homosexuals, as Resolved and Adopted by the 2019 General Conference, or the Actions or Inactions of the Annual Conference Related to Those Issues." See copy of Judicial Council Spring docket announcement attached as Exhibit C.

The fact that the denomination's highest judicial body is set to hear the identical complaints being advanced by petitioners herein is additional argument both for ecclesiastical abstention and the requirement that petitioners first exhaust their ecclesiastical remedies by seeing what the Judicial Council may rule on the identical issues being raised by them herein.

Finally, one of the bodies mentioned in BOD ¶2610, including but not limited to an annual conference, could request a declaratory decision from the Judicial Council "as to the constitutionality, meaning, application, or effect of the *Discipline* or any portion thereof or of any act or legislation of a General Conference, and the decision of the Judicial Council thereon shall be as binding and effectual as a decision made by it on appeal." *Book of Discipline* ¶2610.

There are thus multiple, church-internal methods for the questions and issues being raised by plaintiffs in their petition to be definitively and finally determined. If the court does not consider the attached Judicial Council decisions dispositive, plaintiffs should still not be heard to seek a ruling from this court, when they clearly have failed to exhaust the non-judicial, ecclesiastical remedies available to them from the Judicial Council on the issues raised in their petition.

IV. CONCLUSION

Plaintiffs' petition unquestionably entails the consideration of church law and doctrine, particularly the subjective intent of the United Methodist General Conference behind the passage of BOD ¶2553 which the plaintiffs contend that defendant is not following. This is not the type of question that can be decided pursuant to "neutral principles," but will inevitably entangle this court in "matters of religious faith, doctrine or internal ecclesiastical administration." **Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, Jones v. Wolf, supra.** Under the state and federal authorities cited above, relying on both the First Amendment of the U.S. Constitution and Article I, Section 4 of the Louisiana Constitution, courts are prohibited from interfering in ecclesiastical matters of religious groups. Moreover, the only adjudicatory body with jurisdiction in this matter, the Judicial Council, has ruled against plaintiffs' claims twice, in its decisions nos. 1422 and 1453, and plaintiffs should therefore be barred from seeking yet another, third "bite of the apple" on these issues through this court, which must defer to the decisions of the church's highest court on the subject. Finally, defendant's argument for ecclesiastical abstention is further strengthened by the fact that plaintiffs have a right to have their grievances aired before, and decided by, the United Methodist Church's highest judicial body (the Judicial Council), but have failed to avail themselves of that right – even if one were to assume that the Judicial Council's aforementioned decisions are inapplicable or inapposite. Indeed, the Judicial Council has scheduled a case raising the identical issues as asserted by petitioners herein for decision during its spring docket. Under these circumstances, both of defendant's exceptions, for lack of subject matter jurisdiction and for prematurity, are valid and should be granted.

Respectfully submitted,

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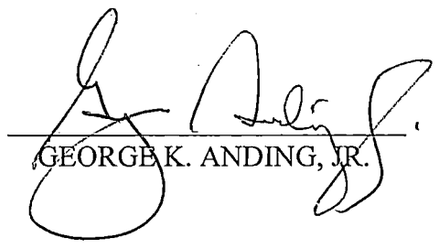
CERTIFICATE OF SERVICE

I do hereby certify that I have on this 14th day of March, 2023, mailed a copy of the foregoing Memorandum of Authorities In Support Of Exceptions to plaintiffs' counsel of record, David M. Cohn, The Cohn Law Firm, 10754 Linkwood Court, Baton Rouge, LA 70810, by U.S. Mail, properly addressed, and prepaid.



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