IN THE CIRCUIT COURT OF MARYLAND

FOR ANNE ARUNDEL COUNTY

The Methodist Church of Cape St. Claire, *et al.*,	*	
Plaintiffs,	*	
v.	*	Case No. C-02-CV-23-000500
The Baltimore Washington Conference of the United Methodist Church, *et al.*,	*	
Defendants.	*	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendants The Baltimore Washington Conference of The United Methodist Church ("Conference"), Bishop LaTrelle Easterling, and The Board of Trustees of The Baltimore Washington Conference of The United Methodist Church ("Conference Trustees") (collectively, "Defendants"), by counsel, submit this Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint.

I. INTRODUCTION

Binding Maryland precedent affirms that, "commencing in 1871 with *Watson v. Jones*," 80 U.S. (13 Wall.) 679 (1871), "the Supreme Court has made clear that, under the First Amendment Establishment and Free Exercise clauses, civil courts have no authority to second-guess ecclesiastical decisions made by hierarchical church bodies." *Downs v. Roman Cath. Archbishop of Balt.*, 111 Md. App. 616, 621, 683 A.2d 808, 811 (1996). More recently, and more than 150 years after *Watson* first laid the foundation, the Supreme Court continued a long line of decisions holding that the "First Amendment protects the right of religious institutions 'to decide

for themselves, free from state interference, *matters of church government* as well as those of faith and doctrine.'" *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) (quoting *Kedroff v. St. Nicholas Cathedral of Russ. Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)) (emphasis added).

Although there are numerous defects in the First Amended Complaint filed by the several plaintiffs here, thirty-nine local United Methodist churches ("Plaintiffs" or "Plaintiff Churches"), this threshold principle—sometimes called the "Ecclesiastical Abstention" doctrine—operates to divest this Court of subject matter jurisdiction. Every aspect of the First Amended Complaint is grounded in Plaintiffs disagreement with "ecclesiastical decisions made by hierarchical church bodies." *Downs,* 111 Md. App. at 621. As the Court of Special Appeals explained in *Downs*, the Supreme Court has, "in effect, declared *immune from civil jurisdiction* 'a matter which concerns *theological controversy*, *church discipline*, *ecclesiastical government*, or the conformity of the members of the church to the standard of morals required of them.'" *Downs*, 111 Md. App. at 622 (quoting *Watson*, 80 U.S. at 733) (emphasis added).

Respectfully, these bedrock constitutional principles preclude this Court from exercising subject-matter jurisdiction over the claims asserted in the Amended Complaint filed in this case. The Plaintiff Churches, who state that they "wish to disaffiliate from the United Methodist Church" *Amended Complaint* ("Am. Compl.") ¶ 1, have brought this First Amended Complaint because they wish to take with them the land and church property that United Methodist church law, not to mention Maryland Code provisions governing United Methodist church property, expressly obliges them to hold *in trust* exclusively for the ministry and membership of The United Methodist Church. The plaintiffs are indisputably trustees of those properties based on express trust provisions in ¶¶ 2501-03 of *The Book of Discipline of The United Methodist Church* (the

"*Discipline*"), which in turn are buttressed by Md. Code Ann., Corp. & Ass'ns § 5-325, which makes the *Discipline* binding on all United Methodist churches in Maryland, and § 5-326, which makes particular reference to the same express trust provisions included in the *Discipline*. The United Methodist Church's choices, as implemented by the Baltimore-Washington Conference and its Bishop and Trustees, in whether and when to sever these congregations' connectional relationship with The United Methodist Church, on terms that release them from these foundational and doctrinally rooted trust obligations, are quintessential ecclesiastical decisions which are barred adjudicating.

Because this principle is jurisdictional in nature, it must be addressed as a threshold issue, before any other considerations. However, should the Court disagree, several additional grounds exist for dismissing various of Plaintiffs' claims, each of which is addressed in more detail following the overarching subject-matter jurisdiction discussion. In Part IV.A below. *First*, this Court lacks in rem jurisdiction and is otherwise an improper venue for the claims asserted by all but four of the thirty-nine plaintiff churches, as only four of the subject churches and appurtenant land are located in this county. *See* Part IV.B. *Second*, Plaintiffs lack standing to assert the derivative claims purportedly alleged on behalf of the Conference in Count III (Constructive Fraud) and Count IV (Breach of Fiduciary Duty) because they are not "members" of the Conference. *See* Part IV.C. *Third*, the Conference's Board of Trustees is not a distinct legal entity and lacks the capacity to be sued. *See* Part IV.D.

Again, though, Defendants respectfully urge that Supreme Court and Maryland appellate court precedent prohibits this Court from reaching the merits of this dispute in any fashion. Jurisdiction is plainly lacking, and the First Amended Complaint should be dismissed in its entirety, with prejudice.

II. STATEMENT OF FACTS

A. The United Methodist Church, Including its Rules of Church Governance and Property Ownership

The Court of Appeals has recognized that, when a secular court is presented with a church property dispute, "it is usually important . . . to consider the 'polity' or form of church government which the particular denomination has." *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 249 Md. 650, 663, 241 A.2d 691, 699 (1968) ("*Eldership I*"), *vacated and remanded*, 393 U.S. 528 (1969), *reaff'd*, 254 Md. 162, 254 A.2d 162 (1969) ("*Eldership II*"), *appeal dismissed*, 396 U.S. 367 (1970). What follows is a brief summary of the polity of The United Methodist Church, drawn in part from Plaintiffs' own complaint, but also from established precedent, the express terms of the *Discipline*, and the attached affidavit of Bishop Easterling.

1. The Hierarchical and Connectional Character of The United Methodist Church

The United Methodist Church is widely recognized as having a decidedly *connectional* or *hierarchical* system of church governance or "polity," meaning "that the local church is a part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulations." *Carnes v. Smith*, 222 S.E.2d 322, 325 (Ga. 1976).[1] The United States

[1] The Georgia Supreme Court's decision in *Carnes* hardly stands alone in affirming the decidedly hierarchical character of The United Methodist Church. As near as the Conference can discern, every court that has addressed the issue has recognized The United Methodist Church as a hierarchical denomination, belying Plaintiffs' conclusory and unsupported assertion that the "UMC is not a hierarchal religious organization." Am. Compl. ¶ 49. *See East Lake Methodist Episcopal Church, Inc. v. Trs. of Peninsula-Del. Ann. Conf. of United Methodist Church, Inc.*, 731 A.2d 798, 810 (Del. 1999); *Brady v. Reiner*, 198 S.E.2d 812, 827 (W. Va. 1973), *overruled in part on other grounds*, *Bd. of Church Extension v. Eads*, 230 S.E.2d 911, 918 n.6 (W. Va. 1976); *United Methodist Church v. St. Louis Crossing Indep. Methodist Church*, 276 N.E.2d 916, 919-20 (Ind. 1971); *Trs. of Peninsula Ann. Conf. v. Spencer*, 183 A.2d 588 (Del. Ch. 1962); *Clay v. Crawford*, 183 S.W.2d 797 (Ky. 1944).

There is no merit to Plaintiffs' conclusory assertion that the "UMC is *not* a hierarchal religious organization but rather a covenant-based organization where the church and the Defendant are in an ecclesiastical covenant-based relationship." Am. Compl. ¶ 49 (emphasis added). The Conference *agrees* that The United Methodist Church's relationship with its local churches is fundamentally an *ecclesiastical* and *covenant*-based relationship. Neither of those facts, however, conflicts with the universally recognized

Supreme Court has defined hierarchical churches as "those organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 110 (1952). As outlined below, the organizational structure of The United Methodist Church plainly qualifies as hierarchical by this definition.

2. The General Conference

The United Methodist rules of church governance are delineated in the *Discipline*, the broad strokes of which reflect that the denomination's mission and ministry is conceived and implemented by an interconnected series of "Conferences" that operate at every level of the Church's operations (international, national, regional and local) and which are bound together and accountable to one another under the terms set forth in the *Discipline*. At the highest level, the denomination's General Conference oversees "the entire Church." *Discipline* ¶ 8. The General Conference convenes once every four years and is comprised of clergy and lay delegates elected to represent each of the denomination's many "annual conferences." *Id.* ¶¶ 8, 13-16. The General Conference has "full legislative power over all matters distinctively connectional" (*id.* ¶¶ 16, 501), including sole responsibility for enacting or amending the provisions of the *Discipline*, which constitutes "the instrument for setting forth the laws, plan, polity, and process by which United Methodists govern themselves." *Discipline*, "Episcopal Greetings," at v.

reality that The United Methodist Church qualifies as a hierarchical denomination. Further, if anything, the fact that the relationship between The United Methodist Church and its member churches is fundamentally *ecclesiastical* only reinforces that the core subject matter of dispute in this case is "strictly and purely ecclesiastical in its character" and, as such, "a matter over which the civil courts exercise no jurisdiction" because, at bottom, "it concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1871).

3. The Annual Conference

An annual conference, in turn, is similar to a diocese in the Roman Catholic Church, in that an annual conference encompasses all United Methodist congregations located within a given region, each of which is presided over by a bishop. *Id*. ¶¶ 46, 415.2. The name "Annual Conference" signifies that its clergy and lay "members" convene in "session" at least once a year, to fulfill the responsibilities that the General Conference has assigned to the annual conferences. *Id*. ¶¶ 603-05. The voting members of the annual conference consist of all clergy serving the conference's local churches (*id*. ¶¶ 32, 602.1), as well as an equal number of lay members representing each local church (or "charge") within the annual conference's bounds (*id*. ¶¶ 32, 602.4).

Recognized "as the fundamental bodies of the Church," (*id*. ¶ 11), annual conferences are broadly empowered to oversee the operations of all "local churches" operating as United Methodist congregations within the annual conference's bounds. Indeed, under Methodist polity, local congregations are *established* at the annual conference level in the first instance. The *Discipline* provides that a new local church "shall be established only with the consent of the bishop in charge." *Id*. ¶ 259.1. If the bishop consents, then the organization of the local church becomes the responsibility of one of the Bishop's district superintendents and is carried out pursuant to the method outlined in detail in the *Discipline*. *Id*. ¶¶ 259.1–259.10. Once the organizational process is completed, the annual conference is the body within The United Methodist Church that is empowered to formally recognize and grant certificates of organization to new local churches. *Id*. ¶ 604.10.

4. The Local Church (as governed by a "Charge Conference" or "Church Conference")

The connectional character of the United Methodist system of church governance is borne out at the local church level even after the local church is first organized. The *Discipline* defines the "local church" as "a ***connectional*** society of persons who have been baptized, have professed their faith in Christ, and have assumed the ***vows*** of membership in The United Methodist Church." *Id*. ¶ 203 (emphasis added). "Such a society of believers," the *Discipline* explains, "***being within The United Methodist Church and subject to its Discipline***, is also an inherent part of the church universal . . . ." *Id*. (emphasis added).

In keeping with the "conferencing" principle used to administer the denomination on the national and regional levels, the *Discipline* makes the "charge conference" the principal governing body of each local church. *Id*. ¶¶ 43, 205.1, 205.2. Although all voting members of the charge conference must be professing members of the local church itself (*id*. ¶ 169), hierarchical oversight is ensured by the *Discipline*'s mandate that the ***presiding officer*** at all charge conference meetings shall be the district superintendent whom the bishop has appointed to oversee all local churches in a given district or the district superintendent's chosen designee. *Id*. ¶ 246.5. Given this overlapping governance structure, the *Discipline* recognizes the charge conference as "the connecting link between the local church and the general Church" (*id*. ¶ 247.1), and admonishes the "charge conference, the district superintendent, and the pastor" to work together to "organize and administer the pastoral charge and churches according to the policies and plans . . . set forth" in the *Discipline*. *Id*. ¶ 247.2.

5. The Judicial Council

Should a dispute ever arise as to the interpretation of the *Discipline*, including the Constitution, the UMC has its own authoritative judicial body, the Judicial Council of The

United Methodist Church (the "Judicial Council"), which serves as the final, supreme authority to interpret the law of the Church as expressed in the *Discipline*. **[cite].** There are a variety of pathways pursuant to which a dispute or question of church law may come before the Judicial Council for an authoritative decision that will be binding on all United Methodists. One such pathway begins with presenting a question of law to an annual conference's bishop when the bishop is presiding over an annual conference session. Any member of the annual conference—whether clergy or lay—may seek a ruling from the presiding bishop on a question of law that relates to business pending before the annual conference session. *See Discipline* ¶ 51. Moreover, every such decision of law made by a bishop during an annual conference session must be reported to and reviewed by the Judicial Council, which in turn is obliged to "affirm, modify, or reverse them." *Id*.[2] The *Discipline* is clear that, once a bishop's decision of law "has been passed upon by the Judicial Council, . . . thereafter it shall become the law of the Church to the extent that it is affirmed by the council." *Id*. ¶ 2609.6.

This intrachurch judicial review mechanism has been invoked numerous times across the denomination in order to obtain binding rulings of church law on the proper interpretation of the recently enacted disaffiliation provisions found in *Discipline* ¶ 2553. Indeed, the Judicial Council has issued several decisions that have "become the law of the Church" on local church disaffiliation pursuant to ¶ 2553, including several that challenged the procedures certain annual conferences were using to process disaffiliation requests and/or the "additional standard terms," including payment terms, that the General Conference gave annual conference trustees

[2] *See also Discipline* ¶ 2609.6 ("The Judicial Council shall pass upon and affirm, modify, or reverse 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 a session; and in order to facilitate such review, each bishop shall report annually in writing to the Judicial Council on forms provided by the council all the bishop's decisions of law.").

considerable leeway to impose. This pathway for challenging the Conference's disaffiliation process was equally available to Plaintiffs, but no annual conference member associated with any of the plaintiff churches presented any question of law to Bishop Easterling during any of the four annual conference sessions (2019, 2020, 2021, and 2022) that were held between the time *Discipline* ¶ 2553 was enacted in February 2019 and the filing of this lawsuit earlier this year. Nor did any of them present such a question during the most recent annual conference session held in Baltimore from May 31 to June 3, 2023.

B. The Denomination's Rules Governing the Ownership and Control of Local Church Property

Since the denomination's founding, local congregations have always been required to hold their property *in trust* for the use and benefit of the denomination as a whole. The Minutes of the General Conference's first meeting in Baltimore in 1796 reflect the adoption of a "*Deed of Settlement* for Church Edifices," requiring that all church buildings be held by the specifically named local church trustees "and their *successors in office*, *forever*, *in trust*, that they shall erect and build, or cause to be erected and built thereon, a house or place of worship, *for the use of the members of the Methodist Episcopal Church* in the United States of America, *according to the rules and discipline which from time to time may be agreed upon and adopted by the ministers and preachers of the said Church, at their General Conferences* . . . ." *Minutes of the 1796 General Conference of The Methodist Episcopal Church*, appearing in *Journals of the General Conference of The Methodist Episcopal Church*, Vol. I, 1796-1836 (New York 1855) (emphasis added).

Resting on this foundation, the *Discipline* provides the following general statement regarding the mandate that church property—not just at the local church level, but at every level—is to be held in trust for the benefit of the denomination as a whole:

> All properties of United Methodist local churches and other United Methodist agencies and institutions are held, in trust, for the benefit of the entire

> denomination, and ownership and usage of church property is subject to the *Discipline*. This trust requirement is an essential element of the historic polity of The United Methodist Church or its predecessor denominations or communions and has been a part of the *Discipline* since 1797. It reflects the connectional structure of the Church by ensuring that the property will be used solely for purposes consonant with the mission of the entire denomination as set forth in the *Discipline*. The trust requirement is thus a fundamental expression of United Methodism whereby local churches and other agencies and institutions within the denomination are both held accountable to and benefit from their connection with the entire worldwide Church.

Id. ¶ 2501.1.

C. The "Closing" or "Disaffiliation" of a Local United Methodist Church

Just as annual conferences are alone empowered to *establish* new United Methodist congregations, the *Discipline*, as interpreted and applied in binding precedent handed down by the Judicial Council, provides that any decision to *close* a local United Methodist church, or to *sever* its affiliation with The United Methodist Church, must be approved by the annual conference. *Discipline* ¶ 2549—which governs the "closing" of a local church—provides, "Upon a recommendation by the district superintendent, and with the consent of the presiding bishop, a majority of the district superintendents, and the appropriate district board of church location and building, *the annual conference* may declare a local church closed." *Id*. ¶ 2549.2(b) (emphasis added). Meanwhile, in affirming the constitutionality of *Discipline* ¶ 2553, the Judicial Council held that, while ¶ 2553.4 provides that "the terms and conditions for . . . disaffiliation shall be established by the board of trustees of the applicable annual conference" (after obtaining the advice of various other key conference officers), *Discipline* ¶ 2529.1(b)(3) further mandates that every local church disaffiliation ultimately be "ratified by a simple majority of the members of the annual conference present and voting" during a regular or special session of the annual conference. *In re: Petition for Declaratory Decision from the Council of Bishops Regarding the Constitutionality, Meaning, Application, and Effect of Petition 90066 as Amended*, JCD 1379 (Apr. 25, 2019); *see*

also Discipline ¶ 2529.1(b)(3) (providing that a local church "cannot sever its connectional relationship to The United Methodist Church without the consent of the annual conference").

Despite those important similarities, however, those two ecclesiastical processes—"closing" a local United Methodist church (on the one hand), and allowing a local United Methodist church to "disaffiliate" from the denomination (on the other hand)—apply in distinct contexts and are governed by distinct ecclesiastical rules and procedures establish by the General Conference.

***Closure*:** Congregations are *closed* pursuant to a detailed process spelled out in *Discipline* ¶ 2549, which requires "a finding that: *a)* The local church no longer serves the purpose for which it was organized or incorporated . . . ; or *b)* The local church property is no longer used, kept, or maintained by its membership as a place of divine worship of The United Methodist Church." *Id.* ¶ 2549.1. The closure process is typically invoked in scenarios in which the congregation will cease operations entirely. But whatever the grounds for closure may be, any decision to close a local United Methodist church pursuant to *Discipline* ¶ 2549 requires "the consent of the presiding bishop, a majority of the district superintendents, and the appropriate district board of church location and building," *id*. ¶ 2549.2(b), and it must ultimately also be approved by a majority vote of the annual conference membership. *Id*.; *see also* ¶ 2549.3(b) (imposing the same requirements when a local church is provisionally closed on an *ad interim* basis between sessions of annual conference).

The *Discipline* also contains provisions that govern the disposition of local church property when the annual conference declares a congregation to be closed pursuant to ¶ 2549. Specifically, "[i]f the annual conference closes a local church," the *Discipline* states that "title to all the real and personal, tangible and intangible property of the local church shall immediately vest in the annual

conference board of trustees, who shall hold said property in trust for the benefit of the annual conference." *Discipline* ¶ 2549.2(b). In turn, the *Discipline* gives the annual conference board of trustees power to "retain, sell, lease, or otherwise dispose of the property of a closed local church in accordance with the direction of the annual conference, if any." *Id*. ¶ 2549.2(c).[3]

Disaffiliation: The *disaffiliation* of a local United Methodist church is entirely distinct from *closing* a local church. Indeed, as the Judicial Council ruled in JCD 1449, no valid mechanism for local churches to sever their affiliation with The United Methodist Church and retain their property existed until a special session of the General Conference convened in St. Louis in February 2019 and approved a legislative petition entitled "*Disaffiliation of Local Churches Over Issues Related to Human Sexuality*" that became *Discipline* ¶ 2553. Undoubtedly frustrated by a decades-long debate over whether to allow "self-avowed practicing homosexuals" to be ordained, or to allow same-sex unions or marriages to be celebrated in United Methodist churches, the delegates to the 2019 Special Session of the General Conference voted for the first time to accord local churches a time-limited right to exit the denomination and retain all of their property, free and clear of the denomination's beneficial interest in all local church property, but only if certain terms and conditions were satisfied.

[3] The Circuit Court of Harford County relied on this aspect of *Discipline* ¶ 2549 in holding that title to a closed local United Methodist church's property had passed by operation of law to the Conference's Board of Trustees on the effective date of the church's closure by the annual conference pursuant to ¶ 2549. *The Balt.-Wash. Conf. of The United Methodist Church, Inc. v. Calvary Church*, Case No. 12-C-1502633, Mem. Op. at 11-12 (Harford Cnty. Cir. Ct. Aug. 12, 2016). Courts in other states have likewise relied on ¶ 2549 in upholding the rights of annual conference trustees to take possession of a closed local church's property from holdover church members who refused to surrender possession following the annual conference's closure decision. *See East Lake Methodist Episcopal Church, Inc. v. Trs. of the Peninsula-Del. Ann. Conf. of The United Methodist Church, Inc.*, 731 A.2d 798 (Del. 1999); *Bd. of Trs. of the La. Ann. Conf. of The United Methodist Church v. Revelation Knowledge Outreach Ministry, LLC*, 142 So.3d 353 (La. App. 2014).

In so doing, the General Conference has imposed certain prerequisites of its own on local churches that seek to disaffiliate pursuant to ¶ 2553. The principal requirements imposed by the General Conference are the following:

1. The local church's "basis" for disaffiliating from the denomination must be "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 [that General Conference]." *Discipline* ¶ 2554.1.[4]
2. A local church's "decision to disaffiliate from The United Methodist Church must be approved by a two-thirds (2/3) majority vote of the professing members of the local church present at the church conference." *Id*. ¶ 2553.3.
3. The local church must make the following payments to the annual conference:
    a. The local church must pay "any unpaid apportionments for the 12 months prior to disaffiliation, as well as an additional 12 months of apportionments." *Id*. ¶ 2554.4(b).
    b. To do its fair share in guarding against the future risk of underfunded clergy pension obligations (including for retired United Methodist clergy that have previously served the disaffiliating congregation), the local church must make a pension "withdrawal liability" payment "in an amount equal to its pro rata share of any aggregate unfunded pension obligations" ascribed to the disaffiliating church's annual conference by the denomination's General Board of Pension and Health Benefits. *Id*. ¶ 2554.4(d).

As confirmed by the Judicial Council in a decision rendered in August 2022—nearly seven months ***before*** Plaintiffs filed the original complaint in this action—*Discipline* ¶ 2553 stands as the ***exclusive*** means by which a local church can disaffiliate from The United Methodist Church and retain its property, free and clear of the denomination's beneficial interest. *See In re: Petition*

[4] In other words, ¶ 2553 imposes a threshold theological requirement the local church must meet to qualify for disaffiliation: its decision to withdraw must be based on "reasons of conscience" regarding changes to the standards included in the Discipline regarding clergy ordination and marriage—standards that are framed in decidedly doctrinal terms (i.e., by referencing practices that are deemed "incompatible with Christian teaching"), making it wholly illusory that the matter is one that a secular court can decide without entering the "theological thicket."

for Declaratory Decision from the Council of Bishops on Questions Related to ¶ 2548.2 of the 2016 Book of Discipline, Judicial Council Decision ("JCD") 1449 at 2, 7-9. In so holding, moreover, the Judicial Council explicitly rejected the notion that *Discipline* ¶ 2548.2 provides an alternative mechanism for severing a local church's connection with The United Methodist Church. That Paragraph is one of two alternative disciplinary provisions (the other being the ¶ 2549 "closure" provision) that Plaintiffs argue may properly be used to disaffiliate local United Methodist churches, but that argument has already been foreclosed by the Judicial Council. As the Council explained in JCD 1449:

> It stands to reason that, if disaffiliation of local churches could be accomplished under ¶ 2548.2 or *any* other provision of *The Discipline*, the special session of General Conference in 2019 would not have gone through the trouble of enacting ¶ 2553 and (redundantly) labeling it "Disaffiliation of Local Churches Over Issues Related to Human Sexuality." The rational conclusion must be that, in adopting ¶ 2553, the 2019 General Conference intended that the process set forth therein be used for the stated purpose because there is no other provision available in *The Discipline*.
>
> Under a long-standing rule of statutory interpretation, special legislation supersedes general legislation. JCD 424 (holding that "there is another rule of statutory construction that as between general and specific legislation the latter controls."). Undoubtedly, ¶ 2553 is a *special* legislation adopted by a *special* General Conference for the *specific* purpose of permitting local churches to disaffiliate from The United Methodist Church with their property under certain terms and conditions. Consequently, ¶ 2553 controls in matters of local church disaffiliation.

Id. at 7-8 (italics in original; underlining added for emphasis).

III. LEGAL STANDARD

The Maryland Rule 2-322 grants defendants the right to file a pre-answer motion to dismiss. Among the permitted grounds are lack of subject matter jurisdiction, improper venue, and failure to state a claim. *See* Md. Rule 2-322(a)(2) & (b)(1)-(2).

"Subject matter jurisdiction is the power to hear and determine a case." *Bourne v. Ctr. on Child., Inc.*, 838 A.2d 371, 377 (2003) (quoting *Grindstaff v. State*, 470 A.2d 809 (1984)). A court

lacks subject matter jurisdiction when the "power to render a judgment over that class of cases" has been committed elsewhere. *See id.* (quoting *Eng'g Mgmt. Servs., Inc. v. Maryland State Highway Admin.*, 825 A.2d 966, 984 (2003)). Cases that require a court wade to "into a theological thicket" are a "class of cases" where the "power to render a judgment" has been committed elsewhere. *See Bacharach v. Star K Certification*, 2022 WL 4299571, at *2 (Md. Ct. Spec. App. Sept. 19, 2022) (upholding the circuit court's grant of a motion to dismiss for lack of subject matter jurisdiction where plaintiff's tort claim would have required the court to inquire into the reasonableness of the defendants' "policies, practices, and standards with regard to overseeing a kosher kitchen"); *Bourne*, 838 A.2d at 377 (upholding the circuit court's grant of a motion to dismiss for lack of subject matter jurisdiction where plaintiff's contract and tort claims "were inextricably associated with the determination of religious issues").

Because subject matter jurisdiction is "collateral to the merits" and a "question of law," a court may consider materials outside of the pleadings in ruling on a motion to dismiss for lack of subject matter jurisdiction. *See Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 878 A.2d 567, 574 (2005); *Evans v. Cnty. Council of Prince George's*, 969 A.2d 1024, 1027 (2009); *A.C. v. Maryland Off. of the Att'y Gen.*, 2018 WL 3738983, at *1 n.2 (Md. Ct. Spec. App. Aug. 6, 2018). If a court concludes that it lacks subject matter jurisdiction, it must grant the motion and dismiss the case. *See* Md. Rules 2-324(b).

By contrast, "Venue, unlike subject matter and personal jurisdiction, focuses largely on geographical nexus related to the appropriate county in which an action may proceed." *Burnside v. Wong*, 412 Md. 180, 195-96 (2010). It is "the place where the trial may properly occur." See *McBurney v. State*, 280 Md. 21, 31, 371 A.2d 129 (1977).

As for a request for dismissal for failure to state a claim, "a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause of action for which relief may be granted." RRC Northeast, LLC v. BAA Maryland, Inc., 413 Md. 638, 643, 994 A.2d 430 (2010) (citations omitted). In applying this standard, "[t]he well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *Id.* (citations omitted). In addition to the pleadings, "in order to place a complaint in context, we may take judicial notice of additional facts that are either matters of common knowledge or capable of certain verification." *Faya v. Almarez*, 329 Md. 435, 444 (1993).

Consistent with these standards, Defendants have included matters outside the pleadings that are relevant to the jurisdictional arguments set forth below. For all other arguments, Defendants refer to the contents of the pleadings.

IV. ARGUMENT

A. The Religion Clauses of the First Amendment Preclude The Court from Exercising Subject Matter Jurisdiction Over Plaintiffs' Claims

Jurisdiction is lacking because "under the First Amendment Establishment and Free Exercise clauses, civil courts have no authority to second-guess ecclesiastical decisions made by hierarchical church bodies." *Downs*, 111 Md. App. 616, 621, 683 A.2d 808, 811, citing *Watson v. Jones*," 80 U.S. (13 Wall.) 679 (1871); *see Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) (quoting *Kedroff v. St. Nicholas Cathedral of Russ. Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). As in *Downs*, this matter "concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to

the standard of morals required of them," and is thus "immune from civil jurisdiction." *Downs*, 111 Md. App. at 622, quoting *Watson*, 80 U.S. at 733.

The precedent supporting this proposition is legion. *See, e.g., Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 724 (1976) ("[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters."); *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 187-88 (2012) (by "inquiring into whether the Church had followed its own procedures," a state's supreme court "had 'unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals' of the Church") (quoting *Serbian E. Orthodox Diocese*, 426 U.S. at 720).

In recognizing such cases to be "immune from civil jurisdiction," the Court of Special Appeals in *Downs* explained that "[t]he goal of this exclusion" is "'to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.'" *Id.* (quoting *Jones v. Wolf*, 443 U.S. 595, 603 (1979)). In so holding, moreover, the *Downs* Court was following the lead of the Court of Appeals. Thus, in *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 249 Md. 650, 241 A.2d 691 (1968), *vacated and remanded*, 393 U.S. 528 (1969), *reaff'd*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed*, 396 U.S. 367 (1970), the Court of Appeals emphasized, citing *Watson*, that "the courts, wisely we think, will not enter a 'theological thicket.'" 249 Md. at 660, 241 A.2d at 697. Likewise, since *Downs*, the Court of Appeals has reiterated that "Maryland courts, like courts generally in this country, have no authority to resolve religious disputes." *Mt. Olive Afr. Methodist Episcopal Church of Fruitland, Inc. v. Bd. of Incorporators of Afr. Methodist Episcopal Church Inc.*, 348 Md. 299, 314, 703 A.2d

194, 199 (1997) (citing *Polen v. Cox*, 259 Md. 25, 31-32, 267 A.2d 201, 204-05 (1970), and *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969)).

The thrust of Plaintiffs' objection – disagreement with ecclesiastical decisionmaking – is evident throughout the First Amended Complaint. Indeed, Plaintiffs allege that Conference is "holding [plaintiffs'] church buildings and property hostage," by "claiming" that the church "property is encumbered by an irrevocable trust for the benefit of the UMC and [that] the only way for Plaintiff Churches to disaffiliate without surrendering [their] buildings and property . . . is by the permission of the UMC and payment of a financial ransom." *Id*.

In truth, it is no mere "claim" that local United Methodist churches hold their property irrevocably in trust for the exclusive use and benefit of the ministry and membership of The United Methodist Church. Detailed express trust provisions confirming this are included in ¶¶ 2501-03 the *Discipline*.[5] Those paragraphs unmistakably provide as follows:

- "All properties of United Methodist local churches . . . are held, *in trust*, for the benefit of the entire denomination, and ownership and usage of church property is subject to the *Discipline*." *Id*. ¶ 2501.1 (emphasis in original).
- That this "trust is and always has been <u>*irrevocable*</u>, except as provided in the *Discipline*." *Id.* ¶ 2501.2 (emphasis added).

[5] As explained by the Bishops of the Church in a preface to the *Discipline*, the *Discipline* is "the instrument for setting forth the laws, plan, polity, and process by which United Methodists govern themselves." *Discipline*, "Episcopal Greetings," at v; *see also Gen. Council on Fin. & Admin. of the United Methodist Church v. Superior Ct. of Cal., San Diego Cnty.*, 439 U.S. 1369, 1370 (1978) (Rehnquist, Circuit Justice) (the *Discipline* "contains the constitution and bylaws of the [United] Methodist Church"); *St. Paul Church, Inc. v. Bd. of Trs. of Alaska Missionary Conf. of United Methodist Church, Inc.*, 145 P.3d 541, 544 (Alaska 2006) ("*The Book of Discipline* is the book of law of The United Methodist Church.").

- That local church property "can be released from the trust, transferred free of trust or subordinated to the interests of creditors and other third parties only to the extent authority is given by the *Discipline*." *Id.*

In addition, in a ruling that binds all United Methodists, including the plaintiff churches and the Conference, the denomination's Judicial Council has declared that *Discipline* ¶ 2553—as enacted by the denomination's supreme legislative body (the General Conference) during a Special Session convened in February 2019—stands as the sole ecclesiastically approved mechanism for local United Methodist churches to disaffiliate from The United Methodist Church and retain the church property under terms that, *if satisfied by the local church*, include obtaining from "the applicable annual conference [a] release [of] any claims that it may have under ¶ 2501 and other paragraphs of *The Book of Discipline of The United Methodist Church* commonly referred to as the trust clause[.]" *Discipline* ¶ 2553.4(h). As the Judicial Council explained in a decision handed down in August 2022—nearly seven months ***before*** Plaintiffs filed the original complaint in this action—*Discipline* "¶ 2553 is a ***special*** legislation adopted by a ***special*** General Conference for the ***specific*** purpose of permitting local churches to disaffiliate from The United Methodist Church with their property under certain terms and conditions. Consequently, ¶ 2553 controls in matters of local church disaffiliation." *In re: Petition for Declaratory Decision from the Council of Bishops on Questions Related to ¶ 2548.2 of the 2016 Book of Discipline*, Judicial Council Decision ("JCD") 1449, at 7-8 (emphasis in original).

On this record, the plaintiff local churches cannot possibly prevail in this lawsuit unless the Court undertakes to do what the Religion Clauses and binding precedent preclude. The essential nature of Plaintiffs' claims is such that the Court cannot possibly adjudicate those claims "without engaging in a searching and therefore impermissible inquiry into church polity." *Serbian*

E. Orthodox Diocese, 426 U.S. at 723. And even worse, the very relief that Plaintiffs seek from this Court, if granted, would effectively nullify ecclesiastical rules of church governance enacted by the denomination's supreme legislative body, along with binding rulings of church law handed down by the denomination's highest judicial body. Most notably:

- The principal relief that Plaintiffs seek on all 10 of their asserted counts is nothing less than the outright "termination" of the trust with their church property and is impressed by express terms of both the *Discipline* and the Maryland Code, ostensibly "because the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve." *See* Am. Compl. ¶¶ 117(a), 204(a) & Prayers for Relief at 39, 43.

- Failing outright termination, in Count II, Plaintiffs seek "Judicial Modification" of the trust, converting the ***ir***revocable trust imposed by the *Discipline*'s express terms into a *revocable* trust and thereby giving the plaintiff churches "all power to revoke the trust and/or dispose of the property as Maryland law allows." *Id.* ¶ 129.

- To justify such relief, moreover, Plaintiffs ask the Court to hold that the financial payments the General Conference imposed as a precondition to disaffiliation under ¶ 2553—especially the pension withdrawal liability payment required by ¶ 2553.4(d), which is based on calculations provided by the denomination's General Board of Pension and Health Benefits—constitute an "unconscionable and inequitable" "financial ransom" that stands "to unjustly enrich the [Conference's] bank accounts," contrary to the "intent of the parties and the Gospel mission of each church." Am. Compl. ¶¶ 1-2, 81, 104, 139-40, 142, 157, 159, 164.

- Similarly, Plaintiffs want the Court to nullify the Conference Board of Trustees' decision to require each disaffiliating church to make a payment equal to 50% of the assessed value of the church's real estate (*id.* ¶ 77), notwithstanding that the General Conference (i) expressly provided

in *Discipline* ¶ 2553.4 that "the terms and conditions for [any] disaffiliation" shall be established by the board of trustees of the applicable annual conference, with the advice of the cabinet, the annual conference treasurer, the annual conference benefits officer, the director of connectional ministries, and the annual conference chancellor, and (ii) expressly accorded annual conferences discretion in ¶ 2553.4(a) to "develop ***additional*** standard terms" for disaffiliation, provided only that such terms "are not inconsistent with the standard form" developed at the General Conference's direction by the denomination's General Council on Finance and Administration.

- Plaintiffs even ask the Court to conclude that *Discipline* ¶¶ 2548.2 and 2549 provide alternative "pathways under the Discipline for local churches . . . to disaffiliate," Am. Compl. ¶ 81, in direct conflict with the Judicial Council's holding that "¶ 2553 controls in matters of local church disaffiliation" and "there is no other provision available in *The Discipline*." JCD 1449 at 7-8 (emphasis in original).

Plaintiffs' challenge to ecclesiastical decisionmaking is plainly barred by the First Amendment and, as such, this Court may not exercise jurisdiction over the dispute.

B. The Court Lacks *In Rem* Jurisdiction and Is Not a Proper Venue to Adjudicate the Claims Asserted by the Thirty-Five Plaintiff Churches That Are Located Outside of Anne Arundel County

Dismissal is warranted for the additional reason that venue is improper in this Court for all four of the Plaintiff Churches, the others seek title to land situated elsewhere in Maryland – or in West Virginia. *See* Md. Rule 2-322(a)(2). To be sure, this court may – indeed, must – first decide the threshold subject matter jurisdiction discussed above before reaching this venue challenge.

See, e.g., Kent Island, LLC v. DiNapoli, 430 Md. 348 (2013).[6] If, however, the Court exercises subject matter jurisdiction, venue is plainly improper here for most plaintiffs.

1. The Circuit Court for Anne Arundel County Lacks *In Rem* Jurisdiction over Plaintiff Churches Located in Other Maryland Counties and West Virginia

Plaintiffs themselves characterize this case as presenting a "*real property* dispute between Plaintiff Churches and Defendants" (Am. Compl. ¶ 57), and that it surely is, given that the principal relief sought for all ten counts is a declaration that Plaintiffs "are entitled to the quiet, exclusive, uninterrupted, and peaceful possession of their respective properties (real and personal) without any interference from Defendants." *Id*. at pp. 39, 43. As such, each Plaintiff's claim is fundamentally an *in rem* local action, not a transitory action, and venue is therefore proper only in the county where the property at issue is located. That requires dismissal of most Plaintiff Churches, as only *four* of the plaintiff churches is located in Anne Arundel County. The real property as to which twenty-one plaintiffs seek a declaration of ownership and possessory rights is located in other Maryland counties, and fourteen of the plaintiff churches are not located in Maryland at all, but in West Virginia.[7]

[6] Venue challenges and subject matter jurisdiction challenges often appear side by side, raising the question of which should be addressed first – as both present threshold issues. The Court of Appeals' decision in Kent Island is instructive. In that case, the defendant challenged both subject matter jurisdiction and venue, and the circuit court ordered a venue transfer. The Court of Special Appeals concluded that the original venue was proper. The Court of Appeals, however, held that subject matter jurisdiction was lacking at the outset, such that the venue analysis was redundant: "The Court of Special Appeals should have dismissed the underlying action in *Kent Island II,* rather than engaging in a venue analysis. Accordingly, we reverse." 430 Md. at 368; *accord Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (concluding that subject matter jurisdiction is a threshold consideration and rejecting concept of "hypothetical jurisdiction").

[7] Plaintiffs cannot justify venue for the *non*-Anne Arundel County churches based on the Amended Complaint's assertion that § 6-207 of the Courts and Judicial Proceedings Article ("CJP") applies "because *part* of the subject trust property is in Anne Arundel County . . . ." Am. Compl. ¶ 60. The Court of Appeals clearly holds that plaintiffs cannot properly invoke CJP § 6-207 to establish venue by "aggregating their separate properties, located in different counties, into a greater whole and regarding them as merely a portion of that whole[.]" *Piven*, 397 Md. at 289.

"A court's resolution of questions of title and ownership to real property is a paradigmatic exercise of in rem jurisdiction." *PNC Bank, Nat'l Ass'n*, 215 Md. App. at 328, 81 A.3d at 509. A court "cannot decree in rem, when the thing against which the decree goes . . . is beyond its territorial jurisdiction." *InterMoor, Inc. v. U.S. Wind Inc.*, 2021 WL 4130752, at *3 (Md. App. Sept. 10, 2021) (quoting *White v. White*, 7 G. & J. 208, 208 (1835)), *cert. denied*, 476 Md. 592, 264 A.3d 1287 (2021). A court's "territorial jurisdiction" is limited to "the county in which the court sits." *Id.* at *2. Put differently, a "circuit court is vested with power to act only within its county." *Id.* at *3.

In *InterMoor, Inc. v. U.S. Wind Inc.*, the Maryland Court of Special Appeals considered whether the Circuit Court for Worcester County had jurisdiction to impose and enforce a mechanic's lien—an *in rem* proceeding—on a meteorological tower situated on the Outer Continental Shelf ten nautical miles off the coast of Worcester County. 2021 WL 4130752, at *1. Looking first to the Maryland Constitution, then to the Maryland Code, then to Maryland case law, the court found there was not "any Maryland legal authority [supporting] the proposition that the circuit court may exercise in rem jurisdiction over a property located outside of the county in which the court sits." *Id.* at *3. Because the meteorological tower was located ten miles off the coast of Worcester County—and not in Worcester County—the court concluded that the Circuit Court for Worcester County did not have jurisdiction over the mechanic's lien action and affirmed its dismissal. *Id.* at *4.

Here, Plaintiff Churches are asking the Court to resolve questions of title and ownership to real property. They cite the Real Property chapter of the Maryland Code, claiming that "Jurisdiction and Venue are also appropriate in the Circuit Court for Anne Arundel County pursuant Md. Code Ann., Real Property § 14-108." *Id.* ¶ 61. Section 14-108—"Quieting Title to

Property"—provides that "[a]ny person in actual peaceable possession of property . . . may maintain a suit . . . in the circuit court for the county where the property or any part of the property is located to quiet or remove any cloud from the title, or determine any adverse claim." MD. CODE ANN., REAL PROP. § 14-108(a). That Plaintiff Churches rely on this Section to establish jurisdiction and venue further suggests that Plaintiff Churches are asking the Court to resolve questions of title and ownership to real property.

Again, whether the Court can resolve questions of title and ownership to real property depends on whether it can exercise *in rem* jurisdiction over the properties at issue. *See PNC Bank, Nat'l Ass'n*, 81 A.3d at 509. Plaintiff Churches are churches located in Anne Arundel County and outside of Anne Arundel County, so there are two categories of real property at issue here: churches in Anne Arundel County and churches outside of Anne Arundel County. The churches outside of Anne Arundel County include churches in other Maryland counties as well as churches in West Virginia.

The Court has jurisdiction over Plaintiff Churches in Anne Arundel County because those churches are located in Anne Arundel County, "the county in which the court sits." *InterMoor, Inc.*, 2021 WL 4130752, at *2. But the Court does not have jurisdiction over the churches outside of Anne Arundel County—both those in other Maryland counties and in West Virginia—because those churches are not located in Anne Arundel County, "the county in which the court sits." *Cf. Kortobi v. Kass*, 182 Md. App. 424, 431-32, 957 A.2d 1128, 1132 (2008), *aff'd*, 978 A.2d 247 (2009) ("The question of whether there is property within the court's territorial reach that will provide a jurisdictional base 'is a simple one since the situs of realty or tangible personalty [sic] is not difficult to determine.'") (quoting *Livingston v. Naylor*, 173 Md. App. 488, 514, 920 A.2d 34, 50 (2007)).

2. This Court Is Not a Proper Venue for Adjudicating the Claims of Plaintiff Churches That Own No Property in Anne Arundel County

Venue "concerns the place, among courts having jurisdiction, that an action will be litigated." *Sigurdsson v. Nodeen*, 180 Md. App. 326, 343, 950 A.2d 848, 857 (2008), *aff'd*, 408 Md. 167, 968 A.2d 1075 (2009). Acknowledging venue's "ancient lineage," "Maryland has long recognized a distinction between local actions, which must be brought where the subject matter of the action is located, and transitory actions, which ordinarily may be brought wherever defendant works, lives, or has a principal office." *Piven v. Comcast Corp.*, 397 Md. 278, 284-85, 916 A.2d 984, 988 (2007). "Local actions" include actions where real property is at issue. *Id.* (citing *Crook v. Pitcher*, 61 Md. 510, 513 (1884)). Indeed, those actions must be brought in the county where the property at issue is located. *See id.* ("[L]ocal actions be brought in the county where the subject matter of the action is located.").

This principle applies even when the action makes the same type of claim as to distinct properties located in different counties. Even then, each claim must be brought in the county where the particular property at issue is located; claims regarding multiple distinct parcels located in different counties cannot be aggregated and asserted together in any one county where at least some of properties are located.

Piven v. Comcast Corp., for example, involved plaintiffs who filed an action in the Circuit Court for Baltimore County that involved one property in Baltimore County and another in Baltimore City. *Id.* at 985. Plaintiffs' lawsuit alleged that the wires Comcast had strung across each of their properties constituted a trespass and asserted other "quiet title" claims asking for "legal ownership of the wires over their property or requiring [defendants] to remove the wires[.]." *Id.* Defendants moved to dismiss the complaint for improper venue, arguing that "claims involving distinct properties located in different jurisdictions and owned by different plaintiffs cannot be

combined in one jurisdiction." *Id.* at 986. The circuit court agreed—reasoning that the actions were local actions "that had to be brought in the county where the land was located, and that it was impermissible to bring, or join, a claim for trespass to property in Baltimore City in an action in Baltimore County"—and granted the defendants' motion to dismiss. *Id.*

The Court of Special Appeals and the Court of Appeals affirmed. *Id.* at 984. Revisiting venue's "ancient lineage," the Court of Appeals noted that the "heart of the distinction between local and transitory actions" precluded the plaintiffs "from aggregating their separate properties, located in different counties, into a greater whole and regarding them as merely a portion of that whole." *Id.* at 990. It likewise rejected the plaintiffs' reliance on Section 6-202(7) of the Maryland Code: "to the extent the action could in any way be construed as one to recover possession of real property, it could be brought only where a portion of the land is located." *Id.* at 990-91. As to the plaintiff whose property was in Baltimore City, that was only "in Baltimore City." *Id.* at 991.

As explained above, here Plaintiff Churches are asking the Court to resolve questions of title and ownership to real property. Therefore, this is a local action that must "be brought in the county where the real property is located." *Piven*, 916 A.2d at 988. As *Piven* demonstrates, the fact that several of the Plaintiff Churches are located in Anne Arundel County is not enough for venue to be proper in Anne Arundel County. *See id.* at 990-91. And as *Piven* also demonstrates, Plaintiff Churches' nod to Section 6-202(7), Am. Compl.¶ 60, does not cause a different result.

It follows that the claims brought by the Plaintiff Churches in West Virginia must be dismissed, even if this Court were not required to abstain from exercising jurisdiction for First Amendment reasons. Likewise the claims brought by Plaintiffs Churches in other Maryland counties may not be adjudicated here, and Defendants submit that those claims should be

dismissed, rather than endeavoring to disentangle and assign claims to various counties. S*ee Lampros v. Gelb & Gelb, P.C.*, 837 A.2d 229, 232 (2003) (citing Md. Rule 2–322(c).

C. The Derivative Claims Asserted in Counts III and IV Must Be Dismissed Because the Plaintiff Churches Are Not "Members" of the Conference

Besides asserting claims that are inextricably intertwined with matters of church governance and ecclesiastical authority, and therefore immune from civil court review on First Amendment grounds, the fundamentally derivative claims the plaintiff churches purport to assert on the Conference's behalf in Counts III and IV must be dismissed because Plaintiffs are not corporate members and therefore lack standing to assert those claims.

No local churches, and therefore none of the plaintiff churches, qualify as members of the Conference. In line with most other states, the Maryland Court of Appeals has declined to allow parties that are neither officers nor members of a non-profit corporation to assert derivative claims on behalf a non-profit corporation. *See O'Donnell v. Sardegna*, 336 Md. 18, 30 646 A.2d 398, 404 (1994) (plaintiff subscribers to health services insurance plans offered by a nonstock, non-profit corporation lacked standing to bring derivative claims on behalf of the corporation because none of them were directors or members of the corporation).

Indeed, in *O'Donnell*, the Court surveyed precedent from other states and identified only a "relative handful of cases . . . in which a nonmember has attempted to bring a derivative action on behalf of a nonprofit corporation," and found that, "[w]ith but one possible exception that our research has disclosed, the cases hold that nonmembers have no standing." 336 Md. at 35, 646 A.2d at 406 (citing *Chambrella v. Rutledge*, 69 Haw. 271, 740 P.2d 1008 (1987)).

Notably, one of the reported cases the *O'Donnell* Court reviewed was *Basich v. Board of Pensions of the Evangelical Lutheran Church in America*, 493 N.W.2d 293 (Minn. Ct. App. 1992), after the Protestant denomination known as the Evangelical Lutheran Church of America

("ELCA"), itself a nonprofit corporation, passed a resolution stating that the ELCA's separately incorporated Board of Pensions should not invest any of the clergy pension funds in companies doing business in South Africa during Apartheid. *Id*. at 294. Three ministers who participated in the pension plan filed suit challenging the investment limitation as a breach of duty on the part of the Pension Board, but the Minnesota Court of Appeals held that the ministers lacked standing to bring the claims because they were not corporate members of either ELCA or its separately incorporated Board of Pensions. *Id*.

The fundamentally derivative claims that the plaintiff churches purport to bring on the Conference's behalf in Counts III and IV suffer from the same defect that required dismissal of the derivative claims asserted in *O'Donnell* and in *Basich* (the ELCA clergy pension case). The Baltimore-Washington Conference is both (1) an ecclesiastical entity, whose membership as such is defined in *Discipline* ¶ 32; and (2) a Maryland nonprofit corporation, whose corporate members are listed in the Eighth Article of the Conference's Articles of Incorporation, which simply incorporates by reference the definition provided in the *Discipline*.[8] Neither source identifies any local church, let alone any of the plaintiff churches, as members of the Conference. Rather, all such members are human beings, consisting of (1) individual clergy members of the Baltimore-Washington Conference, (2) individual lay members elected to represent each local church (in a number equal to the number of ministers serving that church), (3) various officers of the Conference, and (4) two "young persons" from each of the Conference's defined geographic districts. *See Discipline* ¶ 32.[9]

[8] Article Eighth of the Conference's Articles of Incorporation now provides simply, "As provided by the Book of Discipline of the United Methodist Church, this corporation shall be comprised of ministerial and laity members as defined by the General Conference." *See* Starnes Affidavit, Ex. 4.

[9] *Discipline* ¶ 32 defines the membership of annual conferences as follows:

Accordingly, Counts III and IV of the First Amended Complaint are defective on their face and must be dismissed.

D. The Conference's Board of Trustees Lacks the Capacity to be Sued

The *Discipline* provides that every annual conference "shall have a board of trustees, which shall be incorporated if the conference itself is not incorporated." *Discipline* ¶ 2512.1. Since the Baltimore-Washington Conference is incorporated, the Conference's Board of Trustees need not be, and while it was initially incorporated it has since been merged into the Conference corporation.

Thus, as things now stand, the Conference's Board of Trustees is not a distinct entity. Rather, as provided in *Discipline* ¶ 2512, the Conference trustees function as "the directors of [conference] corporation." In the same way, the Maryland Code provides that trustees of a local

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> The annual conference shall be composed of clergy and lay members. The clergy membership shall consist of deacons and elders in full connection, provisional members, associate members, and local pastors under appointment. The lay membership shall consist of professing lay members elected by each charge, the diaconal ministers, the active deaconesses, and home missioners under episcopal appointment within the bounds of the annual conference, the conference president of United Methodist Women, the conference president of United Methodist Men, the conference lay leader, district lay leaders, the conference director of Lay Servant Ministries, conference secretary of Global Ministries (if lay), the president or equivalent officer of the conference young adult organization, the president of the conference youth organization, the chair of the annual conference college student organization, and one young person between the ages of twelve (12) and seventeen (17) and one young person between the ages of eighteen (18) and thirty (30) from each district to be selected in such a manner as may be determined by the annual conference. In the annual conferences of the central conferences, the four-year participation and the two-year membership requirements may be waived by the annual conference for young persons under thirty (30) years of age. Such persons must be professing members of The United Methodist Church and active participants at the time of election. Each charge served by more than one clergy shall be entitled to as many lay members as there are clergy members. The lay members shall have been for the two years next preceding their election members of The United Methodist Church and shall have been active participants in The United Methodist Church for at least four years next preceding their election.
>
> If the lay membership should number less than the clergy members of the annual conference, the annual conference shall, by its own formula, provide for the election of additional lay members to equalize lay and clergy membership of the annual conference.

United Methodist church "shall be the directors of the religious corporation" if the church they serve is itself incorporated. Md. Code. Ann, Corp. & Ass'ns § 5-324(b).

Against that backdrop, the Conference's Board of Trustees, as a group, is not a distinct legal entity and cannot be sued as such. Just as "a corporate board of directors is not a legal entity separate and apart from the corporation itself and, thus, should not be named as a separate party," *Heslep v. Americans for African Adoption, Inc.*, 890 F. Supp. 2d 671, 678 (N.D. W.Va. 2012), the Conference's Board of Trustees, like the trustees of any religious corporation, is not a distinct legal entity and lacks the capacity to be sued in its own name. *See North St. Louis Christian Church v. McGowan*, 62 Mo. 279, 288 (1876) ("Religious incorporations are aggregate corporations, and whatever property they possess or acquire is vested in the body corporate. . . . Although [the officers of the corporation are] called trustees they do not hold the property in trust. Their right to intermeddle with or manage the property is an authority, and not an estate or title. They have no other or greater possession than the directors of a bank in a banking establishment. The whole title or estate is vested in the incorporated body and the corporation is the proper party to sue.")

For this additional reason, all claims asserted against the Conference Board of Trustees must be dismissed.

V. CONCLUSION

For the reasons discussed above, Defendants respectfully request that the First Amended Complaint be dismissed, with prejudice, as set forth in the accompanying proposed Order.

Date: June 20, 2023

By: /s/ Brian A. Coleman

Brian A. Coleman (I.D. No. 9806230112)
Anthony F. Jankoski (I.D. No. 1912170169)
FAEGRE DRINKER BIDDLE & REATH LLP
1500 K Street, N.W., Suite 1100
Washington, D.C. 20005
P: (202) 842-8868
Brian.Coleman@faegredrinker.com
Anthony.Jankoski@faegredrinker.com

Thomas E. Starnes (*pro hac* pending)
STARNES PLLC
5416 32nd Street, N.W.
Washington, D.C. 20015
P: (202) 630-9948
tomstarnes@starnespllc.com

Attorneys for Defendants