

The amicus brief, Charles A. Shirley, et al., v. Christian Methodist Episcopal Church, was joined by Clifton Kirkpatrick, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.). The brief was filed in the Supreme Court of Mississippi on June 8, 1999.

IN THE SUPREME COURT OF MISSISSIPPI
NO. 98-CA-00587

CHARLES SHIRLEY, LARRY BOULDES,
JIMMIE A. SHIRLEY AND WILLIE BOULDES

APPELLANTS

VS.

CHRISTIAN METHODIST EPISCOPAL CHURCH

APPELLEES

APPEAL FROM THE CHANCERY COURT
LOWNDES COUNTY, MISSISSIPPI

HONORABLE DOROTHY W. COLOM, PRESIDING

BRIEF FOR AMICI CURIAE GENERAL COUNCIL OF FINANCE AND
ADMINISTRATION OF THE UNITED METHODIST CHURCH, MISSISSIPPI
ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH,
THE STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN
CHURCH (U.S.A.), THE UNITED HOUSE OF PRAYER FOR ALL PEOPLE
OF THE CHURCH ON THE ROCK OF THE APOSTOLIC FAITH, THE PRESBYTER OF THE
PRESBYTERY OF ST. ANDREW, AND THE SEVENTH-DAY ADVENTIST CHURCH

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

The Court's decision in this case will determine who owns real property that one small congregation in Steens, Mississippi, has used as the place of worship for 52 years. The decision will be intensely important, of course, to the parties locked in this particular struggle, the more so because both sides have come to their positions as matters of faith. It will be important to the local parishioners because the property in question has been the place of their baptisms, marriages, funerals and countless other events that mark the journey of

a Christian life. But the decision will be no less important to the Christian Methodist Episcopal Church ("CME Church"), for that Church teaches that property ownership, like all aspects of Christian life, should bear witness to the central tenets of the faith, including the principle that all Christians are part of a larger, unified "Body of Christ." Under that doctrinally-rooted view, all members of the denomination may lay claim to the church's resources, no matter who is entrusted with maintaining and cultivating those resources on a daily basis for the greater good of the Church at large.

The amici who sponsor this brief share the latter perspective. Each is affiliated with a denomination that has adopted an ecclesiastical polity in which congregations covenant to hold their property in trust for the benefit of the denomination as a whole. From the amici's perspective, this case presents the Court with a crucial opportunity to amplify the opinion issued last summer in *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200 (Miss. 1998) ("Freewill"), and affirm that the "neutral principles" approach to resolving church property disputes must be applied in a manner that respects the constitutional rights of voluntary religious associations to make and enforce these faith-based choices regarding property ownership without interference from civil authorities.

STATEMENT OF THE INTEREST OF THE AMICI

The interests of the amici are expressed in detail in their motion for leave to file this brief. For present purposes, the amici stress that their rules governing property ownership are informed in part by religious considerations. That is, requiring local congregations to hold their property in trust of the denomination is not simply an administrative matter. For some amici, it is an expression of their understanding of what their faith requires; for others, it reinforces their unity in faith.

For example, John Wesley, the father of Methodism, caused deeds with trust clauses to be drawn up in England more than 250 years ago as a means of enforcing the doctrine that bishops, not local churches, have the authority to appoint preachers. Without such restrictions, it was feared, local trustees might be able to exclude the bishop's pastoral appointments from the property, thereby undermining the crucial Methodist principles of "connectionalism" and "itineracy." *Id.* Those principles, in turn, arise from the "idea that as a people of faith [Methodists] journey together in connection and in covenant with one another," an idea that has "deep biblical roots," as evidenced by New Testament images like "the vine and the branches, . . . the fellowship of the saints, the Body of Christ, and a host of others . . ."

The Book of Discipline of The United Methodist Church, para 112 at 111-112 (1992). It is these kinds of principles that are ultimately at stake here.

LEGAL ARGUMENT

I.

The Chancellor's Resolution of this Dispute Accords with the "Neutral Principles" Approach Endorsed by the Supreme Court of the United States

In *Jones v. Wolf*, 443 U.S. 595 (1979), the United States Supreme Court reaffirmed two crucial, constitutional limitations on the manner in which civil courts may resolve church property disputes. "Most importantly," the Court held, "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones*, 443 U.S. at 602. A "corollary to this commandment" is that civil courts must "defer to the resolution of issues of religious doctrine or polity by the highest court of an hierarchical church organization." *Id.*

The neutral principles approach seeks to steer a course through these limitations. It seeks to avoid consideration of doctrinal matters by resting the resolution of property disputes on a purely secular analysis 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." *Id.* at 603. The Chancellor's resolution of this case should be recognized as a model application of that approach.

A. The Chancellor's Decision is Mandated by a Neutral Reading of the Language of the Relevant Deed

Chancellor Colom's primary rationale for affirming the CME Church's interest in the Cross Roads property is based on an eminently neutral reading of the plain terms of the deed in question. The Chancellor concluded that, since the deed expressly identifies the legal title holders as "Trustees of the Cross Roads Colored Methodist Episcopal Church" and their "successors and assigns," the owners of record cannot possibly include persons who have disavowed the denomination the trustees named in the deed were obliged to serve. As Chancellor Colom put it: "Once the Defendants voted to leave the CME Church, they lost their roles as successors to the original trustees under the deed and may not keep the property for their own use." Slip op. at 6.

The Chancellor's reasoning is unassailable. The deed to the property plainly identifies the legal title holders as trustees of a congregation affiliated with a specifically-named denomination and the successors or assigns of the trustees who held that particular office. In the face of this language, not to mention the longstanding affiliation of the local church with the CME Church, there is no basis for concluding that the parties to the deed intended to reserve to the local congregation the right to control the property even if it severed its relationship with the denomination identified in the deed.

B. The Chancellor's Decision Is Required by a Neutral Reading of the CME Church's Book of Discipline

To backstop her common-sense reading of the deed, Chancellor Colom also concluded that a trust in favor of the CME Church arose by virtue of the terms of The Book of Discipline of The Christian Methodist Episcopal Church ("CME Discipline"). *Id.* at 6-7. The CME Discipline provides that, since "The Christian Methodist Episcopal Church is organized and operates as a Connectional Structure," titles to all local church property "shall be held in trust for the Christian Methodist Episcopal Church and subject to the provisions of its Discipline." CME Discipline, para 602 Appellee's Record Excerpts ("R.E." at 39). Furthermore, while the denomination prefers that trust clauses favoring the general church be included in all deeds, *id.*, para 602.2, the CME Discipline makes clear that the absence of a trust clause in the deed does not excuse the local congregation from its responsibility to hold property in trust for the entire denomination: [The absence of a trust clause . . . in deeds and conveyance[s] previously executed shall in no way exclude a local church . . . from or relieve It of its Connectional responsibilities to the Christian Methodist Episcopal Church. Nor shall it absolve a local congregation or church agency or Board of Trustees of its responsibility and accountability to the Christian Methodist Episcopal Church; provided that the intent and desires of the congregations or Boards of Trustees and/or later congregations or Boards of Trustees are shown by any or all of the following indications:

(a) The conveyance of the property to the trustees of a local church or agency of the Christian Methodist Episcopal Church;

(b) The use of the name, customs and polity of the Christian Methodist Episcopal Church in such a way as to be thus known to the community as a part of the Christian Methodist Episcopal Church[;]

(c) The acceptance of the pastorate of ordained ministers appointed by the Presiding Bishop, or use of the tax exempt privileges of the C.M.E. Church.

Id., para 602.2, § 5 (R.E. at 41).

There is no dispute that Cross Roads met not merely one, but each of these criteria. The congregation has stipulated that, before it renounced its affiliation with the CME Church, it had always been a member of the denomination; had always paid its annual assessments to the denomination; had always accepted the ministers the CME Bishops appointed to serve that congregation; and had always accepted Bible study literature provided by the CME Church. R.E. at 44-45. Given these facts, the plain terms of the CME Discipline obliged Chancellor

Colom to find that the Cross Roads property was impressed with a trust in favor of the CME Church, irrespective of the wording of the deed.

This analysis is entirely consistent with the neutral principles approach described in Jones. The Supreme Court held in Jones that denominations may protect their interest in local church property not merely by "modify[ing] the deeds or the corporate charter to include a right of reversion or trust in favor of the general church[,]" but also by amending "the constitution of the general church . . . to recite an express trust in favor of the denominational church." Jones, 443 U.S. at 606 (emphasis added). Indeed, as an example of that very approach, the Jones opinion discusses with approval a decision by Georgia's Supreme Court, *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, 327, cert. denied, 429 U.S. 868 (1976), which enforced a trust in favor of the parent church based on provisions in The Book of Discipline of The United Methodist Church that are virtually identical to the provisions found in the CME Discipline. See Jones, 443 U.S. at 600 & n.2. II. The Court Should Clarify the Standards That Govern Application of the "Neutral Principles" Approach

While the Chancellor's decision comports with the neutral principles analysis approved by the U.S. Supreme Court, the amici are concerned that passages in this Court's opinion in *Freewill* might be read to suggest that Mississippi's take on the neutral principles approach requires a different result here. The amici are troubled that *Freewill* might be read as saying that (1) a trust arising from the denomination's constitution will have no effect unless the congregation "was indeed a legitimate 'sister church' in affiliation with [the parent church]," *Freewill*, 716 So.2d at 208; (2) a trust in favor of the denomination cannot be based on provisions in the parent church's constitution that were adopted after the congregation acquired the property in question, *id.*; or (3) a parent church's "failure" to contribute to the purchase price of the property proves that a local church does not hold the property in trust for the denomination. *Id.* at 209. The amici submit that applying these concepts here would be inconsistent with U.S. Supreme Court precedent, would thrust Mississippi courts into conducting the very kind of religious inquiry that the Constitution forbids, and would make it exceedingly difficult for denominations like the amici ever to protect their doctrinally-rooted interest in local church property.

A. A Denomination's Interest in Local Church Property Cannot Turn on the "Legitimacy" of a Congregation's Affiliation with the Denomination, or on Whether the Local Church Has Followed the Denomination's Rules

The *Freewill* opinion suggests that, once it is determined that the rules of the denomination in question purport to give the national church an interest in local church property, the "relevant inquiry becomes the relationship between the [parent church and the local] congregation to determine if the . . . congregation was indeed a

legitimate 'sister church' in affiliation with [the denomination] and if the . . . congregation had indeed complied with the by-laws of [the denomination]." Freewill, 716 So. 2d at 208 (emphasis added). The amici submit that such an inquiry is not justified when, as in this case, (1) the local church cannot seriously deny its affiliation with the denomination in question, or (2) conducting the inquiry would require the court to resolve religious questions that the church is entitled to resolve for itself, without interference from civil courts.

While the amici do not have access to the record in Freewill, it appears that the Court had reason to doubt whether the congregation in that case had ever, in fact, affiliated itself with the denomination. The Court's opinion indicates that the record contained evidence, including testimony and affidavits from officials of the denomination itself, that the parent church "did not consider any Mississippi congregations as a part of its denomination," Freewill, 716 So. 2d at 208; that the "congregation had no voice or vote at any meeting or conference of [the denomination]," *id.*; that "the people of Moss Point 'fellow-shipped' with several other denominations," *id.*; and that the denomination's own witnesses had the "understanding that church and the property belonged to the local people," *id.* at 203.

The facts in this case are distinctly different and supply no justification for scrutinizing the "legitimacy" of the Cross Roads congregation's admitted affiliation with the CME Church. The Cross Roads congregation concedes, without qualification, that it "has always been a member" of the denomination; always contributed its annual assessments" to the denomination; "always accepted the ministers appointed [by CME Bishops] to serve the congregation"; and "always accepted Bible study literature provided by the CME Church." R.E. at 44-45 (emphasis added).

When a local church's affiliation with a denomination is undeniable, there is no basis for undertaking a civil inquiry of the "legitimacy" of that affiliation. In particular, the Court must reject Cross Roads' suggestion that it can avoid the obligations imposed by the CME Discipline if it can demonstrate that "Cross Roads never officially joined the CME [C]hurch, but instead was [merely] voluntarily associated with CME." Slip op. at 6 (emphasis added). See also Appellant's Br. at 33, nn. 2-3 (in which Cross Roads argues that its "choice" to follow procedures "prescribed by the DISCIPLINE . . . cannot be used as a basis for the determination of the ownership of property," presumably because that "choice" may merely reflect esteem for the principles espoused in Discipline, rather than submission to the authority that authored the principles).

Other courts, including the Supreme Courts of Georgia and Alabama, have sensibly rejected similar arguments. In *Carnes*, Georgia's Supreme Court adopted the following quote from an Indiana appellate decision involving The United Methodist Church:

"A local church, if it desires to remain independent of the influence of a parent church body, must maintain this independence in the important aspects of its operation -- e.g., polity, name, finances. It cannot, as here, enter into a binding relationship with a parent church which has provisions of implied trust in its constitution, . . . yet deny the existence of such relationship. It does not matter whether the agreement to be bound is memorialized. A local church cannot prosper by the benefits afforded by the parent, participate in the functioning of that body, yet successfully disclaim affiliation when the parent acts to the apparent disadvantage of the local, so to shield from equitable or contractual obligation the valuable property acquired by the local church either before or during such affiliation."

Carnes at 328-29 (quoting *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 276 N.E.2d 916 (Ind. App. 1971)).

Similarly, in *African Methodist Episcopal Zion Church v. Zion Hill Methodist Church*, 534 So. 2d 224, 228 (Ala. 1988), Alabama's highest court held that, having associated itself for 75 years with AME Zion Church, a local church could not "sever the relationship between AME Zion and itself and unilaterally declare that obligations incumbent upon itself because of three-quarters of a century of association do not now exist." On the contrary, the local church*s "choice to join AME Zion means it is obligated to obey all the rules and regulations its members promised to uphold, not just the rules and regulations they prefer" *Id.*

This analysis also demonstrates the impropriety of examining the extent to which the local church has obeyed the rules of a denomination with which it is admittedly affiliated. If a congregation can credibly claim that it has never joined a denomination that is seeking to exert control over the congregation's property, the fact that the congregation's conduct is wholly inconsistent with the denomination's rules may perhaps be taken as evidence of the lack of any affiliation in the first place. It is quite a different matter, however, to allow a congregation that admits being a member of a denomination to argue that its failure to follow certain of the denomination's rules exempts it from those rules. As the Alabama Supreme Court explained in *Zion Hill*, using a local church's disrespect for the parent church's rules as grounds for denying the parent church's rights is tantamount to saying that, "because the [local church] broke the rules of the Discipline, [it] should be immune from those rules." *Zion Hill*, 534 So. 2d at 227.

Overlaying all of this is a more fundamental concern: examining the quality or character of a local church's affiliation with a denomination, or seeking to calibrate the extent to which a local church has adhered to the denomination's rules, will virtually always require the kind of inquiry that the First Amendment forbids, namely, "a searching and therefore impermissible inquiry into church polity."

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 723 (1976). It is no more appropriate for a civil court to determine which congregations are "legitimately" affiliated with a denomination than it is for the courts to decide which individuals qualify as "members" of a local church, or which persons are qualified to pastor a church. As one court has explained, few decisions stand closer to the core of a church's beliefs and mission than identifying those with whom they are bound together in faith, and churches are entitled to make those central decisions without any interference from the state:

While the religious principles that a church espouses and the minister or priest and other officials who govern are certainly important, an indispensable part of any church is the collection of individuals who have joined together in worship and constitute the church's membership. For essentially the same reasons that courts have refused to interfere with the basic ecclesiastical decision of choosing the minister or priest of a church . . . , this Court must not interfere with the fundamental ecclesiastical concern of determining who is and who is not [a member of the defendant church].

Burgess v. Rock Creek Baptist Church, 734 F. Supp. 30, 33 (D.D.C. 1990).

B. The CME Discipline in Effect When the Dispute Arose Is Controlling

The Court should also make clear that trust provisions contained in a parent church's constitution are binding on local churches even as to property acquired before the constitution was amended to include the trust provisions. When the Supreme Court approved the neutral principles approach in Jones, it explained that one of the merits of the approach was that it allows local and parent churches to order their affairs and make their intentions known before a court is called upon to resolve a dispute over church property. Jones, 443 U.S. at 603-604. In making that point, the Court made clear that the critical date is the date the dispute arises, not the date the property is acquired:

Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general trust can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result dictated by the parties, provided it is embodied in some legally cognizable form.

Id. at 606 (emphasis added).

The Supreme Court's lead has been consistently followed by other states. In *Polen v. Cox*, 267 A.2d 201 (Md. 1970), for example, Maryland's highest court rejected a local church's claim that its consent to a denomination's rules extended only to the rules in effect when the congregation joined the denomination or acquired the property in question. When the local church, an African-American congregation, joined the denomination the parent church's constitution subdivided the denomination into two separate branches, one for African-American churches and the other for white congregations. *Id.*, 267 A.2d at 202. When the two branches were later merged, the local congregation objected and withdrew from the denomination, but sought to continue using the local church property. *Id.* at 203. The denomination's constitution, however, provided that local church property stays with the denomination upon the withdrawal of a local congregation. *Id.* at 206. The court recognized that the congregation "may have placed a great deal of value on the segregated church structure" when it joined the denomination. *Id.* at 207. Nevertheless, "by agreeing [at the outset] to be bound by the [denomination's constitution], it should have been apparent that a majority vote at the General Assembly level might change any doctrinal practice and that if such change was so unpalatable as to cause withdrawal, the property would revert to the control of the national body." *Id.* Similarly, the Court indicated that a congregation would be deemed to consent to a change in the hierarchy's rules regarding the ownership of local church property unless the local church protested the change by withdrawing from the denomination promptly after the change was made. *Id.* at 207.

In this case, there is no evidence that the Cross Roads congregation ever complained when the CME Discipline was revised to make clear that local churches cannot escape their obligation to hold property in trust for the denomination if they accept the bishop's pastoral appointments or use the name, customs or polity of the parent church. Moreover, given its longstanding association with the CME Church, the local church knew (or certainly should have known) that all CME churches are governed by a living, organic document -- the CME Discipline -- that is subject to amendment at each quadrennial session of the denomination's General Conference. Under these circumstances, it is entirely equitable to hold a local congregation accountable to the denomination's rules regarding property ownership as those rules evolve.

In contrast, distinguishing the local church's obligations based on property-acquisition dates would impose significant burdens on local and parent churches. Congregations frequently acquire several parcels of property over the course of years or even decades. It would be pointlessly confusing to hold that properties acquired early in such a congregation's life are held free and clear of any obligation to the denomination, while parcels acquired later are impressed with a trust

in favor of the parent church. The situation would be hopelessly muddled in cases involving contiguous parcels. What, for example, would be the local church's obligations when a new sanctuary is constructed across adjoining parcels, one of which was only recently acquired to meet the congregation's need for a sanctuary larger than its original property could accommodate? Would half the sanctuary be held in trust, but not the other half? Such perplexity is hardly consistent with the Supreme Court's conviction that one of the virtues of the neutral principles approach is that "the burden involved" in protecting a denomination's interest in local church property "will be minimal." *Jones*, 443 U.S. at 606.

C. A Trust in Favor of the Denomination Should Not Turn on Whether the Parent Church Has Contributed Funds Toward the Acquisition of the Property

Finally, the Court should reject the defendant's effort to diminish the CME Church's interest in the Cross Roads property by asserting that the denomination "contributed only \$1,000.00 to the building of a sanctuary which is now insured at a replacement cost of \$85,000.00." Well-reasoned decisions by other courts faced with such arguments have concluded that financial contributions by the parent church are irrelevant to the proper resolution of church property disputes. See *Mills v. Baldwin*, 362 So. 2d 2 (Fla. 1978), vacated and remanded for further consideration, 446 U.S. 983 (1979), reinstated, 377 So. 2d 971 (Fla. 1979), cert. denied, 446 U.S. 983 (1980); *Smart v. Indiana Yearly Conference of Wesleyan Methodist Church*, 271 N.E.2d 713 (Ind. 1971); *Pilgrim Holiness Church v. First Pilgrim Holiness Church*, 252 N.E.2d 1 (Ill. App. 1969). Indeed, the Court must treat the issue of whether the parent church helped fund the property's purchase as irrelevant if the constitution of the denomination that the local church is obliged to follow makes it irrelevant to the question of property ownership. In this case, for example, the CME Discipline (like the Disciplines of other Methodist denominations) expressly lists the factors that are to be considered in determining whether a trust relationship exists, and the existence of funding by the parent church is not among those factors. A civil court cannot add that factor to the list without encroaching on the church's free exercise rights to define its doctrines, practices and polity for itself, without interference from secular courts. *Serbian*, supra.

Furthermore, if a denomination's interest in local church property were conditioned on its contributing part of the purchase price, hierarchical denominations would rarely prevail in cases of this type. It is the usual case, not the exception, that local parishioners raise the vast majority, if not all, of the funds used to acquire local church property. But that practice is not at all inconsistent with the creation of a trust in favor of the general church. Indeed, even

outside the religious property context, most trusts are funded by the grantor of the trust (the local congregation in our context), not the beneficiary (the denomination as a whole). It would be unusual, to say the least, if it were the other way around -- if children, for example, were expected to contribute to trusts established for their benefit by their parents. There is no reason to adopt a different model for churches, and doing so would be the antithesis of "neutrality."

The amici do not, for a minute, mean to diminish the sacrifice their parishioners make to acquire and improve property that is needed to fulfill the church's mission. None of the amici could long survive without such sacrifices. But it must also be remembered that, over the course of time, legions of local parishioners -- including, no doubt, the founders of the Cross Roads congregation -- have contributed their hard-earned money and labor as an expression of faith in, and with the expectation that the congregation will remain faithful to, the principles of a particular denomination. In addition, local congregations receive countless benefits from their association with a larger denomination, including being served by pastors trained at the denomination's colleges and seminaries; receiving hymnals and Sunday School literature prepared by musicians and educators trained at those institutions; and being part of a national (and in some cases global) system of missions and programs, the fruits of which are often used to sustain local congregations in need.

The ultimate point, however, is this: the fact that a congregation funds all or the lion's share of the cost of acquiring the property in question does not relieve the parishioners of their pledge -- a pledge they freely made by joining a hierarchical, rather than a congregational, denomination -- to commit their talents and resources to the good of their Church as a whole.

CONCLUSION

For all of the foregoing reasons, the amici respectfully urge the Court to affirm the Chancellor's decision in this case as a proper application of the neutral principles approach to resolving church property disputes.

Respectfully submitted,

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I, Thomas E. Starnes, hereby certify that on this the 8th day of June, 1999, I have mailed, by United States mail, postage prepaid, a true and correct copy of the foregoing amicus brief to:

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