

The amicus brief, From the Heart Church Ministries, Inc., et al., v. African Methodist Episcopal Zion Church Mid-Atlantic II Episcopal District, et al., was joined by Clifton Kirkpatrick, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.). The brief was filed with the Maryland Court of Appeals on July 6, 2000.

IN THE COURT OF APPEALS OF MARYLAND
September Term, 2000
Case No. 3

FROM THE HEART CHURCH MINISTRIES, INC., ET AL.,
Appellants
v.
AFRICAN METHODIST EPISCOPAL ZION CHURCH
MID-ATLANTIC II EPISCOPAL DISTRICT, ET AL.,
Appellees

APPEAL FROM THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND
(The Honorable E. Allen Shepherd, Judge)
ON WRIT OF CERTIORARI TO THE COURT OF
SPECIAL APPEALS OF MARYLAND

BRIEF AMICUS CURIAE OF
THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED
METHODIST CHURCH, THE GENERAL CONFERENCE OF SEVENTH-DAY
ADVENTISTS, THE PROTESTANT EPISCOPAL CHURCHES OF THE DIOCESES OF
WASHINGTON AND EASTON, THE AMERICAN BAPTIST CHURCHES IN THE U.S.A.,
THE PRESBYTERIAN CHURCH (U.S.A.), AND THE REORGANIZED CHURCH OF
JESUS CHRIST OF LATTER-DAY SAINTS

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INTRODUCTION AND STATEMENT OF THE CASE

Like countless other cases of its kind, this case is far more than a dispute over property. As Justice Frankfurter put it nearly fifty years ago in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952), “What is at stake here is the power to exercise religious authority. That is the essence of this controversy. It is that even though the religious authority becomes manifest and is exerted through authority over [religious property] as the outward symbol of a religious faith.” *Id.* at 121 (Frankfurter, J., concurring).

Indeed, in this case, as in many others such as *Kedroff, Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440 (1969), the church property is more than a symbol of religious faith. It is also central to the ability of a religious community—reduced though it may be by the departure of its former pastor and other members—to assemble for religious worship and fellowship. Communal worship and fellowship are fundamental features of virtually every major religious tradition, be it Jewish, Muslim, Buddhist, Hindu or, as in this case, Christian. *See generally* Douglas Laycock, *State RFRA’s and Land Use Regulation*, 32 U.C. DAVIS L. REV. 755 (1999). And communal worship requires a “sacred space”—be it a church, synagogue, temple or mosque—where the faithful can assemble.

In this case, too, as in many others, the dispute over religious property reflects a broader dispute about authority to determine the nature of the relationship between an individual congregation and the larger denomination or community of which it is part. Here, as in many other cases, the nature of that relationship—including the authority to control religious property—is a matter of religious doctrine, not simply a matter of administration.

In short, this case is at bottom a dispute about religious institutions’ authority, based on their own religious beliefs, to control not only religious symbols, but also the manner of worship in religious buildings and the nature of the relationship between individual congregations and the broader

denomination. At every turn, therefore, this case raises First Amendment values, interests, and limitations that the courts are bound to respect.

Appellant Cherry, the former minister of a congregation of the African Methodist Episcopal (AME) Zion Church, and the trustees of the property used by that congregation, have decided to reject the religious authority of the AME Zion Church. They have decided, instead, to form their own church (known as From the Heart Church Ministries, Inc.). That, of course, is their right under the U.S. Constitution and the laws of Maryland.

Appellants, however, are not content simply to leave the AME Zion Church. They also want the courts of this state to deprive that organization of its authority over religious property—property that was acquired with contributions collected under that church’s banner, and which is still needed for worship by those from Mr. Cherry’s former congregation who have remained part of the AME Zion Church. By seeking to gain control of the religious property, appellants want this Court to ignore key provisions of the Church’s *Book of Discipline*. Those provisions, like similar provisions in the charters of many other religions, are based on religious doctrine, in this case John Wesley’s reading of the book of Acts. And those provisions specify that local property is to be held in trust for the benefit of the larger community.

To avoid the trust provisions of the AME Zion *Book of Discipline*, moreover, appellants seek to have this Court adopt legal rules based on what can only be described as a bias in favor of religious schisms. This bias is perhaps best captured in a quotation from a legal treatise that appellants claim (incorrectly) to have been endorsed by this Court: “Schisms are . . . analogous to the process of breaking and reforming by which a glacier makes its slow way to its destination,” and are “as necessary to the growth of the church as the fissures on the outer bark of trees produced by the expansion of the living tissue below.” Br. at 20 (quoting Zollman, *American Church Law*, at 250-51).

Appellants’ legal arguments reflect this “pro-schism” bias. For example, in attempting to evade the property provisions of the *Book of Discipline*, appellants implicitly reject the principle—well settled since at least *Watson*, 80 U.S. 679—that affiliation with any voluntary association (including a religious one) constitutes consent to that association’s governing documents. Instead, appellants argue that a member, and even an ordained minister, of a religious body must be shown to have specifically

consented to each provision at issue. And even if such consent was obtained, appellants contend, the organization can be subjected to extensive discovery, and a civil trial, on the question of whether it enforced its requirements with sufficient vigor to avoid a “waiver” of them.

Appellants further contend that, if a religious organization wishes to protect its property from diversion to a different religious group, the organization must ensure the presence of an express “reverter provision” in its deeds, its governing documents, or perhaps even a state statute. In appellants’ view, generic trust provisions of the sort routinely used by non-religious voluntary associations, and by several of the *amici* here, will not suffice.

In short, appellants ask this Court to adopt a set of rules, unique to religious communities, that will make it as easy as possible for disaffected groups to take the community’s property with them if they decide to break away. This is not to say, of course, that the Court should base its decision on any bias *against* such schisms and in favor of established religious authority. This Court has long followed a “neutral principles” approach to the resolution of these kinds of disputes, and *amici* do not oppose a proper application of that approach here. Indeed, as the Supreme Court observed in *Jones v. Wolf*, 443 U.S. 595, 603 (1979), “[t]he primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity.” But the Court cannot, consistent with the Constitution, adopt a pro-schism bias any more than it can adopt an approach that is less favorable to religious associations than to non-religious ones.

QUESTION PRESENTED

At bottom, this case presents a single, controlling issue of great concern to *amici* and, indeed, virtually all religious associations: Does a religious association retain the right to control the use of religious property notwithstanding the desire of the property’s trustees—as a result of a schism in the association—to transfer the property elsewhere, where the association’s governing documents in effect at acquisition specify that such property is to be held in trust for the benefit of the association?

STATEMENT OF FACTS

Amici adopt as their own the statement of facts in the brief of the appellees.

SUMMARY OF ARGUMENT

Resolution of the issue presented in this case is controlled by two bedrock principles of law that should be reaffirmed and applied by this Court. First, a member of a religious organization—and especially a minister—must be deemed to have accepted a church’s existing governing documents by the simple act of becoming a member or officer of that organization. To require a religious organization to prove that the member (or minister) specifically consented to a particular provision and that the organization did not, through its course of dealings, “waive” any such provision, would be flatly unconstitutional. It would subject religious organizations to stricter standards than non-religious voluntary associations. It would unfairly favor schisms. It would interfere with internal church governance. And it would enmesh the courts in an entangling inquiry into the manner in which a church exercises authority over its local officials. Accordingly, this Court should reaffirm as a matter of Maryland “neutral principles” law the general principle articulated repeatedly by the Supreme Court in such decisions as *Watson*, 80 U.S. at 710-11, namely, that “[a]ll who unite themselves to [a church] do so with an implied consent to [its] government, and are bound to submit to it.”

Second, like any other voluntary association, a religious community must be allowed to protect the community’s interest in locally used property through any formulation, in its deeds *or* its governing documents, that expressly *or* by legal implication gives control to the broader community in the event of a schism. No reverter clauses or other “magic words” should be required. Adherence to this principle is necessary to protect a church’s free exercise right to organize itself in any way it sees fit and to avoid impermissible discrimination, both against religious organizations in general and among denominations in particular. This principle also fully comports with the neutral principles approach approved by the Supreme Court in *Jones v. Wolf*, 443 U.S. 595 (1979), and with the prior decisions of this Court.

Contrary, to appellants’ arguments, these decisions in no way require an express “reverter clause.” To interpret them otherwise would be to accept appellants’ argument that Maryland law is, in effect, biased against established religious communities and in favor of schisms.

These two principles are sufficient, under the undisputed facts of this case, to sustain the trial court's grant of summary judgment to the AME Zion Church. The trust provisions of the 1980 version of the Church's *Book of Discipline* clearly establish a trust in favor of the denomination on all premises used as places of worship or as a parsonage. Unlike the situation in situation in *Mt. Olive African Methodist Episcopal Church of Fruitland v. Board of Incorporators*, 348 Md. 299, 703 A.2d 194 (1997), moreover, the AME Zion Church adopted those provisions before the acquisition of any of the property at issue here. Appellants are thus bound by those provisions of the *Discipline*, not only because they freely and expressly submitted themselves to that document, but also because they, like participants in all other voluntary organizations, must be deemed to have consented to the governing documents of the organization when they joined it.

ARGUMENT

I. THOSE WHO, LIKE APPELLANTS, JOIN A DENOMINATION, CHURCH, OR OTHER VOLUNTARY ASSOCIATION MUST BE DEEMED TO HAVE CONSENTED TO THE REQUIREMENTS OF THE ASSOCIATION'S GOVERNING DOCUMENTS.

Appellants acknowledge, as they must, that the *Discipline* on its face deals with the beneficial ownership and disposition of church property acquired and used by local congregations. Most of the appellants' brief is devoted to arguing either that the *Discipline* does not mean what the AME Zion Church says it means, or that, as a matter of law, the *Discipline* is inadequate because it does not contain an express "reverter" clause dealing with schisms. These arguments will be addressed in the next section.

This section, however, addresses an important issue that appellants raise at the end of their brief but which is logically prior to the others, *i.e.* whether the pertinent provisions of the *Discipline* are binding on appellants at all. This of course is a critical issue of "religious authority"—in Justice Frankfurter's words—that applies to virtually all religious communities, not just hierarchical ones. Appellants contend that the provisions of the *Discipline* are not binding on them, either because appellants never consented to them, or because the AME Zion Church somehow waived them. Br. at 35-37. At a minimum, appellants argue that material issues of fact must be resolved before a court can

determine whether these provisions are binding and, therefore, that summary judgment was improper. Br. 37-40.

It is no wonder that appellants assert these arguments almost as an afterthought, for they are utterly lacking in merit. As shown below, the settled rule is that one who joins a church (like one who joins any other voluntary association) is deemed by that act alone to have consented to the requirements of the church's governing documents, and is therefore bound by them. This "consent-by-affiliation" rule is constitutionally necessary, not only to avoid discrimination between churches and other voluntary associations, but also to avoid impermissible entanglement and to respect the church's constitutionally protected autonomy. And in this case, unlike the situation in *Mt. Olive African Methodist Episcopal Church of Fruitland v. Board of Incorporators*, 348 Md. 299, 703 A.2d 194 (1997), the undisputed facts show that the *Discipline's* property clauses were in effect at least as early

as 1981, before any of the property at issue here was acquired.¹ Accordingly, whatever those clauses may mean, appellants are unquestionably bound by them.

A. THE CONSENT-BY-AFFILIATION RULE IS FIRMLY ESTABLISHED IN THE DECISIONS OF THIS COURT AND OTHER COURTS, IN BOTH THE CHURCH AND NON-CHURCH CONTEXTS.

It has long been the law, in this state and elsewhere, that “one who becomes a member of an association is deemed to have known *and* assented to its bylaws, and cannot be heard to object to the enforcement thereof.” 6 AM. JUR. 2D *Associations and Clubs* § 5 (1999) (emphasis added);

¹ AME Zion’s *Book of Discipline* is updated every four years by its general conference. Because the 1980 *Discipline* was in effect at the time appellants joined the denomination, *amici* have referred to that version throughout, rather than the current 1996 *Discipline*. The references to the 1980 *Book of Discipline*, however, should not be taken to suggest that *amici* believe it is the operative version of the *Discipline* in this case.

On the contrary, religious institutions, like any other voluntary association, have the autonomy to amend their governing documents and have those documents bind their members. *See e.g.*, 6 AM. JUR. 2D *Associations and Clubs* § 10 (1999); *Orchard Ridge Country Club, Inc. v. Schrey*, 470 N.E.2d 780 (Ind. App. 1984). Properly enacted amendments to the governing documents bind the members of the association just as effectively as did the governing documents in effect when the member joined. *See Calabrese v. Policeman’s Benev. Ass’n Local No. 76, Inc.*, 384 A.2d 579 (N.J. Super. Ct. Law Div. 1978); *Skane v. Star Valley Ranch Ass’n*, 826 P.2d 266 (Wyo. 1992). Maryland has long recognized this principle. *See Supreme Conclave Improved Order of Heptasophs v. Rehan*, 119 Md. 92, 85 A. 1035, 1036 (1912) (holding that after one joins a voluntary association, the association “may enact reasonable rules and amendments, and bind him to their observance”). Because Maryland law allows nonreligious institutions to enact such amendments, the neutral principles doctrine dictates that the same rule apply to religious institutions.

Moreover, the 1980 *Book of Discipline* explicitly provided that the General Conference had the power to make, revise and amend any rule or regulation for the Church. *See Book of Discipline* ¶ 72-73 (1980). Because appellants consented to the 1980 *Discipline*, they also consented to all later versions of the *Discipline* that would be created by the properly enacted amendments of the General Conference. For all these reasons, the 1996 *Book of Discipline* is operative and binding on appellants.

However, because both versions of the *Book of Discipline* contain the same trust provisions, this Court need not determine which version of the *Discipline* is operative in order to conclude that appellants hold their property in trust for the denomination as a whole. For the Court’s reference, ¶ 431 of the 1980 *Book of Discipline* is identical to ¶ 494 of the 1996 *Discipline*, and ¶ 432 § 2 of the 1980 *Discipline* is—with two slight editorial changes—identical to ¶ 495.2 of the 1996 *Discipline*.

Donnelly v. Supreme Council, Catholic Benevolent Legion, 106 Md. 425, 429-30, 67 A. 276, 278 (1907). Indeed, the courts of this state have long held that a member of an association “has no ground of complaint” when an association enforces its own rules, for the association “is but carrying into effect the agreement he made when he became a member of the association.” *Most Worshipful United Grand Lodge v. Lee*, 128 Md. 42, 49, 96 A. 872, 874-75 (1916); *accord NAACP v. Golding*, 342 Md. 663, 679 A.2d 554, 558 (1996) (“courts will not interfere with the internal affairs of a voluntary membership organization”); *Martin v. United Slate, Tile & Composition Roofers*, 196 Md. 428, 77 A.2d 136 (1950); *Anacosta Tribe, No. 12, Improved Order of Red Men v. Murbach*, 13 Md. 91 (1859); *Chisholm v. Hyattstown Volunteer Fire Dep’t, Inc.*, 115 Md. App. 58, 70, 691 A.2d 776, 781 (1997). Other courts likewise uniformly hold that, by joining or affiliating with a voluntary association, one necessarily consents to the organization’s governing documents. *E.g.*, *Maine Cent. R. Co. v. Bangor & Aroostook R. Co.*, 395 A.2d 1107 (Me. 1978) (railroad association); *Adams v. American Quarter Horse Ass’n*, 583 S.W.2d 828 (Tex. Civ. App. 1979) (horse registration association); *Liggett v. Koivunen*, 34 N.W.2d 345, 349 (Minn. 1948) (labor union, and citing other cases involving labor unions); *La Salle County Farm Bureau & Illinois Agric. Ass’n v. Thompson*, 245 Ill. App. 413 (1927) (agricultural association).

The same principle has long been recognized and applied in the specific context of religious institutions. As the Supreme Court put it in *Watson v. Jones*, “[t]he right to organize voluntary religious associations . . . for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned.” 80 U.S. (13 Wall.) 679, 728-29 (1871). Moreover, “[a]ll who unite themselves to such a body do so with an implied *consent* to this government, and are bound to submit to it.” *Id.* (emphasis added). This critical passage, which the Supreme Court later said “has a clear constitutional ring,” has been repeated in virtually every Supreme Court decision involving church property. *See, e.g.*, *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 446; *see also Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 114 (1952); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 711 (1976).

This Court has also previously recognized and applied this consent-by-affiliation principle. For example, this Court has ruled that, although “each religious corporation is entirely free to affiliate with any denomination it pleases,” when it does so it “becomes bound by its system of church ownership.” *Maryland & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 249 Md. 650, 659, 241 A.2d 691, 701 (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). Many other courts have likewise applied this same principle in the context of religious organizations. *E.g.*, *Fluker Community Church v. Hitchens*, 419 So.2d 445, 446 (La. 1982); *Western Pa. Conference of the United Methodist Church v. Everson Evangelical Church*, 312 A.2d 35, 37 (Pa. 1973); *Hardin v. Starnes*, 221 S.W.2d 824, 828-29 (Tenn. App. 1949).

The consent-by-affiliation principle is so well established—and so central to the neutral principles doctrine—that its application in this case cannot be seriously questioned. Moreover, as explained in detail below, if this principle is applied here, there can be no doubt that appellants are bound by the *Discipline* of the AME Zion faith. For there is no dispute that this document (or at least its pertinent features) was in effect when appellants affiliated with that denomination, and that by joining the denomination, they must therefore be deemed to have consented to its provisions. Thus, appellants’ attempt to cast doubt on whether they are bound by the *Discipline* is akin to an argument by a party to a contract that he should be excused from performance simply because he never read the pertinent document. *See, e.g.*, *Rossi v. Douglas*, 203 Md. 190, 100 A.2d 3 (1953); *Kolker v. Gorn*, 202 Md. 322, 96 A.2d 475 (1953).

B. APPLICATION OF THE CONSENT-BY-AFFILIATION RULE IN CIRCUMSTANCES SUCH AS THESE IS NECESSARY TO AVOID IMPERMISSIBLE DISCRIMINATION AGAINST RELIGIOUS ASSOCIATIONS, TO PROTECT THEIR AUTONOMY, AND TO AVOID IMPERMISSIBLE ENTANGLEMENT.

Application of the consent-by-affiliation rule to disputes of this kind is not only consistent with applicable precedent. As the Supreme Court has recognized, that rule also has a “clear constitutional ring.” *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Church*, 393 U.S. at 446. Indeed, application of that rule is constitutionally necessary here, for at least three reasons.

Discrimination Against Religious Institutions. First, application of a more stringent rule for determining whether a former church member is bound by the denomination's governing documents would result in unconstitutional discrimination between religious and non-religious voluntary associations. As explained above, the consent-by-affiliation rule is routinely applied to the latter. Accordingly, the Free Exercise Clause permits the application of a more stringent test to religious associations only if the appellants can show that such a distinction is narrowly tailored to further a compelling government interest. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993); *Employment Div., Dep't of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990).² This they have not attempted to do and simply cannot do.

In short, it would be constitutionally impermissible, and the opposite of "neutrality," to impose more burdensome requirements on religious organizations than other voluntary associations such as labor unions. For this reason alone, appellants are wrong to suggest that the enforcement of a religious institution's governing documents must be predicated upon proof of an explicit act of consent beyond that implied by the act of joining the organization. They are likewise wrong to suggest that religious institutions, unlike other voluntary associations, can be subjected to a searching review of their conduct to determine whether the organization has somehow "waived" its rights under those documents.

Religious Autonomy. Second, failure to apply the consent-by-affiliation rule, and adoption of appellants' contrary approaches, could well result in an unconstitutional intrusion into the constitutionally protected autonomy of religious institutions. The First Amendment gives churches the "power to decide for themselves, free from state interference, matters of church government, as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116. Indeed, over the past two centuries, courts, including this one, have uniformly recognized that if First Amendment protection means anything, it means that a civil court may not entertain "a matter which concerns theological controversy, church discipline, ecclesiastical

² The Fourteenth Amendment's Equal Protection Clause, as well as Article 36 of Maryland's Declaration of Rights, mandate the same conclusion. *See Employment Div. v. Smith*, 494 U.S. 872, 886 n.3; *McDaniel v. Paty*, 435 U.S. 618 (1978); *Torcaso v. Watkins*, 367 U.S. 488 (1961); *McMillan v. State*, 258 Md. 147, 151, 265 A.2d 453, 455 (1970) ("Article 36 of the Declaration of Rights of the Constitution of Maryland give[s] extensive protection to religious liberty."); *Levitsky v. Levitsky*, 231 Md. 388, 190 A.2d 621 (1963).

government, or the conformity of the members of the church to the standard of morals required of them.” *Milivojevich*, 426 U.S. at 714; *see also Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Eldership I*, 294 Md. at 660, 241 A.2d at 697 (“the courts, wisely we think, will not enter a ‘theological thicket”); *Polen v. Cox*, 259 Md. 25, 31-32, 267 A.2d 201, 204-05 (1970); *Shaeffer v. Klee*, 100 Md. 264, 271, 59 A. 850, 852 (1905) (stating that religious controversies “must be left with the authorities of the church or denomination who have the power, by custom and usages of ecclesiastical organization, to consider and determine them”).³ This right to institutional autonomy is also protected by the constitution of this state. *See Maryland Const., Declaration of Rights, art. 36; McMillan v. State*, 258 Md. 147, 265 A.2d 453 (1970).

Appellants’ argument that they are not bound by the property provisions of the *Discipline*, however, is in large measure an invitation to the Court to second-guess the decisions of the AME Zion Church with regard to church government as well as matters of faith. Appellants contend, for example, that additional discovery and a trial are needed on whether the relationship between Full Gospel and AME Zion was “hierarchical” with respect to property matters. This is so, they say, because the evidence indicates that Full Gospel “was not a *typical* church within AME Zion” because it “used the *untraditional* name ‘Full Gospel,’ adopted *worship practices* that AME Zion considered *unconventional*,” or “departed from AME Zion’s traditional *modes of behavior*.” Br. at 9-10, 39 (emphasis added).

This argument is an affront to the First Amendment. Based on that provision, the Supreme Court has repeatedly forbidden civil courts from “question[ing] the centrality of particular beliefs or practices to a faith,” *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989), and “warned that courts must not presume to determine the place of a particular belief in a religion” *Smith*, 494 U.S. at 887. Thus, appellants’ attempt to have this Court rule on whether their “worship practices” and

³ As the Fifth Circuit has noted, judicial review of ecclesiastical matters would “cause the State to intrude upon matters of church administration and government which have so many times before been proclaimed to be matters of a singular ecclesiastical concern. Control of strictly ecclesiastical matters could easily pass from the church to the State. The church would then be without the power to decide for itself, free from state interference, matters of church administration and government.” *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972).

“modes of behavior” were “conventional,” “typical,” or “traditional” is foreclosed by the First Amendment.

In any event, even if appellants did depart in some ways from traditional AME Zion practice, that cannot logically relieve them of their obligations to hold their property in trust for the denomination. Appellants’ argument, “in effect, states that because [From the Heart] broke the rules of the *Discipline*, [From the Heart] should be immune from those rules.” *African Methodist Episcopal Zion Church v. Zion Hill Methodist Church, Inc.*, 534 So.2d 224 (Ala. 1988). Other courts have squarely rejected such arguments, *see id.*, and this Court should do so as well. To rule otherwise would be to adopt appellants’ pro-schism bias.

Even more misguided is appellants’ related suggestion that the courts should examine the level of control that the Church *actually* exercised over them as well as the degree to which they actually submitted to the Church’s authority. Appellants argue, for example, that they should be allowed to show that the AME Zion Church “waived” the provisions of the *Discipline* by, among other things, failing to force the appellants to change the pertinent deeds despite knowing that the deeds did not comply with the *Discipline*. Br. at 35-37. Based on the same factual allegations, appellants argue that “[d]espite AME Zion’s purportedly hierarchical structure, the record shows that, *in practice*, the relationship between AME Zion and From the Heart was congregational.” Br. at 9. Through both of these arguments, the appellants seek essentially seek to rewrite the AME Zion *Discipline* and polity so that they can establish that the property provisions of the *Discipline* are not binding on them.⁴

⁴ Similarly misguided is the appellants’ contention that there are legitimate factual disputes regarding their church’s polity. Appellants cite *Eldership I* for the proposition that a hierarchical polity “does not . . . exclude the use of a congregational polity so far as the use and control of property of the local congregation is concerned.” Br. at 38, *quoting Eldership I*, 249 Md. at 664, 241 A.2d at 699. Yet the *Eldership I* court was merely recognizing the possibility that some *denominations* might have a “hybrid polity,” one that was hierarchical for purposes of doctrine and discipline, yet congregational for the purposes of property ownership. Such a hybrid polity, if it exists at all, must exist on a denominational level. Appellants seem to think that individual congregations, on a case-by-case basis, could have hybrid polities within otherwise entirely hierarchical denominations. However, the clearly articulated command of the First Amendment forbids any kind of “detailed review” of the particular circumstances surrounding the polity of a local congregation. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 718 (1976).

Any such conclusion, however, would represent an unconstitutional intrusion into the religious practices of the AME Zion Church. As the Supreme Court put it in *Hull Memorial*:

“First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine *and practice*. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.”

Hull Mem’l, 393 U.S. at 449 (emphasis added). Additionally, such an inquiry would thoroughly undermine the neutral principles approach, which is supposed to “obviate[] entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.” *Jones*, 443 U.S. at 605.⁵

This is particularly true where, as here, a dispute involves the relationship between a church and its clergy. As the Fifth Circuit has held, “The relationship between an organized church and its ministers is its lifeblood. . . . Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern.” *McClure v. Salvation Army*, 460 F.2d 553, 558-59 (5th Cir. 1972). Indeed, this relationship is so critical to the protection of religious autonomy that it often requires exempting a church’s dealings with its clergy from generally applicable laws. *See, e.g., Equal Employment Opportunity Comm’n v. Roman Catholic Diocese*, ___ F.3d ___ (4th Cir. May 22, 2000), available in 2000 WL 667370 (ministerial exception exempts claim by former director of music ministry against

⁵ It is perhaps worth remembering also that appellants could not advance such arguments under the “deference to polity” approach to such controversies. Under that approach, the court simply defers to the authoritative decisions of a church hierarchy. *See Milivojevich*, 426 U.S. at 709; *Kedroff*, 344 U.S. at 120-21; *Watson*, 80 U.S. at 733-34. The courts, moreover, have held that this approach is a constitutionally acceptable alternative to the neutral principles approach. *See Jones v. Wolf*, 443 U.S. 595, 604 (1979); *Maryland & Va. Eldership of the Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 368-69 (1970) (Brennan, J., concurring); *Watson*, 80 U.S. at 724.

Amici do not ask this Court to abandon the neutral principles approach. As the Supreme Court has noted, it has some advantages over the deference approach. *See Jones*, 443 U.S. at 603-604. However, if misapplied, the neutral principles approach can draw courts into improper inquiries about church doctrine or organization that ultimately result in disguised revisions of theological doctrine. *See id.* at 604. Courts must therefore be careful in applying neutral principles to church property disputes so that they avoid the kind of intrusive inquiry that appellants invite here.

former employer); *Gellington v. Christian Methodist Episcopal Church*, 203 F.3d 1299 (11th Cir. 2000) (finding that the ministerial exception to Title VII is of continuing vitality).⁶ Although *amici* do not seek a similar “clergy exemption” in this case, the principles underlying those exemptions reinforce the need for avoiding any searching analysis of the AME Zion Church’s course of dealings with its ministers.

Appellants’ arguments would run afoul of these principles. The manner and extent to which a religious association chooses to enforce the requirements of its governing documents against its ministers is as much a matter of “religious practice” as the association’s manner of worship. Some religious communities—such as the original Puritan communities of New England—react quickly and decisively to any deviation from the community’s norms. Others may be willing to tolerate greater levels of deviation and, sometimes, dissent within their ranks. But regardless of a community’s decisions on such matters—either in general or in a particular case—those choices are *religious* choices. They cannot be overturned or second-guessed by the courts, either in the context of a property dispute, or otherwise. *See*

⁶ *See also Starkman v. Evans*, 198 F.3d 173 (5th Cir. 1999) (holding that ministerial exemption prevented a discharged church music director from maintaining an action under the Americans With Disabilities Act and a state retaliatory discharge statute); *Bollard v. California Province of the Soc’y of Jesus*, 196 F.3d 940, 944 (9th Cir.1999) (“The Free Exercise and Establishment Clauses of the First Amendment compel this exception to the otherwise fully applicable commands of Title VII when the disputed employment practices involve a church’s freedom to choose its ministers or to practice its beliefs.”); *Combs v. Central Tex. Annual Conference of the United Methodist Church*, 173 F.3d 343 (5th Cir. 1999) (Free exercise clause deprived federal court of jurisdiction to hear Title VII sex discrimination suit brought against church by member of its clergy, even though church’s challenged actions were not based on religious doctrine); *Equal Employment Opportunity Comm’n. v. Catholic Univ. of America*, 83 F.3d 455, 461 (D.C. Cir. 1996) (exempting clergy from Title VII); *Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994) (Free Exercise Clause bars Title VII action by probationary minister against her church); *Scharon v. St. Luke’s Episcopal Presbyterian Hospitals*, 929 F.2d 360 (8th Cir. 1991) (religion clauses bar application of Title VII and Age Discrimination in Employment Act claims of chaplain against church-affiliated hospital); *Minker v. Baltimore Annual Conference of the United Methodist Church*, 894 F.2d 1354, 1358 (D.C. Cir. 1990) (adjudication of minister’s Age Discrimination in Employment Act claim against his church would violate the Free Exercise Clause); *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989) (Free Exercise Clause bars wrongful termination action brought by clergyman against not-for-profit religious corporation); *Rayburn v. General Conference of Seventh-day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985) (religion clauses barred a racial and sexual discrimination lawsuit by a plaintiff denied a pastoral position).

Jones, 443 U.S. at 602 (“[T]he First Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.”); *Milivojevich*, 426 U.S. at 709 (“[T]he First and Fourteenth Amendments mandate that civil courts shall not disturb the highest ecclesiastical tribunal within a church or hierarchical polity, but must accept such decisions as binding on them.”); *Kedroff*, 344 U.S. at 120-21 (describing circumstances in which “the church rule controls” the determination of a civil court); *Watson*, 80 U.S. at 733-34. Nor can the courts discriminate among religious institutions on the basis of such choices. See *Smith*, 494 U.S. at 877 (recognizing that the Free Exercise Clause prohibits states from “impos[ing] special disabilities on the basis of religious views or religious status”); see also *Larson v. Valente*, 456 U.S. 228, 245 (1982); *McDaniel v. Paty*, 435 U.S. 618 (1978); *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953).

Such second-guessing would be particularly inappropriate in circumstances such as these, *i.e.*, in which differences in certain worship practices or beliefs lead to strains between the church denomination and the local church. For many denominations, the sensitivities of those situations require the denomination to place a high priority on pastoral issues—such as reconciliation, forgiveness, and patience—rather than on a rigorous insistence on legal rights. Such pastoral considerations are the essence of the practice of religion. The denomination's emphasis on pastoral issues and in preserving the unity of the church as a whole should not be viewed by a court as evidence that it has “waived” the protections of its governing documents.

Entanglement. Third, even if the courts of this state ultimately ruled in AME Zion's favor on all these issues of religious practice, the very process of litigating them would be unconstitutional. As the Supreme Court recognized in *N.L.R.B. v. Catholic Bishop*, 440 U.S. 490, 502 (1979), where matters of institutional government are litigated in the courts, “It is not only the conclusions that may be reached . . . which may impinge on rights guaranteed by the Religion Clauses, *but also the very process of inquiry leading to findings and conclusions.*” (emphasis added). Accordingly, the First Amendment forbids any “searching . . . inquiry into church polity.” *Milivojevich*, 426 U.S. at 723. Such inquiries violate both the free exercise rights of the institution, as well as the Establishment Clause's general prohibition on inappropriate “entanglement” between church and state. See *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); *Jones*, 443 U.S. at 599, 606; *Hull Mem'l*, 393 U.S. at 448-49.

Indeed, the Supreme Court has made clear that the First Amendment prohibits litigation not only over religious doctrine, but also over religious “practice”—such as (in this case) a denomination’s course of dealings with its ministers. As the Court put it in *Hull Memorial*, “First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine *and practice*.” 393 U.S. at 449 (emphasis added). And in *Milivojevich*, the Court expressly held that “[t]his principle applies with equal force to church disputes over church polity and church administration.” 426 U.S. at 710. The issue that appellants seek to litigate here—whether despite its hierarchical structure the AME Zion Church’s dealings with appellants was “in practice” congregational—is a classic issue of “church administration” the litigation of which is proscribed by these bedrock principles.

This Court has also repeatedly reaffirmed these basic principles: “Our predecessors have held, in accordance with the law generally in this Country, that in regard to matters involving spiritual affairs the Maryland courts have *no power to interfere*. Such matters ‘*must be left with the authorities of the church or denomination who have the power, by custom and usages of the ecclesiastical organization, to consider and determine upon them.*’ In short the courts, wisely we think, will not enter a ‘theological thicket.’” *Eldership I*, 249 Md. at 660, 241 A.2d at 697 (quoting *Shaeffer v. Klee*, 100 Md. 264, 271, 59 A. 850, 852 (1905)).

The only way to avoid such “theological thickets” in this case, the only way to avoid impermissible litigation about the AME Zion Church’s “practices” with respect to its ministers, and the only way to avoid the impermissible discrimination and intrusion into church autonomy discussed above, is to apply the consent-by-affiliation rule. By focusing only on whether a church member, minister, or congregation actually joined or affiliated with a religious association, that rule avoids any entangling or intrusive inquiry into matters of faith or religious practice.

C. IN THIS CASE, THERE IS NO MATERIAL ISSUE OF FACT WITH RESPECT TO WHETHER APPELLANTS ARE BOUND BY THE CHURCH’S BOOK OF DISCIPLINE.

As noted above, the consent-by-affiliation rule holds that “one who becomes a member of an association is deemed to have known and assented to its bylaws, and cannot be heard to object to the

enforcement thereof.” 6 AM. JUR. 2D *Associations and Clubs* § 5 (1999). Thus, even if Pastor Cherry and the other trustees of the property at issue here were *not* aware of the Discipline’s trust provisions—which is certainly not the case here—the appellants would still be bound by them by virtue of their undisputed membership in the AME Zion Church.⁷

Indeed, it is undisputed that those provisions were in effect at least as early as 1980, before Pastor Cherry became an AME Zion minister, before the property at issue here was acquired, and indeed before the necessary contributions were collected.⁸ In fact, the *Book of Discipline* itself states that when members of a local church wish to become united with the AME Zion Church, they must state their “desire to become organized under [the] Discipline,” and have “read to them the General Rules of [the] Church” before they can become members. *Book of Discipline* (1980) ¶ 49 § 1. By becoming members (and affiliates) of the AME Zion Church, appellants must be deemed to have consented to the *Discipline* and all of its relevant provisions.⁹

In sum, this Court should reaffirm, and apply in this case, the fundamental principle that is basic to the exercise of all religious authority: namely, that one who joins a voluntary religious association

⁷ It is undisputed that both Appellant Cherry and members of Appellant From the Heart participated actively and knowingly in the affairs of the AME Zion Church from 1981 until their withdrawal from the AME Church in July 1999. Those activities included: use of the name “AME Zion” in the congregation’s own name; participation in the annual General Conference of the AME Zion Church; attendance at District and Annual Conferences; payment of annual assessments to the AME Zion Church; acceptance of the bishop’s annual appointments of Appellant Cherry as pastor in charge by the AME Zion Church; and holding at least weekly religious services as an AME Zion Church denomination. (E. 747-48)

⁸ For this reason, appellants’ position would be contrary to the expectation of those who donated the money used to purchase this property. When they made those donations, these individuals obviously knew they were making them to Pastor Cherry in his capacity as a minister of the AME Zion denomination, and not in his individual capacity. Thus, those donors could not reasonably expect that the property would follow Pastor Cherry if he later chose to leave the denomination.

⁹ Even if knowledge of the *Discipline* were necessary, there is no dispute as to whether Mr. Cherry and the other trustees knew about those provisions at the relevant times. The congregation’s own original articles of incorporation specifically stated that voting membership requires “Full Connection in the A.M.E. Zion Church,” and that its Trustees had an “obligation . . . to uphold the laws and practices of the A.M.E. Zion Church as expressed in the Book of Discipline.” Obviously, then appellants knew at that time that the *Discipline* existed, and must surely have known of its trust provisions.

(like any other voluntary association) is deemed by that act alone to have consented to the provisions of that organization's governing documents.

II. A RELIGIOUS COMMUNITY MUST BE PERMITTED TO PROTECT ITS INTEREST IN LOCALLY USED PROPERTY THROUGH ANY FORMULATION IT CHOOSES, AND IN GOVERNING DOCUMENTS OF ITS OWN CHOOSING.

Having established that appellants are bound by the *Discipline* of the AME Zion Church, we now turn to the question whether that document suffices to sustain the trial court's decision granting summary judgment in the Church's favor. Appellants concede, as they must, that the *Discipline*—both in 1980 and again in 1996—included a “trust provision” applicable to local church property. Br. at 9, 11, 26-27. Appellants nevertheless contend that this provision was inadequate to protect the Denomination's interest in that property because it does not “*expressly* provide for the reversion” of that property to the AME Zion Church in the event of a schism. Br. at 17. Appellants contend that such a “reverter provision” is necessary because of a purported presumption in Maryland law in favor of “a congregational form of church government’ under which a local church controls its own property.” Br. at 15 (quoting but mischaracterizing *Mt. Olive African Methodist Episcopal Church of Fruitland v. Board of Incorporators of African Methodist Episcopal Church, Inc.*, 348 Md. 299, 314, 703 A.2d 194, 201 (1997) (“*Fruitland*”). Indeed, as noted above, appellants go so far as to suggest that this Court has endorsed the pro-schismatic view expressed by Professor Zollman. Br. at 20.

Appellants' view of the law is wrong. As shown below, nothing in this Court's decisions—or the decisions of any court of which we are aware—requires a denomination to include an express “reverter clause” in its governing documents. To the contrary, the law is settled that a religious institution, like any other voluntary association, can protect its interests in local church property through a garden-variety “trust provision” or through any other similar means. Appellants' proposed approach—and the anti-authority, anti-denominational bias on which it is based—would be patently unconstitutional and unfair. Moreover, the trust provisions contained in the *Discipline* easily establish a trust in favor of the AME Zion Church.

A. THIS RULE IS FIRMLY GROUNDED IN THE DECISIONS OF THIS COURT AND OTHER COURTS, IN BOTH THE CHURCH AND NON-CHURCH CONTEXTS.

It is well established, in Maryland and elsewhere, that voluntary associations have the autonomy to enact rules, regulations, bylaws, or constitutions that will control all questions of discipline, doctrine, or policy internal to the association. *See* 6 AM. JUR. 2D *Associations and Clubs* § 5 (1999); *Bonneville Properties, Inc. v. Simons*, 677 P.2d 1111, 1113 (Utah 1984) (noting that this proposition is “generally accepted”); *Lawson v. Hewel*, 50 P. 763, 764 (Cal. 1897) (“in all matters of policy or of the internal economy of the organization, the rules by which the members have agreed to be governed constitute the charter of their rights”); *Supreme Lodge of Order of Select Friends v. Raymond*, 47 P. 533 (Kan. 1897). Indeed, an association has a “sacred right” to adopt in its governing documents any rules that serve its interests or protect its welfare and are not contrary to law. *See* 6 AM. JUR. 2D *Associations and Clubs* § 5 (1999); *State ex rel. Givens v. Superior Court of Marion County*, 117 N.E.2d 553, 555 (Ind.1954); *see also Crane v. Indiana High Sch. Athletic Ass’n*, 975 F.2d 1315, 1320 (7th Cir. 1992); *Cox v. Government Employees Ins. Co.*, 126 F.2d 254, 256 (6th Cir. 1942); *Booker & Kinnaird v. Louisville Bd. of Fire Underwriters*, 224 S.W. 451, 454 (Ky. 1920). *See, e.g., Anacosta Tribe, No. 12, Improved Order of Red Men v. Murbach*, 13 Md. 91 (1859); *Marvin v. Manash*, 153 P.2d 251 (Or. 1944). As this Court has also noted, the governing documents of such an association are an enforceable contract between the members. *Martin v. United Slate, Tile & Composition Roofers*, 196 Md. 428, 440, 77 A.2d 136, 141 (1950); *accord Scott v. East Ala. Educ. Found., Inc.*, 417 So.2d 572, 573 (Ala. 1982); *Perkaus v. Chicago Catholic High Sch. Athletic League*, 488 N.E.2d 623, 627 (Ill. App. Ct. 1986); *Maine Cent. R. Co. v. Bangor & Aroostook R. Co.*, 395 A.2d 1107, 1119 (Me. 1978) (noting that this rule is “well established”); *Straub v. American Bowling Congress*, 353 N.W.2d 11, 13 (Neb. 1984). Moreover, “as a general rule, courts will not interfere in the internal affairs of a voluntary membership organization.” *NAACP v. Golding*, 342 Md. 663, 672, 679 A.2d 554, 558 (1996). In short, all voluntary associations have the institutional autonomy to employ any rules or regulations to protect their legitimate property interests, and this autonomy is free from interference by civil courts.

Appellants do not dispute the correctness of these principles as applied to *non*-religious associations. Indeed, appellants cite no Maryland authority indicating that nonreligious associations—or voluntary associations in general—have any obligation to protect their property interests through specific “reverter” clauses. Appellants nevertheless expend enormous effort to construe Maryland precedents as requiring explicit reverter clauses in deeds or governing documents of *religious* institutions.

If appellants’ interpretation of Maryland law were correct, Maryland would be well outside the mainstream. Indeed, all of the jurisdictions that have addressed the issue (of which we are aware) have ruled that religious institutions can protect their interests in property used by a local congregation through any formulation in their governing documents. The Supreme Court, for example, explicitly endorsed just such a practice in *Jones v. Wolf*, 443 U.S. 595, 600-01 (1979), when it discussed the Georgia Supreme Court’s award of local church property to the national denomination based upon an express trust provision in the *Book of Discipline* of the United Methodist Church. See *Carnes v. Smith*, 222 S.E.2d 322 (Ga. 1976). Numerous other courts have held that general provisions in a denomination’s governing documents are sufficient to protect the denomination’s property interests. See, e.g., *African Methodist Episcopal Zion Church in America, Inc. v. Zion Hill Methodist Church, Inc.*, 534 So.2d 224 (Ala. 1988); *First English Evangelical Lutheran Church v. Dysinger*, 6 P.2d 522 (Cal. App. 1931); *Bishop of Colorado v. Mote*, 716 P.2d 85, 99 (Colo. 1986); *St. John’s Presbytery v. Central Presbyterian Church*, 102 So. 2d 714 (Fla. 1958); *Clay v. Crawford*, 183 S.W.2d 797 (Ky. 1944); *Fluker Community Church v. Hitchens*, 419 So.2d 445 (La. 1982); *Southern Ohio State Exec. Offices of Church of God v. Fairborn Church of God*, 573 N.E.2d 172, 180 (Ohio App. 1989); *Western Pa. Conference of the United Methodist Church v. Everson Evangelical Church*, 312 A.2d 35 (Pa. 1973); *Nagle v. Miller*, 118 A. 670 (Pa. 1922); *Church of God in Christ, Inc. v. Cawthon*, 366 F. Supp. 1066 (E.D. Tex. 1973), *aff’d* 507 F.2d 599 (5th Cir. 1975); *Norfolk Presbytery v. Bollinger*, 201 S.E.2d 752, 758 (Va. 1974).

Contrary to appellants’ arguments, this Court has consistently followed this same principle. This is clearly exemplified in this Court’s opinions in *Babcock Mem’l Presbyterian Church v.*

Presbytery of Baltimore of the United Presbyterian Church in the United States, 296 Md. 573, 464 A.2d 1008 (1983) and *Polen v. Cox*, 259 Md. 25, 267 A.2d 201 (1970).

In *Babcock*, the local church voted to sever its ties with the national organization and executed deeds to its property transferring it to another party so that the local church could remove its existing trust obligations to the national denomination. The national denomination's governing document included the following provision:

Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct.

Babcock, 296 Md. at 584, 464 A.2d at 1014. Even though the denomination's governing document contained no explicit provision providing for reversion of the property to the national denomination upon the withdrawal of a local congregation, the Court deemed the constitution's provisions sufficient to create for the national church an interest in the property. *Babcock*, 296 Md. at 588, 464 A.2d at 1016. Hence, *Babcock* acknowledges that a church can protect its property rights with any formulation in its governing documents; the church is not limited to specific reverter clauses.¹⁰

¹⁰ Appellants attempt to distinguish *Babcock* on the ground that it was not a "withdrawal case." See Br. at 24-25. They claim that the issue in *Babcock* was limited to whether the church could transfer its property while still a member of the denomination. See *id.* However, in that case the transfer prior to withdrawal was purely a sham, an effort to relieve the local congregation of its trust obligations to the national church prior to its withdrawal. The congregation had anticipated withdrawal more than six months prior to the transfer of their property, and the conveyance had been part of the preparation for the withdrawal vote. See *Babcock*, 296 Md. at 575, 464 A.2d at 1009-10. For appellants to state that *Babcock* was not a withdrawal case is to rely upon paper-thin formalisms, which are inappropriate in the First Amendment context. See, e.g., *Mitchell v. Helms*, No. 98-1648, slip op. at 19, 2000 WL 826256 (June 28, 2000) (plurality opinion) (noting "the irrelevance of such formalism"); *Wolman v. Walter*, 433 U.S. 229, 250 (1977) (refusing similarly to "exalt form over substance").

The same is true of *Polen*. There, a local church attempted to withdraw from the Church of God following a change in the denomination's organizational structure. The governing documents of the denomination provided that "the right of any local church as a whole to withdraw from the General Assembly is not recognized and does not exist," *Polen*, 259 Md. 25, 34, 267 A.2d 201, 206 (1970), and that

If any local church shall cease to function or exist, then the local board of trustees shall hold the local property as trustees for the Church of God generally . . . and said local board shall convey the local property to the state board to be used and disposed of by it for the use and benefit of the church in that state generally.

Id. at 35, 267 A.2d at 206. This Court found that the local church had agreed to these trust provisions, and that they were therefore binding. *See id.* at 37, 267 A.2d at 207. The Court then concluded that "the Church of God clearly has made a determination that when a majority of the local church discontinues fellowship with the national church, the property does not follow." *Id.* at 36, 267 A.2d at 207. Thus, the denomination retained its interest in the property even though there was no reversion-upon-withdrawal clause in its governing documents. Like *Babcock*, then, *Polen* shows that Maryland law recognizes that denominations can protect their property rights through means other than reverter clauses.

To be sure, appellants repeatedly point to the "three methods" by which this Court, in *Eldership I*, said that a hierarchical church can protect its interests in local property. But no matter how often appellants invoke those "three methods" as a kind of talismanic incantation, *Eldership I* cannot be interpreted as limiting churches to them alone, for several reasons.

First, appellants' interpretation of *Eldership I* would be contrary to the Supreme Court's characterization of the neutral principles approach in *Jones v. Wolf*. There, the Court observed that, to protect an interest in local property, hierarchical churches "can modify the deeds or the corporate charter to include a right of reversion *or* trust in favor of the general church." *Jones*, 443 U.S. at 607 (emphasis added). And the Court went on: "*Alternatively*, the constitution of the general church can

be made to recite an express trust in favor of the denominational church.” *Id.* Thus, *Jones v. Wolf* clearly establishes that the neutral principles approach does not limit a hierarchical church to the “three methods” discussed in *Eldership I*.

Second, that interpretation is not supported by the language of the opinion. For example, in the passage immediately preceding its enumeration of three techniques, this court wrote that “[i]n many of the hierarchical churches there may be provisions in their Constitutions, Canon Law or other controlling documents or statutes which make it clear that the property is held in trust for the uses of the parent church and its discipline and appointments.” *Eldership I*, 249 Md. at 663, 241 A.2d at 698-99. Nothing in this general statement indicates that a specific reversionary clause would be required.¹¹

Third, as noted above, appellants’ interpretation is foreclosed by later decisions of this Court. Specifically, *Babcock* and *Polen* confirm that churches are not limited to using specific reversion-upon-withdrawal clauses if their governing documents employ some other means—like general trust language—to protect their interests in locally-used property. *See supra*. In fact, as this Court pointed out soon after deciding the *Eldership* cases, *Eldership I* “turned on the pivotal fact that the mother church failed to provide any rule or regulation regarding the disposition and control of local church

¹¹ An examination of the facts in *Eldership* also clarifies that the absence of a reverter clause in that case could not be dispositive. In *Eldership*, the relevant governing documents contained no provision that created a trust in the denomination’s favor. *See Eldership I*, 249 Md. at 664-65, 241 A.2d at 699-700. If the national church’s governing documents said nothing that would have created a trust, the only other possible way for the national church to establish control over the local property would have been through a specific reverter clause whose condition was the withdrawal of the local congregation. Yet, the national church had provided for no such reversion upon withdrawal, *see id.* at 665, 241 A.2d at 700, and without a specific clause whose condition was satisfied, the church had no legal basis to take the local property. On those facts, it is impossible to conclude that general trust provisions in a hierarchical church’s governing documents, or any other similar provisions, are insufficient to protect a hierarchical church’s property interest.

property upon withdrawal of the local congregation from the mother church.” *See Polen*, 259 Md. 25, 38, 267 A.2d 201, 208 (1970) (emphasis added).¹²

The general principle allowing hierarchical churches to protect their property through any formulation in their governing documents was further confirmed by this Court in *Fruitland*, 348 Md. 299, 703 A.2d 194 (1997). There, the lower court had specifically stated that “the *Eldership I* methods were not exclusive,” *id.* at 308, 703 A.2d at 198, and this Court did not disavow that conclusion. Indeed, this Court described *Eldership I* as merely “proffering” its three methods, not as establishing them as the exclusive means for hierarchical churches to maintain their control of locally-used property. *See id.* at 315, 703 A.2d at 202. In addition, the decision court went on to note that this Court has recognized at least one other method by which a denomination can protect its property interests: “the provisions of the constitution, charter or by-laws of the denomination and the action of the authoritative agencies of such denomination.” *Id.* at 315-16, 702 A.2d at 202. Thus, *Fruitland* confirms that the “three methods” of *Eldership I* are not the exclusive tools to which religious institutions must resort in order to preserve their legitimate property rights.

B. THIS RULE IS NECESSARY TO AVOID UNCONSTITUTIONAL DISCRIMINATION AGAINST AND AMONG RELIGIONS AND TO ENSURE THE CONSTITUTIONALLY PROTECTED AUTONOMY OF HIERARCHICAL RELIGIONS.

Appellants’ attempt to have this Court overrule long-standing precedent and adopt instead a rule requiring specific “reverter clauses” in a religious association’s governing documents also has

¹² The error of appellants’ interpretation of the *Eldership* cases is also apparent from the opinion in *United Methodist Church v. St. Louis Crossing Independent Methodist Church*, 276 N.E.2d 916 (Ind. Ct. App. 1971) (“*St. Louis Crossing*”). The court in that case relied heavily upon this Court’s opinions in *Eldership*; in fact, it quoted the very passage upon which appellants hang their entire argument. *See St. Louis Crossing*, 276 N.E.2d at 920-21 (quoting *Eldership I*, 249 Md. at 662, 241 A.2d at 698). The governing documents in that case did not contain a specific reversion-upon-withdrawal clause. *See id.* at 924-25. Nonetheless, the court found that the governing documents and the actions of the local congregation were sufficient to establish a trust in favor of the national denomination.

serious constitutional infirmities. These include discrimination against religious institutions in general; discrimination among religions; intrusion into such institutions' constitutionally protected autonomy; and improper entanglement.

Discrimination. Appellants' approach would foster three types of discrimination, each of which would be unconstitutional. First, if to protect their legitimate property interests religious institutions must act in accordance with special requirements not applicable to other voluntary associations, those special requirements would unconstitutionally discriminate against religion. The Supreme Court's cases "establish the general proposition that a law that is neutral and of general applicability need not be justified by a compelling governmental interest," but that "[a] law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993); see also *Employment Div., Dep't of Human Resources of Ore. v. Smith*, 494 U.S. 872 (1990). Any rule that would require religious institutions, but no other secular institutions, to employ particular reversion-upon-withdrawal clauses in their governing documents to protect their property rights is clearly not neutral; as the Supreme Court has explained, "if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral." *Lukumi*, 508 U.S. at 533 (citing *Smith*, 494 U.S. at 878-879).¹³ Rather, such a rule restricts the practices of a religious institution—specifically, the power of the religious institution to use its governing documents to order its affairs as it sees fit—simply because the institution is a religious one.¹⁴

¹³ Without question, AME Zion's interest in regulating property ownership by its individual congregations is "motivated by religious belief." John Wesley, the founder of Methodism, insisted that local churches hold their property in trust for the denomination as whole so that the church could enforce the doctrine that bishops, not local churches, have the authority to appoint preachers. See John Leo Topolewski, *Mr. Wesley's Trust Clause: Methodism in the Vernacular*, 27 *METHODIST HISTORY* 143, 144-46 (1999). This view, in turn, is based upon Acts 2:44-45, which states that "all who believed were together, and had all things in common, and sold their possessions and goods, and divided them among all, as anyone had need." Thus, AME Zion's practices regarding property ownership are based on religious doctrine and "motivated by religious belief."

¹⁴ Nor, obviously, is a special reversion-upon-withdrawal rule for religious institutions one of general applicability. See *Employment Div., Dep't of Human Resources of Ore. v. Smith*, 494 U.S. 872, 879-881 (1990). While the Supreme Court has not articulated the specific standard for evaluating

Second, appellants' interpretation of Maryland law would lead to a bias against hierarchical religions and in favor of congregational ones. But a neutral principles approach, in avoiding theological controversies, cannot resolve church property disputes in any fashion that favors particular religious sects or modes of church polity. To do so would violate both the concept of neutrality and the central meaning of the First Amendment's religion clauses. *See Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."); *Everson v. Board of Educ.*, 330 U.S. 1, 15 (1947).

In this regard, appellants mistakenly rely upon a passage in *Fruitland*, 348 Md. at 314, 703 A.2d at 201, in which this Court stated, "Maryland law thus is clear. The general provisions of the Religious Corporations law place the control of local church property in the hands of the trustees. . . . In other words, Maryland law contemplates a congregational form of church government." Appellants take this as deciding the issue in their favor, at least in the first analysis. But they ignore the constitutional constraints on Maryland's presumption in favor of a congregational form of church government. Because the First Amendment clearly requires that "one religious denomination cannot be officially preferred over another," *Larson*, 456 U.S. at 244, Maryland law's "contemplation" of a

whether a rule is one of general applicability, *see Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993), it is clear that appellants' reversion-upon-withdrawal rule fails to measure up to any such standard. A special rule that applies only to religious institutions is not a neutral principle of law, and it cannot be a law of general applicability.

Nor could appellants' proposed rule satisfy the settled requirement that "[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny." *Lukumi*, 508 U.S. at 546. Appellants offer no explanation of what purpose might lie behind a special reversion-upon-withdrawal rule for religious institutions. Whatever legitimate interest a state might have in "the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively," *Jones v. Wolf*, 443 U.S. 595, 602 (1979), that interest cannot justify different treatment for religious and secular institutions. The state's interest in settling secular property disputes with simple and determinate neutral principles of law is just as strong as that interest with respect to church property. By requiring a specific reversion-upon-withdrawal clause for only religious institutions, the appellants would impose a rule that is underinclusive. Because this rule is neither neutral nor generally applicable, it cannot be constitutional if it is underinclusive. Thus, appellants urge an interpretation of Maryland law that would run afoul of basic First Amendment principles.

congregational polity cannot strongly favor such churches. At most, while the neutral principles doctrine allows states to employ ordinary presumptions to help civil courts resolve church property disputes, the constitutional prohibition on official preferences demands that any presumptions in favor of one polity be easily rebuttable by churches with different polities.

This was the case, for example, in *Jones v. Wolf* with respect to Georgia's presumptive rule of majority representation for religious institutions. There, part of the dispute concerned the true identity of the local church. The Supreme Court noted that it would be consistent with the neutral-principles approach to settle that question with a presumptive rule in favor of majority representation, but only if the presumption were "defeasible upon a showing that the identity of the local church is to be determined by some other means." *Jones*, 443 U.S. at 607. Specifically, the Supreme Court stated that "any rule of majority representation can always be overcome, under the neutral-principles approach, either by providing, in . . . *the constitution of the general church*, that the identity of the local church is to be established in some other way, or by providing that the church property is *held in trust for the general church* and those who remain loyal to it." *Id.* at 607-08 (emphasis added). Because a denomination's governing documents can be used to easily overcome the presumption in favor of majority rule, majoritarian religions are not officially preferred to nonmajoritarian ones under that approach.

As with Georgia's presumptive rule in favor of majoritarian rule, if Maryland law establishes a presumption in favor of congregational polities, a church with a hierarchical polity must be able easily to avoid the operation of that presumption with respect to its own property. To hold otherwise would be to favor congregational polities—such as Baptist congregations—over hierarchical ones, such as Catholic dioceses. By contrast, allowing a hierarchical church to use its governing documents to rebut the presumption in favor of congregational polities is entirely consistent with the recommendation of the Supreme Court in *Jones v. Wolf*.

Appellants' insistence on a specific reverter provision so narrows the means by which hierarchical churches could rebut Maryland's presumption of a congregational polity that it would

violate the First Amendment. Instead of appellants' cramped and unconstitutional interpretation of the Maryland law, this Court should recognize that hierarchical churches can—and must—be permitted to protect their interests in local church property through any formulation in their governing documents.

Third, appellants' approach would create a practically impossible situation for religious institutions that operate in many different states, and thereby discriminate against large, hierarchical denominations. As each state created its own special requirements, national denominations would need to tailor what should be universal governing documents to the different demands of each state. The difficulties that would be produced by imposing special requirements on religious institutions contradict the Supreme Court's intention that the neutral principles approach make it easy for churches to protect their interests by taking steps to do so in their governing documents: "The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Jones*, 443 U.S. at 606.¹⁵

Religious Autonomy. Appellants' proposed rule would also be an impermissible intrusion into the autonomy of religious institutions. As noted above, the First Amendment protects the autonomy of religious institutions in a variety of contexts. This right to institutional autonomy protects a class of activities broader than simply conducting worship services, praying or teaching.¹⁶ Religious institutions

¹⁵ In addition to the practical difficulties involved in enforcing particularistic state standards, there is also the threat of unconstitutional entanglement. Under the Supreme Court's familiar *Lemon* test, no state action is permitted that would foster an excessive entanglement with religion. See *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). But if appellants' view prevailed here, one can imagine that a reverter clause requirement would lead to a situation in which state officials would be called upon by church leaders to assist them in drafting their documents in a manner that would conform with the requirement and thereby be certain of their legal effectiveness. Such entanglement is avoided altogether if courts simply allow hierarchical churches to place in their governing documents any formulation establishing that property used by a local church is held in trust for the denomination as a whole.

¹⁶ Of course, the First Amendment protects almost absolutely the right of religious believers and institutions to engage in these activities, which are central cases of the free exercise of religion. See, e.g., *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality opinion) ("the right to the free exercise of religion unquestionably encompasses the right to preach, proselytize, and perform other similar religious functions"); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

have a right to act autonomously with respect to their religious practices. Thus, for example, churches have a right to select their own leaders. See *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Kreshik v. Saint Nicholas Cathedral of the Russian Orthodox Church*, 363 U.S. 190 (1960) (per curiam); *Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94 (1952). Religious institutions must also be free to define their own doctrines without interference from civil authorities. See *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Church*, 393 U.S. 440 (1969); *Kedroff*, 344 U.S. at 116 (recognizing the “power [of religious institutions] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine”). Similarly, religious institutions must be able resolve their own disputes in theological controversies. See *Jones*, 443 U.S. 595; *Maryland & Va. Eldership of the Churches of God v. Church of God*, 396 U.S. 367 (1970) (Brennan, J., concurring). In addition, churches have wide latitude to manage their institutions, especially in making personnel decisions. See *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987); *Thomas v. Review Board*, 450 U.S. 707 (1981); *N.L.R.B. v. Catholic Bishop*, 440 U.S. 490 (1979). These particular liberties amount to a constitutionally protected right to institutional autonomy for religious organizations.

It follows from this right to institutional autonomy that churches must be free to order the management and ownership of their property in a manner consistent with their religious beliefs. For “hierarchical” polities following the teachings of John Wesley, for example, the notion that each local church holds property for the benefit of the entire denomination is ultimately based on scripture. See *supra* note 13. It is for that reason that millions of mainstream Christians across the country and around the world believe, for religious reasons, in the property principles that are embodied in the *Discipline* at issue here.

Given the religious implications of property ownership, religious communities must be allowed to protect their property interests in local church property through any formulation in their governing documents. To confine narrowly the permissible means by which churches could do so—as appellants seek to do here—is to violate the First Amendment’s guarantee of institutional autonomy. Such a

requirement would plainly deny churches the power to “decide for themselves, free from state interference, matters of church government.” *Kedroff*, 344 U.S. at 116.

C. THERE IS NO MATERIAL ISSUE OF FACT AS TO WHETHER THE CHURCH’S *BOOK OF DISCIPLINE* CLEARLY MAINTAINS THE CHURCH’S RIGHT TO CONTROL THE PROPERTY OF A LOCAL CONGREGATION IN THE EVENT OF A SCHISM

Because a hierarchical church can legitimately protect its interest in local church property through any formulation in its governing documents, the only remaining question is whether AME Zion’s *Book of Discipline* contains such a formulation. On this point, there is no material issue of fact: the *Book of Discipline* contains clear provisions, capable of interpretation according to the neutral principles doctrine, that articulate the church’s rights in local church property.

Paragraph 431 of the *Book of Discipline* (1980) states:

All written instruments of conveyance by which premises are held or hereafter acquired, for use as a place of Divine worship for members of the African Methodist Episcopal Zion Church or for other church activities, shall contain the following trust clause:

“In trust that said premises shall be used, kept maintained, and disposed of as a place of Divine Worship for the use of the Ministry, and Membership of the African Episcopal Zion Church in America, subject to the provisions of the Discipline, Usage, and Ministerial appointments of said Church, as from time to time authorized and declared by the General Conference of said Church, and by the Annual Conference within whose bounds the said premises are situated. This provision is solely for the benefit of the grantee, and the grantor reserved no right or interest in said premises.”

Although the appellants here failed to carry out their obligation to include these clauses in the pertinent property deeds, this clear statement in the governing documents is sufficient to create an enforceable trust in favor of the denomination. In a similar case, the highest court of Kentucky held that

a local church held its property in trust for the African Methodist Episcopal Church, even though specific trust language prescribed by that church's *Book of Discipline* was not found in the deed to the property. See *Clay v. Crawford*, 183 S.W.2d 797 (Ky. 1944).

But even if this provision were insufficient to create a trust in favor of AME Zion, the *Book of Discipline* does not attempt to protect the denomination's interests solely through that mechanism. In addition to the specific requirement in Paragraph 431, Paragraph 432 § 2 of the *Discipline* provides the following:

However, the absence of the trust clause stipulated in paragraph 431 . . . in deeds and conveyances previously executed, shall in no way exclude a local church from, or relieve it of, its African Methodist Episcopal Zion Church Connectional responsibilities. Nor shall it absolve a local congregation or board of trustees of its responsibility to the African Methodist Episcopal Zion Church, provided that the intent and desire of the founders and/or the later congregations and board of Trustees is shown by any or all of the following indications: (a) the conveyance of the property to the trustees of the local African Methodist Episcopal Zion Church or any of its predecessors; (b) the use of the name, customs, and policy of the African Methodist Episcopal Zion church in such a way as to be known in the community as a part of this denomination; (c) the acceptance of the pastorate of ministers appointed by a bishop of the African Methodist Episcopal Zion Church, or employed by the presiding elder of the district in which it is located.

This provision of the *Discipline* clearly demonstrates that all church or pastoral property is held in trust for the national denomination even if the explicit trust clause is omitted from the pertinent deeds. Moreover, in keeping with the idea of neutral principles of law, ¶ 495 § 2 provides three objective criteria by which a court could neutrally determine when the responsibilities owed the national denomination attach to a local congregation. These objective conditions make it easy for a court "to scrutinize the [church] document in purely secular terms, and not to rely on religious precepts in

determine whether the document indicates that the parties have intended to create a trust.” *Jones*, 443 U.S. at 604.

Of those three criteria, two of them have been undeniably met by appellants. First, without any doubt, appellants caused it to be known in the community that they were a part of the AME Zion denomination. The name of their church was “Full Gospel *African Methodist Episcopal Zion Church*,” which by itself indicates their membership in the denomination. *See Fluker Community Church*, 419 So.2d at 448. The appellants even hosted national conferences of the AME Zion Church. (E. 488, 748) These undisputed facts alone satisfy condition (b) in ¶ 432 § 2, which is then enough to create an express trust in favor of the denomination.

Second, Pastor Cherry was appointed each year by an AME Zion Bishop (E. 604, 747). This also evinces appellants’ intention to be part of the AME Zion church and be bound by its *Discipline*, including the *Discipline*’s provision for a local church’s responsibility to hold its property in trust for the denomination.

There is thus no issue of fact with respect to appellants’ satisfaction of the criteria in ¶ 432 § 2. Accordingly, by the operation of this provision in the *Discipline*, appellants necessarily hold the pertinent property in trust for the denomination. Indeed, this was the conclusion of another court that considered the provisions of the *Book of Discipline* of the same denomination. On facts similar to those here, that court concluded that, upon the withdrawal of a local congregation, the national denomination was “the equitable owner of the property and building *by virtue of the property clauses contained in the AME Zion Discipline*.” *Zion Hill Methodist Church*, 534 So.2d at 228 (emphasis added). The same is true here.

In addition, like the governing documents in *Babcock*, 296 Md. at 584, 464 A.2d at 1014, and *Polen*, 259 Md. at 35, 267 A.2d at 206, the AME Zion *Book of Discipline* contains an explicit provision that enforces the denomination’s property rights upon the dissolution of a congregation. Paragraph 435 § 1 provides the following:

It is further provided that where there is a Church or Circuit, or a Station, without a Pastor, because the membership has withdrawn and scattered and there is no Congregation, and no need for an appointment of a Preacher to this place, that the Conference in which the Church is located may pass a resolution declaring the Church or Circuit, or station discontinued or abandoned and *ordering the sale of the property*, and approved by the Bishop; the Bishop of the District shall give a deed to the purchaser for the same, and *the proceeds from the sale of said property turned over to the Annual Conference for its disposition*.

(emphasis added). This provision brings the present case on all fours with *Babcock*. Just as in that case, the appellants here have decided to “withdraw” from the denomination and “scatter.” According to ¶ 435 § 1 of the *Discipline*, therefore, the local property is brought under the direct control of the Bishop as representative for the entire denomination.

Appellants argue that this Court’s decision in *Fruitland* somehow casts doubt on the conclusion that the property here is held for the benefit of the denomination as a whole. But the key distinction between this case and *Fruitland* (which involved the AME denomination, not the AME Zion denomination) is that the virtually identical trust provision in *Fruitland* was present in only the 1992 version of that denomination’s *Discipline*, which was in effect when the local church there attempted to withdraw from the denomination. By contrast, the denomination’s 1972 *Discipline*, which was in effect when the local church purchased the relevant property, contained no provision analogous to the trust provision that is binding upon appellants here. *See Fruitland*, 348 Md. at 304, 703 A.2d at 196. This Court held that because the property had been purchased when the 1972 version was in effect, it was that version, not the 1992 version, that controlled the dispute. *See Board of Incorporators of the African Methodist Episcopal Church, Inc. v. Mt. Olive African Methodist Episcopal Church of Fruitland, Inc.*, 108 Md. App. 551, 573, 672 A.2d 679, 690 (1996).¹⁷ Thus, the decision ultimately

¹⁷ As indicated in note 1, *supra*, amici believe that the 1996 *Book of Discipline* is the operative governing document in this case. To the extent that a trial court in a somewhat analogous situation found that only an earlier governing document was binding upon a local church, amici submit that this

was not based on the 1992 *Discipline*, which contains the provision analogous to ¶ 432 § 2 of the *Discipline* at issue here. Accordingly, appellants' argument that "[t]he presence of this provision in *Mt. Olive* did *not* dictate the result that the appellees seek here," Br. at 29, obscures the fact that no provision like ¶ 432 § 2 was actually under consideration! Their argument is misleading at best.¹⁸

Consequently, there is no question that the provisions in AME Zion's *Book of Discipline* establish an express trust in favor of the denomination if one of three conditions is satisfied. As two of

conclusion incorrect for reasons explained above. *See supra* note 1. However, for reasons explained in the text, the Court need not reach this issue here, inasmuch as the 1980 version of the *Book of Discipline*—with its express trust provisions—had already been issued when the property at issue here was acquired.

¹⁸ Contrary to appellants' arguments, moreover, ¶ 432 § 2's reference to "connectional responsibilities" is not ambiguous. Appellants' confusion stems from their unfamiliarity with connectional polities in religious institutions. Most courts, following the Supreme Court's discussion in *Watson*, 80 U.S. at 722-27, have characterized religious polities only as either hierarchical or congregational. As was recognized in *Eldership I*, 249 Md. 650, 662, 241 A.2d 691, 698 (1968), however, there are other forms of polity, like the presbyterial polity. A fully hierarchical church creates positions of authority from the top down—i.e., in the Roman Catholic Church, the Pope appoints bishops. In a presbyterial polity, there is a hierarchy of authoritative bodies, but those bodies are representative and created from the bottom up—i.e. democratically-elected governing bodies that have authority over the local congregations even while the local congregations have a voice in choosing and constituting those higher bodies. Connectional polities, like the United Methodist Church and the AME Zion Church, are similar to the presbyterial polity, but they employ a denominational leader for purposes of moderating an annual or quadrennial conference. The connectional polity is thus not completely centralized, but the connection among congregations emerges out of their shared beliefs, governing documents, and obligations. These obligations are clearly specified in provisions of the *Book of Discipline* like ¶ 431, and it is to them that ¶ 432's "connectional responsibilities" refers. When the *Book of Discipline* is considered in this context, there is no ambiguity in the phrase "connectional responsibilities."

Moreover, in addition to imposing "connectional responsibilities" upon local churches in the absence of specific trust clauses, ¶ 432 § 2 continues, stating "[n]or shall [the absence of trust clauses] absolve a local congregation or board of trustees of its responsibility to the African Methodist Episcopal Zion Church." *Book of Discipline* ¶ 432 § 2. As ¶ 431 mandates that every church hold its property in trust for the denomination, this is a responsibility that is made effective upon the satisfaction of any one of the three criteria in ¶ 432 § 2. Thus, even if there were any ambiguity in the term "connectional responsibility," it would be beside the point because the imposition of general "responsibility" includes the responsibility imposed by the trust provisions of ¶ 431.

those conditions have indisputably been satisfied here, there can be no question that appellants held the property at issue here in trust for the benefit of their national denomination. The authority of the AME Zion Church to control the property is thus crystal clear, and summary judgment on that matter was therefore appropriate.

CONCLUSION

This case presents the Court with a stark choice between two competing approaches to church property disputes. Echoing Professor Zollman, appellants would have this Court adopt a bias in favor of religious schisms, based (apparently) on a *religious* belief that such schisms are a good thing and therefore should be encouraged. By contrast, the entire body of neutral principles law—in this state and many other jurisdictions—holds that a court should be neutral, not only as between the religious and the secular, but also between authority and dissent, and between hierarchy and congregationalism. In this case, bedrock constitutional principles demand the same result, and require rejection of appellants’ arguments.

For all these reasons, and those stated by the appellees, the judgment of the trial court should be affirmed.

Respectfully submitted,

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