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HERE IS THE CHURCH, NOW WHO OWNS THE STEEPLE? A REVISED APPROACH TO CHURCH PROPERTY DISPUTES

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ABSTRACT

This Article reviews two approaches to the implementation of neutral principles of law—the constitutionally permissible method of resolving property disputes between bodies in a religious hierarchy. Though both approaches may be valid, the formal title approach, as implemented by the Pennsylvania Supreme Court in *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, leads to problems in application that have been rectified by that court's more recent decision in *In re Church of St. James the Less*. It is the contention of this Article that future courts and practitioners facing church property disputes can draw guidance from the *St. James* decision when faced with any church property dispute to be resolved under neutral principles of law.

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INTRODUCTION

In November 2005, in response to the Episcopal Church's position on homosexuality, a coalition of church members gathered in Pittsburgh to voice their intent to force a separation from the hierarchy.[1] Though the dispute was theological, the protest came with an acknowledgment that it was likely to spill over into the practical, as dissenting parishes sought not only to leave the Church's sacrament but also to take their parish buildings with them.[2] The protest could hardly have surprised the Episcopal Church; it and many of the other mainline American churches are embroiled in internal disputes stemming from disagreements on this issue and others.[3]

Pennsylvania's courts are intimately familiar with such disputes. Just within the Episcopal Church, different groups have brought property disputes before courts in Philadelphia[4] and Pittsburgh[5] over the last few years. There is every reason to expect that similar property disputes will come before the Pennsylvania courts again.

When they do, they will be heard in light of an established conceptual framework. In 1978, the Supreme Court of the United States issued *Jones v. Wolf*[6] in which it, for the first time, specifically approved the constitutionality of the "neutral principles of law" approach for resolving disputes regarding the ownership of church property.[7] Since that time, the Supreme Court of Pennsylvania has issued two opinions applying neutral principles of law, *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*[8] in 1985 and *In re Church of St. James the Less*[9] in 2005. Interestingly, while both decisions claim to apply the same neutral principles of law approach to similar facts, they come to opposite results, in one case finding in favor of the local parish[10]

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[1] Neela Banerjee, *Conservative Episcopalians Warn Church that it Must Change Course or Face Split*, N.Y. TIMES, Nov. 12, 2005, at A9.

[2] *Id.*

[3] *See, e.g.*, Neela Banerjee, *Methodist Divisions over Gays Intensify*, N.Y. TIMES, Oct. 21, 2005, at A16; Laurie Goodstein, *Lutherans Reject Plan to Allow Gay Clerics*, N.Y. TIMES, Aug. 13, 2005, at A7.

[4] *See In re* Church of St. James the Less, No. 953NP, 2003 Phila. Ct. Com. Pl. LEXIS 91 (Mar. 10, 2003), *aff'd in part, rev'd in part*, 888 A.2d 795 (Pa. 2005).

[5] *See* Complaint in Equity, Calvary Episcopal Church v. Duncan, No. GD-03-020941 (Pa. Ct. Com. Pl. Allegheny County Oct. 24, 2003).

[6] 443 U.S. 595 (1979).

[7] *Id.* at 602.

[8] Presbytery of Beaver-Butler v. Middlesex Presbyterian Church (*Beaver-Butler II*), 489 A.2d 1317 (Pa. 1985), *cert. denied*, 474 U.S. 887 (1985).

[9] *In re* Church of St. James the less (*St. James II*), 888 A.2d 795 (Pa. 2005).

[10] *Beaver-Butler II*, 489 A.2d 1317.

and in the other in favor of the hierarchy.[11] *St. James* asserts that this alternate holding is due to those few facts that distinguish the earlier decision from the later,[12] but close analysis reveals that something else occurred. Examination of these cases and the precedents from which they stem shows that *Beaver-Butler* suffered from inherent failings that *St. James* rectified.

This Article argues that in *St. James*, the Supreme Court of Pennsylvania modified its prior statement on judicial oversight of ecclesiastical organizations. While the use of neutral principles of law to resolve church property disputes remains the rule, the particular method by which the court applied that approach (the "formal title" method) is no longer valid. Instead, courts are specifically instructed to review religious documents as part of their neutral principles of law analysis and are to give such documents an unweighted reading when determining whether a property interest exists.

Part I of this Article provides an overview of the development of the neutral principles of law approach, with a specific focus on those elements that are key to *Beaver-Butler* and *St. James*. Part II reviews the *Beaver-Butler* decision and examines relevant elements of prior decisions, both upon those it relied and those it ignored. Part III discusses *St. James* in light of *Beaver-Butler*, highlighting some of the tensions in the earlier opinion that are addressed by *St. James*. In Part IV, the Article examines the guidance that future courts and practitioners facing church property disputes should draw from *St. James*. Finally, the Article reviews certain lessons to be drawn from the change in Pennsylvania law, both for courts in Pennsylvania and those in other jurisdictions.

I. THE UNITED STATES SUPREME COURT HAS DEVELOPED GUIDELINES FOR RESOLVING CHURCH PROPERTY DISPUTES

The detailed history of civil court review of church property disputes is well-documented elsewhere[13] and is far beyond the scope of this Article. A brief overview of that history, however, is necessary for understanding the context in which the Supreme Court of Pennsylvania issued *Beaver-Butler* and *St. James*.

In *Watson v. Jones*,[14] the United States Supreme Court held that in property disputes between a parish and the hierarchy with which it affiliates,[15] civil courts must

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[11] *St. James II*, 888 A.2d 795.

[12] *Id.* at 805–10.

[13] *See, e.g.*, Arlin M. Adams & William R. Hanlon, Jones v. Wolf*: Church Autonomy and the Religion Clauses of the First Amendment*, 128 U. PA. L. REV. 1291 (1980); Patty Gerstenblith, *Civil Court Resolution of Property Disputes Among Religious Organizations*, 39 AM. U. L. REV. 513, 521–29 (1990); Louis J. Sirico, Jr., *The Constitutional Dimensions of Church Property Disputes*, 59 WASH. U. L.Q. 1, 7–48 (1981).

[14] 80 U.S. (13 Wall.) 679 (1871).

[15] Denominations make use of differing terms to describe their internal structures. For ease of reference, "parish" will be used throughout this Article to mean the local church and "hierarchy" will be used to mean any superior body having authority over it.

defer to and enforce the decisions of that hierarchy.[16] In no small part, the Court based this ruling on the simple logic that civil courts could not be proficient adjudicators of ecclesiastical disputes,[17] a position which, as the Court noted, was also taken by a number of state supreme courts, including the Supreme Court of Pennsylvania.[18] This approach, which has become alternatively known as the "deference" or "polity"[19] approach, was not limited to a property dispute per se, but instead was the only permissible approach for dealing with any ecclesiastical dispute brought before a civil court.[20] In effect, this rule created a pro-hierarchy bias because every such dispute involves a hierarchy that believes it is right.

Subsequent to *Watson*, federal courts resolved church property disputes pursuant to the deference approach, though a few decisions suggested that alternate approaches could be permitted.[21] Of note among these is *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*,[22] in which Justice Brennan, in his concurrence, stated that "'[n]eutral principles of law, developed for use in all property disputes,' provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine

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[16] *Watson*, 80 U.S. (13 Wall.) at 727 ("[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."). *Watson* was the first United States Supreme Court decision on this point. For a review of the prior rule as established by the English courts, i.e., the "departure from doctrine" approach, see *id.* at 727–28.

[17] *Id.* at 729 ("It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own.").

[18] *Id.* at 732 ("We cannot better close this review of the authorities than in the language of the Supreme Court of Pennsylvania, in the case of the *German Reformed Church v. Seibert* [3 Pa. 282 (1846)]: 'The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offence against the word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline, and doctrine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt which would do anything but improve either religion or good morals.'" (footnote omitted)).

[19] "Polity" references the first step of the analysis—determining that the parish is part of a hierarchical organization as opposed to having a congregational governance. Adams & Hanlon, *supra* note 13, at 1292 n.5.

[20] *Watson*, 80 U.S. (13 Wall.) at 729. *Watson* was not articulated as being a constitutional decision, but later the Court placed *Watson* squarely within the requirements of the First Amendment. *See* Jones v. Wolf, 443 U.S. 595, 602 (1979); *see also* Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 445–46 (1969) (the decision in *Watson* had "a clear constitutional ring"); Adams & Hanlon, *supra* note 13, at 1293 & n.10.

[21] *See, e.g.*, *Mary Elizabeth Blue Hull Mem'l*, 393 U.S. at 449 ("And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.").

[22] 396 U.S. 367 (1970).

ownership by studying deeds, reverter clauses, and general state corporation laws."[23] This "formal title" approach would have resolved church property disputes according to the exclusively civil law documents pertaining to the property in question. That, however, was not the approach that the Court adopted with its 1979 decision in *Jones v. Wolf*.[24]

In *Jones*, the Court faced a property dispute regarding which of two factions in a parish had the right to the parish's property when the smaller faction was loyal to the hierarchy to which the parish belonged and the larger faction was not.[25] Writing for the five-member majority, Justice Blackmun first held that, subject to certain constitutional limitations (most importantly, the requirement that the civil courts not resolve church property disputes on the basis of religious doctrine),

> the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith."[26]

The Court further held that one of these permitted approaches was the application of neutral principles of law.[27]

Neutral principles of law, the Court reasoned "promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice."[28] To resolve these church property disputes, a court will look at deeds, state statutes, and relevant "religious documents" (specifically including, in *Jones*, the *Book of Church Order*).[29] When examining "religious documents," however, the "civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts,"[30] especially when

> the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the

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[23] *Id.* at 370 (Brennan, J., concurring) (citation omitted).

[24] 443 U.S. 595.

[25] *Id.* at 597–98.

[26] *Id.* at 602 (quoting *Sharpsburg*, 396 U.S. at 368 (Brennan, J., concurring)).

[27] *Id.*

[28] *Id.* at 603.

[29] *Id.* at 601, 604.

[30] *Id.* at 604 (citing Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709 (1976)).

> resolution of the doctrinal issue by the authoritative ecclesiastical body.[31]

Thus, the *Jones* Court approved an approach under which religious documents are viewed for their civil significance unless they are so instilled with religious meaning as to make civil court review impossible.

The Court also addressed the fear that a new rule would change the status quo between parishes and hierarchies when both had long understood that any property stayed with the hierarchy.[32] To alleviate that fear, the Court specifically stated that the parties could remove any doubt about the intent to create a trust by placing language stating their intent in the deeds, parish's charter, or hierarchy's constitution.[33] The change from *Watson* to *Jones* was not intended to change the ownership of property but simply to remove the pro-hierarchy bias from that consideration. Instead, the Court gave both parties' views equal weight so as to create an unbiased review.

The four Justices in dissent, led by Justice Powell, believed the majority went too far in requiring a court to engage in document review to define the parties' agreement.[34] On the contrary, the dissent concurred with the *Watson* Court's reasoning that the parties' agreement to a form of hierarchical government was all the evidence that a court could or should review.[35] By instead requiring a probing review into church documents, but limited to those documents evidencing secular intent to create a trust, the majority "ensures that in some cases the courts will impose a form of church government and a doctrinal resolution at odds with that reached by the church's own authority."[36]

Though *Watson* and *Jones* employ different approaches, both seek the same result: to enforce the will of the parties as expressed in the contract between them. Thus, the *Watson* deference approach allowed "[i]ndividuals or groups [to] affiliate themselves for religious purposes with any other individuals or groups they choose—apparently, on any terms—without interference from the courts."[37] The *Jones* neutral principles approach—"a restrictive rule of evidence," as Justice Powell termed it[38]—applied a different standard and looked at different evidence but to the same purpose: to enforce the parties' contract.[39] For that reason, *Jones* specifically allowed for a single statement of trust in the hierarchy's documents to be determinative. The rule

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[31] *Id.*

[32] *Id.* at 606.

[33] *Id.*

[34] *Id.* at 610 (Powell, J., dissenting).

[35] *Id.* at 614.

[36] *Id.* at 614 n.2.

[37] Adams & Hanlon, *supra* note 13, at 1299–300.

[38] *Jones*, 443 U.S. at 611 (Powell, J., dissenting).

[39] Adams & Hanlon, *supra* note 13, at 1317. "Significantly, the four dissenting Justices also appeared to have accepted this same underlying rationale." *Id.*

after *Jones* appears to be that, so long as the terms of the contract between the parties can be discerned, it is to be enforced by the courts.[40]

II. PENNSYLVANIA HAS ADOPTED NEUTRAL PRINCIPLES OF LAW AS THE EXCLUSIVE APPROACH FOR RESOLVING CHURCH PROPERTY DISPUTES

Even prior to *Jones*, the Pennsylvania Supreme Court had suggested that it would apply neutral principles to resolve church property disputes. In *Western Pennsylvania Conference of United Methodist Church v. Everson Evangelical Church*, the court addressed a church property dispute within a hierarchical denomination, wherein two parishes sought to withdraw from the hierarchy with which they were affiliated.[41] In both parishes, title to the property favored the parish.[42] The parishes, however, admitted that they "subscribed to the doctrine and were subject to the jurisdictional control of" the hierarchy and "that the Book of Discipline of the said United Methodist Church provides that the parent denomination governs all matters relating to the use of property held by its member churches."[43]

The *Everson* court first acknowledged that Pennsylvania law required that any parish that separated itself from its hierarchy must forfeit the property it held.[44] Nonetheless, the court said that it was applying "neutral principles of law" to resolve the case, under which it placed the property with the denomination according to the hierarchy's *Book of Discipline*, which was "a contractual agreement between the parent denomination and its members."[45] Because *Everson* acknowledged both deference and neutral principles, it left unclear exactly what law Pennsylvania courts should apply. The opinion, however, did clearly establish the elements of a neutral principles approach. First, under neutral principles, courts should settle church property disputes according to the intent of the parties, as expressed in their denominational documents.[46] Second, these denominational documents are to be construed as a contract.[47] Third, if that contract gives the hierarchy control over the use of the property, then that contract will be enforced.[48]

The Pennsylvania Supreme Court next dealt with a church property dispute in *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*,[49] its first decision

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[40] *Jones*, 443 U.S. at 606.

[41] 312 A.2d 35, 36 (Pa. 1973).

[42] *Id.* at 36–37. Title at one parish was in the parish's name and, at the other, was in the name of certain individuals as trustees for the parish. *Id.*

[43] *Id.* at 37.

[44] *Id.*

[45] *Id.* at 38.

[46] *Id.* at 37–38 (reviewing terms of the Methodist *Book of Discipline*, the Methodist constitution, and the E.U.B. *Book of Discipline*).

[47] *Id.*

[48] *Id.* at 37.

[49] *Beaver-Butler II*, 489 A.2d 1317 (Pa. 1985).

relating to church property after *Jones*. The case involved a parish that had been part of the United Presbyterian Church in the United States of America (a hierarchical body) and its predecessor since 1799.[50] The parish had split into two competing groups, the larger of which sought to leave the hierarchy and retain the parish property.[51]

The evidence before the court did not lead to any obvious conclusion. Title to the property was in the parish's name.[52] There was no explicit trust language in the hierarchy's documents (in fact, the dispute arose just prior to the inclusion of such language).[53] The parish's charter, however, provided that its purpose is "to worship 'according to the faith, doctrine, creed, discipline and usages of the Presbyterian Church in the United States of America.'"[54] Also supporting the pro-hierarchy group's claim to the property were several passages from the hierarchy's *Book of Order*, which gave the hierarchy authority over sale and use of the property as well as a right to the property in case of parish dissolution.[55] The trial court granted summary judgment awarding the property to the parish.[56]

The Pennsylvania Commonwealth Court reversed this decision, first ruling that the property should remain with the hierarchy under the deference approach and then finding that the same result would occur were neutral principles applied.[57] In its neutral principles analysis, the commonwealth court relied on the noted provisions of the *Book of Order*, combined with the statement of purpose in the parish charter and the effect of a Pennsylvania statute under which "control of local congregations over property is subject to the regulations and requirements of the denomination of which it is a part,"[58] as demonstrating that the parish had intended to bind its property to the hierarchy under neutral principles of law.[59]

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[50] *Id.* at 1323.

[51] Presbytery of Beaver-Butler v. Middlesex Presbyterian Church (*Beaver-Butler I*), 471 A.2d 1271, 1272 (Pa. Commw. 1984).

[52] *Id.*

[53] *Id.* at 1280 n.3.

[54] *Id.* at 1272.

[55] *Id.* at 1280 ("In the case of a formal dissolution or extinction of a particular [parish], its properties shall be held, used and applied to such uses as the [hierarchy] should direct . . . . The particular [parish] may not sell, mortgage, encumber, or lease real property without permission of the [hierarchy]. The [hierarchy] . . . may determine that the . . . particular [parish] is unable or unwilling to manage wisely the affairs of its church and appoint an Administrative Commission to take charge of the particular [parish] . . . . [The hierarchy] has 'exclusive authority over the uses to which the [parish] buildings and properties may be put' and to delegate this responsibility to the trustees of the adjunct nonprofit corporation subject to the "superior authority and direction of the [hierarchy]." Finally, trustees, the name given the officers of the nonprofit corporation holding title to [parish] property 'shall deal with such property only as they may be authorized or directed by the [hierarchy].'" (citations omitted)).

[56] *Beaver-Butler II*, 489 A.2d 1317, 1319 (Pa. 1985).

[57] *See Beaver-Butler I*, 471 A.2d at 1274, 1279, 1281.

[58] *Id.* at 1279 (citation omitted); *see also* 10 PA. STAT. ANN. § 81 (West 1999).

[59] *Beaver-Butler I*, 471 A.2d at 1279–81.

The Pennsylvania Supreme Court overturned these conclusions. First, it determined that it would exclusively apply neutral principles of law, as announced in *Presbyterian Church* and *Sharpsburg* and approved in *Jones*, to church property disputes.[60] The court then determined that only the parish could be the settlor of any property interest because the parish "was not a creation or offshoot of the central denomination," "all property was retained in the corporate name of the [parish]," and "there was never any express trust language in the [hierarchy's] constitution during the entire period [the parish] remained affiliated."[61] Because the parish was the settlor, it was the parish's intent that was relevant.

Despite the apparent similarity to the evidence in *Everson* (a comparison not acknowledged in *Beaver-Butler*), the court found that the *Beaver-Butler* parish had not shown any intent to place a property interest with the hierarchy.[62] This conclusion was based on two premises: first, the parish had retained the property in its own name, and second, the *Book of Order* was intended "as a means of overseeing the *spiritual* development of member churches" and was therefore not evidence of an intent to place the property with the hierarchy.[63] The court also noted, in dicta, that the provisions in the *Book of Order* were "far from constituting the clear unequivocal evidence necessary to support a conclusion that a trust existed."[64]

These findings are inherently problematic and confuse any application of neutral principles. First, the court justified its ruling on the fact that the parish had kept title to the property in its own name.[65] If, however, the name in which the property is titled was conclusive, then there would never be an analysis of the charters and religious documents to see if those documents show the necessary intent to create a trust, as neutral principles contemplates. Although the fact that the property is not titled to the hierarchy is necessary before the court could consider whether the parties showed the intent to create a property interest, it is not the end of the analysis under neutral principles.[66] Yet, perhaps with the intent of adopting Justice Brennan's "formal title" approach from *Sharpsburg*, the *Beaver-Butler* decision treats this prerequisite as a conclusion.

Second, the conclusion to ignore the *Book of Order*, because it was "spiritual" in nature and could not be evidence of intent to create a trust, is equally problematic.[67]

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[60] *Beaver-Butler II*, 489 A.2d at 1321. The commonwealth court relied on *Everson* for the statement that deference applied. *Beaver-Butler I*, 471 A.2d at 1275–76. The Pennsylvania Supreme Court, however, found this reliance misplaced; in its view, *Everson* required neutral principles analysis. *Beaver-Butler II*, 489 A.2d at 1322–23.

[61] *Beaver-Butler II*, 489 A.2d at 1324–25.

[62] *Id.* at 1325.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] This is not to say that the fact that the property is titled to the parish is not evidence of the parish's intent not to create a trust, which of course it is, as the clearest intent to create a trust would be a direct statement in the deed that a trust exists.

[67] *Beaver-Butler II*, 489 A.2d at 1325.

The reported decision does not explain the reasons for the finding that the *Book of Order* is exclusively "spiritual," but a review of the *Beaver-Butler* defendants' filings for summary judgment is illuminating. In their motion for summary judgment, the *Beaver-Butler* defendants specifically argued that the "*Book of Order* provides that the governing bodies of UPCUSA possess only *ecclesiastical* power and *ecclesiastical* jurisdiction," and in support of that argument they quoted portions of the document.[68] It is odd, however, that the court accepted the "spiritual" interpretation out of hand with no discussion in the opinion, especially because the *Book of Order* language does not appear necessarily to lead to that interpretation and because, as religious documents, the language may have meanings not readily apparent to a layperson.[69]

But even if the finding that the document is "spiritual" were correct, the very premise of neutral principles as stated in *Jones* is that the court considers religious documents for their civil impact.[70] If the document reviewed was so "spiritual" in nature that the court could not interpret it without relying on "religious precepts," then the court "must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body."[71] In *Beaver-Butler*, that would mean that if interpretation of the *Book of Order* was made impossible by its religious intent, then the court should

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[68] Motion for Summary Judgment at 5–6, Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church, No. 81-024 (Pa. Ct. Com. Pl. Butler County Feb. 19, 1982) ("Since ecclesiastical discipline must be purely moral or spiritual in its object, and not attended with any civil effects, it can derive no force whatever but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church Universal." (quoting *Book of Order* ¶ 31.08 (1980–81))).

> These judicatories ought not to possess any civil jurisdiction, or to impose any civil penalties. Their power is wholly moral or spiritual, and that only ministerial and declarative. They possess the right of requiring obedience to the laws of Christ and of excluding the disobedient and disorderly from the privileges of the Church. To give efficiency, however to this necessary and Scriptural authority, *they possess the powers requisite for obtaining evidence and inflicting order and government of the Church*; they can require members of their own society to appear and give testimony in the cause; but the highest punishment to which their authority extends is to exclude the contumacious and impenitent from the congregation of believers.

Id. at 6 (quoting *Book of Order* ¶ 35.05 (1980–81)) (emphasis added). "The functions of the Church as a Kingdom and government distinct form the civil commonwealth are to proclaim, to administer, and *to enforce* the law of Christ revealed in the Scriptures." *Id.* (quoting *Book of Order* ¶ 35.08 (1980–81)) (emphasis added).

[69] *See generally* Sirico, *supra* note 13, at 33 (arguing that civil events may have religious implications) ("[A] religious question is arguably involved—whether a church that withdraws from a general church ceases to exist. From the general church's viewpoint, apostasy might be the equivalent of nonexistence.").

[70] Jones v. Wolf, 443 U.S. 595, 604 (1979) (noting that the court must consider "religious documents" and "scrutinize the document[s] in purely secular terms").

[71] *Id.* (citation omitted).

have deferred to the hierarchy's determination that the document was intended to create a trust.

Without these two conclusions, the *Beaver-Butler* decision would only stand on the court's final reason, given as dicta, that the provisions of the *Book of Order* were insufficient to show the intent to create a trust.[72] The asserted insufficiency of the evidence might be an appropriate ground for the holding (though one that was belied by the similarity to *Everson*), but it was not the one on which the court relied.

III. *ST. JAMES* CLAIMS CONTINUITY WITH *BEAVER-BUTLER* BUT DEMONSTRATES DIFFERENCE

After *Beaver-Butler*, the Pennsylvania Supreme Court did not again address church property disputes until *In re Church of St. James the Less*, a dispute between a parish and the hierarchy of which it was a member, the Episcopal Church.[73] In 1999, as the result of long-standing doctrinal differences between the parish and the hierarchy, the parish attempted to disaffiliate while retaining its property, through the mechanism of merging into a previously-established corporation that had no relationship to the hierarchy.[74]

The evidence in *St. James* bore a striking similarity to that in *Beaver-Butler*. Title to the property was in the parish's name,[75] but from 1967 until the attempted merger, the parish's charter had provided that the purpose of the corporation was "the support of the public worship of Almighty God according to the faith and discipline of the Protestant Episcopal Church in the United States of America and the Diocese of Pennsylvania."[76] Also similar to *Beaver-Butler* (and *Everson*, for that matter), in *St. James*, the hierarchy's documents gave the hierarchy authority over the disposition and use of the property.[77]

The charter and the hierarchical documents in *St. James* each had a significant difference from *Beaver-Butler*, however, particularly in the explicit statement of trust in the hierarchy's documents via the 1979 Dennis Canon.[78] In addition, the parish

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[72] *Beaver-Butler II*, 489 A.2d at 1325.

[73] *St. James II*, 888 A.2d 795, 797 (Pa. 2005).

[74] *Id.* at 800.

[75] *In re* Church of St. James the Less (*St. James I*), 833 A.2d 319, 322 (Pa. Commw. 2003).

[76] *Id.* at 323. In the Episcopal Church hierarchy, dioceses are intermediary jurisdictions, superior to parishes, but beneath the Church as a whole.

[77] *Id.* at 325 n.5.

[78] The Dennis Canon, which the Episcopal Church adopted in response to the invitation in *Jones v. Wolf*, states that "[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this [National] Church and the Diocese thereof in which such Parish, Mission or Congregation is located." *Id.* at 322 n.2 (citation omitted) (addition in original). The Diocese had also enacted explicit trust language in 1941, stating that parish property is held "'for the work of the [Diocese].'" *St. James II*, 888 A.2d at 809 (citation omitted).

charter "excludes from membership any 'person who shall disclaim or refuse conformity with and obedience to the constitution, canons, doctrines, discipline or worship of the Protestant Episcopal Church or of the Diocese'" and prohibited the parish from amending the charter without diocesan approval.[79]

The trial court determined that 10 Pa. Stat. Ann. § 81 (the same statute on which the Commonwealth Court had relied in *Beaver-Butler*)[80] required the parish's charter to incorporate all hierarchical rules regarding property and, pursuant to those rules, that the hierarchy was the holder and trustee of the property.[81]

On appeal, the Commonwealth Court affirmed the trial court's decision and ruled that the Dennis Canon alone demonstrates the existence of the trust.[82] As part of this decision, the appellate court focused on a factor that distinguished *St. James* from *Beaver-Butler*: the parish in *St. James* had remained part of the hierarchy after the Dennis Canon was adopted, whereas the parish in *Beaver-Butler* had not.[83] The court, however, also made clear that St. James would not have avoided the trust interest had it left the hierarchy prior to the Dennis Canon. On the contrary, the court found that there was pre-existing evidence of a trust[84]—even though, with regard to several of the other proofs, "[s]imilar language quoted from the Book of Order in *Presbytery of Beaver-Butler* was held to refer only to matters of spiritual development and not to evidence intent to create a trust."[85]

The Supreme Court of Pennsylvania affirmed the conclusion that there was a trust, but on different grounds.[86] Like the commonwealth court, the supreme court found that the Dennis Canon created a trust.[87] The larger part of the decision, however, asked whether the parish had intended to establish a trust interest in its property such that the interest shown by the Dennis Canon was not forced upon it. The supreme court found that the parish had such intent:

> St. James' Charter declares that St. James' purpose is to serve as a place to worship God "*according to the faith and discipline of the [National Episcopal Church].*" More importantly, the Charter ensures that St. James will *always* be used for this purpose as it (1) states that any person who disclaims the authority of the National Episcopal Church or the Diocese can no longer be a member of

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[79] *St. James I*, 833 A.2d at 323 (citation omitted).

[80] *Beaver-Butler I*, 471 A.2d 1271, 1279–81 (Pa. Commw. 1984).

[81] *St. James I*, 833 A.2d at 321–22.

[82] *Id.* at 324.

[83] *Id.* at 324–25.

[84] *Id.* at 325 n.5.

[85] *Id.* at 323.

[86] *St. James II*, 888 A.2d 795, 810 (Pa. 1985). The Supreme Court did not affirm the lower court's finding that the hierarchy was the title holder and trustee, however, instead finding that the title holder and trustee was the parish. *Id.*

[87] *Id.*

> St. James; and (2) requires St. James to obtain the Diocese's consent for amendments to its Charter. Accordingly, St. James effectively agreed in these provisions to always accede to the authority of the National Episcopal Church and the Diocese and to forever serve as a place of worship for those who adhere to that same authority.[88]

The court also found relevant, though not necessary to the decision, that St. James amended its charter (and accepted the rules then in effect) after the Diocese had added its 1941 canon requiring that the parish "take and hold its property 'for the work of the [Diocese]'"; that the hierarchy's rules required the parish "not to alienate or encumber its property without the Diocese's consent"; and that "if [the parish] ever dissolves, its property will be placed in trust for the Diocese."[89]

It is particularly of note that the Pennsylvania Supreme Court found that these provisions supported the intent to create a trust while admitting that they were "similar" to the provisions that *Beaver-Butler* held did not.[90] Indeed, this very similarity was evoked by the *St. James* defendants as part of their argument against finding a trust.[91] The court, however, ruled that "the provisions in the instant case are distinguishable from those in *Beaver-Butler* primarily because they require St. James to *always* accede to the authority of the [hierarchy]" and because the *Beaver-Butler* provisions did not prohibit disaffiliation.[92]

Dissenting from the opinion,[93] Justice Newman pointed out several perceived problems in the majority opinion. First, she found that several points of Pennsylvania trust law made it difficult for the hierarchy to show the existence of a trust in *St. James*, specifically because the law placed a high burden of proof on the hierarchy to show a trust and required several technical elements that were not fulfilled under the facts of *St. James*.[94] Second, Justice Newman assailed the majority's reliance on documents that "fail even to mention the *res* of the supposed trust," and therefore, cannot show "St. James intended by including this language in its Charter to create a trust."[95] Finally, Justice Newman attacked the majority's remaining points evidencing the intent to create a trust, on the basis that materially identical language was held insufficient in *Beaver-Butler*.[96]

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[88] *Id.* at 808–09 (citations and footnote omitted) (insertion in original).

[89] *Id.* at 809.

[90] *Id.* at 809 n.29.

[91] *Id.*

[92] *Id.*

[93] Justice Newman termed her opinion a "concurrence." Because her conclusion is that the property was not held in trust, the opinion is more property termed a dissent.

[94] *St. James II*, 888 A.2d at 811–14 (Newman, J., concurring).

[95] *Id.* at 812.

[96] *Id.* at 812–13.

Justice Newman's points are not invalid, but equally they do not undermine the *St. James* decision. Instead, they highlight the several ways in which *St. James* revised the state of the law after *Beaver-Butler*, without *expressly* overturning the prior opinion.

IV. THE DIFFERING CONCLUSION IN *ST. JAMES* FROM THAT IN *BEAVER-BUTLER* SIGNIFIES TWO CHANGES IN PENNSYLVANIA LAW REGARDING CHURCH PROPERTY DISPUTES

In distinguishing itself from *Beaver-Butler* solely on the basis of the unbreakable bond between the parish and the hierarchy, the *St. James* court has indicated a move away from the principles in the earlier decision and placed itself on more firm constitutional ground. This is despite the fact that the court chose not to address the two reasons provided by the *Beaver-Butler* court in support of its decision (i.e., that the deeds did not include explicit trust language and that the document containing the relevant language was "spiritual") and despite the similarities that implicate these other reasons.

The intended larger effect of *St. James* can be seen, in part, by its going beyond the issues absolutely necessary to its result. Having established that the parish charter prohibited anyone who disclaimed the hierarchy's authority from having any membership in the parish,[97] the court could have simply ruled that it was "unscrambling the omelet" created by the parish's attempted departure: if anyone who disclaimed authority was no longer a member empowered to take acts for the parish, and if attempting to leave the hierarchy was an act that disclaimed authority, then it would be impossible for the parish to effect any action that would cause the parish property to leave the hierarchy.[98] Instead of making this its ultimate conclusion, however, the court treated this holding as a step toward justifying the property interest. Impliedly, the court felt it had to clarify the principles addressed in that additional discussion (i.e., regarding neutral principles) and was not merely confirming established ideas.

For that matter, treating *St. James* as merely confirming *Beaver-Butler* would be odd in that there was no need to reconfirm *Beaver-Butler* at all. The decision remained good law at the time of *St. James* and the court's decision in *St. James* did not change the lower courts' finding of a trust. Had the court merely wished to modify an aspect of the lower courts' opinions (e.g., by changing the trustee from the parish to the

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[97] *Id.* at 812.

[98] For that matter, the trial court and appellate courts found that the parish's attempted merger was void for failure to obtain both court and hierarchy approval. *Id.* at 801, 803 n.20 (majority opinion). Court approval, in particular, was required under a provision of the Pennsylvania Corporate Code that prohibited any change in corporate purpose without such approval. 15 PA. CONS. STAT. ANN. § 5547(b) (West 1995). Thus, simply continuing to apply the secular code would have allowed the court an "out" that did not require any analysis of an implied trust under neutral principles. In fact, the lower court's decisions on this point had not been presented to the Pennsylvania Supreme Court for review, *St. James II*, 888 A.2d at 801, and the court could simply have ruled that an opinion on whether there was a trust was unnecessary because the attempted merger was undone in any event.

hierarchy), it could have limited its opinion to that point. There is no justification for the length and breadth of opinion that was produced unless it is understood as clarifying mistakes made by *Beaver-Butler*.

Justice Newman's opinion also helps illustrate that *St. James* did not seek to simply confirm the *Beaver-Butler* approach. Her points regarding general trust law and unaddressed similarities between *Beaver-Butler* and *St. James* are apt,[99] but they do not undermine the ultimate conclusion in *St. James* if the unnecessary assumption that *St. James* merely sought to reconfirm *Beaver-Butler* is removed. When viewed from the perspective that the *St. James* court was not trying to support *Beaver-Butler*, the issues upon which Justice Newman focuses merely serve to highlight a change in the law.

If one reviews the *St. James* decision—not just for its holding but for what it actually relied on, says, and does not say—it becomes clear that the *St. James* court did far more than simply resolve the case before it. Instead, it rectified two errors in Pennsylvania law regarding church property disputes.

A. St. James *Clarifies that a Court Must Review All Available Evidence and that Exclusion of the "Spiritual" Is Prohibited*

By acknowledging, but then ignoring, the *Beaver-Butler* court's refusal to review a "spiritual" document for its civil effect and by refocusing the inquiry on the standards from *Jones* (which undermine the *Beaver-Butler* approach), the *St. James* court has shown that the *Beaver-Butler* view of neutral principles is no longer valid law.

That *St. James* has dismissed *Beaver-Butler*'s review of documents to determine if they are "spiritual" is established at several points in the decision. In no small part, that change is shown in *St. James*'s choice not to substantively address *Beaver-Butler*'s reliance on the "spiritual" finding, despite acknowledging that this issue was present in the prior decision.[100] It is no answer to say that the question did not arise in *St. James*: on the contrary, the parish raised the issue,[101] and the court specifically found that provisions "similar" to those ignored as coming from a "spiritual" source in *Beaver-Butler* were relevant to the case before it.[102] If the question of "spirituality" continued to matter, one would expect that the *St. James* court would have stated at least that the hierarchy's documents were not "spiritual" under the facts before it; instead, it did not even address that question.[103] For that matter, Justice Newman also ignored the "spiritual" issue, focusing instead on the prior court's finding that the similar evidence was

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[99] *St. James II*, 888 A.2d at 811–14 (Newman, J., concurring).

[100] *Compare id.* at 807 n.26 (majority opinion) (restating that *Beaver-Butler* found no intent to create a trust from the *Book of Order* because that document focused on "spiritual development"), *with id.* at 809 n.29 (distinguishing *Beaver-Butler* without examining whether the hierarchy's documents focused on spiritual development).

[101] *Id.* at 809 n.29.

[102] This conclusion was reached by the appellate court and highlighted for the supreme court's consideration. *St. James I*, 833 A.2d 319, 323 (Pa. Commw. 2003).

[103] *St. James II*, 888 A.2d at 809.

insufficient proof.[104] Thus, neither the majority nor the minority saw fit to address this key element of the prior court's decision, a clear indication that neither believed the theory had continued viability.

The movement away from *Beaver-Butler* can also be seen in the *St. James* court's return to *Jones* rather than *Beaver-Butler* for its statement of the relevant standards.[105] To that end, the *St. James* court restated the principle in *Jones* as follows: "the Court directed civil courts to scrutinize documents evincing the parties' intentions, such as a church charter or constitution, 'in purely secular terms, and not rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust'"[106] and required the courts to review "'the terms of a governing statute, the property deed, and *any other document* that expresses the parties' intentions regarding the ownership of the property.'"[107] In contrast, *Beaver-Butler* contains only one quotation from *Jones*; that sole reference contains none of this language, instead focusing on the idea that neutral principles will "free civil courts completely from entanglement in questions of religious doctrine, polity, and practice."[108] When it refused to review the hierarchy's documents as too "spiritual," *Beaver-Butler* may have been focusing on this quotation and thereby violated key elements of *Jones*. By returning to *Jones*, *St. James* re-established the proper standards for review.

B. After St. James, *Civil Courts Are to View the Evidence in Church Property Disputes as a Contract and Interpret It Without Bias in Favor of Either Party*

A second principle to draw from *St. James* is that evidence should be read without bias to accurately determine the parties' intent. That was the approach in *Everson*, in which the court found a trust under neutral principles.[109] There, the evidence was that the parish's charter aligned the parish with the hierarchy and that the hierarchy's rules gave the hierarchy authority over the disposition and use of the property.[110] In *Beaver-Butler* the evidence was nearly identical, but the result was different, creating a clear conflict.[111] By evaluating the evidence as it did in *St. James*, the court resolved

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[104] *Id.* at 811–14 (Newman, J., concurring).

[105] *Id.* at 804–05 (majority opinion).It is notable that *Jones* specifically included the *Book of Church Order* in its discussion of documents that were to be considered under neutral principles. Jones v. Wolf, 443 U.S. 595, 603, 609 (1979).

[106] *St. James II*, 888 A.2d at 805 n.24 (quoting *Jones*, 443 U.S. at 604).

[107] *Id.* at 805 (quoting *Jones*, 443 U.S. at 603) (emphasis added).

[108] *Beaver-Butler II*, 489 A.2d 1317, 1321 (Pa. 1985) (quoting *Jones*, 443 U.S. at 603).

[109] W. Pa. Conference of United Methodist Church v. Everson Evangelical Church, 312 A.2d 35 (Pa. 1973).

[110] *Id.* at 36–37.

[111] *Beaver-Butler II*, 489 A.2d at 1322–23. The *Beaver-Butler* court does point out that the evidence of the hierarchy's control over property issues in *Everson* was uncontested, but the differing conclusion in *Beaver-Butler* was the result of the weighting of this evidence and not a dispute over its existence. *Id.*

the conflict between *Everson* and *Beaver-Butler* in favor of the *Everson* court's balanced reading of the evidence.

In *St. James*, the evidence was very similar to that in *Everson* and *Beaver-Butler*: the parish had adopted a statement of purpose that aligned it with the hierarchy and the hierarchy had adopted rules that gave it authority over the disposition and use of the property.[112] To be fair, there were also differences between the evidence in *St. James* and that in the two earlier cases, but after recognizing these differences the supreme court maintained that it could rely on the "similar" evidence in support of its opinion.[113] The commonwealth court also noted that the evidence it relied on was similar to that found insufficient in *Beaver-Butler*.[114] Thus, both the Pennsylvania Supreme Court and Pennsylvania Commonwealth Court found that evidence previously dismissed in a church property dispute was now relevant and probative.

The clear similarity of the evidence in all three cases prohibits resolving a church property dispute according to either of the earlier cases without considering the effect of *St. James*. Instead, the only conclusion to draw from the double reverse in the court's reading of this evidence is that the *Beaver-Butler* reading is not correct. It is not credible to believe that *Beaver-Butler* remains viable under any factual distinction between the three cases for two reasons. First, the facts in the three cases are too similar and the results are too divergent to accept the attempt to harmonize them by pointing to the minor differences. Instead, the only reasonable way to account for the changing outcome is by recognizing the changed standard. Second, *St. James* had reason to reform the *Beaver-Butler* view: the earlier decision was inconsistent with *Jones* in that it ignored evidence of the parties' intentions. It did this not only explicitly, when it excluded one party's statement of intention by refusing to assess the hierarchy's documents because they were "spiritual," but also implicitly when it undervalued the hierarchy's view (i.e., it created a pro-parish bias) by finding that evidence, sufficient in *Everson*, was now insufficient to show property interest.

Replacing the *Watson* Court's pro-hierarchy bias with a pro-parish bias was not the intended effect of *Jones*. Rather, by giving each party equal power, *Jones* signaled a move to an unbiased review. It was for that reason that the Court could state that the new approach would not alter the outcome of a case in which the parties did not intend it to do so. Instead, each party would be empowered to announce the parties' intent and, once done, that announcement became binding. Because *Beaver-Butler* violated this principle by undervaluing one party's intent, *St. James* returned to *Jones*.

CONCLUSION

As this Article argues, *In re St. James the Less* restores Pennsylvania law to the path it had attained in the *Everson* decision but from which it detoured with *Beaver-Butler*. Of course, the court has done so without explicitly overturning *Beaver-Butler*

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[112] *St. James II*, 888 A.2d at 797.

[113] *Id.* at 809 n.29.

[114] *St. James I*, 833 A.2d 319, 323, 325 n.5 (Pa. Commw. 2003).

but neither did *Beaver-Butler* explicitly overturn *Everson*; it simply rendered the prior decision superfluous by inserting the "spiritual" question into the approach. In re-evaluating *Beaver-Butler*, the *St. James* court has restored the neutral principles approach to the focus suggested in *Jones* and applied in *Everson*—the search for the parties' actual intent.

In both *Watson* and *Jones*, the United States Supreme Court sought to define the appropriate scope of review for a civil court examining a church property dispute—to determine how far into the temple Caesar could appropriately go. In both cases, the Court found that it was appropriate for a court to enforce that to which the parties had agreed. The opinions disagreed only in determining what evidence to consider in order to establish that agreement: *Watson* looked for evidence that the parish agreed to bind itself to the hierarchy,[115] whereas *Jones* looked for evidence that the parish and hierarchy had agreed to hierarchical property control.[116] The *Watson* approach created a de facto pro-hierarchy bias in its result (because a dispute always includes a hierarchy that believes it is right), but under both cases, the idea of civil court intervention in a church property dispute was to evaluate the appropriate evidence and generate a result consistent with the parties' intentions.

Beaver-Butler moved away from this concept. Instead, it focused on only those statements of intent that were available in strictly secular sources and it undervalued other sources even if they were to be reviewed, perhaps in an unstated reliance on the "formal title" approach to neutral principles that Justice Brennan suggested in his *Sharpsburg* concurrence.[117] It did this despite the guidance in *Jones* to the contrary and despite its more broad view of the evidence in *Everson*. Moreover, it did this even though formal title is not the majority position[118] and is of uncertain

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[115] Watson v. Jones, 80 U.S. (13 Wall.) 679, 734 (1871).

[116] Jones v. Wolf, 443 U.S. 595, 620–21 (1979).

[117] Additionally, the *Beaver-Butler* court may have relied on certain language in Justice Powell's *Jones* dissent. *See* Sirico, *supra* note 13, at 47 ("According to Justice Powell, the [neutral principles] rule acts as a restrictive rule of evidence in that it limits courts to examining language written in secular legal property terms and forbids consideration of other language that might speak to the allocation of authority within the church polity." (citing *Jones*, 443 U.S. at 612–14 (Powell, J., dissenting))). The court also may have relied on a misreading of the language in *Jones* that "'a State may adopt *any* one of various approaches for settling church property disputes so long as it involves *no consideration of doctrinal matters*, whether the ritual and liturgy of worship or the tenets of faith,'" *Jones*, 443 U.S. at 602 (citation omitted) (second emphasis added), putting too much emphasis on the second clause of this statement. In any event, it is clear from the *Beaver-Butler* court's exclusion of the "spiritual" evidence and focus on the title deeds that it did not apply neutral principles as broadly as *Jones* stated.

[118] *See, e.g.*, Bishop & Diocese of Colo. v. Mote, 716 P.2d 85, 91 n.6 (Colo. 1986) (rejecting "formal title" label for neutral principles analysis), *cert. denied*, 479 U.S. 826 (1986); *see also* Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church, 620 A.2d 1280, 1293 (Conn. 1993) (considering hierarchy's documents under neutral principles); Bjorkman v. Protestant Episcopal Church, 759 S.W.2d 583 (Ky. 1988) (same); Parish of the Advent v. Protestant Episcopal Diocese, 688 N.E.2d 923, 931 (Mass. 1997) (same); Episcopal Diocese v. DeVine, 797 N.E.2d 916, 924 (Mass. App. Ct. 2003) (same); Trustees of the Diocese

constitutionality—Justice Brennan would have allowed it, but the *Jones* Court approved a far less restrictive approach only by the slightest of majorities.

By re-evaluating *Beaver-Butler*, *St. James* has turned away from the formal title approach and returned Pennsylvania law to the view *Jones* espoused. Thus, future Pennsylvania courts reviewing church property disputes are to consider all evidence and not to avoid secular review of the "spiritual." Moreover, the courts must determine the parties' intent without weighting the evidence toward any particular result. Thus, *St. James* returns Pennsylvania law to an accepted and workable approach to resolution of church property disputes.

The counter argument, that *St. James* and *Beaver-Butler* present a consistent approach, fails in light of *Everson*. It is impossible to square *Everson* and *Beaver-Butler* after *St. James*: once the "spiritual" argument is removed from *Beaver-Butler*, the facts in that case mirror those in *Everson* such that either *Beaver-Butler* must overturn *Everson* or *Beaver-Butler* itself must be overturned as inconsistent with the prior opinion. At the same time, the *St. James* court's reliance on evidence equal to that accepted in *Everson* cannot be squared with *Beaver-Butler*'s rank dismissal of that same evidence if the intermediate decision remains good law. Instead, the only conclusion is that there has been a change in the relevant law and that under the *St. James* view of the neutral principles standard, all available evidence is to be given unbiased review to determine the parties' intent and that intent is to be enforced.

Looked at more broadly, Pennsylvania's experience is instructive for other jurisdictions that may consider institution of the formal title approach. Under *Everson*, Pennsylvania's approach was consistent with that later suggested in *Jones*—a broad review of all available evidence to determine both parties' intent. The switch in *Beaver-Butler*, however, all but removed the hierarchy's intent from the analysis and reached a conclusion that directly contradicted the hierarchy's view. Thus, the *Beaver-Butler* application created the very situation about which Justice Powell warned:[119] it imposed a form of governance at odds with the one the parties chose. That also would have occurred in *St. James* had the court continued in the narrow view and is likely to occur in any other case using strict title as well. Only the rarest dispute will include a parish that has deliberately included in its own documents the views of a hierarchy with which it disagrees. But the conclusion to draw from the Pennsylvania Supreme Court's move away from this approach is that ignoring one party's intent is bad law and worse policy. Instead, the better view is to select an approach that gives voice to each party's intent. With *St. James*, the Pennsylvania Supreme Court has returned to that approach.

This broad approach is more consistent with that presently employed in most jurisdictions and is the one squarely approved in *Jones* as constitutional. It is unsurprising, therefore, that the Pennsylvania Supreme Court would choose to readopt it as it has with *St. James*.

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v. Trinity Episcopal Church, 684 N.Y.S.2d 76, 81 (App. Div. 1999) (same); Daniel v. Wray, 580 S.E.2d 711 (N.C. Ct. App. 2003) (same).

[119] *Jones*, 443 U.S. at 612–14 (Powell, J., dissenting).