No. _____ FIFTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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FIFTH AVENUE UNITED METHODIST CHURCH OF WILMINGTON, Plaintiff-Respondent, v. THE NORTH CAROLINA CONFERENCE, SOUTHEASTERN JURISDICTION, OF THE UNITED METHODIST CHURCH, et al., Defendants-Petitioners.	From New Hanover County COA23-1013

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NOTICE OF APPEAL BASED ON CONSTITUTIONAL QUESTIONS AND ALTERNATIVE PETITION FOR DISCRETIONARY REVIEW

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INDEX

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Rules

Other Authorities

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INTRODUCTION

This appeal asks whether the Court of Appeals erred in holding that despite the First Amendment's ecclesiastical-entanglement prohibition, a court can effectively reverse a decision of the United Methodist Church's highest ecclesiastical authority.

Under a discretionary standard that implicates church doctrine, Methodist Church officials decided to close Fifth Avenue United Methodist

Church of Wilmington. A bishop and other church officials determined that Fifth Avenue "no longer serve[d] the purpose for which it was organized." (R pp 136–37). They made that decision in their "sole discretion" under the *Book of Discipline*, the governing document for the United Methodist Church. (R p 136). Clergy and church delegates voted to approve Fifth Avenue's closure. (R p 240). And the Judicial Council—the denomination's highest ecclesiastical authority—entered a formal decision affirming the result. App. 42–46.

Shortly after Fifth Avenue was closed, it filed this lawsuit. (R pp 6–70). The lawsuit sought a preliminary injunction to set aside the closure decision, asserted claims against the Methodist Church's governing body, and even attempted to bring fraud claims against the bishop and other church officials. (R pp 25–26).

The Superior Court saw the lawsuit for what it was: an invitation to ignore the First Amendment's ecclesiastical-entanglement prohibition and deprive a religious body the freedom to interpret its own laws and doctrines. This Court has condemned that approach as "wholly inconsistent with the American concept of the relationship between church and state." *Nation Ford Baptist Church Inc. v. Davis*, 382 N.C. 115, 128, 876 S.E.2d 742, 754 (2022). So the trial court did what it was required to do: it dismissed Fifth Avenue's claims to avoid wading into an intra-church dispute.

But the Court of Appeals reversed, ordering the Superior Court to intervene. The Court of Appeals did so notwithstanding this Court's clear instruction in *Nation Ford*—a unanimous decision from just three years ago—that when claims "necessarily require" a court "to become entangled in spiritual matters," the First Amendment mandates dismissal. *Id.* at 128, 876 S.E.2d at 754. It did so even though the "authoritative ecclesiastical body," *id.* at 125, 876 S.E.2d at 752, (here, the Methodist Church's Judicial Council) had definitively ruled. App. 42–46. And it did so even though the practical result of its holding, which reversed the trial court's decision to abstain under the First Amendment, was to reverse the Judicial Council:

Judicial Council Decision 1490	**No. COA23-1013**
"The interim closure of Fifth Avenue United Methodist Church . . . did not violate the plain reading of ¶¶ 414.2, 419.4, 2549.3(b) or 2553 of the *Book of Discipline*." App. 46.	"[A]t this stage in the litigation, Fifth Avenue's breach of contract claim simply asks whether Defendants' actions complied with the steps outlined in BOD paragraphs 248 and 2553." Slip op. at 23.
"The bishop and district superintendent do not violate [their responsibilities under the *Book of Discipline*] when they inform a local church of interim closure." App. 46.	"Fifth Avenue's complaint and affidavits included in the record allow for an adequate assessment of the elements of fraud and constructive fraud claims without delving into doctrine." Slip op. at 28.

Judicial Council Decision 1490	No. COA23-1013
"The question of . . . disaffiliation . . . is moot and a hypothetical because of the annual conference's approval of formal closure" as provided in the *Book of Discipline*. App. 45.	"This cited exigency—disaffiliation—considered in conjunction with other representations by Defendants, can be resolved by application of neutral principles of contract law." Slip op. at 26–27.

The Court of Appeals' decision is both flawed and troubling. It requires a civil court to second-guess the sole discretion of a bishop and other denominational leaders on whether Fifth Avenue still "serves the purpose for which it was organized." (R p 137). What is more, it subjects those same church officials to *fraud claims* for exercising their "sole discretion" under the *Book of Discipline*. (R p 136); App. 45.

All of this clashes sharply with this Court's decision in *Nation Ford*, which demands deference on issues resolved "by the authoritative ecclesiastical body" of a religious institution. 382 N.C. at 125, 876 S.E.2d at 752. By not affording that deference here—indeed, by doing the opposite—the Court of Appeals has called this Court's precedent into question, including what analysis lower courts should apply to protect the First Amendment rights of worshipers and religious organizations across the State.

For the reasons that follow, the Court should exercise jurisdiction over the substantial constitutional questions in this appeal, or in the alternative, allow discretionary review.

BACKGROUND

The United Methodist Church and the Book of Discipline

The United Methodist Church ("UMC") is a global Christian denomination that traces its origins to the Methodist movement founded in England by John Wesley and Charles Wesley in the 1700s. (R p 79).

The UMC is both hierarchical and connectional. (R pp 79–81). The official rules for governance and the theological doctrines of the denomination are established by the General Conference of the UMC, whose delegates are elected worldwide by members of Annual Conferences. These rules and doctrines are set forth in *The Book of Discipline of The United Methodist Church*, which serves as the governing document for the UMC, its Conferences, and its individual churches. (R pp 79–80). The Judicial Council of the United Methodist Church—the denomination's tribunal of highest authority—resolves any disagreements regarding the application or interpretation of the *Book of Discipline*.

Among the theological and administrative matters addressed in the *Book of Discipline* are key terms—rooted in the denomination's doctrine—

that govern the ownership and stewardship of property in furtherance of the UMC's mission. (R pp 119–20). The method of ownership and stewardship of property used by the UMC and its predecessors has been a fundamental tenet of Methodism since its founding, and in fact predates the *Book of Discipline* itself. (R p 85). Consistent with these principles, property owned anywhere in the world by the UMC, its conferences, agencies, institutions, or local churches is held in trust for the benefit of the entire denomination. (R pp 119–20).

This requirement is known as the "trust clause." The trust clause has been included in every iteration of the *Book of Discipline* adopted by every predecessor denomination of the UMC since 1784. (R pp 85–86, 143–82). Fifth Avenue has been bound by the trust clause or its equivalent predecessor since the local church's founding in 1847. (R pp 231–32, 247).

The *Book of Discipline* makes clear that the intent of a local church to be bound by the trust clause goes beyond traditional notions of property law. For example, the trust clause can apply based on a local church's actions, including the use of the name, customs, and polity of the UMC, the acceptance of UMC-appointed ministers, or the conveyance of property to the board of trustees of a local church of the UMC or any of its predecessor denominations. (R pp 121–22); *Discipline* ¶¶ 2503.6(a)-(c).

Throughout Fifth Avenue's 176-year history as a local church of the UMC, Fifth Avenue's affiliation was indisputable. (R pp 230–32). Fifth Avenue accepted deeds in the name of the trustees of the UMC (R pp 270–73), accepted pastoral appointments from the Conference or its predecessors since 1847 (R pp 230–31), acknowledged the authority of the *Book of Discipline* in its Articles of Incorporation (R pp 184–89), made use of the UMC hymnal, and held itself out as a United Methodist Church—or its predecessor denominations—since its founding (R pp 230–31). Even the parcel on which the church's building sits expressly includes trust clause language. (R pp 271–72).

In short, until Fifth Avenue filed this lawsuit, there was never any doubt or question that the trust clause applied to the property at issue.

Fifth Avenue's closure

The *Book of Discipline* includes certain discretionary provisions related to the trust clause. It allows officials of the annual conference—here, the North Carolina Conference—to declare, in their *sole discretion*, that "exigent circumstances exist that require immediate protection of the local church's property, for the benefit of the denomination." (R pp 136–37); *Discipline* ¶ 2549.3(b). Under this provision, "[e]xigent circumstances include, but are not limited to, situations where a local church no longer serves the purpose

for which it was organized." *Id.* Upon a declaration of exigent circumstances, title to all local church property vests with the annual conference. *Id.* The formal closure of the local church is then considered at the next meeting of the annual conference, when delegates to the conference vote to approve or disapprove the closure. *Id.*

In the spring of 2023, church officials made the discretionary determination to close Fifth Avenue.

By that time, Fifth Avenue's rich history as a local church within the denomination had waned. As downtown Wilmington grew over the years, Fifth Avenue's membership, attendance, and participation in key ministries declined. (R p 233). Despite many efforts to change this trajectory, Fifth Avenue's activity and participation as a local church ultimately fell below the minimum standards outlined in the *Book of Discipline*. (R pp 235–37).

Just before the decision to close the church, Fifth Avenue began exploring the process of disaffiliating from the UMC under paragraph 2553 of the *Book of Discipline*.[1] Paragraph 2553 set forth a multi-step process

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[1] Paragraph 2553 was a temporary measure enacted in 2019 that gave local churches an opportunity to disaffiliate "for reasons of conscience regarding a change in the requirements and provisions of the Book of Discipline related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals." (R p 95). Paragraph 2553 expired on 31 December 2023 and the *Book of Discipline* expressly provides that it cannot be used after that date. (R p 140); *Discipline* ¶ 2553.2.

through which local churches could request to disaffiliate. Approving such a request was discretionary. Specifically, even if a local church complied with the steps set forth in paragraph 2553, it could only disaffiliate if a majority of voting members of the annual conference voted to approve disaffiliation. (R pp 95–96; 123–24); *Discipline* ¶ 2529.1(b)(3).

Here, such a vote was unnecessary. Notwithstanding Fifth Avenue's request to initiate the disaffiliation process, the North Carolina Conference and its officials determined that exigent circumstances existed to temporarily close Fifth Avenue. (R pp 237–39).

Conference officials then adopted a "Resolution of Closure of Fifth Avenue United Methodist Church" on 24 March 2023. (R p 240). As noted in the resolution, Conference officials concluded, in their sole discretion under the *Book of Discipline*, that based on the circumstances closure was in the best interests of the denomination as a whole. *Id.*

A motion to formally close Fifth Avenue was made at the Annual Conference Session on 16 June 2023. (R p 239). A majority of the assembled clergy and church delegates subsequently voted to formally close Fifth Avenue. *Id.*

Fifth Avenue seeks court intervention

Fifth Avenue filed this action on 27 June 2023, seeking declaratory, monetary, and injunctive relief. Those claims were all aimed at avoiding the decision to close the church and allowing Fifth Avenue—notwithstanding its closure—to seek disaffiliation. The lawsuit named the Conference as a defendant, along with various church officials, including the bishop.

On 15 September 2023, the trial court granted Defendants' motion to dismiss the complaint, which timely raised the ecclesiastical abstention doctrine as a defense.[2] (R pp 74–76, 338–41); *see also* N.C. R. App. P. 14(b)(2). Most of Fifth Avenue's claims were dismissed under Rule 12(b)(1). The trial court concluded that it lacked subject matter jurisdiction over those claims under the First Amendment. *Id.* It dismissed the remaining claims under Rule 12(b)(6) because the complaint failed to adequately plead that those claims could be resolved solely under "neutral principles of law." *Id.* The court also denied Plaintiff's request for a mandatory injunction—an injunction that would have required the court to modify and oversee the disaffiliation process. *Id.*

Fifth Avenue appealed. (R p 342).

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[2] The ecclesiastical-abstention issue was also timely raised and addressed before the North Carolina Court of Appeals, which determined that issue erroneously. *See infra* pp. 11–30.

Appellate proceedings

In a published decision that included a dissent, the Court of Appeals reversed. *Fifth Ave. United Methodist Church of Wilmington v. The N.C. Conf.*, No. COA23-1013 (N.C. Ct. App. Dec. 31, 2024); App. 1–41.

The majority concluded that Fifth Avenue's claims for breach of contract, quiet title, judicial modification of trust, fraud, and constructive fraud could all be resolved under neutral principles of law. *See* slip op. at 11–12. The court reasoned that Fifth Avenue's claims, including its claim to judicially modify the trust created by the *Book of Discipline*, were simply "property" or "contract" claims that it could decide in isolation. *See id.* at 12–13 (quoting *Nation Ford*, 382 N.C.at 127, 876 S.E.2d at 754).

As to the trial court's dismissal of Fifth Avenue's claims for declaratory judgment and quiet title under Rule 12(b)(6) (each of which were premised on Fifth Avenue's request to terminate or modify the trust clause), the court similarly reversed. *See* slip op. at 30–34. The court also reversed the denial of injunctive relief, ordering the trial court to enter "a preliminary injunction enjoining Defendants from taking any action to encumber, impair, change, or otherwise alter" the property at issue. *See id.* at 37.

The dissent concluded that addressing all but one of Fifth Avenue's claims deprived Defendants of "interpreting and determining their own laws and doctrine." Dissent, slip. op. at 3.

REASONS WHY THIS APPEAL PRESENTS A SUBSTANTIAL CONSTITUTIONAL QUESTION

I. By reversing the trial court, the Court of Appeals effectively reversed United Methodism's highest ecclesiastical authority.

The trial court dismissed Fifth Avenue's complaint under the First Amendment's ecclesiastical abstention doctrine. (R pp 338–41). Under that doctrine, the First Amendment precludes civil courts from wading into certain disputes—namely, disputes that might deprive religious bodies of the ability or freedom to interpret their own laws and doctrines. *See infra* pp. 28–30.

The trial court determined—correctly—that Fifth Avenue's claims could not be resolved without construing and interpreting numerous provisions of the *Book of Discipline*, a number of which vest church officials with "sole discretion." (R pp 136–37); *Discipline* ¶ 2549.3(b). Thus, under the ecclesiastical abstention doctrine, dismissal was required.

Indeed, a few months after the trial court dismissed Fifth Avenue's claims, the Judicial Council of the United Methodist Church entered a formal decision. App. 42–46.[3] That decision did what the trial court lacked jurisdiction to do: In a detailed ruling, the Judicial Council construed

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[3] A copy of the Judicial Council's decision, which was entered after the record on appeal was docketed, was provided to the Court of Appeals and discussed in Defendants' brief without objection from Fifth Avenue.

numerous provisions of the *Book of Discipline* to address the various issues underlying Fifth Avenue's closure. *Id.*

The Judicial Council did so by adhering to a standard of review derived from church precedent. Specifically, the Judicial Council explained that addressing the issues involving Fifth Avenue's closure required construing various "pertinent" provisions of the *Book of Discipline* not "in isolation," but "in relation to" one another:

Excerpt from Judicial Council Decision No. 1490
In Judicial Council Decision 1379, we held that ¶ 2553's constitutionality, meaning, application, and effect *should not be determined in isolation*. We further determined that, once codified, ¶ 2553 *must be construed in relation to other pertinent disciplinary paragraphs*.

App. 44 (emphasis added).

Consistent with this standard, the Judicial Council then addressed the fundamental question underlying this lawsuit: whether the discretionary closure of Fifth Avenue was conducted in accordance with the *Book of Discipline*. At issue in its decision were a wide range of ecclesiastical issues:

- For example, the Judicial Council construed paragraph 414.2 of the *Book of Discipline*, which addresses the responsibility of

bishops to "strengthen the local church, giving spiritual leadership to both laity and clergy." App. 42–46.

- It construed paragraph 419.4 of the *Book of Discipline*, which addresses a church superintendent's responsibility to "develop faithful and effective systems of ministry within the district." *Id.*
- And it construed paragraph 2549.3(b) of the *Book of Discipline*, which describes the circumstances under which church officials may, "in their sole discretion, declare that exigent circumstances exist that require immediate protection of the local church's property, for the benefit of the denomination." *Id.*

By construing these and other provisions, the Judicial Council answered questions ranging from whether the *Book of Discipline* prevented church officials from declaring exigent circumstances following Fifth Avenue's disaffiliation request, to whether transferring property under the trust clause was in furtherance of church policy, to whether the bishop, superintendent, and others acted in the best interests of the denomination. *Id.*

The Judicial Council ultimately determined that the *Book of Discipline* authorized Fifth Avenue's closure:

Excerpt from Judicial Council Decision No. 1490
The interim closure of Fifth Avenue United Methodist Church and the vesting of the church's property in the annual conference board of trustees under ¶ 2549.3(b), and that congregation's interim and final closure, did not violate the plain reading of ¶¶ 414.2, 419.4, 2549.3(b), or 2553 of the *Book of Discipline*.

App. 46.

A few months later, the North Carolina Court of Appeals provided the parties with a considerably different interpretation of the *Book of Discipline*. Although it acknowledged the "constitutional prohibition against court entanglement in ecclesiastical matters," the Court of Appeals fashioned a workaround. Slip op. at 11 (quoting *Harris v. Matthews*, 361 N.C. 265, 270, 643 S.E.2d 566, 569 (2007)). Specifically, it determined that by narrowing its analysis to a set of certain provisions from the *Book of Discipline*, as opposed to those provisions that the Judicial Council deemed pertinent, the "core of the issues" (slip op. at 22) before the Court of Appeals could be resolved in a way that would not require a court to "interpret or weigh church doctrine." Slip op. at 24.

For numerous reasons, that approach was deeply flawed.

First, the underlying premise of the majority's decision—that the Court of Appeals can decide which provisions of the *Book of Discipline* matter and

which provisions do not—effectively overruled the Judicial Council. As the Judicial Council explained, issues related to disaffiliation "must be construed in relation to other pertinent disciplinary paragraphs" throughout the *Book of Discipline*. App. 44. Thus, by narrowing its focus to a handful of provisions of the *Book of Discipline*, the Court of Appeals not only supplanted the Judicial Council's standard of review, but also the Judicial Council's ability to decide which provisions of the *Book of Discipline* were implicated.

Second, although the majority recognized that it could not "interpret or weigh church doctrine" in any way, it did so in multiple ways. Slip op. at 13 (quoting *Nation Ford*, 382 N.C. at 123, 876 S.E.2d at 751). Further supplanting the Judicial Council's ruling, including its ability to decide which provisions of the *Book of Discipline* were implicated, the Court of Appeals weighed in on what "successful disaffiliation under paragraph 2553" of the *Book of Discipline* "allows." Slip op. at 4. It also discussed, again in its view, how certain provisions of the *Book of Discipline* are supposed to "operate" when construed "in conjunction with" one another. Slip. op. at 5.

Finally, after making these and other observations, the Court of Appeals selected specific provisions of the Book of Discipline to address each of Fifth Avenue's claims. In other words, it did precisely what the Judicial Council stated should <u>not</u> be done: It analyzed the "constitutionality,

meaning, application, and effect" of the disaffiliation provision "in isolation." App. 44.[4]

The result of this analysis effectively overruled the Judicial Council:

Judicial Council Decision 1490	**No. COA23-1013**
"The interim closure of Fifth Avenue United Methodist Church . . . did not violate the plain reading of ¶¶ 414.2, 419.4, 2549.3(b) or 2553 of the *Book of Discipline*." App. 46.	"[A]t this stage in the litigation, Fifth Avenue's breach of contract claim simply asks whether Defendants' actions complied with the steps outlined in BOD paragraphs 248 and 2553." Slip op. at 23.
"The bishop and district superintendent do not violate [their responsibilities under the *Book of Discipline*] when they inform a local church of interim closure." App. 46.	"Fifth Avenue's complaint and affidavits included in the record allow for an adequate assessment of the elements of fraud and constructive fraud claims without delving into doctrine." Slip op. at 28.
"The question of . . . disaffiliation . . . is moot and a hypothetical because of the annual conference's approval of formal closure" as provided in the *Book of Discipline*. App. 45.	"This cited exigency—disaffiliation—considered in conjunction with other representations by Defendants, can be resolved by application of neutral principles of contract law." Slip op. at 26–27.

[4] In the context of the *Book of Discipline*, "constitutionality" refers to the Constitution of the United Methodist Church, which, as its preamble explains, outlines the method through which the denomination "provide[s] for the maintenance of worship, the edification of believers, and the redemption of the world." (R p 106).

It is well established that courts "must defer to the resolution of [a] doctrinal issue by the authoritative ecclesiastical body." *Nation Ford*, 382 N.C. at 125, 876 S.E.2d at 752. Said another way, courts "cannot decide disputes involving religious organizations where the religious organizations would be deprived of interpreting and determining their own laws and doctrine." *Smith v. Privette*, 128 N.C. App. 490, 494, 495 S.E.2d 395, 397 (1998) (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871)); *see also infra* pp. 19–21.

Yet that is precisely what occurred here. The Judicial Council held that church officials properly closed Fifth Avenue in accordance with numerous provisions of the *Book of Discipline*. But just a few months later, and under its own reading of the *Book of Discipline*, the Court of Appeals determined that a civil court should be the final arbiter of what these fundamental religious principles mean and how they apply.

What is more, the decision held that a bishop and other church officials could face fraud claims for exercising their "sole discretion" under the *Book of Discipline*. This result is not only unconstitutional, but also "wholly inconsistent with the American concept of the relationship between church and state." *Nation Ford*, 382 N.C. at 128, 876 S.E.2d at 754 (quoting *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445–46 (1969)).

In sum, the decision below deprives United Methodism's highest authority on ecclesiastical matters the ability to interpret church doctrine and practice. And it does so in direct conflict with established First Amendment jurisprudence. *See infra* pp. 21–27.

For these reasons, this case presents a substantial constitutional question requiring this Court's review.

II. The decision below adopted an analytical framework that is inconsistent with the First Amendment.

A. Interpretive and judgment-based deference to religious bodies is a fundamental tenet of the First Amendment.

For more than 150 years, it has been a core principle of First Amendment jurisprudence that religious bodies are entitled to deference on matters of doctrine. *See Watson*, 80 U.S. (1 Wall.) at 728–29; *see also Jones v. Wolf*, 443 U.S. 595, 602 (1979) (explaining that "the [First] Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization").

The scope of that deference is twofold.

First, civil courts must defer to the ecclesiastical body on questions of interpretation. *Jones*, 443 US. at 602. This means that civil courts cannot resolve textual ambiguity within religious doctrines, and any "searching" inquiry to divine the meaning of religious doctrine is off limits. *Serbian E.*

Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich, 426 U.S. 696, 723 (1976). Simply stated, the role of "interpreting and determining" the meaning of religious doctrines is exclusively reserved for the religious body. *See Privette*, 128 N.C. App. at 494, 495 S.E.2d at 397–98 (citing *Watson*, 80 U.S. (1 Wall.) 679).

These principles broadly apply to every case, notwithstanding the subject matter. For that reason, and as this Court recently observed, where property-related claims cannot be addressed without resolving questions about the meaning and interpretation of religious doctrine, deference—and by extension, abstention—is required. *See Nation Ford*, 382 N.C. at 124–25, 876 S.E.2d at 752 (citing *Jones*, 443 U.S. at 604).

Second, the First Amendment requires civil courts to provide judgment-based deference on questions arising from religious doctrine. Civil courts cannot, for example, resolve claims that ask whether a religious official acted "in good faith." *Id.* at 125, 876 S.E.2d at 752. They cannot determine whether a religious official acted in the best interests of the religious body. *Id.* Nor can they make an inquiry into the justification behind decisions involving religious concepts or doctrine. *Id.* (explaining that the Court could not, consistent with the First Amendment, determine whether church officials acted "without justification" in terminating a pastor).

This two-part deference to religious bodies is critically "necessary to protect the First Amendment rights identified by the 'Establishment Clause' and the 'Free Exercise Clause.'" *Id.* at 116–17, 876 S.E.2d at 747 (quoting *Harris*, 361 N.C. at 270, 643 S.E.2d at 569).

B. The Court of Appeals dispensed with First Amendment deference and construed the *Book of Discipline*.

In a 38-page opinion, the Court of Appeals did precisely what this Court cautioned against in *Nation Ford*. It did not "distinguish between claims that will necessarily require it to become entangled in spiritual matters and those that can potentially be resolved purely on civil grounds." *Id.* at 128, 876 S.E.2d at 754. And it did not "defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Id.* at 125, 876 S.E.2d at 752.

As to the latter, it also dispensed with both types of required deference: interpretive and judgment-based.

1. The decision below did not afford interpretive deference to the United Methodist Church.

As *Nation Ford* and *Jones* make clear, where scrutiny of religious doctrine under "neutral principles of secular law" necessarily involves the resolution of a religious controversy, civil courts must (at the very least) afford deference. *Nation Ford*, 382 N.C. at 124, 876 S.E.2d at 752; *see also*

Milivojevich, 426 U.S. at 724–25 ("In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and . . . create tribunals for adjudicating disputes over [doctrinal] matters. When this choice is exercised . . . , *the Constitution requires that civil courts accept their decisions as binding upon them*.") (emphasis added).

In connection with its discussion of Fifth Avenue's contract claim, the Court of Appeals conducted a multi-page analysis concerning the disaffiliation process under the *Book of Discipline*. *See* slip op. at 22–24. It ultimately reasoned that because paragraph 2553.3 incorporates paragraph 248 by reference—a discretionary provision for calling church conferences—the trial court could determine whether the Conference complied with its own procedure. *Id.*

This approach failed to recognize, however, that reaching an outcome on disaffiliation necessarily resolved *the* "religious controversy" surrounding closure. *Nation Ford*, 82 N.C. at 124–25, 876 S.E.2d at 752. After all, once Fifth Avenue was closed, it no longer had the ability to disaffiliate. So the issue of closure and disaffiliation are one and the same—that is, a decision to proceed with the former necessarily precludes the latter.

The Judicial Council's decision recognized as much:

Excerpt from Judicial Council Decision No. 1490

> "Unless and until disaffiliated, a local church remains . . . subject to the requirements of the *Discipline* [and] initiation of the disaffiliation process . . . is no impediment to an interim closure."
>
> . . . .
>
> Thus, the question of disaffiliation "is moot and a hypothetical because of the annual conference's approval of formal closure" as provided in the *Book of Discipline*.

App. 45–46.

In other words, because a local church that initiates the disaffiliation process may still be closed, and because closure eliminates the ability to disaffiliate, a civil court cannot actually resolve Fifth Avenue's claim for breach of contract based on the disaffiliation issue alone. It must also delve into the religious controversy surrounding the merits of closure. *See Nation Ford*, 382 N.C. at 124–25, 876 S.E.2d at 752.

Notably, the Court of Appeals acknowledged that it lacked authority to resolve the "substantive merits of the[ ] decision to permanently close Fifth Avenue." Slip. op. at 23. But as the above shows, it did just that by wading into the disaffiliation issue, which can only be addressed after first setting aside Fifth Avenue's closure.

The analysis of each of Fifth Avenue's remaining claims suffers from similar flaws—namely, addressing claims that fundamentally turn on interpreting church doctrine.

For example, in analyzing Fifth Avenue's quiet title and judicial modification of trust claim, the Court of Appeals concluded that a jury could determine whether Fifth Avenue intended to create a connectional relationship with the UMC. *See* slip op. at 20–21. That conclusion is entirely incompatible with the record, which shows that Fifth Avenue's congregation has been a part of the UMC or its predecessor denominations for over 175 years. (R pp 81–82, 85, 143–52, 271). More fundamentally, however, it calls into question the very nature and scope of the UMC's hierarchical structure—a reality that belies any analysis premised on "neutral principles of secular law." *Nation Ford*, 382 N.C. at 124, 876 S.E.2d at 752

At bottom, what Fifth Avenue's property claims really ask a court to do is interpret the *Book of Discipline* and determine that the spiritual purpose of the trust clause is "unlawful, contrary to public policy, or impossible to achieve" (R pp 24, 29–31), or that the trust clause, notwithstanding the unequivocal statement in the *Book of Discipline* that it "is and always has been irrevocable" (R p 119); *Discipline* ¶ 2501, be rewritten so as to be revocable. (R p 31).

In sum, the Court of Appeals' opinion not only requires the trial court to cast aside interpretive deference, but also to consider and answer questions of theology and religious doctrine about what the trust clause *should* mean. Such an approach is not, and has never been, consistent with the First Amendment.[5]

2. The decision below requires the trial court to second-guess discretionary decisions made under religious doctrine.

The decision below also instructs the trial court to review decisions made exclusively based on religious doctrine—that is, precisely the type of second-guessing that *Nation Ford* disallows. 382 N.C. at 125, 876 S.E. at 752.

Paragraph 2549.3(b) of the Book of Discipline gives Conference leaders "*sole discretion*" to make interim closure decisions. App. 45. It further

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[5] The Court of Appeals' approach also misinterprets and misquoted paragraph 248 of the *Book of Discipline*. Contrary to the unattributed quote in the opinion, *see* slip op. at 23, paragraph 248 provides that a church conference *may*—not "shall"—be called at the request of the church council. The actual text states:

> The church conference shall be authorized by the district superintendent. It *may* be called at the discretion of the superintendent or following a written request to the district superintendent by one of the following: the pastor, the church council, or 10 percent of the professing membership of the local church.

Discipline ¶ 248; (Doc. Ex. 609–10) (emphasis added).

provides that those exigent circumstances allowing closure "include, *but are not limited to*, situations where a local church no longer serves the purpose for which it was organized or incorporated." (R pp 136–37); *Discipline* ¶ 2549.3(b) (emphasis added).

Church officials decided, in their sole discretion, that multiple reasons justified Fifth Avenue's closure. And under established precedent, those reasons should not have been second guessed by the courts. *See supra* pp. 12–19. Indeed, the Court of Appeals seemingly acknowledged as much, noting that a civil court was likely barred from questioning the sincerity of the officials in determining that Fifth Avenue no longer met the minimal religious expectations for a local church. *See* slip op. at 25–26.

Despite this, the Court held that Fifth Avenue's fraud claim could go forward. The court noted that Fifth Avenue's request for disaffiliation was listed as one of several factors justifying the interim closure decision. *Id.* at 26. From there, the court reasoned that this reference to disaffiliation sufficiently "intertwined" the fraud claim with the breach of contract claim. *Id.* And from there, the court reasoned that because the breach of contract claim could, in its view, be decided on "neutral principles" of law, so could the fraud claim. *Id.*

This analysis contradicts this Court's precedent. As this Court held in *Nation Ford*, when ultimately resolving a dispute "would require the civil

court to resolve a religious controversy[,] the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." 382 N.C. at 124–25, 876 S.E.2d at 752.

Here, that calls for deferring to the "sole discretion" vested in church officials who decided that Fifth Avenue "no longer serve[d] the purpose for which it was organized or incorporated." (R p 137). And it also calls for deferring to United Methodism's highest authority on ecclesiastical matters, which put to rest any notion that second guessing (which is not permitted in the first place) would yield a different result. *See supra* pp. 12–10; App. 42–46.

In sum, by pairing an incorrect reading of the *Book of Discipline* with a view of the law that conflicts with this Court's precedent, the Court of Appeals reached a troubling result: It determined that a civil court could question the sole discretion of a bishop and other denominational leaders to decide whether a local church still "serves the purpose for which it was organized." (R p 137).

That decision by the Court of Appeals presents a substantial constitutional question warranting this Court's review.

III. Reviewing this case will allow the Court to provide important guidance on the proper scope of ecclesiastical abstention.

A. This Court's review is needed to resolve the conflict between the decision below and this Court's decision in *Nation Ford*.

This Court's decision in *Nation Ford* reinforced decades-old ecclesiastical abstention principles, relying heavily on *Harris*, *Jones*, and *Presbyterian*.

It also clarified an issue of timing.

The Court of Appeals, when first deciding *Nation Ford*, explained that, while certain claims raised in that lawsuit could ultimately require the court to delve into issues prohibited by the First Amendment, "there [was] no guarantee at [the Rule-12] stage of the proceedings that our courts will be forced to answer" those religious questions. *Nation Ford Baptist Church Inc. v. Davis*, 279 N.C. App. 599, 606, 866 S.E.2d 11, 17 (2021), *rev'd in part*, 382 N.C. 115 (2022).

As to those claims that might later present ecclesiastical concerns, this Court unanimously reversed. *See Nation Ford*, 382 N.C. at 125, 876 S.E.2d at 752. In doing so, the Court rejected a "wait-and-see" approach in favor of a thorough claim-by-claim approach that considers all stages of litigation. Thus, where claims—even at the remedy stage—necessarily involve wading

into religious issues and deciding religious controversies, dismissal at the Rule-12 stage is appropriate. *Id.*

Just two years after that clear instruction, the decision below reverted to a pre-*Nation Ford* approach. Although the Court of Appeals reviewed each of Fifth Avenue's claims, it overlooked the "nature of the case" (a dispute over the discretionary closure of the church) and "the type of relief sought" (including modification of religious doctrine and injunctive relief modifying and reinstating the disaffiliation process). *See Nation Ford*, 382 N.C. at 127, 876 S.E.2d at 754.

This approach is in direct conflict with this Court's teachings in *Nation Ford*, and only through this Court's review can the conflict be resolved.

B. This case illustrates why civil courts should not interpret religious doctrine.

The decision below drastically alters the First Amendment landscape for religious organizations across the state.

Under the ruling below:

- civil courts have the authority to declare religious doctrine "unlawful, contrary to public policy, or impossible to achieve" (R pp 24, 29);

- civil courts can resolve for themselves questions of religious interpretation, even if that means overruling the highest tribunal within a religious organization (*see supra* pp. 12–19);
- local churches within hierarchical denominations can set aside denominational obligations, rules regarding membership and property stewardship, and other fundamental denominational principles and apply to civil courts to avoid the consequences of doing so (*see supra* p. 18);
- civil courts can review discretionary decisions about fundamental religious principles and theology by church officials entrusted with the authority to make those decisions (*see supra* pp. 25–27); and
- civil courts are authorized to issue mandatory injunctive relief that conflicts with—and even rewrites—denominational rules and procedures (R pp 33–34).

* * *

In sum, the decision below conflicts with this Court's precedent on the ecclesiastical abstention doctrine, calling that longstanding doctrine into question in North Carolina. Thus, the decision below presents a substantial constitutional question calling for this Court's review under N.C.G.S. § 7A-30(1).

PETITION FOR DISCRETIONARY REVIEW

As shown in the above notice of appeal, this case presents a substantial constitutional question warranting review under N.C.G.S. § 7A-30(1). For all of the same reasons, and as described more fully below, this case also satisfies the criteria for discretionary review under N.C.G.S. § 7A-31(c)—not just one of the criteria, but all three.

Each are addressed below.

Reasons Why Certification Should Issue

I. The decision below conflicts with this Court's precedent.

The decision below directly conflicts with multiple decisions of this Court.

As shown in the above notice of appeal, it conflicts with this Court's unanimous decision in *Nation Ford* from just three years ago. *See, e.g.*, *supra* pp. 19–27. The Court held there that when claims "necessarily require" a court "to become entangled in spiritual matters," the First Amendment mandates dismissal. *See supra* pp. 21–23. The decision below simply cannot be squared with this central holding from *Nation Ford*.

It also conflicts with this Court's decision in *Harris*, which explained that the "constitutional prohibition against court entanglement in ecclesiastical matters is necessary to protect First Amendment rights

identified by the Establishment Clause and the Free Exercise Clause." 361 N.C. at 270, 643 S.E.2d at 569 (quotation omitted).

As described above, these are no small conflicts. *Supra* pp. 28–30. Particularly with respect to *Nation Ford*, the decision below directly clashes with this Court's teachings. *See supra* pp. 29–30.

If left undisturbed, the decision below will raise legitimate questions about whether and to what extent North Carolina courts should simply look past this Court's thorough, well-reasoned decision in *Nation Ford* to embrace the newly minted approach in *Fifth Avenue*. Without further review by this Court, many will argue that the decision below—rather than this Court's precedent—is now the law of North Carolina.

By itself, this conflict between the decision below and this Court's precedents warrants discretionary review under N.C.G.S. § 7A-31(c)(3).

II. This case involves legal principles of major significance to the jurisprudence of this state.

As discussed in the above notice of appeal, *see supra* pp. 1–30, this case involves a number of significant issues of law. These are issues that are not just important to North Carolina practitioners; they are issues that are deeply important to North Carolina parishioners.

As the above notice of appeal describes, the legal issues in this case reach far beyond the parties to this appeal. They affect when and how North

Carolina's churches can make their own doctrinal decisions free from government oversight, how churches may provide for the "maintenance of worship, the edification of believers, and the redemption of the world," (*see supra* p. 17 n.4), and how doctrinal disputes concerning the furtherance of these goals are resolved. Thus, if left undisturbed, the sweeping impact of the decision below would be felt by congregations across the state, deeply affecting the delicate relationship between our state's Christian community and the state itself. *See* N.C. Const. art. I, § 13 ("All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.").

As to these significant consequences, Fifth Avenue is in no position to disagree. In the immediate wake of the decision below, its counsel called the public's attention to the fact that the decision below "has significant implications for other churches"[6] and "broader implications for congregations across the state."[7]

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[6] *Victory at the N.C. Court of Appeals for Wilmington's Fifth Avenue United Methodist Church*, Ward & Smith, P.C. News & Insights, Jan. 8, 2025, https://perma.cc/D654-BPJW.

[7] *PlainSpoken Podcast to Discuss High-Stakes Church Property Dispute*, Ward & Smith, P.C. News & Insights, Jan. 24, 2025, https://perma.cc/W3XH-N9ET.

Notably, these broad implications for North Carolina congregations diverge from the law of other states on the question of a "contractual right to disaffiliate." Indeed, in the last two years alone, state supreme courts in other states have decided this issue differently than the court did in the decision below. *See Aldersgate United Methodist Church of Montgomery v. Ala.-W. Fla. Conf. of United Methodist Church, Inc.*, No. SC-2023-0830, 2024 WL 2790269, at *3 (Ala. May 31, 2024) (explaining that claims challenging annual conference's rejection of eligibility statements under paragraph 2553 hinged on "underlying controversies over religious doctrine" not suitable for civil court review); *see also Okla. Annual Conf. of the United Methodist Church, Inc. v. Timmons*, 538 P.3d 163, 168 (Okla. 2023) (claims arising from postponement of church vote on disaffiliation required the interpretation of the *Book of Discipline* and trial court erred in undertaking "its own interpretation to achieve a 'fair' result").

In sum, and as further described above (*see supra* pp. 28–30), the significance of this case to the state's jurisprudence, by itself, warrants discretionary review under N.C.G.S. § 7A-31(c)(2).

III. This case has significant public interest.

This case, as well as the broader First Amendment issues it presents, has significant public interest. *See, e.g.*, *supra* pp. 28–30.

As described in the above notice of appeal, the Court of Appeals' decision opens the door to the kind of "total subversion" of religious institutions that *Watson* warned of more than 150 years ago. *Watson*, 80 U.S. (1 Wall.) at 729. As a result, and as demonstrated by the statewide media attention this case has received, this has been a closely watched case that has generated significant interest not just within North Carolina's broader Christian community, but also with the general public:

- *N.C. Court of Appeals Finds Error in Dismissal of Fifth Avenue Methodist Church Suit*, WECT News 6, Dec. 31, 2024, 6:17 PM, https://www.wect.com/2024/12/31/nc-court-appeals-finds-error-dismissal-fifth-ave-united-methodist-church-suit/

- *Court Rules Fifth Avenue Church Can Move Forward with Suit Against United Methodist Church*, Port City Daily, Jan. 9, 2025, https://portcitydaily.com/latest-news/2025/01/09/court-rules-fifth-avenue-church-can-move-forward-with-suit-against-united-methodist-church

- John Staton, *Long Legal Fight Looms Over Closing of Historic Methodist Church in Wilmington*, Wilmington Star News, Feb. 2, 2025, 5:02 AM, https://www.starnewsonline.com/story/news/local/2025/02/02/closing-of-5th-ave-united-methodist-church-in-wilmington-leads-to-legal-fight/77726162007/

- *N.C. Court of Appeals Makes Ruling of Fifth Avenue United Methodist Church Lawsuit*, Old North State Wealth News, Dec. 31, 2024, https://news.onswm.com/local-news/north-carolina-court-of-appeals-makes-ruling-of-fifth-avenue-united-methodist-church-lawsuit/

As the above shows, the strong public interest in this case, particularly within North Carolina's Christian community, warrants discretionary review under N.C.G.S. § 7A-31(c)(1).

* * *

For the reasons above, including those set forth in the notice of appeal, this case satisfies all three of the criteria for discretionary review. *See* N.C.G.S. § 7A-31(c).

IV. This case warrants review in its procedural posture.

Appellate Rule 15(h) embraces this Court's review of interlocutory orders, including decisions of the Court of Appeals ordering "further proceedings in the trial tribunal," when the "failure to certify would cause a delay in final adjudication which would probably result in substantial harm to a party." N.C. R. App. P. 15(h).

This "standard parallels the 'substantial rights' standard," Elizabeth Brooks Scherer & Matthew Nis Leerberg, *North Carolina Appellate Practice and Procedure* § 19.04[4](e) (2019), only it is lower. Under the substantial-rights standard, an interlocutory order is immediately reviewable if it "*will* work injury [to a substantial right] if not corrected before final judgment." *Harris*, 361 N.C. at 269, 643 S.E.2d at 569 (emphasis added). By contrast,

Appellate Rule 15(h) only requires that the order "probably" would do so. N.C. R. App. P. 15(h).

Here, because the higher substantial-rights standard is satisfied under this Court's precedent, the Appellate Rule 15(h) standard is more than satisfied. In *Harris*, this Court held that in cases like this one, the substantial-rights standard is satisfied because a church's substantial rights "*will* be impaired or lost and defendant *will* be irreparably injured if the trial court becomes entangled in ecclesiastical matters from which it should have abstained." 361 N.C. at 271, 643 S.E.2d at 570 (emphasis added). It follows then that Appellate Rule 15(h)'s lower standard—that "failure to certify would . . . probably result in substantial harm"—is more than satisfied under the same circumstances. *See supra* pp. 32–35 (describing the First Amendment violations that will occur in the absence of this Court's review).

As a result, this case warrants review in its procedural posture.

ISSUES TO BE BRIEFED

If the Court allows discretionary review, Defendants' appeal will present the following issues:

I. Under the First Amendment's ecclesiastical-entanglement prohibition, did the Court of Appeals err by reversing the trial court's dismissal of Fifth Avenue's claims?

CONCLUSION

Defendants respectfully request that the Court exercise jurisdiction over the substantial constitutional questions in this appeal, or in the alternative, allow discretionary review.

Respectfully submitted the 4th day of February, 2025.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed with the clerk of the North Carolina Court of Appeals and with the clerk of the North Carolina Supreme Court in accordance with Appellate Rule 14 and Appellate Rule 15.

I further certify that the foregoing document was served on all counsel by email and U.S. mail to the following:

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This the 4th day of February, 2025.

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APPENDIX

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1013

Filed 31 December 2024

New Hanover County, No. 23 CVS 2156

FIFTH AVENUE UNITED METHODIST CHURCH OF WILMINGTON, Plaintiff,

v.

THE NORTH CAROLINA CONFERENCE, SOUTHEASTERN JURISDICTION, OF THE UNITED METHODIST CHURCH, INC.; THE BOARD OF TRUSTEES OF THE NORTH CAROLINA CONFERENCE, SOUTHEASTERN JURISDICTION, OF THE UNITED METHODIST CHURCH, INC.; CONNIE SHELTON; TARA C. LAIN; DEBORAH BLACK; MIKE PRIDDY; REBECCA W. BLACKMORE; EARL HARDY; M. FRANCIS DANIEL; BECCA DETTERMAN; SUE W. HAUSER; HEATHER REAVES; ISMAEL RUIZ-MILLAN; DENA M. WHITE; JON STROTHER; KENNETH LOCKLEAR; DAVID BLACKMAN; and MICHAEL D. FRESE, Defendants.

Appeal by Plaintiff from order entered 15 September 2023 by Judge Tiffany Peguise-Powers in New Hanover County Superior Court. Heard in the Court of Appeals 4 March 2024.

Coats & Bennett, PLLC, by Attorney Gavin B. Parsons, for the plaintiff-appellant.

Poyner Spruill, LLP, by Attorneys Eric P. Stevens and Colin R. McGrath, for the defendant-appellee.

STADING, Judge.

This matter concerns a dispute between a church in Wilmington and its

denomination over the ownership of certain real estate (the "Property") originally deeded to the church. The church congregation has held services on the Property since 1889. That congregation is known as Fifth Avenue United Methodist Church of Wilmington ("Fifth Avenue"), the plaintiff in this action. The defendants (collectively, "Defendants"), represent the United Methodist Church denomination (the "UMC") and include: the North Carolina Conference, Southeastern Jurisdiction of the United Methodist Church (the "Conference"); the Board of Trustees of the Conference (the "Board"); and individually named defendants holding positions with the Conference.

Fifth Avenue appeals from an order denying its request for preliminary injunctive relief and granting Defendants' motions to dismiss all claims under N.C. Gen. Stat. § 1A-1, Rules 12(b)(1), (6) (2023). After careful consideration, we hold that the trial court committed error by dismissing Fifth Avenue's claims for breach of contract, quiet title, judicial modification of trust, fraud, and constructive fraud pursuant to Rule 12(b)(1). The trial court also committed error by dismissing Fifth Avenue's claims for declaratory judgment and quiet title pursuant to Rule 12(b)(6). Furthermore, the trial court committed error by denying Fifth Avenue's request for preliminary injunctive relief. However, the trial court did not commit error by dismissing Fifth Avenue's claim for promissory estoppel pursuant to Rule 12(b)(6).

I. Background

Fifth Avenue is a historic church established in 1847 and situated near the Cape Fear River in Wilmington. In 1889, the church constructed its historic sanctuary on the Property. The Property's tax value presently exceeds $2,000,000.00. In 1968, Fifth Avenue affiliated with the UMC. The UMC is governed by the *Book of Discipline* (the "BOD"), which sets forth rules and procedures for the UMC, its conferences, and its individual churches. The BOD is "published, and generally revised and updated every four years by the General Conference of the UMC."

The UMC's hierarchical structure as provided in the BOD consists of: (1) the General Conference, which is over the entire UMC denomination; (2) geographically based Annual Conferences, each led by a bishop; and (3) districts within each Annual Conference, led by a district superintendent. As an affiliate of the UMC, Fifth Avenue was a part of the Harbor District (the "District") within the North Carolina Annual Conference. Defendant Connie Shelton serves as the Bishop of the North Carolina Annual Conference (the "Bishop"). Defendant Tara C. Lain serves as the superintendent of the Harbor District (the "District Superintendent").

The dispute between Fifth Avenue and Defendants centers largely on the application of particular provisions in the BOD concerning the ownership of Fifth Avenue's church property. Among these provisions, paragraph 2501 provides, "[a]ll properties of United Methodist local churches . . . are held, *in trust*, for the benefit of the entire denomination, and the ownership and usage of church property is subject

to the [BOD]." The trust clause, paragraph 2501, "reflects the connectional structure of the Church by ensuring that the property will be used solely for purposes consonant with the mission of the entire denomination as set forth in the [BOD]." Furthermore, the trust clause states that it "is and always has been irrevocable, except as provided in the [BOD]. Property can be released from the trust [or] transferred free of trust . . . only to the extent authority is given by the [BOD]."

In 2019, the UMC General Conference enacted paragraph 2553 of the BOD, which provides circumstances and a process by which an individual church may disaffiliate from the UMC. According to the BOD, to disaffiliate from the UMC under this provision, a church must: (1) ask its district superintendent to call a "church conference . . . in accordance with [paragraph] 248"; (2) hold the conference within 120 days "after the district superintendent calls for the conference"; and (3) vote for disaffiliation by a "two-thirds (2/3) majority vote." In addition, paragraph 2553.4(c) provides that "[a] disaffiliating local church shall have the right to retain its real and personal, tangible and intangible property. All transfers of property shall be made prior to disaffiliation. All costs for transfer of title or other legal work shall be borne by the disaffiliating local church." Therefore, successful disaffiliation under paragraph 2553 allows for local church property to be released free of the trust clause in paragraph 2501. Even so, according to the District Superintendent, a local church's affirmative vote to disaffiliate "is not absolute, and . . . is not effective unless

. . . ratified by the annual conference through a majority vote of members at an annual conference session." Important here, Paragraph 248 works in conjunction with paragraph 2553 and operates as follows:

> [T]here are two ways in which a church conference can be called by the district superintendent. One is at his/her own discretion. The other is when he/she is requested to do so by the pastor, the church governing body, or 10 percent of the professing membership of the local church. In the latter cases, the district superintendent's duty is purely ministerial and is *not subject to his/her discretion*.

(emphasis added).

On 18 January 2023, Fifth Avenue contacted the Annual Conference inquiring about the disaffiliation process under paragraph 2553. Two weeks later, on 1 February 2023, Fifth Avenue's church council met and voted eight–to–two in favor of moving forward with the disaffiliation process. In light of this vote, Fifth Avenue proceeded with the steps outlined in paragraph 2553 by submitting the essential paperwork for the UMC to conduct a "Charge Conference" vote.[1] Then, Fifth Avenue requested that the District Superintendent "hold a Charge Conference for [Fifth Avenue] to conduct a vote on disaffiliation" pursuant to paragraphs 248 and 2553. Later that month, on 27 February 2023, the Annual Conference confirmed receipt of Fifth Avenue's disaffiliation request; noting that it had received all of the required information for Fifth Avenue to proceed with the church's disaffiliation vote.

[1] A "Charge Conference" is an official meeting of the local church membership.

Three weeks later, on 19 March 2023, Fifth Avenue's pastor informed the congregation that the District Superintendent would hold an informational meeting regarding disaffiliation on the following Sunday, 26 March 2023. On 21 March 2023, Fifth Avenue made an additional written request that the District Superintendent "schedule a Church Conference vote on disaffiliation in accordance with [paragraph] 2553 of the BOD prior to March 31, 2023." Fifth Avenue's bulletin, circulated in anticipation of the 26 March 2023 meeting, stated, "'Disaffiliation' informational meeting for **Professing Members only** this Sunday evening @ 6 pm, presented by Tara Lain, District Superintendent."

Without the knowledge of any member or pastor of Fifth Avenue, and in the context of requests to schedule a disaffiliation vote, on Friday, 24 March 2023—two days before Fifth Avenue's scheduled informational meeting with the District Superintendent—Defendants seized the Property and closed Fifth Avenue pursuant to paragraph 2549. In doing so, Defendants promptly adopted a "Resolution for Closure of Fifth Avenue" (the "Resolution of Closure"), and recorded an "Affidavit of Declaration of Ownership" (the "Affidavit of Ownership") of the Property in the New Hanover County Registry. All individual defendants, including the District Superintendent and the Bishop, signed the Resolution of Closure asserting that "exigent circumstances" warranted the immediate closure of Fifth Avenue and seizure of the Property under paragraph 2549.

The "exigent circumstances" stated by Defendants to warrant closure of Fifth Avenue included: (1) declining membership and missional activity; and (2) Fifth Avenue's pending application with the Annual Conference for disaffiliation. Fifth Avenue retorts that the UMC's own data, published in 2020, shows that its average worship attendance "was higher than 235 of the 785 churches in the North Carolina Conference of the UMC." Nonetheless, Defendants reasoned that permanent closure under paragraph 2549.3(b) was appropriate "because [Fifth Avenue] no longer serve[d] the purpose for which it was organized and incorporated."

The BOD's *Disposition of Property of a Closed Local Church* clause, paragraph 2549.3(b), provides:

> At any time between sessions of annual conference, if the presiding bishop, the majority of the district superintendents, and the appropriate district board of church location and building all consent, they may, in their sole discretion, declare that exigent circumstances exist that require immediate protection of the local church's property, for the benefit of the denomination. In such case, title to all the real and personal, tangible and intangible property of the local church shall vest immediately in the annual conference board of trustees who may hold or dispose of such property in its sole discretion, subject to any standing rule of the annual conference. Exigent circumstances include, but are not limited to, situations where a local church no longer serves the purpose for which it was organized or incorporated . . . or where the local church property is no longer used, kept, or maintained by its membership as a place of divine worship of The United Methodist Church. When it next meets, the annual conference shall decide whether to formally close the local church.

Members of Fifth Avenue worshipped on the Property on the morning of Sunday, 26 March 2023, unaware that Defendants had effectively closed the church two days earlier. That Sunday evening, members of Fifth Avenue—still unaware of Defendants' Resolution of Closure—gathered at the local church for the scheduled disaffiliation informational meeting with its District Superintendent. However, the Bishop and the District Superintendent both attended and notified Fifth Avenue's pastor and membership that they had closed Fifth Avenue two days prior. The next day, Fifth Avenue was excluded from the Property by Defendants changing the locks to the fellowship hall and church sanctuary. Months later, between 15–17 June 2023, at its annual meeting, Defendants' Annual Conference voted to ratify the closure of Fifth Avenue's church due to exigent circumstances, explaining:

> The Effective Date of the Resolution for Closure of Fifth Avenue United Methodist Church . . . was March 24, 2023. At that time the Church had submitted its disaffiliation inquiry form and *was requesting a church council meeting to vote on disaffiliation*, but no meeting had been scheduled or vote held. Paragraph 2549.3(b) . . . clearly states that "*At any time* between sessions of annual conference, if the presiding bishop, the majority of the district superintendents, and the appropriate district board of church location and building all consent, they may, *in their sole discretion*, declare that exigent circumstances exist that require immediate protection of the local church's property . . . ." The [BOD] plainly establishes that the existence of exigent circumstances allows the presiding bishop, the Cabinet, and the appropriate district committee of church location and building to act at any time,

> regardless of what other circumstances or options a local church is addressing.

(first emphasis added).

On 27 June 2023, Fifth Avenue filed this action claiming that Defendants had no right to seize the Property and had otherwise deprived Fifth Avenue of their right to disaffiliate from the UMC—as granted by the BOD—and retain its Property free from any trust provision in the BOD. In its complaint, Fifth Avenue brought the following causes of action and requests for relief: (1) breach of contract; (2) promissory estoppel; (3) declaratory judgment; (4) fraud; (5) constructive fraud; (6) quiet title; (7) judicial modification of trust; and (8) preliminary and permanent injunction.[2] In response, Defendants moved to dismiss all of Plaintiff's claims pursuant to Rules 12(b)(1) and 12(b)(6). *See* N.C. Gen. Stat. § 1A-1, R. 12(b)(1), (6). On 15 September 2023, after a hearing, the trial court granted Defendants' motion to dismiss all of Fifth Avenue's claims. Fifth Avenue timely entered its notice of appeal on 18 September 2023.

II. Jurisdiction

The trial court's order dismissing all of Fifth Avenue's claims is a final judgment. Accordingly, our Court has jurisdiction to consider Fifth Avenue's appeal.

[2] On appeal, Fifth Avenue does not raise the issue of whether the trial court erred by denying its request for a permanent injunction. We therefore do not address the issue in this opinion. N.C. R. App. P. 28(a) ("The scope of review on appeal is limited to issues so presented in the several briefs.").

N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Analysis

Fifth Avenue submits several issues for our consideration: Whether the trial court committed error by (1) dismissing Fifth Avenue's claims for breach of contract, fraud, constructive fraud, quiet title, and judicial modification of trust for lack of subject matter jurisdiction pursuant to Rule 12(b)(1); (2) dismissing Fifth Avenue's claims for promissory estoppel, declaratory judgment, and quiet title for failure to state a claim pursuant to Rule 12(b)(6); and (3) denying Fifth Avenue's request for preliminary injunctive relief. For the reasons below, we hold that the trial court erred in dismissing Fifth Avenue's claims for breach of contract, quiet title, judicial modification of trust, fraud, and declaratory judgment. But the trial court did not err in dismissing Fifth Avenue's claim for promissory estoppel. We also hold that the trial court erred in denying Fifth Avenue's request for injunctive relief.

A. Ecclesiastical Entanglement – Rule 12(b)(1)

In the matter *sub judice*, the trial court granted Defendants' motion to dismiss the following claims under N.C. Gen. Stat. § 1A-1, Rule 12(b)(1): (1) breach of contract, (2) fraud, (3) constructive fraud, (4) quiet title, and (5) judicial modification of trust. Fifth Avenue contends that the trial court erroneously dismissed all of these claims because they "do not require examination, interpretation, or determination of religious doctrine." "We review Rule 12(b)(1) motions to dismiss for lack of subject

matter jurisdiction de novo and may consider matters outside the pleadings." *Harris v. Matthews*, 361 N.C. 265, 271, 643 S.E.2d 566, 570 (2007). "Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Bartley v. City of High Point*, 381 N.C. 287, 293, 873 S.E.2d 525, 532 (2022) (quoting *Craig v. New Hanover Cty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009)).

"Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act . . . ." *In re T.R.P.*, 360 N.C. 588, 590, 636 S.E.2d 787, 790 (2006). "The principle that civil courts lack subject matter jurisdiction to resolve disputes involving 'purely ecclesiastical questions and controversies' has long been recognized." *Nation Ford Baptist Church Inc. v. Davis*, 382 N.C. 115, 121, 876 S.E.2d 742, 750 (2022) (quoting *Braswell v. Purser*, 282 N.C. 388, 393, 193 S.E.2d 90, 93 (1972)). Indeed, "[w]hen the resolution of a dispute requires the interpretation of religious doctrines or spiritual practices, the court must abstain from deciding purely religious questions." *Davis*, 382 N.C. at 116, 876 S.E.2d at 747. "The constitutional prohibition against court entanglement in ecclesiastical matters is necessary to protect First Amendment rights identified by the 'Establishment Clause' and the 'Free Exercise Clause.'" *Harris*, 361 N.C. at 270, 643 S.E.2d at 569 (citation omitted). The *Davis* Court explained:

> The impermissible entanglement doctrine limits a court's authority to resolve disputes involving religious

> organizations. Courts possess jurisdiction over only those claims that can be resolved through application of neutral principles of secular law that govern all similar organizations and entities. A court must carefully distinguish between claims that will necessarily require it to become entangled in spiritual matters and those that can potentially be resolved purely on civil grounds. Essentially, if the issues raised in a claim can be "resolved on the basis of principles of law equally applicable to" an "athletic or social club," then the court has jurisdiction to proceed. If the issue raised in a claim requires the court to "determine ecclesiastical questions" or wade into "a controversy over church doctrine," then a court may not proceed because doing so would be "wholly inconsistent with the American concept of the relationship between church and state."

382 N.C. at 128, 876 S.E.2d at 754 (first quoting *Atkins v. Walker*, 284 N.C. 306, 319, 200 S.E.2d 641, 650 (1973); then quoting *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445–46, 89 S. Ct. 601, 604 (1969)).

But "the First Amendment does not provide religious organizations absolute immunity from civil liability." *Johnson v. Antioch United Holy Church, Inc.*, 214 N.C. App. 507, 510–11, 714 S.E.2d 806, 810 (2011). "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property." *Atkins*, 284 N.C. at 316, 200 S.E.2d at 648. "While the civil courts have no jurisdiction over and no concern with purely ecclesiastical questions and controversies due to constitutional guarantees of freedom of religious profession and worship, the courts do have jurisdiction to determine property rights which are involved in, or arise from,

a church controversy." *Looney v. Cmty. Bible Holiness Church*, 103 N.C. App. 469, 473, 405 S.E.2d 811, 813 (1991). "Where civil, contract[ ] or property rights are involved, the courts [can] inquire as to whether the church tribunal acted within the scope of its authority and observed its own organic forms and rules." *Davis*, 382 N.C. at 123, 876 S.E.2d at 751 (quoting *W. Conf. of Original Free Will Baptists v. Creech*, 256 N.C. 128, 140–41, 123 S.E.2d 619, 627 (1962)).

"[T]o determine whether a civil court has jurisdiction to entertain a dispute, '[t]he dispositive question is whether resolution of the legal claim requires the court to interpret or weigh church doctrine.'" *Davis*, 382 N.C. at 123, 876 S.E.2d at 751 (quoting *Smith v. Privette*, 128 N.C. App. 490, 494, 495 S.E.2d 395, 398 (1998)). "The specific relief a plaintiff seeks does not dictate a court's jurisdiction to adjudicate a claim. Rather, a court must have jurisdiction over 'the *nature* of the case and the *type* of relief sought in order to decide a case,' not over every possible fact pattern and legal issue connected to a complaint." *Davis*, 382 N.C. at 127, 876 S.E.2d at 754 (quoting *Catawba County ex rel. Rackley v. Loggins*, 370 N.C. 83, 88, 804 S.E.2d 474, 478 (2017)).

1. Quiet Title and Judicial Modification of Trust

Fifth Avenue argues that the trial court erred in dismissing its quiet title and judicial modification of trust claims for lack of subject matter jurisdiction, contending that these claims can be resolved by the application of neutral legal principles.

Specifically, Fifth Avenue contends that the trial court has subject matter jurisdiction to consider its property and trust claims because there remains a genuine, secular question of whether it was in a connectional relationship with the UMC concerning the Property. Fifth Avenue maintains as such because none of the deeds pertaining to the Property refer to the trust clauses contained in the BOD, "save one green space parcel conveyed in 1986." After carefully considering our precedents resolving similar disputes, we agree.

"[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment." *Atkins*, 284 N.C. at 316, 200 S.E.2d at 648 (quoting *Presbyterian Church in United States*, 393 U.S. at 449, 89 S. Ct. at 606). "[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Atkins*, 284 N.C. at 312, 200 S.E.2d at 645. "As a general rule the parent body of a connectional church has the right to control the property of local affiliated churches, and, as a corollary, this right will be enforced in civil courts." *Looney*, 103 N.C. App. at 473, 405 S.E.2d at 813; *see also A.M.E. Zion Church v. Union Chapel A.M.E. Zion Church*, 64 N.C. App. 391, 412–13, 308 S.E.2d 73, 85 (1983). That said, "a local church may have retained sufficient independence from the general church so that it

reserved its right to withdraw at any time, and, presumably take along with it whatever property it independently owned prior to and retained during its limited affiliation with the general church." *Looney*, 103 N.C. App. at 473–74, 405 S.E.2d at 813.

Fifth Avenue offers case law in support of the notion that property and trust disputes involving connectional churches can be resolved in civil courts. *See A.M.E. Zion Church*, 64 N.C. App. at 416, 308 S.E.2d at 87 (remanded to determine "whether the defendant local church was . . . in a hierarchical relationship with the plaintiff body with respect to property matters."); *see also Looney*, 103 N.C. App. at 474, 405 S.E.2d at 813–14 (noting that there is a distinction between connectional and hierarchical churches, that a connectional church may be congregational with respect to property matters, and that a question of this nature may be submitted to a jury); *see also Fire Baptized Holiness Church v. McSwain*, 134 N.C. App. 676, 680–81, 518 S.E.2d 558, 560 (1999) (affirming that whether a church had surrendered its property to the denomination was a proper jury question under *Looney*).

For example, in *Looney*, our Court considered "whether the [ ] local church gave up its right to own and control [its] local church property by affiliating with the Church of God denomination." 103 N.C. App. at 471, 405 S.E.2d at 812. The facts of *Looney* provide that the local church affiliated with the Church of God, beginning in 1956, and its "trustees conveyed the church property to . . . [the] trustees for the

Community Church of God." *Id.* at 474, 405 S.E.2d at 813–14. Later, the denomination "altered its policy statement" concerning how its constituents should lead their daily lives. *Id.* at 472, 405 S.E.2d at 812. As a result of that change, the local church disassociated from the denomination. *Id.* at 472, 405 S.E.2d at 813. Then, the plaintiff "dismissed the Community Church of God local board of trustees[,] appointed a successor state board of trustees," and "executed deeds conveying to themselves title to the real property occupied by the [local church]." *Id.* at 473, 405 S.E.2d at 813. The *Looney* Court noted "three central points":

> Viewing the evidence in the light most favorable to defendant non-movant, three central points appear to form the decisive framework.
>
> (1) Defendant's predecessor congregation or church affiliated with the plaintiff denominational church in 1955 and remained so affiliated until 1988.
>
> (2) The discipline of the denominational church manifest an implied assent of local churches to denominational control of local church property. This evidence, if not contradicted, would make the plaintiffs' case.
>
> (3) The third point is the nature of the property transactions themselves. When the defendant local church affiliated with the plaintiff denominational church, the property was deeded to trustees of, or for, the local church, not to the denominational church or to trustees of, or for, the denominational church. This pattern was followed in all property transactions during the entire period of affiliation. Thus this evidence created a jury question as to whether *as to church property* the local church intended to establish a connectional relationship with the denominational church.

Id. Ultimately, our Court held that the "evidence created a jury question as to whether[,] *as to church property*[,] the local church intended to establish a connectional relationship with the denominational church." *Id.* at 474, 405 S.E.2d at 813–14

Here, the four parcels making up the Property consist of: (1) the church sanctuary; (2) the fellowship hall; (3) parking lots; and (4) undeveloped green space. Fifth Avenue's quiet title and judicial modification of trust claims hinge on the fact that only one of these four parcels was deeded to the UMC, its trustees, or the denomination in general—the "one green space parcel conveyed in 1986." That 1986 deed stated, "In trust, that said premises shall be kept, maintained, and disposed for the benefit of The United Methodist Church and subject to the usages and the Discipline of The United Methodist Church." In contrast, Plaintiff's 1969 deed—the year after it affiliated with the UMC—conveyed part of the Property to the "Trustees of the Fifth Avenue United Methodist Church of Wilmington," thereby not adhering to the language set out in paragraph 2503 of the BOD.[3] The deeds to the other parcels used language similar to the 1969 deed, conveying part of the Property to the

[3] Paragraph 2503 of the BOD provides: "[A]ll written instruments of conveyance by which premises are held or hereafter acquired for use as a place of divine worship or other activities for members of The [UMC] shall contain the following trust clause: *In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the United Methodist ministry and members of The [UMC]; subject to the Discipline, usage, and ministerial appointments of said Church as from time to time authorized and declared by the General Conference 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 reserves no right or interest in said premises.*"

"Trustees of the Fifth Avenue Methodist Church" and the "Trustees of the Fifth Street Methodist Church," respectively, including the church sanctuary.

As in *Looney*, the BOD "manifest[ed] an implied assent of local churches to denominational control of local church property" by way of the mandatory trust clause in paragraphs contained in the BOD. *Id.* There thus remains a genuine question "whether as to church property," Fifth Avenue "intended to establish a connectional relationship with the denominational church." *Id.* And as the *Looney* Court provided, in scenarios such as these, "the courts do have [subject matter] jurisdiction to determine property rights which are involved in, or arise from, a church controversy." *Id.* at 473, 405 S.E.2d at 813.

Similarly, in *African Methodist Episcopal Zion Church*, our Court determined "that civil courts may settle certain types of disputes arising from a church controversy by applying or following the rules of the [ ] Church Discipline." 64 N.C. App. at 413–14, 308 S.E.2d at 86. In that case, the local church "sought to disaffiliate from the A.M.E. Zion Church, apparently as a result of an increase in assessments levied by the 1976 General Conference." *Id.* at 394, 308 S.E.2d at 75. The local church thereafter sent a letter signed by its board of trustees notifying the denomination of "their decision to withdraw . . . ." *Id.* In response, the denomination stated that while the local church may disaffiliate, its "property must remain within the Connection."

Id. at 395, 308 S.E.2d at 76. The denomination required all property to be held in a trust comparable to the one in the present case:

> [B]eginning with the 1968 Discipline at Paragraph 434, Section 2, it is specifically provided that the absence of the 'trust clause' in deeds and conveyances previously executed does not relieve a local church from connectional responsibilities. Neither the 1873 deed for the First Tract nor the 1976 deed for the Second Tract contained the trust language required by the 1940 and subsequent Disciplines.

Id. at 396–97, 308 S.E.2d at 76. The trust clause provided that a local church's failure to expressly include the trust language shall not absolve that local church of its responsibility to the denomination, if the intent of the local church is shown by any or all of the following:

> (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 thus known to 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.

Id. at 396 n.1, 308 S.E.2d at 76.

Relying on the trust clause language, the denomination asserted that the local church manifested an intent and desire to be bound by the trust clause with respect

to its church property. *Id.* at 397, 308 S.E.2d at 76–77. In response—similar to the present matter—the local church contended "that the 1873 deed does not contain the trust language required by the . . . Discipline and that the property has never been conveyed to . . . [the denomination]." *Id.* at 400, 308 S.E.2d at 78. The trial court ultimately determined that "[t]he language contained in the Discipline which attempts to impose a trust upon the property based upon usage and practice of the local church is not sufficient to impose such a trust." *Id.* at 405, 308 S.E.2d at 81. The trial court further determined that "[n]o trust in favor of the African Methodist Episcopal Zion Church in America was created as concerns the property . . . ." *Id.* Upon review, this Court vacated and remanded the trial court's judgment for a trial *de novo* to determine "whether the defendant local church was in fact in a hierarchical relationship with the plaintiff parent body with respect to property matters." *Id.* at 416, 308 S.E.2d at 87 (emphasis omitted).

Like our precedents discussed above, we agree that Fifth Avenue has alleged a dispute against Defendants regarding its right to the Property. And as in those cases, resolution of this dispute invokes separate and distinct legal principles outside the interpretation of the UMC's religious doctrine. *See A.M.E. Zion Church*, 64 N.C. App. at 412, 308 S.E.2d at 85 ("[T]he courts do have jurisdiction as to civil, contract and property rights which are involved in, or arise from, a church controversy."); *see also Looney*, 103 N.C. App. at 473, 405 S.E.2d at 813 ("[T]he courts do have

jurisdiction to determine property rights which are involved in, or arise from, a church controversy."). Considering the foregoing, the trial court does not lack subject matter jurisdiction since Fifth Avenue's claims for quiet title and judicial modification of trust may be settled by neutral principles of law. *A.M.E. Zion Church*, 64 N.C. App. at 414-15, 308 S.E.2d at 87 (citation omitted) ("[T]he 'discipline' of a hierarchical Methodist Church, as it pertains to property of local churches, may be considered a 'neutral principle of law' in the resolution of church property disputes between an affiliated local church and its parent body."); *Presbyterian Church in United States*, 393 U.S. at 449, 89 S. Ct. at 606 ("Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. 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.").

2. Breach of Contract

Fifth Avenue next argues that even if the Property is subject to a trust under the BOD, the trial court erred in dismissing its claim arising from its right to disaffiliate and retain the Property free of the trust clause under paragraph 2553. Fifth Avenue contends that its breach of contract claim survives dismissal at this stage because it does not require a determination of ecclesiastical issues and can be settled by neutral principles of contract law. Fifth Avenue maintains that Defendants failed to follow the disaffiliation procedures set out in paragraph 2553 by

not allowing a church conference vote within 120 days, and under *Nation Ford Baptist Church Inc. v. Davis,* a court has jurisdiction to review such an issue. 382 N.C. 115, 876 S.E.2d 742. For the reasoning below, we agree and hold that the trial court committed error by dismissing Fifth Avenue's breach of contract claim because determining whether Defendants "acted within the scope of their authority" and "observed the organization's own organic forms and rules is founded in neutral principles of secular law." *Id.* at 124, 876 S.E.2d at 752 (quoting *Creech*, 256 N.C. at 140–41, 123 S.E.2d at 627).

In *Davis*, our Supreme Court stated that "[w]here civil, contract[ ] or property rights are involved, the courts [can] inquire as to whether the church tribunal acted within the scope of its authority and observed its own organic forms and rules." *Davis*, 382 N.C. at 123, 876 S.E.2d at 751 (brackets in original) (quoting *Creech*, 256 N.C. at 140–41, 123 S.E.2d at 627). In that case, the Court held that the "claim for a declaratory judgment establishing which bylaws apply, whether the [c]hurch followed those bylaws, and whether there was an employment contract . . . can potentially be resolved solely by application of neutral principles of corporate, contract, and employment law." *Davis,* 382 N.C. at 128, 876 S.E.2d at 754.

Similarly, here, the core of the issues presented by Fifth Avenue's breach of contract claim asked the trial court to determine whether there was a contract between the parties, and if so, whether the UMC followed its own procedures. *Id.*

Paragraph 2553 of the BOD granted local churches the right to disaffiliate from the UMC and retain their property free of any trust obligation.[4] Considering the trust clause of paragraph 2501, the trust may be revoked "as provided in the [BOD]." In this case, paragraph 2553 of the BOD provided a mechanism for Fifth Avenue to "retain its real and personal, tangible and intangible property." The process highlights multiple steps, one of which is that the District Superintendent call for the church conference, which "shall be conducted in accordance with [paragraph] 248 . . . and shall be held within one hundred twenty (120) days," for the membership to vote on disaffiliation. Per paragraph BOD 248, if a local church governing body requests a church conference vote on disaffiliation, the district superintendent has no discretion in the matter and must do so. Thus, at this stage in the litigation, Fifth Avenue's breach of contract claim simply asks whether Defendants' actions complied with the steps outlined in BOD paragraphs 248 and 2553, not the substantive merits of their decision to permanently close Fifth Avenue under paragraph 2549. *See Tubiolo v. Abundant Life Church, Inc.*, 167 N.C. App. 324, 329, 605 S.E.2d 161, 164 (2004) (citation omitted) ("While the Courts can under no circumstance referee ecclesiastical disputes, they can adjudicate 'property disputes,' provided that this can

[4] The right to disaffiliate is *expressly limited* by the language of paragraph 2553 as follows: "The choice by a local church to disaffiliate with The [UMC] under this paragraph shall be made in sufficient time for the process for exiting the denomination to be complete prior to December 31, 2023. The provisions of [paragraph] 2553 expire on December 31, 2023 and shall not be used after that date."

be done without resolving underlying controversies over religious doctrine."). And moreover, determining whether Defendants followed their own procedures does not require a civil court "to interpret or weigh church doctrine." *Davis*, 382 N.C. at 123, 876 S.E.2d at 751 (quoting *Smith*, 128 N.C. App. at 494, 495 S.E.2d at 398). Rather, a resolution of the breach of contract claim asks for a determination of whether the parties performed pursuant to the plain language of their contractually agreed upon terms; in this case, the terms of BOD paragraphs 248 and 2553.

Our *de novo* review thus leads us to hold that the trial court committed error by dismissing Fifth Avenue's breach of contract claim pursuant to Rule 12(b)(1). The trial court has not been divested of subject matter jurisdiction over Fifth Avenue's breach of contract claim because it can be resolved by neutral principles of contract law under *Davis*, 382 N.C. at 123, 876 S.E.2d at 751 (citations omitted).

3. Fraud and Constructive Fraud

Fifth Avenue next submits that the trial court committed error by dismissing its claims for fraud and constructive fraud because they do not require the court to examine or determine ecclesiastical issues. More precisely, Fifth Avenue contends that whether Defendants colluded to take the Property "under the guise of legitimate action can be determined without delving into the validity of the reasons" provided for closure. After scrutinizing the record and applicable law, we agree.

A claim for fraud is established by "(1) [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party." *Forbis v. Neal*, 361 N.C. 519, 526–27, 649 S.E.2d 382, 387 (2007) (citation omitted). But "[a] claim of constructive fraud does not require the same rigorous adherence to elements as actual fraud." *Id.* at 528, 649 S.E.2d at 388 (citation omitted). "[T]his cause of action arises where a confidential or fiduciary relationship exists, which has led up to and surrounded the consummation of the transaction in which [the] defendant is alleged to have taken advantage of his position of trust to the hurt of [the] plaintiff." *Id.* (internal quotation marks and citation omitted).

When Defendants adopted the Resolution of Closure, purporting accordance with the exigent circumstances clause of BOD paragraph 2549, one of Defendants' articulated justifications was that "membership and missional activity of the Church has recently declined . . . ." The Resolution of Closure noted that "the Church has a current membership of 205 and average weekly attendance of approximately 20 members[.]" Additionally, Defendants referenced "local needs in the community" as exigency warranting closure of the church. But a civil court "cannot answer the question of whether the [governing body of the church] 'in good conscience . . . act[ed] honestly, in good faith and in the best interests of the [c]hurch.'" *Davis*, 382 N.C. at 125, 876 S.E.2d at 752. Here, we do not seek to tread on the sanctity of church

doctrine. Therefore, without specifically holding so, we note that inquiring into Fifth Avenue's fraud and constructive fraud claims on those bases *alone* could impermissibly require a civil court to determine whether these particular claimed exigent circumstances were proclaimed in good faith and in accordance with church doctrine. *Id.*

Yet, remarkable here, Defendants cited another exigency, that "the congregation has initiated a procedure seeking . . . to disaffiliate from the United Methodist Church[.]" Defendants, by their own actions, have intertwined the contractual dispute as a purported exigent circumstance underlying closure—which can be resolved by application of neutral principles of contract law. *See id.* at 123, 876 S.E.2d at 751. The BOD, which Defendants rely upon to support dismissal of the fraud and constructive fraud claims under Rule 12(b)(1), provided the mechanism for Fifth Avenue's disaffiliation. Defendants now seek to use the BOD and this mechanism against Fifth Avenue. And at this stage in the proceedings, our *de novo* review considers the contents of Fifth Avenue's pleading as well as other evidence, such as affidavits. *Smith*, 128 N.C. App. at 493, 495 S.E.2d at 397 ("Unlike a Rule 12(b)(6) dismissal, the court need not confine its evaluation [of a Rule 12(b)(1) motion] to the face of the pleadings, but may review or accept any evidence, such as affidavits, or it may hold an evidentiary hearing."). This cited exigency—disaffiliation—considered in conjunction with other representations by Defendants, can be resolved

by application of neutral principles of contract law and does not require the interpretation or weighing of church doctrine. *Davis*, 382 N.C. at 123, 876 S.E.2d at 751.

According to Fifth Avenue's complaint, "the Conference confirmed to [Fifth Avenue] and its Pastor that it had in fact received all information and material necessary for Plaintiff to take the next step in the disaffiliation process and conduct a Church Conference vote." This information included copies of Fifth Avenue's real property deeds. The complaint also alleged that Defendants represented to Fifth Avenue that it would have a meeting about disaffiliation—mandated by protocols outlined in the BOD—but the meeting turned into a surprise announcement about the church's closure. In the context of the representations and the pendency of the scheduled meeting, unbeknownst to Fifth Avenue, Defendants adopted the Resolution of Closure and filed their Affidavit of Ownership of the Property. Thus, Fifth Avenue's fraud claims do not hinge on whether Defendants' reasons provided for closure under paragraph 2549 were made "honestly, in good faith and in the best interests of the [c]hurch.'" *Davis*, 382 N.C. at 125, 876 S.E.2d at 752. Rather, the claims, questioning whether the representations made by Defendants concerning the "information meeting" and receiving the necessary paperwork to proceed with a "Church Conference vote," do not fall within the protections of the impermissible entanglement doctrine. *See id.* at 128, 876 S.E.2d at 754.

Adding support to Fifth Avenue's claims, the District Superintendent conceded that with the closure of other "churches in the Harbor District . . . under [her] leadership," she "led the congregation in an assessment . . . of the church," and "depending on the results of the study, [she] would preside over a church conference in which the assembled members voted on whether to close." But in this instance, the District Superintendent stated that since Fifth Avenue "already indicated it did not wish to close but instead wanted to disaffiliate . . . discussion would not have been productive." In any event, the day after the purported disaffiliation meeting, Defendants changed the locks on the sanctuary and fellowship hall. Fifth Avenue alleges that Defendants' actions deprived it of the right to vote on disaffiliation, caused a cloud on the Property's title, and prevented its members from worshipping and conducting activities. Accordingly, Fifth Avenue's complaint and affidavits included in the record allow for an adequate assessment of the elements of fraud and constructive fraud claims without delving into doctrine. The trial court thereby committed error by dismissing Fifth Avenue's fraud and constructive fraud claims pursuant to Rule 12(b)(1).

B. Failure to State a Claim—Rule 12(b)(6)

In the present matter, the trial court granted Defendants' motion to dismiss the following claims pursuant to Rule 12(b)(6): promissory estoppel, declaratory judgment, and quiet title. Fifth Avenue contends that the trial court committed error

by granting Defendants' motion on this basis because it sufficiently stated claims for all three causes of action.

"On appeal from a motion to dismiss under Rule 12(b)(6) this Court reviews *de novo* 'whether, as a matter of law, the allegations of the complaint . . . are sufficient to state a claim upon which relief may be granted[.]'" *Christmas v. Cabarrus Cty.*, 192 N.C. App. 227, 231, 664 S.E.2d 649, 652 (2008) (citation omitted) (brackets and ellipses in original). "This Court views the allegations in the complaint in the light most favorable to the non-moving party." *BDM Invs. v. Lenhil, Inc.*, 264 N.C. App. 282, 291, 826 S.E.2d 746, 756 (2019). "[U]nder de novo review, the appellate court as the reviewing court considers the Rule 12(b)(6) motion to dismiss anew: It freely substitutes its own assessment of whether the allegations of the complaint are sufficient to state a claim for the trial court's assessment." *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679, 878 S.E.2d 798, 800 (2022).

Dismissal is appropriate where: "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Wood v. Guilford Cty.*, 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002). However, "[a] complaint is sufficient to withstand a motion to dismiss where no insurmountable bar to recovery on the claim alleged appears on the face of the complaint and where allegations contained therein are

sufficient to give a defendant notice of the nature and basis of plaintiffs' claim so as to enable him to answer and prepare for trial." *McAllister v. Khie Sem Ha*, 347 N.C. 638, 641, 496 S.E.2d 577, 580 (1998) (quoting *Forbis v. Honeycutt*, 301 N.C. 699, 701, 273 S.E.2d 240, 241 (1980)).

1. Declaratory Judgment

Fifth Avenue submits that the trial court committed error by dismissing its claim for declaratory judgment. In doing so, Fifth Avenue maintains that it sufficiently alleged facts to establish this claim and survive a motion to dismiss under Rule 12(b)(6). After conducting a *de novo* review, we agree.

North Carolina's Declaratory Judgment Act is codified under N.C. Gen. Stat. § 1-253 (2023) ("Courts of record permitted to enter declaratory judgments of rights, status and other legal relations"). "A motion to dismiss for failure to state a claim is seldom appropriate 'in actions for declaratory judgments, and will not be allowed simply because the plaintiff may not be able to prevail.'" *Morris v. Plyler Paper Stock Co.*, 89 N.C. App. 555, 557, 366 S.E.2d 556, 558 (1988) (citation omitted). The "issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." *Morris*, 89 N.C. App. at 557, 366 S.E.2d at 558 (quoting *Johnson v. Bollinger*, 86 N.C. App. 1, 4, 356 S.E.2d 378, 381 (1987)). "The motion is allowed only when 'there is no basis for declaratory relief, as when the complaint does not allege an actual, genuine existing controversy.'" *Morris*, 89 N.C.

App. at 557, 366 S.E.2d at 558 (quoting *N.C. Consumers Power, Inc. v. Duke Power Co.*, 285 N.C. 434, 439, 206 S.E.2d 178, 182 (1974)). A claim for declaratory judgment is sufficiently stated if:

> (1) a real controversy exists between or among the parties to the action; (2) that such controversy arises out of *opposing contentions* of the parties, made in good faith, *as to the validity* or construction of a . . . *contract in writing*, or as to the validity or construction of a statute, or municipal ordinance, contract, or franchise; and (3) that the parties to the action have or may have legal rights, or are or may be under legal liabilities which are involved in the controversy, and may be determined by a judgment or decree in the action, the court has jurisdiction, and on the facts admitted in the pleadings or established at the trial, may render judgment, declaring the rights and liabilities of the respective parties, as between or among themselves, and according relief to which the parties are entitled under the judgment.

N.C. Consumers Power, Inc., 285 N.C. at 449, 206 S.E.2d at 188 (emphasis added). North Carolina has long allowed declaratory judgment actions to interpret written instruments. *LDDC, Inc. v. Pressley*, 71 N.C. App. 431, 434, 322 S.E.2d 416, 418 (1984); *see also York v. Newman*, 2 N.C. App. 484, 489, 163 S.E.2d 282, 286 (1968) (citation omitted) ("A declaratory action is an appropriate remedy to perform the function of the customary action to quiet title."); *see also Johnson v. Wagner,* 219 N.C. 235, 236, 13 S.E.2d 419, 420 (1941) ("An action to determine the rights of the parties under a charitable trust created by will, in which the trustees and all of the agencies

who are beneficiaries of the trust are made parties, is justiciable under the Declaratory Judgment Act.").

In its complaint, Fifth Avenue requested that the trial court declare:

> a. That the trust has terminated because the purpose of the trust ha[s] become unlawful, contrary to public policy, or impossible to achieve;
>
> b. That to the extent the trust has not terminated, it is revocable; and
>
> c. That Plaintiff is entitled to the quiet, exclusive, uninterrupted, and peaceful possession of its property (real and personal) without any interference from Defendants.

Our case law shows that Fifth Avenue sufficiently stated a claim for declaratory relief because it demonstrated that: (1) "a real controversy exist[ed]" concerning the Property; (2) the controversy was the result of "opposing contentions of the parties . . . as to the construction of" paragraphs 248, 2501, 2503, and 2553 of the BOD; and (3) both Fifth Avenue and Defendants may have legal rights that could be adjudicated by a court of law as discussed in our analyses about the claims for quiet title and judicial modification of trust. *Id.* Even if the trial court determined that Fifth Avenue "may not be able to prevail," that reasoning alone is not enough to justify dismissal pursuant to Rule 12(b)(6). *Morris*, 89 N.C. App. at 557, 366 S.E.2d at 558 (citation omitted).

We therefore hold that the trial court committed error by dismissing Fifth Avenue's claim for declaratory judgment because its "complaint alleged sufficient facts to establish the existence of a genuine controversy and to survive [D]efendants' motion to dismiss under Rule 12(b)(6)." *Id.*

2. Quiet Title

Fifth Avenue next submits that the trial court committed error by dismissing its claim for quiet title because it sufficiently stated such a claim. In support of its contention, Fifth Avenue cites a case from our Court providing the two requirements to establish a *prima facie* case for removing cloud upon title: "(1) the plaintiff must own the land in controversy, or have some estate or interest in it; and (2) the defendant must assert some claim in the land adverse to plaintiff's title, estate or interest." *Hensley v. Samel*, 163 N.C. App. 303, 307, 593 S.E.2d 411, 414 (2004) (citation omitted). After consideration, we agree the complaint fulfills both requirements to establish a *prima facie* case for quiet title.

The complaint asserted Fifth Avenue has an interest in the Property. *See id.* Fifth Avenue claimed it "received its real property from donors who wanted [its] congregation to have use of the church sanctuary and property forever." Deeds were attached to the complaint in support of this contention. The complaint also alleged Fifth Avenue "acquired and held title to its real property (save one parcel acquired in 1986 [containing language from the trust clauses in the BOD]) prior to . . . its later

affiliation with the UMC." The complaint further alleged that Defendants assert a claim in the Property adverse to Fifth Avenue's interest on account of the BOD's "denominational trust grant[ing] them control over [Fifth Avenue's] real property . . . ." *See id.*

Our review of the claims alleged on the face of the complaint, viewed in the light most favorable to the non-moving party, shows that Fifth Avenue's quiet title claim meets the essential requirements to survive a motion to dismiss. *See McAllister*, 347 N.C. at 641, 496 S.E.2d at 580; *see also BDM Invs.*, 264 N.C. App. at 291, 826 S.E.2d at 756. Consequently, we hold the trial court's dismissal of Fifth Avenue's quiet title claim pursuant to Rule 12(b)(6) was in error.

3. Promissory Estoppel

Fifth Avenue next submits that "there is a good faith basis to extend the law and recognize its claim for promissory estoppel." We agree with Fifth Avenue that promissory estoppel has not been officially recognized as an affirmative cause of action under North Carolina law. *See Home Elec. Co. of Lenoir, Inc. v. Hall & Underdown Heating & Air Conditioning Co.*, 86 N.C. App. 540, 545, 358 S.E.2d 539, 542 (1987). Rather, "[t]he North Carolina cases which have applied the doctrine have only done so in a defensive situation, where there has been an intended abandonment of an existing right by the promisee. North Carolina case law has not approved the doctrine for affirmative relief." *Id.* at 543, 358 S.E.2d at 541. Presently, *state* court

precedent does not extend this doctrine to cases such as the present one. *See Clement v. Clement*, 230 N.C. 636, 55 S.E.2d 459 (1949); *see also Wachovia Bank & Tr. Co., N.A. v. Rubish*, 306 N.C. 417, 293 S.E.2d 749 (1982); *see also Home Elec. Co. of Lenoir*, 86 N.C. App. 540, 358 S.E.2d 539; *contra Allen M. Campbell Co., Gen. Contractors, Inc. v. Virginia Metal Indus., Inc.,* 708 F.2d 930 (4th Cir. 1983). We hold that the trial court's dismissal of this claim was proper.

C. Preliminary Injunction

In its final submission, Fifth Avenue contends that the trial court committed error by not issuing preliminary injunctive relief because it demonstrated a likelihood of success on the merits and irreparable injury if not granted. *See* N.C. Gen. Stat. § 1-485 (2023) (when preliminary injunction issued). We agree.

"The scope of appellate review in the granting or denying of a preliminary injunction is essentially *de novo*. '[A]n appellate court is not bound by the findings, but may review and weigh the evidence and find facts for itself.'" *Robins & Weill, Inc. v. Mason*, 70 N.C. App. 537, 540, 320 S.E.2d 693, 696 (1984) (citation omitted and brackets in original). A preliminary injunction is warranted "(1) if a plaintiff is able to show likelihood of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *Emp't Staffing Grp., Inc. v. Little*, 243 N.C. App. 266, 270, 777 S.E.2d

309, 312 (2015) (citation omitted); *see also Setzer v. Annas*, 286 N.C. 534, 537, 212 S.E.2d 154, 156 (1975). "The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980).

Fifth Avenue contends that the trial court erred by denying its preliminary injunction because it is likely that Defendants breached their contract by failing to call a church conference vote within 120 days of submitting a disaffiliation application.[5] The record evidence demonstrates that Fifth Avenue requested Defendants to call the church conference vote by adhering to the procedures set out in BOD paragraphs 248 and 2553. Moreover, Fifth Avenue's "church governing body" requested that Defendants schedule the vote on two occasions. The first request occurred before the District Superintendent scheduled the "informational meeting." Yet, per paragraph 248 of the BOD, if a local church governing body requests a church conference vote on disaffiliation, the district superintendent has no "discretion" in the matter. Under these circumstances, "the district superintendent's duty is purely ministerial . . . ." In this case, the District Superintendent failed to schedule the

[5] Although Fifth Avenue could conceivably succeed on the merits of several of its proffered claims, including quiet title, judicial modification of trust, fraud, and constructive fraud, we limit our analysis to the contract claim.

meeting within 120 days of receiving the disaffiliation application from Fifth Avenue's governing body. Fifth Avenue has thus demonstrated a likelihood of success on the merits with respect to at least its breach of contract claim. *Little*, 243 N.C. App. at 70, 777 S.E.2d at 312.

Fifth Avenue has also demonstrated that it is likely to suffer irreparable injury if the injunction is not granted given that it has been permanently excluded from the Property. *Id.* On 27 March 2023, Defendants placed locks on Fifth Avenue's church, effectively ousting it from the Property. Since then, Fifth Avenue has been unable to open its doors to over 200 active members in its community. As a result, the injury that Fifth Avenue faces is "both real and immediate." *Bd. of Light & Water Comm'rs v. Parkwood Sanitary Dist.*, 49 N.C. App. 421, 423, 271 S.E.2d 402, 404 (1980). Without injunctive relief, Fifth Avenue could potentially suffer further harm during the course of the litigation on remand hereinafter; the Property could be sold, not kept in proper condition, or harmed in a myriad of other manners.

Our review reveals that the trial court erred in denying Fifth Avenue's request for preliminary injunctive relief. *See Robins & Weill, Inc.*, 70 N.C. App. at 540, 320 S.E.2d at 696. Accordingly, we reverse the trial court's order and remand for entry of a preliminary injunction enjoining Defendants from taking any action to encumber, impair, change, or otherwise alter the Property. *See QSP, Inc. v. Hair*, 152 N.C. App. 174, 179, 566 S.E.2d 851, 854 (2002) (reversing the trial court's order denying

preliminary injunction and remanding "for entry of a preliminary injunction enjoining defendant from further breach . . . ."); *see also TSG Finishing, LLC v. Bollinger*, 238 N.C. App. 586, 602, 767 S.E.2d 870, 882 (2014) (reversed and remanded "with instructions to issue the preliminary injunction.").

IV. Conclusion

For the above reasons, we hold that the trial court committed error by dismissing Fifth Avenue's claims for breach of contract, quiet title, judicial modification of trust, fraud, and constructive fraud for lack of subject matter jurisdiction pursuant to Rule 12(b)(1). We also hold that it was error to dismiss Fifth Avenue's claims for declaratory judgment and quiet title for failure to state a claim pursuant to Rule 12(b)(6). We therefore reverse the trial court's order ruling on these claims and remand for further proceedings consistent with this opinion. However, the trial court did not commit error by dismissing Fifth Avenue's claim for promissory estoppel. Finally, we hold that the trial court committed error by denying Fifth Avenue's request for preliminary injunctive relief; accordingly, we reverse and remand this part of the trial court's order.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Judge GRIFFIN concurs.

Judge ARROWOOD concurs in part and dissents in part by separate opinion.

No. COA23-1013 – *Fifth Avenue United Methodist Church of Wilmington v. The North Carolina Conference, Southeastern Jurisdiction of the United Methodist Church, Inc., et al.*

ARROWOOD, Judge, concurring in part and dissenting in part.

I concur in the majority's determination and analysis that the claim for promissory estoppel was properly dismissed and in reversing the trial court's dismissal of Fifth Avenue's claim for breach of contract. I believe the trial court is permitted to assess whether Fifth Avenue is contractually entitled to disaffiliate following closure, as this can be decided under neutral principles of law. However, I respectfully dissent from the remainder of the majority opinion. I believe the First Amendment church doctrine warrants dismissal of Fifth Avenue's claims apart from the breach of contract claim and would affirm the trial court's judgment in those respects.

As the majority correctly notes, "the principle that civil courts lack subject matter jurisdiction to resolve disputes involving purely ecclesiastical questions and controversies has long been recognized by this Court," and is based in the intention of the First Amendment to foster "a spirit of freedom for religious organizations, an independence from secular control or manipulation–in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Nation Ford Baptist Church Inc. v. Davis*, 382 N.C. 115, 121–22 (2022) (cleaned up). However, religious organizations do not have absolute immunity from civil liability, and "[w]hen the State has a legitimate interest in

resolving a secular dispute, 'civil court is a proper forum for that resolution.' " *Id.* at 122 (citations omitted).

"Consistent with these First Amendment principles, the impermissible entanglement doctrine precludes judicial involvement only in circumstances involving disputes that implicate controversies over church doctrine and practice," including matters concerning religious doctrines or creeds, the church's form of worship, the adoption of regulations concerning church membership, the power of authorized church officials to exclude individuals from membership or association, or "when a court resolves an underlying legal claim or when it issues a form of relief." *Id.* at 122–23 (cleaned up). Ultimately, the "dispositive question is whether resolution of the legal claim requires the court to interpret or weigh church doctrine[,]" and where claims "can be resolved *solely* by applying neutral principles of law, there is no impermissible entanglement." *Id.* at 123 (citations omitted) (emphasis added). "[C]ivil courts cannot decide disputes involving religious organizations where the religious organizations would be deprived of interpreting and determining their own laws and doctrine." *Smith v. Privette*, 128 N.C. App. 490, 494 (1998).

Plaintiff contends the trial court was able to conduct a neutral determination of whether defendants breached the Book of Discipline ("BOD"), and whether provisions of the purported trust are subject to modification based on defendants'

breach of the BOD. In my view, however, the decision to close the church is a matter of church doctrine and cannot be resolved solely by applying neutral principles of law. The BOD establishes the organization and structure of the UMC and includes the trust clause requiring a denominational trust be included in deeds to church property. The BOD also provides that upon a declaration of exigent circumstances, title to local church property vests with the annual conference board of trustees, and the formal closure of the church is considered at a meeting of the annual conference board, which votes to approve or disapprove the closure.

This necessarily implicates a controversy over church doctrine and practice; the decision to close the church and the surrounding procedure is governed by the BOD, and in my view reversing the trial court's dismissal of these claims would deprive defendant "of interpreting and determining their own laws and doctrine." *Smith*, 128 N.C. App. at 494. Accordingly, I would affirm the trial court's dismissal of the entangled claims and respectfully concur in part and dissent in part.

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1490

IN RE: Review of a Bishop's Ruling on Questions Raised During the North Carolina Annual Conference Relating to ¶¶ 2549 and 2553 and the Annual Conference's Adoption of the "Resolution for Closure of Fifth Avenue United Methodist Church."

DIGEST

The rulings of law on the five questions presented to the bishop are affirmed. Paragraph 2549.3(b) and ¶ 2553 are not in conflict, and until a local church is disaffiliated, the provisions of ¶ 2549.3(b) remain available in appropriate circumstances. In light of the annual conference's formal approval of the local church closure, the question of whether a local church's intent to initiate, or the initiation of, the process of disaffiliation under ¶ 2553 can be considered an exigent circumstance under ¶ 2549.3(b), is in fact moot and represents a hypothetical question. The appropriate forum for a local church to challenge an exigent circumstances and interim closure determination under ¶ 2549.3(b) is at the next meeting of the annual conference when formal closure is before that body for consideration; that challenge may be considered in debate and the annual conference shall then decide whether to approve or disapprove formal closure. The bishop and district superintendent do not violate ¶ 414.2 and ¶ 419.4 when they inform a local church of interim closure under ¶ 2549.3(b). The interim closure of Fifth Avenue United Methodist Church and the vesting of the church's property in the annual conference board of trustees under ¶ 2549.3(b), and that congregation's interim and final closure, did not violate the plain reading of ¶¶ 414.2, 419.4, 2549.3(b), or 2553 of the *Book of Discipline.*

STATEMENT OF FACTS

Fifth Avenue United Methodist Church was founded in 1847, and is located near downtown Wilmington, North Carolina (hereinafter, "Fifth Avenue"). In January 2023, the leadership of Fifth Avenue formally inquired about disaffiliation. In February 2023, Fifth Avenue's church council requested that the district superintendent schedule a church conference to vote on disaffiliation as contemplated by ¶ 2553.3. On March 24, 2023, a resolution for interim church closure of Fifth Avenue was adopted by Bishop Connie Mitchell Shelton, all of the district superintendents of the North Carolina Annual Conference, and all members of the Harbor District Board of Church Location and Building.

The district superintendent scheduled a meeting with Fifth Avenue membership on March 26, 2023, but instead of discussing disaffiliation, the local church membership was informed by the bishop and the district superintendent of the interim closure and transfer of the Fifth Avenue property to the annual conference board of trustees.

On June 15, 2023, during the afternoon plenary session of the meeting of the North Carolina annual conference, a clergy member requested a bishop's decision of law on five questions now before the Judicial Council. The presiding bishop responded to these questions on July 7, 2023.

On June 16, 2023, the morning plenary session of the meeting of the lay and clergy members of the North Carolina annual conference considered a motion to approve formal closure of Fifth Avenue. Following debate in the form of three speakers in favor and three against, the annual conference members voted to approve Fifth Avenue's formal closure.

Below are the five questions of law and the bishop's responses to each of those questions:

1. Does the initiation of the disaffiliation process by a local church under ¶ 2553 prevent the bishop, district superintendents, and district board of church location from declaring exigent circumstances for that church under ¶ 2549.3(b)? That is, which takes precedence – the local church's limited right to disaffiliate under ¶ 2553 or the ability to declare exigent circumstances and seize church property under ¶ 2549.3(b)?

   Bishop's Decision of Law: The bishop found that "The *Book of Discipline* plainly establishes that the existence of exigent circumstances allows the bishop, the Cabinet, and the appropriate district committee of church location and building to act at any time, regardless of what other circumstances or options a local church is addressing."

2. Can the local church's intent to initiate, or initiation of, the process of disaffiliation under ¶ 2553 be considered an exigent circumstance under ¶ 2549.3(b)?

   Bishop's Decision of Law: The bishop found that the "question is moot and hypothetical as the annual conference delegates were tasked with deciding whether to close the church, not whether the interim decision to declare exigent circumstances was correct."

3. Where title to local church property vests in the conference board of trustees under ¶ 2549.3(b), because of a declaration of exigent circumstances, does due process require that the local church be given the opportunity to challenge the declaration of exigent circumstances in an appropriate forum?

   Bishop's Decision of Law: The bishop found that "supporters of the [Fifth Avenue] Church exercised the opportunity at annual conference to present arguments that assembled delegates should vote against formally closing the church. The church also had the opportunity to challenge the declaration of exigent circumstances by working with a supporter to request the present ruling of law, which is subject to review by the Judicial Council."

4. Did the bishop violate ¶ 414.2, and the district superintendent violate ¶ 419.4, by the way they announced exigent circumstances at, and seized the property of, Fifth Avenue United Methodist Church under ¶ 2549.3(b)? If so, does such a violation render the declaration of exigent circumstances null and void?

   Bishop's Decision of Law: The bishop found that: 1) as to the bishop, ¶ 414.2 required the bishop "build relationships with people of local congregations and to strengthen the local church. Relationship building has been at the heart of my work since I began my ministry here in January 2023, including several visits to Wilmington and the Harbor District", and 2) as to the district superintendent, ¶ 419.4 requires a district superintendent to "establish working relationships" and to "seek to form creative and effective connections with the local congregations on his or her district" and that "is precisely what the current district superintendent, and her predecessors, have been attempting through contact with this local church. There is no violation of Pars. 414.2 or 419.4."

5. Does the seizure of Fifth Avenue United Methodist Church's property under ¶ 2549.3(b) and that congregation's closure violate the plain reading of ¶¶ 414.2, 419.4, 2549.3(b), and 2553 of the *Book of Discipline*?

   Bishop's Decision of Law: The bishop found that the "actions of the NC annual conference are completely consistent with all disciplinary mandates, including to spread the Gospel and strengthen our witness. There is no violation of the cited paragraphs."

Jurisdiction

The Judicial Council has jurisdiction pursuant to ¶ 2609.6 of the *2016 Book of Discipline* (hereinafter, the *Discipline)*.

Analysis and Rationale

In Judicial Council Decision 1379, we held that ¶ 2553's "constitutionality, meaning, application, and effect should not be determined in isolation." We further determined that, once codified, ¶ 2553 "must be construed in relation to other pertinent disciplinary paragraphs." Paragraph 2549.3(b) and ¶ 2553 are not in conflict, and until a local church is disaffiliated, the provisions of ¶ 2549.3(b) remain available and applicable in appropriate circumstances. Nothing in the text of ¶ 2553 or in our prior decisions suggests or implies that ¶ 2553 suspends the operation of ¶ 2549.3 of the *Discipline*.

Paragraph 2553 by its terms grants a "limited right, under the provisions of this paragraph, to disaffiliate from the denomination…." The right of a local church to disaffiliate is not just limited as to time (¶ 2553.2), but it is also limited in that local churches going through the disaffiliation process remain subject to supervisory and other provisions of the *Discipline*

including ¶ 2549. Paragraph 2553 grants the limited right to disaffiliate, but disaffiliation is not effective absent satisfaction of the requirements of the relevant annual conference board of trustees' approved disaffiliation agreement and the consent of the annual conference itself (JCD 1379; *Discipline* ¶ 2529.1(b)(3)). Unless and until disaffiliated, a local church remains a United Methodist Church, subject to the requirements of the *Discipline.*

Stated another way, even though a local church has already initiated the disaffiliation process, there is nothing in ¶ 2553 that precludes that church from deciding to close without completing that process, either at the recommendation of the district superintendent or on its own (¶¶ 2549.1; 2549.2). Likewise, initiation of the disaffiliation process under ¶ 2553 is no impediment to an interim closure under the provisions of ¶ 2549.3(b).

The question of whether an exigent circumstances determination under ¶ 2549.3(b) may include the disaffiliation status of a local church is moot and a hypothetical in this instance because of the annual conference's approval of formal closure at the subsequent meeting of the North Carolina annual conference. The annual conference has made the determination that Fifth Avenue should be formally closed, and it is not appropriate for the Judicial Council to second guess that judgment.

The use of ¶ 2549.3(b) has built-in safeguards; it requires the bishop, a majority of the district superintendents, **and** the appropriate district board of church location and building, all consent to interim closure provided that all three, in their sole discretion, declare that exigent circumstances exist requiring the immediate protection of the church property. In this instance, all three adopted a written "Resolution for Closure of the Fifth Avenue United Methodist Church", signed by the bishop, every district superintendent, and the members of the Harbor District Board of Church Location.

It is the annual conference that makes the formal decision to close a local church (¶¶ 2549.2(c); 2549.3(b)), and it is the annual conference that must consent to a local church severing its ties with the United Methodist Church (¶ 2529.1(b)(3)). In requiring that the annual conference members approve the formal closure of that local church, ¶ 2549.3(b) leaves open the possibility that the annual conference could reject formal closure, and an implicit part of the consideration of that question includes whether interim closure was appropriate. In this instance, the recommendation for formal closure of Fifth Avenue was made on June 16, 2023, and, after hearing from three persons in favor of closure and three against, the annual conference voted to approve the formal closure of Fifth Avenue.

Despite unsubstantiated assertions by the interested party on the influence of a bishop with respect to both of these safeguards, these requirements are intended to protect against overreach, and if they are followed, then the requirements of the *Discipline* have been satisfied.

Fifth Avenue has been afforded all process that it is due under United Methodist polity. The appropriate forum for a challenge to the exigent circumstances and interim closure determinations was at the meeting of the North Carolina annual conference on June 16, 2023, and that challenge was in fact considered in debate, but did not prevail at the annual conference.

The bishop's determinations that 1) the bishop did not violate ¶ 414.2; and 2) the district superintendent did not violate ¶ 419.4, are well founded. Fulfilling these respective responsibilities does not mean that the decisions made in that process will always please or directly benefit those affected. To find otherwise would mean that ¶ 2549.3(b) could never be invoked without violation of ¶ 414.2 and ¶ 419.4 because of the high likelihood that some might disagree or be displeased with that judgment; such a result is unsupported by either the provisions of the *Discipline* or the past decisions of the Judicial Council.

Finally, the interim and final closure of Fifth Avenue and the vesting of the church's property and assets in the annual conference board of trustees under ¶ 2549.3(b) did not violate the provisions of ¶¶ 414.2, 419.4, 2549.3(b), and 2553 of the *Discipline*, for the reasons stated above.

Decision

The rulings of law on the five questions presented to the bishop are affirmed. Paragraph 2549.3(b) and ¶ 2553 are not in conflict, and until a local church is disaffiliated, the provisions of ¶ 2549.3(b) remain available in appropriate circumstances. In light of the annual conference's formal approval of the local church closure, the question of whether a local church's intent to initiate, or the initiation of, the process of disaffiliation under ¶ 2553 can be considered an exigent circumstance under ¶ 2549.3(b), is in fact moot and represents a hypothetical question. The appropriate forum for a local church to challenge an exigent circumstances and interim closure determination under ¶ 2549.3(b) is at the next meeting of the annual conference when formal closure is before that body for consideration; that challenge may be considered in debate and the annual conference shall then decide whether to approve or disapprove formal closure. The bishop and district superintendent do not violate ¶ 414.2 and ¶ 419.4 when they inform a local church of interim closure under ¶ 2549.3(b). The interim closure of Fifth Avenue United Methodist Church and the vesting of the church's property in the annual conference board of trustees under ¶ 2549.3(b), and that congregation's interim and final closure, did not violate the plain reading of ¶¶ 414.2, 419.4, 2549.3(b), or 2553 of the *Book of Discipline*.

Deanell Tacha was absent. Kent Fulton, lay alternate, participated in this decision.
Luan-Vu Tran was absent. Timothy Bruster, clergy alternate, participated in this decision.

November 7, 2023