The ecclesiastical abstention doctrine is a long-held constitutional principle that prohibits a court from resolving a dispute that is inherently religious in nature. The ecclesiastical abstention doctrine’s practical application requires a court to either abstain from fact-finding issues that are based on religious doctrine or church governance, or defer to the decisions handed down by the church leadership or a hierarchical authority. An implicit concept within the ecclesiastical abstention doctrine is the necessity for there to be an interchurch dispute—namely, one that is confined to a local church body or a hierarchically structured religious organization. Since not every dispute within a church is fundamentally religious, courts are not precluded from resolving certain church disputes using neutral principles of law. A neutral property or contract issue may not necessarily impermissibly intrude on the First Amendment.

This Note examines the Illinois Second District Appellate Court’s confrontation with the ecclesiastical abstention doctrine in the insightful case of Puskar v. Krco. The majority and dissenting opinions in Puskar represent the difficulty of adjudicating disagreements when it is unclear whether a religious question is inescapably intertwined or merely peripheral. Puskar would have been legally insignificant if the outcome turned solely on whether an appointed Serbian Orthodox Church bishop owed a duty of loyalty to the higher appointing authority or the local diocese. However, before duty of loyalty could be decided, the local diocese, a former affiliate of the Serbian Church, contested that it had officially reunited with the hierarchical Serbian Orthodox Church to become re-affiliated. Reunification was contested because the local diocese and the Serbian Orthodox Church disagreed whether a contract they had enacted to guide their transition to reunify remained in effect. Nearly lost in the conflict was the bishop whom the local diocese had allowed the Serbian Orthodox Church to appoint over them, even though he was a focal point of the lawsuit. The bishop had been
appointed in accordance with a provision contained in the transitional contract, and the local diocese did not dispute the legitimacy of the appointment, even though the appointment occurred at a time it would later conclude must have fallen after the transitional contract had expired.

The majority in Puskar held that the ecclesiastical abstention doctrine did not apply because the transitional contract had expired, and thus the former affiliate and the Serbian Orthodox Church were separate and distinct organizations. The dissent in Puskar would have applied the ecclesiastical abstention doctrine due to the inherently religious questions the court faced. The dissent disagreed with the majority's matter of fact holding that the transitional contract had expired, and instead focused on what appeared to be sufficient evidence that the former affiliate and the Serbian Orthodox Church had either reunified or remained under the transitional contract. This Note analyzes Puskar in comparison to other Illinois appellate court cases, and concludes that Puskar's dissenting position was more correct to reach its determination.

I. INTRODUCTION

The ecclesiastical abstention doctrine plays a vital role in maintaining the Establishment Clause and the Free Exercise Clause of the First
Amendment.\textsuperscript{1} The First Amendment’s mutual restraint on church and state has significant relevance when courts are presented with legal issues entangled amongst religious disputes.\textsuperscript{2} When a dispute within a church or hierarchical religious association is either religiously intertwined or subject to a decision by a church authority, the ecclesiastical abstention doctrine prohibits a civil court from exercising subject matter jurisdiction.\textsuperscript{3} In modern jurisprudence, courts have the authority to, when appropriate, apply neutral principles of law to resolve a dispute so long as the court’s decision does not involve ecclesiastical or polity issues.\textsuperscript{4} Some downplay entanglement issues and advocate that courts have the authority and capability to litigate even disputes that appear religious.\textsuperscript{5} Some would advocate doing away with the neutral principles of law approach.\textsuperscript{6} The majority adhere to a balanced approach where courts defer to church authority and ecclesiastical issues,

\begin{itemize}
\item \textsuperscript{*} Juris Doctor candidate, May 2016, and Lead Articles Editor for the \textit{Northern Illinois University Law Review}. I would like to thank the Hon. Robert Spence for bringing the ecclesiastical abstention doctrine to my attention. This Note could not exist otherwise. I must thank my mom for her continued graciousness to listen each time I updated her on my research. Lastly, I am exceedingly grateful to the \textit{Northern Illinois University Law Review} for providing me the opportunity to write this Note, and for its exceptional staff that made publication possible. \\
\textsuperscript{2} See 6 Ronald D. Rotunda, John E. Nowak, \textit{Treatise on Constitutional Law: Substance & Procedure} § 21.12 (5th ed. 2012) ("When there is a dispute between factions of a religious organization, one or more of the parties may seek resolution of the dispute by a state court. Of course, the government cannot declare which party is correct in matters of religion, for that would violate the principles of both religion clauses."). \\
\textsuperscript{3} E.g., Kevin J. Murphy, \textit{Administering the Ministerial Exception Post-Hosanna-Tabor: Why Contract Claims Should Not Be Barred}, 28 Notre Dame J.L. Ethics \& Pub. Pol'y 383, 405 (2014) ("The ecclesiastical abstention doctrine is the general body of case law standing for the principle that civil courts cannot rule on matters that are \textquoteleft strictly and purely ecclesiastical\textquoteright" (quoting Watson v. Jones, 80 U.S. (13 Wall.) 679, 733 (1871))). \\
\textsuperscript{4} E.g., Jones v. Wolf, 443 U.S. 595, 605 (1979) ("compulsory deference" is not required when there are "no issue[s] of doctrinal controversy . . . involved"). \\
\textsuperscript{5} See Helfand, \textit{supra} note 1, at 551-62 (construes the early Court decisions as outlining a deferential approach to religious tribunals’ decisions, but a civil court would not be precluded from carefully litigating matters which may generally be considered religious disputes); Patty Gerstenblith, \textit{Civil Court Resolution of Property Disputes Among Religious Organizations}, 39 Am. U.L. Rev. 513, 516 (1990) (when it comes to property disputes, the \textquoteleft[a]rticle advocates that courts, in their resolution of internal religious disputes, must apply a truly neutral set of legal principles."). \\
\textsuperscript{6} See John E. Fennelly, \textit{Property Disputes and Religious Schisms: Who Is the Church?}, 9 St. Thomas L. Rev. 319, 353-54 (1997) (church property disputes would not exist but for a religious dispute). \end{itemize}
while still allowing neutral principles to resolve property disputes disassociated from religious issues.7

The Illinois Second District Appellate Court had an extraordinary opportunity to positively impact a fifty-year-old conflict surrounding the Serbian Orthodox Church, but unfortunately Puskar v. Krco8 shed a dejected outlook on the possibility of discrete resolution within the church. In 1991 the Serbian Orthodox Metropolitanate of New Gracanica Diocese of the United States and Canada (“Metropolitanate Diocese”) began the process of reunifying with the Serbian Orthodox Church (Serbian Church).9 The churches had previously been unified under a hierarchical structure until 1963, but following the monumental Supreme Court decision Serbian Eastern Orthodox Diocese for United States of America & Canada v. Milivojevich,10 they became disassociated for the subsequent thirty years.11 Beginning around 2008, tensions arose concerning whether a reunification had taken place, whether the transitional documents continued to govern the reunification, and the loyalties of the bishop the Serbian Church had appointed over the Metropolitanate Diocese.12 The trial court dismissed the case citing lack of subject matter jurisdiction due to the ecclesiastical abstention doctrine.13 The majority in Puskar reversed and instead applied neutral principles of law to hold that the transitional documents had expired and therefore the churches remained separate and autonomous.14 The dissent believed there were ecclesiastical issues intermingled and that the court should have been prohibited from resolving the issue of the transitional documents.15

7. See Christopher C. Lund, In Defense of the Ministerial Exception, 90 N.C. L. Rev. 1, 12-19 (2011) (“[T]he Court has not doubted that church autonomy is a right of constitutional dimension.” But, “[l]ike other property rights, rights to church property must be resolved by the state.” “Church autonomy is thus a principle of deference, not abstention.”); David J. Young & Steven W. Tiggs, Into the Religious Thicket Constitutional Limits on Civil Court Jurisdiction over Ecclesiastical Disputes, 47 Ohio St. L.J. 475, 497-99 (1986) (acknowledging there are “two different approaches for resolving similar issues—deference for ecclesiastical disputes, and neutral principles for church property disputes” where the court assesses the type of conflict to determine whether it would be required to defer).
9. See id. ¶¶ 2, 6. Both the Puskar majority and dissent consistently refer to the “Metropolitanate [sic] Diocese” rather than the “Metropolitanate Diocese.” The apparent misspelling of Metropolitanate appears to have originated at the trial court. This Note will use the spelling “Metropolitanate Diocese” throughout.
13. See id. ¶ 32.
14. See id. ¶¶ 42, 45-48 (majority opinion).
15. See id. ¶ 51 (Spence, J., dissenting).
*Puskar* illustrates how courts must wrestle with whether a case involves the religious intricacies the ecclesiastical abstention doctrine specifically prohibits. However, given the history and the dearth of available case law, misapplication of either the ecclesiastical abstention doctrine or neutral principles should be avoidable. Each Illinois Appellate District has interacted with both the ecclesiastical abstention doctrine and the application of neutral principles. Based on the unique circumstances of *Puskar* and the applicability to existing Illinois case law, this Note advocates that the dissenting opinion was more correct in its analysis.

The background section of this Note explains the constitutional development of both the ecclesiastical abstention doctrine and the neutral principles of law approaches. *Puskar* is then examined to explain the details of the case and how the majority and dissent each held. Lastly, *Puskar* is analyzed in comparison to relevant Illinois appellate decisions that have confronted the ecclesiastical abstention doctrine, in order to interact with the issues of an interchurch dispute and whether neutral principles or the ecclesiastical abstention doctrine would be appropriate.

II. BACKGROUND

In order to understand the significance of *Puskar*, the history of the constitutional principles of the ecclesiastical abstention doctrine and the neutral application of law to religious disputes must be examined. This section first reviews early United States Supreme Court case law. Then, it discusses how the origination of the dispute in *Puskar* intersects with Supreme Court jurisprudence. Lastly, this section discusses the United States Supreme Court and Illinois acceptance of neutral principles of law when applied in a limited manner to religious disputes.

A. EARLY CASE LAW

In the 1871 case of *Watson v. Jones*, the United States Supreme Court first established the deferential approach to the ecclesiastical deci-

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16. *E.g.*, Susan v. Romanian Orthodox Episcopate of Am., 2012 IL App (1st) 120697-U, ¶ 7 (“[T]he abstention doctrine itself has been equally hard for courts to apply consistently in practice.”).
17. *E.g.*, id. (“[A]s we mentioned in *Bruss*, the core of the doctrine simply requires us to determine whether the subject matter of the dispute involves resolving ‘matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.’” (quoting *Bruss* v. *Przybylo*, 895 N.E.2d 1102, 1123 (Ill. App. Ct. 2d Dist. 2008))).
sions of a church.\textsuperscript{20} Watson involved a dispute between two factions of members of a Presbyterian church.\textsuperscript{21} The congregation was split over the issue of institutional slavery, and each faction claimed ownership of the Walnut Street Presbyterian Church.\textsuperscript{22} The Court outlined three classifications of church property ownership, with the Watson dispute involving property that was for the use of a local church congregation when the local church was itself identified as being part of a hierarchical structure.\textsuperscript{23} Watson expressed that a court must accept the decisions of the highest church authorities, because “civil courts exercise no jurisdiction” when the “subject-matter of [the] dispute is] strictly and purely ecclesiastical in its character.”\textsuperscript{24} A dispute would be considered ecclesiastical when it “concerns [a] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.”\textsuperscript{25}

Given that the Bill of Rights was not incorporated when Watson was decided,\textsuperscript{26} the Supreme Court confronted the constitutional aspects of ecclesiastical disputes for the first time in 1952 in Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America.\textsuperscript{27} Kedroff addressed a property dispute between the Russian Orthodox Church in Moscow and the North American branch of the Russian Orthodox Church concerning the ownership and control of St. Nicholas Cathedral in New York.\textsuperscript{28} The Court framed the use or control of the property as dependent upon the selection of clergy and the hierarchical structure of the churches following the Russian Revolution.\textsuperscript{29} Citing Watson, the Court identified that the Constitution protected the “freedom for religious organizations” to decide the selection of clergy and church governance, apart from “state interference” and “secular control or manipulation.”\textsuperscript{30} The Court not only deferred to the decisions of the hierarchical authority, but the Court also invalidated a New York law

\begin{itemize}
\item \textsuperscript{20} Helfand, \textit{supra} note 1, at 521, 535.
\item \textsuperscript{21} \textit{Watson}, 80 U.S. (13 Wall.) at 681.
\item \textsuperscript{22} \textit{Id.} at 681, 690-92.
\item \textsuperscript{23} \textit{See id.} at 722-26.
\item \textsuperscript{24} \textit{Id.} at 727, 733.
\item \textsuperscript{25} \textit{Id.} at 733.
\item \textsuperscript{26} \textit{See Jones v. Wolf}, 443 U.S. 595, 617 n. 4 (1979) (Powell, J., dissenting) (“Watson v. Jones was decided at a time when the First Amendment was not considered to be applicable to the States through the Fourteenth Amendment.”).
\item \textsuperscript{27} \textit{Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.}, 132 S. Ct. 694, 704 (2012).
\item \textsuperscript{28} \textit{Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.}, 344 U.S. 94, 95-96 (1952).
\item \textsuperscript{29} \textit{See id.} at 96-97, 100-05.
\item \textsuperscript{30} \textit{Id.} at 115-16.
\end{itemize}
which had attempted to regulate church property disputes by allowing the state to interfere in “area[s] of religious freedom.”

The Supreme Court reaffirmed *Watson* again in 1969 in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*. *Presbyterian Church* was similar to *Watson* and *Kedroff* in that it also involved a property ownership dispute between local congregations and the hierarchical church. Not surprisingly, the Court refused to intervene in an ecclesiastical question when the hierarchical tribunal had already decided the matter.

**B. THE SERBIAN ORTHODOX CHURCH’S CONTRIBUTION TO SUPREME COURT JURISPRUDENCE**

The ecclesiastical abstention doctrine of court abstention peaked in 1976 in *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*. The nearly two decades of litigation examined in *Milivojevich* was a precursor to the dispute in *Puskar*. The litigation centered around the control of church property after the hierarchical Serbian Orthodox Church had removed and defrocked Bishop Dionisije Milivojevich, and reorganized the American-Canadian Diocese of the Serbian Orthodox Church into three separate dioceses. The trial court had found that the disputed property was not controlled by the Serbian Orthodox Church because it was “held in trust for all members of the American-Canadian Diocese,” and that the reorganization by the Serbian Orthodox Church was improper. The Illinois Supreme Court invalidated the reorganization since it had not been approved by the American-Canadian Diocese, but the court also set aside the removal and defrockment of Bishop Dionisije because it was “not conducted according to . . . the Church’s constitution and penal code.”

The *Milivojevich* Court reversed the Illinois Supreme Court because it instead recognized that control of the American-
Canadian Diocese’s property depended upon resolving the removal and defrockment of Bishop Dionisije, and thus as a religious dispute already determined by an ecclesiastical tribunal, it was prohibited by the First Amendment. 41 Regarding the reorganization of the American-Canadian Diocese, the Court held that the Illinois Supreme Court had erroneously “substituted its interpretation of [each church] constitution[] for that of the highest ecclesiastical.” 42 Under Milivojevich, “hierarchical religious organizations [may] create tribunals for adjudicating disputes,” and “the Constitution requires that civil courts accept [ecclesiastical tribunal’s] decisions as binding upon them.” 43 In so concluding, Milivojevich is known to have continued the trend of court deference towards religious tribunals over matters involving religious disputes, 44 even when tangentially involving property. 45 Following the remand and a later appeal back to the Illinois Supreme Court, the span of litigation finally came to a halt, although it would unfortunately not last. 46 As a result of Milivojevich, the ownership of the disputed properties was transferred to the Serbian Orthodox Church, and the American-Canadian Diocese formed its own church. 47

C. NEUTRAL PRINCIPLES OF LAW APPROACH

The neutral principles of law approach was first espoused by the Supreme Court in 1969 in Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church. 48 Presbyterian Church posited the notion that neutral principles of law could be applied to settle church property disputes, even though the Court ultimately held that the First Amendment prohibited the Georgia courts’ application of the “departure-from-doctrine.” 49 Milivojevich is even said to have approved the possibility of a

41. Id. at 709, 713, 725 (“[A] civil court must accept the ecclesiastical decisions of church tribunals as it finds them.”).
42. Id. at 721 (“[R]eorganization of the Diocese involve[d] a matter of internal church government, an issue at the core of ecclesiastical affairs,” and the Serbian Orthodox church “constitution commit[ed] such questions of church polity to the final providence of the Holy Assembly.”).
45. See Milivojevich, 426 U.S. at 709.
48. See Gerstenblith, supra note 5, at 519.
49. See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church, 393 U.S. 440, 449-50 (1969) (discussing the departure-from-doctrine as “re-
civil court’s neutral enforcement.\textsuperscript{50} Jones v. Wolf,\textsuperscript{51} however, was the first decision in which the Supreme Court “explicitly applied ‘neutral principles.’”\textsuperscript{52} Jones rejected “a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved.”\textsuperscript{53}

In 1979, the Court in Jones encountered a property dispute concerning the ownership of the Vineville Presbyterian Church.\textsuperscript{54} The Vineville church was a part of the hierarchical Presbyterian Church in the United States (“PCUS”), while the actual church property had been purchased by local church members and held in trust for the local church and its successors.\textsuperscript{55} A schism formed between members of the Vineville church over whether it would separate from the PCUS.\textsuperscript{56} The Jones Court adopted neutral principles of law as a constitutionally viable approach allowing courts to rely on “objective, well-established concepts of trust and property law” to resolve church property disputes.\textsuperscript{57} At the same time, the Court cautioned that a “court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body” if “interpretation of the instruments of ownership would require the civil court to resolve a religious controversy.”\textsuperscript{58} The Jones Court remanded the case to the Georgia Supreme Court, which had assertedly used neutral principles in adjudicating the matter, even though it had concluded so “without discussion or analysis that the title to the property was in the local church and that the local church was represented by the

quir[ing] the civil judiciary to determine whether actions of the general church constitute such a ‘substantial departure’ from the tenets of faith and practice . . . . If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology.”\textsuperscript{59}

\textsuperscript{50} See Jones v. Wolf, 443 U.S. 595, 603 (1979) (citing Milivojevich, at 723 n.15).
\textsuperscript{51} The section of Milivojevich the Jones Court references states: “The constitutional provisions of the American-Canadian Diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity.” Milivojevich, 426 U.S. at 723. Footnote 15 from Milivojevich implied the ability of a civil court to look into the “formal title” of the property, or whether the property was held in trust. Id. at 723 n.15.
\textsuperscript{52} Jones, 443 U.S. 595.
\textsuperscript{53} Young & Tiggs, supra note 7, at 496.
\textsuperscript{54} Jones, 443 U.S. at 605.
\textsuperscript{55} Id. at 597.
\textsuperscript{56} Id.
\textsuperscript{57} Id. at 603-04. The Court cited Georgia’s use of neutral principles as an example of how a civil court could “examine certain religious documents, such as a church constitution . . . tak[ing] special care to scrutinize the document in purely secular terms.” Jones v. Wolf, 443 U.S. 595, 604 (1979).
\textsuperscript{58} Id.
majority rather than the minority.”

The Georgia Supreme Court would thus have to determine if it had properly applied neutral principles because, in the Court’s opinion, resolving the dispute had the potential to improperly invade into religious doctrine or usurp a hierarchical decision. Since Jones, the neutral principles approach to church property disputes allows a court to “examine the deeds to the property and any other relevant documents, including the church constitution or bylaws, to determine where title to the property is vested and whether it is held in trust.”

Although the neutral principles approach has not changed in substance since Jones, in 2012 the U.S. Supreme Court once again addressed a church autonomy case, leading some to speculate as to the Court’s restatement of deference for religious institutions. Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission was a unanimous decision which applied the ministerial exception doctrine to prohibit a teacher’s wrongful termination claim against her former employer, a church operating a religious school. The Court looked back to Watson, Kedroff, and Milivojevich for the underlying support that the First Amendment protects the ecclesiastical decisions of religious institutions, specifically the hiring and firing of ministers. Hosanna-Tabor limited its application of the ministerial exception to employment discrimination suits; the Court did not delve into “actions by employees alleging breach of contract or tortious conduct by their religious employers.”

D. ILLINOIS’S ADOPTION OF THE NEUTRAL PRINCIPLES OF LAW APPROACH

Lowe v. First Presbyterian Church formally established the ecclesiastical abstention doctrine in Illinois. In doing so, the Illinois Supreme

59. Id. at 606-07, 609.
60. Id. at 608-09.
61. See Young & Tiggs, supra note 7, at 497.
62. See Helfand, supra note 5, at 496 n.12; Richard W. Garnett & John M. Robin-
son, Hosanna-Tabor, Religious Freedom, and the Constitutional Structure, 2012 CATO SUP.
CT. REV. 307, 322-23, perma.cc/NJ22-W36Z.
64. The ministerial exception doctrine “precludes application of [employment discrimina-
tion laws] to claims concerning the employment relationship between a religious institution and its ministers.” Id. at 705.
65. Id. at 699-700, 707, 710.
66. Id. at 704-06.
67. Id. at 710.
68. Lowe v. First Presbyterian Church, 308 N.E.2d 801 (Ill. 1974).
Court relied on *Watson*, *Kedroff*, and *Presbyterian Church* to ultimately abstain from resolving a property dispute between some members at a local Presbyterian Church and the hierarchical body of the Presbyterian Church, when the ecclesiastical body had already rendered a decision.\(^7\) *Lowe* is a pre-*Jones* case and the Illinois Supreme Court has never directly confronted the constitutionality of the neutral principles application to church disputes. However, each Illinois Appellate District has since adopted and applied the neutral principles of law approach.\(^7\) Even though Illinois accepts neutral principles and *Jones*’s rejection of “compulsory deference,”\(^7\) Illinois courts still refrain from intervening in ecclesiastical disputes,\(^7\) which *Jones* also subscribed to.\(^7\)

### III. EXPOSITION OF *PUSKAR V. KRCO*

#### A. FACTS AND PROCEDURE

Plaintiffs in *Puskar v. Krco* are members who “hold various positions of authority” within “the Serbian Orthodox Metropolitanate of New Gracanica Diocese of the United States and Canada” (“Metropolitanate Diocese”).\(^7\) The sole defendant is Bishop Longin Krco, the elected Bishop of the Metropolitanate Diocese.\(^7\) The discord present in *Puskar v. Krco* is a

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70. *See Lowe*, 308 N.E.2d at 802, 804-05, 807.

71. *See generally Clay*, 657 N.E.2d at 692-94 (acknowledged neutral principles approach but did not apply to specific issue); St. Mark Coptic Orthodox Church v. Tanios, 572 N.E.2d 283, 291 (Ill. App. Ct. 2d Dist. 1991) (“Where doctrinal controversy is not involved in a church dispute, however, mandatory deference to religious authority is not required . . . and the court may choose from a variety of approaches in resolving the dispute. One such approach [is] the ‘neutral principles of law’ approach.” (citation omitted)); Williams v. Palmer, 532 N.E.2d 1061, 1065 (Ill. App. Ct. 3d Dist. 1988) (“We acknowledge that the neutral principles approach has been judicially accepted in Illinois.”); Aglikin v. Kovacheff, 516 N.E.2d 704, 707 (Ill. App. Ct. 1st Dist. 1987) (“If doctrinal controversy is not involved, the first amendment does not require that the States adopt a rule of compulsory deference to religious authority in resolving property disputes. . . . State courts may choose . . . the neutral principles approach.”); York v. First Presbyterian Church of Anna, 474 N.E.2d 716, 720 (Ill. App. Ct. 5th Dist. 1984) (“We find that the *Lowe* decision does not prevent our disposition of this appeal by a neutral principles analysis. We note preliminarily that the significant *Jones* case was decided several years after *Lowe*.”).


73. *See, e.g.*, *Clay*, 657 N.E.2d at 693 (“Even the ‘neutral principles of law approach’ is not to be applied when a civil court would need to decide an ecclesiastical issue.”).


76. *Id.*
descendent of Milivojevich. In 1963, the Serbian Eastern Orthodox Church declared its autonomy from the hierarchical authority of the Serbian Orthodox Church ("Serbian Church"), which brought about the Supreme Court case Milivojevich. The prolonged litigation allowed the Serbian Church to retain all of the disputed property, and eventuated in the Serbian Eastern Orthodox Church founding the "Free Serbian Orthodox Diocese of the United States and America." The Free Serbian Orthodox Diocese’s Affidavit of Organization, recorded in 1977, and its Constitution, adopted in 1986, declared itself completely autonomous from the Serbian Church. In 1991, the Free Serbian Orthodox Diocese changed its name to the Metropolitanate Diocese. The schism between the Metropolitanate Diocese and the Serbian Church was in large part due to the communist control of the former Yugoslavia, thus, after the decline of communism, the relationship between the two churches became amiable in 1992, and they began discussing reunification. The Metropolitanate Diocese and the Serbian Church together enacted a document called the “Transitional Regulations” ("Regulations") to guide their reunification efforts. The Regulations became a central figure in conflict.

There were several articles of the Regulations central to the dispute. Article Two stated that the Regulations were to remain in force “until the adoption of a common Constitution ‘for a period not to exceed three years.’” In seemingly contradictory fashion, Article Sixteen indicated only that the Regulations would remain in effect “until the adoption of a common constitution.” Article Two also provided that Metropolitanate Diocese would “be governed based on the ‘Holy Scripture and Holy Tradition’ of the [Serbian] Church; . . . the [Regulations] ‘in the spirit of the Constitution’ of the [Serbian] Church; and the provisions of the Metropolitanate Diocese’s Constitution that did not conflict with the [Regulations].” Articles Five and Six authorized the Serbian Church to appoint or elect a bishop.

78. See Puskar, 2013 IL App (2d) 120847-U, ¶ 3; see also supra notes 35-46 discussing Milivojevich.
80. Id. ¶¶ 4-5.
81. Id. ¶ 2, 6.
82. Id. ¶¶ 5, 6.
83. Id. ¶ 6.
84. In paragraph twenty-six the opinion refers to the trial court noting Article one contained the three-year expiration provision, but the majority and dissent each cite to Article two as containing the three-year expiration provision in every other instance.
86. Id. ¶ 58.
87. Id. ¶ 7.
or administrator in the event of a vacancy within the Metropolitan Diocese.\footnote{Id. ¶ 8.} Article Fourteen provided that: “[t]he protection of Church property shall be regulated according to the hierarchical structure of [the [Serbian] Church] as provided for by the respective Constitutions, Rules and Regulation of the [Metropolitanate Diocese], and the laws of the respective countries.”\footnote{Id. ¶ 9 (some brackets in the original).}

In 1998, six years after the enactment of the Regulations, the Serbian Church appointed Bishop Longin to an administrative position within the Metropolitanate Diocese.\footnote{Puskar v. Krco, 2013 IL App (2d) 120847-U, ¶ 8.} The following year Bishop Longin was elected to serve as “Diocesan Bishop of the Metropolitan Diocese.”\footnote{Id. ¶ 10.} A representative body of the Metropolitanate Diocese convened in 1998, 1999, 2002, and 2005 in order to discuss the enactment of a common constitution, but each time allegedly failed to approve a proposed constitution.\footnote{Id. ¶ 11.} However, in 2008 the Serbian Church “circulated a document” purporting to be a common constitution approved by the Metropolitanate Diocese in 1998, which Plaintiffs denied ever approving.\footnote{Id. ¶ 12.} Furthermore, in 2009 the Serbian Church announced the Metropolitanate Diocese would be reorganized as a part of the Serbian Church, and Bishop Longin “publically stated that a reorganization of the Metropolitanate Diocese had occurred and that there was no longer a division between the Metropolitanate Diocese and the [Serbian] Church.”\footnote{Id. ¶ 13.}

Plaintiffs maintained that a common constitution was never approved by the representative body of the Metropolitanate Diocese, and that the Regulations expired after three years of the 1992 enactment.\footnote{Id. ¶ 14.} Plaintiffs brought an action against Bishop Longin in 2011 seeking a “declaratory judgment that the Metropolitanate Diocese was an independent and autonomous religious organization,” and to permanently enjoin Bishop Longin from “taking any action causing the transfer of property” belonging to the Metropolitanate Diocese,” since Bishop Longin, in his position as bishop, had control over much of the Metropolitanate Diocese’s property and assets.\footnote{See Puskar v. Krco, 2013 IL App (2d) 120847-U, ¶¶ 13, 24.}

Bishop Longin held fast to his assertions that not only had the Regulations not expired three years after enactment, but that the Metropolitanate Diocese and the Serbian Church were no longer “separate entities,” and
therefore the decisions of the Metropolitanate Diocese’s representative body were controlling, not the Metropolitanate Diocese People’s Assembly.\textsuperscript{97} Instead, Bishop Longin argued that the Metropolitanate Diocese had submitted to being “canonically and hierarchically” a part of the Serbian Church, in accordance with the bilaterally agreed-upon Regulations.\textsuperscript{98} To support his argument that the Regulations were still in effect beyond three years, Bishop Longin cited examples of how Plaintiffs had demonstrated through their statements and actions that they remained under the Regulations.\textsuperscript{99} The ecclesiastical abstention doctrine would therefore prohibit the trial court from resolving an internal church dispute according to Bishop Longin.\textsuperscript{100} Bishop Longin stated that attempting to resolve the question of the Metropolitanate Diocese’s autonomy necessarily required delving into the polity of the Serbian Church and determining the Serbian Church’s authority to “adopt a new constitution and reorganize its diocese.”\textsuperscript{101}

Plaintiffs rebutted Bishop Longin’s application of the ecclesiastical abstention doctrine arguing that the two churches had not merged, and thus the Metropolitanate Diocese remained separate and autonomous and was not bound by the decisions of the Serbian Church.\textsuperscript{102} Furthermore, Plaintiffs held the notion that the trial court could use the neutral principles of law approach to interpret the Regulations to “determine whether the Metropolitanate Diocese was separate and/or subordinate to the [Serbian] Church.”\textsuperscript{103} Plaintiffs also believed that it was “beside the point” whether the Regulations remained in effect, since Bishop Longin had not proved the Regulations meant the two churches had merged.\textsuperscript{104}

The trial court found that Plaintiffs’ complaint was a dispute over the control of Metropolitanate Diocese property accompanied by a disagreement “whether the [Regulations] document remained in effect and whether

\textsuperscript{97} Id. ¶ 17.

\textsuperscript{98} Id. ¶ 20. Bishop Longin further argued that the Metropolitanate Diocese had agreed to become part of the hierarchical Serbian Church because the Regulations “were to remain in effect until the adoption of a common Constitution,” he was authorized to sign the amended Affidavit of Organization on behalf of the Metropolitanate Diocese in 1998, the 2008 constitution the Serbian Church stated the Metropolitanate Diocese had adopted, and the Serbian Church had restructured the Metropolitanate Diocese in 2009. Id. ¶ 20.

\textsuperscript{99} See Puskar v. Krco, 2013 IL App (2d) 120847-U, ¶ 28. Bishop Longin gave four examples: in 1998 an amended Affidavit of Organizations was filed; in 1999 the Metropolitanate Diocese newspaper stated the Regulations were still in effect; in 1998 and 1999 Plaintiffs allowed the Serbian Church to appoint Bishop Longin to his positions; and in 2009 he “fully understood and fully concurred” that the Serbian Church was authorized to reorganize the Metropolitanate Diocese. Id.

\textsuperscript{100} Id. ¶ 21.

\textsuperscript{101} Id.

\textsuperscript{102} Id. ¶¶ 22-23.

\textsuperscript{103} Puskar v. Krco, 2013 IL App (2d) 120847-U, ¶¶ 22-23.

\textsuperscript{104} Id. ¶ 29.
a common constitution had been adopted by the Metropolitan Diocese." But the trial court also noted how Plaintiffs’ action was solely against Bishop Longin rather than the Serbian Church, and the “complaint was ‘primarily a dispute over church polity and only tangentially a dispute over the control of church property.’” The trial court granted Bishop Longin’s motion for judgment on the pleadings.

B. MAJORITY OPINION

The majority opinion in Puskar agreed with the trial court’s understanding that the ecclesiastical abstention doctrine precluded a court from deciding disputes over church polity, while the neutral principles approach dismissed the “mandatory deference to religious authority” when a dispute did not involve a “doctrinal controversy.” The majority, however, disagreed with the trial court’s interpretation of the subject matter of the disagreement, and instead characterized it as involving contract interpretation only, rather than church polity. The court held the ecclesiastical abstention doctrine should not have been a hindrance to the trial court’s judgment. The trial court had relied upon Bruss v. Przybylo in reaching its finding, but the majority held Bruss was distinguishable from the facts before it. Bruss applied the ecclesiastical abstention doctrine because the subject matter concerned “the qualifications and fitness of a priest,” of which the court was precluded from deciding, while the majority intoned qualifications and fitness of a priest were not presently disputed.

Instead, the majority framed the issue as strictly a contract dispute between two separate churches who freely entered an agreement, stating, “the trial court did not determine whether the [Regulations] document was still in effect; whether a common constitution between the Metropolitan Diocese and the [Serbian] Church had been adopted; or whether the Metropolitan Diocese was subordinate to the [Serbian] Church.” The majority, moreover, struck down Bishop Longin’s argument that Plaintiffs’ attached exhibits containing his “unilateral actions” invalidated Plaintiffs’ complaint.

105. Id. ¶¶ 30-32.
106. Id. ¶ 32 (citing Bruss v. Przybylo, 895 N.E.2d 1102 (Ill. App. Ct. 2d Dist. 2008)).
107. Id.
109. Id. ¶ 38 (majority opinion).
110. Id. ¶¶ 38, 42 (majority opinion).
111. Id. ¶¶ 39-40 (majority opinion).
112. See id. ¶ 39 (majority opinion) (citing Bruss v. Przybylo, 895 N.E.2d 1102, 1122-24 (Ill. App. Ct. 2d Dist. 2008)).
114. Id. ¶¶ 40-41 (majority opinion).
stating Bishop Longin’s actions only “served to further confuse the relationship between the parties.”

Before it reversed the trial court, the majority addressed whether “the [Regulations] document expired without the adoption of a joint constitution.” Answering in the affirmative, the majority held that the Regulations had expired in 1995 since its “terms . . . when read as a whole, are clear.”

C. DISSENTING OPINION

The dissent in Puskar disagreed with the majority construing the issue “as one of contract interpretation,” and instead believed that the ecclesiastical abstention doctrine prevented the court from exercising subject matter jurisdiction. To the dissent, the “heart of plaintiffs’ claims” was whether Bishop Longin had violated his duty to the Metropolitan Diocese by proclaiming that the two churches were united, and whether the Metropolitan Diocese had become subordinate to the Serbian Church. But before either of those could be resolved, the dissent stated there were preventative ecclesiastical issues of “(1) whether a common constitution had been adopted; (2) the duration and significance of the [Regulations] and the documents it incorporates; . . . and (3) [Bishop Longin’s] authority to file an Affidavit of Organization declaring that the Metropolitan Diocese was bound by the [Regulations] and was subordinate to the [Serbian] Church.”

In fact, the dissent chided the majority for “oversimplifying the nature of the dispute by labeling it as one of contract interpretation, i.e., interpretation of the [Regulations].” The majority had asserted that the trial court should have resolved the dispute by “construing the viability of the contracts,” and further insisted that the Regulations had expired after three years. But the dissent stated the viability of the Regulations could not be

115. Id. ¶ 42 (majority opinion) (Bishop Longin authorized the adoption of a common constitution on behalf of Metropolitan Diocese in 2008).
116. Id. ¶¶ 41, 44, 48 (majority opinion).
117. Id. ¶ 47 (majority opinion) (“The [Regulations] document states clearly that, unless a common constitution is reached by the governing bodies of each church, the terms of the agreement will expire after 3 years’ time.”). The majority stated that Bishop Longin’s unilateral actions subsequent to the Regulations expiration did not matter since the document was no longer in effect, but omitted the circumstances of Bishop Longin’s appointment as administrator and bishop. Puskar v. Krco, 2013 IL App (2d) 120847-U, ¶ 47.
118. Id. ¶ 51 (Spence, J., dissenting).
119. Id. ¶ 53 (Spence, J., dissenting).
120. Id. ¶ 54 (Spence, J., dissenting).
121. See id. ¶ 55 (Spence, J., dissenting).
determined without “improperly delving into issues of church doctrine and polity,” because it was not clear whether the Regulations had expired, or whether the Metropolitanate Diocese was still governed by the Regulations.123

The Regulations contained conflicting provisions, “and the parties continued to operate as though it remained in effect.”124 The dissent pointed to the evidence that lent credence to the fact “that the parties continue to operate as though the document was still in place.”125 The first was the Metropolitanate Diocese’s official newspaper which had stated in 1999 that the Regulations continued to govern the Metropolitanate Diocese.126 The second was the Serbian Church’s authority under Articles Five and Six of the Regulations to appoint Bishop Longin as Administrator Bishop and later Diocesan Bishop of the Metropolitanate Diocese, which occurred in 1998 and 1999, respectively, “long after the Regulations had allegedly expired.”127 The dissent went on to state that, “if the Regulations remain[ed] in effect, the Metropolitanate Diocese [was] not autonomous, as the majority assert[ed], but subordinate to the [Serbian] Church.”128 In arriving at that conclusion, the dissent looked at the language of Article Two, which not only provided that religious documents of the Serbian Church would govern the Metropolitanate Diocese, but also that the Regulations would supersede conflicting provisions of the Metropolitanate Diocese making the Metropolitanate Diocese subservient to the Regulations.129

Finally, the dissent believed the majority’s statement that a court needed to intervene since Bishop Longin acted unilaterally when he filed the amended Affidavit of Organization in 1998 was an unlikely characterization.130 The parties’ disagreement regarding the legitimacy of the amended Affidavit of Organizations demonstrated to the dissenting justice why, in-

123. Id. ¶ 56 (Spence, J., dissenting).
124. Id. (Spence, J., dissenting) (Article two conflicted with Article sixteen about whether the Regulations expired after a three-year period or not until a common constitution was adopted). Despite the conflicting provisions, the majority had concluded the Regulations were clear, without making reference to Article sixteen in its analysis. Id. ¶¶ 47, 57 (Spence, J., dissenting).
125. Id. ¶ 59 (Spence, J., dissenting).
127. Id. ¶ 60 (Spence, J., dissenting).
128. Id. ¶ 64 (Spence, J., dissenting).
129. Id. (Spence, J., dissenting).
130. Id. ¶ 42 (majority opinion); Puskar v. Krco, 2013 IL App (2d) 120847-U, ¶ 62 (Spence, J., dissenting). The dissent stated the amended Affidavit of Organization was “on its face . . . [a] decision of the Assembly of the Metropolitan Diocese,” and “there [was] no evidence that the Metropolitanate Diocese objected to the filing of the amended Affidavit of Organization.” Id. ¶¶ 62-63 (Spence, J., dissenting).
stead of intervening, the court should abstain from weighing in on “matters of church governance and hierarchical structure.”

IV. ANALYSIS

_Puskar_ was incorrectly decided because the court failed to recognize the religious intricacies of the dispute. Even if a judgment on the pleadings was an improper decision by the trial court, it was wrong for the _Puskar_ majority to hold that the Regulations no longer remained in effect. This case illuminates the often difficult decision of whether to apply the ecclesiastical abstention doctrine or the neutral principles of law, but the Free Exercise and Establishment Clauses of the First Amendment cannot afford such a grave error. This section examines other Second District Appellate Court decisions and additional relevant Illinois Appellate Court cases which have confronted the ecclesiastical abstention and neutral principles approaches. This section compares and contrasts how those Illinois appellate cases interact with _Puskar_ to demonstrate that, in order for the ecclesiastical abstention to be applied, there must be an interchurch dispute with either a religious issue or religious authority involved, all of which should have been acknowledged as present in _Puskar_.

A. INTERCHURCH CONFLICT

In order for the ecclesiastical abstention doctrine to apply, regardless of if an otherwise precluded ecclesiastical issue were involved, there must be a dispute that arises from within a church or authoritative religious organization. Whether an identifiable hierarchical structure existed at the time is a crucial issue underlying _Puskar_. At oral arguments, Justice Hutchinson, the author of the majority in _Puskar_, expressed concern that the facts were such that an unassociated religious organization was essentially attempting to take over another church. Such a concern is valid. If


132. E.g., Duncan v. Peterson, 947 N.E.2d 305, 313-14 (Ill. App. Ct. 2d Dist. 2010) (distinguishing between “internal church matter” and subject matter not generated internally, with the latter not triggering the ecclesiastical abstention doctrine).

133. E.g., Diocese of Quincy v. Episcopal Church, 2014 IL App (4th) 130901, ¶¶ 43, 46-48 (distinguishing between a clearly structured hierarchical religious governance and an unidentifiable hierarchical structure, especially when evidence pointed to a lack of authoritative hierarchy), petition for leave to appeal denied, Diocese of Quincy v. Episcopal Church, 21 N.E.3d 713 (Ill. 2014) (unpublished table decision).

the Serbian Church and the Metropolitanate Diocese did not have any semblance of an authoritative hierarchical relationship, then Puskar’s majority is correct and any reasonable person should look with a skeptical eye at the Serbian Church attempting to force its control over the Metropolitanate Diocese. However, if the majority is not correct, and the two churches in fact reunified and reestablished the decades-old authoritative hierarchy, then the decision has put both parties in a confounded dilemma. Resolution of reunification turns on determining if the Regulations remained in effect, or if a common constitution had been enacted.

Three cases provide insight as to the need for a structured relationship before a court may apply ecclesiastical deference. The first, Duncan v. Peterson, is perhaps the clearest example of when a dispute does not arise from within a single church or authoritative hierarchy. Duncan came before the Second District in 2005 and 2010. The case arose after the senior pastor of Moody Church and Moody Church elders sent Duncan, among others, three letters which Duncan based a claim of false light invasion of privacy. Duncan was at that time a pastor of Hope Church, but had received his ordination from Moody Church. The three letters inquired about accusations of Duncan’s sexual impropriety, and threatened that his ordination would be revoked if Duncan did not respond to the claims. The court determined the ecclesiastical abstention doctrine did not apply in 2005 due to the Moody Church’s lack of authority over Duncan. It reiterated in 2010 that the abstention doctrine did not apply because it was not an interchurch dispute.

The second and third examples both emerge from the Fourth District. In what would have otherwise been a straightforward property dispute, Clay

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135. Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich, 426 U.S. 696, 700-02 (1976) (giving the background of the American-Canadian branch of the Serbian Orthodox Church adopting its constitution in 1927 and aligning with the authoritative hierarchical structure of the Serbian Church).
136. Duncan, 947 N.E.2d 305.
138. Duncan, 947 N.E.2d 305.
139. Duncan, 835 N.E.2d at 414.
140. Id.; Duncan, 947 N.E.2d at 309.
141. See Duncan, 835 N.E.2d at 414-15; Duncan, 947 N.E.2d at 309-11. The third letter informed Duncan that Moody Church rescinded his ordination because Duncan had not attended a hearing on the allegations. Id. at 310.
142. See Duncan, 835 N.E.2d at 422 (“Deciding whether defendants published a letter placing Duncan in a false light, by appearing to revoke Duncan's ability to be a minister and pastor at Hope Church, does not require extensive inquiry into religious law and polity.”).
143. Duncan, 947 N.E.2d at 314 (“[T]he Moody Church has no authority over Hope Church and, hence, the dissemination of the letters at issue was not an internal procedure of the Moody Church.”).
v. Illinois District Council of Assemblies of God Church confronted the reversion of a property deed between a local Assemblies of God Church and its higher religious affiliate, the Illinois District Council.\textsuperscript{144} The local church’s bylaws provided that church property would revert to the Illinois District Council if the church “ceased to function as an Assemblies of God Church.”\textsuperscript{145} Even though the court agreed the “ceased to function” phrase was ambiguous and ambiguous contractual terms were usually resolved by a court, neutral principles were inappropriate because the ambiguity turned on the meaning of what it meant to “function as an Assemblies of God Church.”\textsuperscript{146} Neutral principles were not to be used when an ambiguity concerned an ecclesiastical issue.\textsuperscript{147} As a church polity issue between two hierarchical connected religious organizations, the court thereby deferred to the Illinois District Council’s conclusion that the local church had indeed ceased to function as an Assemblies of God Church.\textsuperscript{148}

In Diocese of Quincy v. Episcopal Church, the Diocese of Quincy (“Diocese”) voted to dissociate from the Episcopal Church, upon which the Episcopal Church attempted to freeze over three million dollars held in the Diocese’s bank account.\textsuperscript{149} The two issues presented were the structure of the church and ownership of the funds.\textsuperscript{150} The Diocese had been associated with the Episcopal Church, although the relationship had not been sufficiently formal and controlling, the Diocese’s constitution and bylaws did not mention a hierarchical structure, and the Episcopal Church lacked supreme authority.\textsuperscript{151} Of added importance, the control of church funds and the bank account funds had always been handled exclusively by Diocese trustees.\textsuperscript{152} The Episcopal Church wanted the court to apply deference to its authority over the Diocese and its right to the disputed property, but the court declined as strict deference was not applicable when “determination of a church’s hierarchical structure [was] not easily discernible.”\textsuperscript{153} Since religious deference was not applicable, neutral principles were appropriate

\begin{footnotesize}
\begin{enumerate}
\item Id. at 693.
\item Id. at 692-93.
\item See id. at 693.
\item Id. at 693-94.
\item See Diocese of Quincy v. Episcopal Church, 2014 IL App (4th) 130901, ¶ 1, petition for leave to appeal denied, Diocese of Quincy v. Episcopal Church, 21 N.E.3d 713 (Ill. 2014) (unpublished table decision).
\item See id. ¶¶ 46, 50.
\item See id. ¶¶ 6, 20-23, 48.
\item Id. ¶¶ 6-7, 54.
\end{enumerate}
\end{footnotesize}
to resolve ownership of the property. The court ultimately held in favor of the Diocese, because the Episcopal Church had never been a beneficiary of the account or been involved with the account in any way, nor had the account ever been held in trust for the Episcopal Church.

Two takeaways can be gleaned from the three case examples concerning the need for a religiously structured relationship: (1) An outside church or religious organization or a non-interchurch dispute does not trigger the ecclesiastical abstention doctrine, and (2) the language of a church’s bylaws and constitution could be demonstrative in the application of ecclesiastical deference or abstention. In light of that reality, two questions may be raised in regards to Puskar: Is the Serbian Church an outside organization attempting to assert unjustified authoritative influence over the Metropolitan Diocese? And does language in either the Regulations or a common constitution establish a hierarchical relationship? Both questions obviously turn on the status of reunification, whether the Regulations remained in effect or if a common constitution had been adopted.

Puskar’s majority framed the facts in a similar manner to Duncan in the way that the Serbian Church should be considered an entirely unassociated religious authority since the “clear” terms indicate the Regulations expired after three years, and by extension Bishop Longin did not apparently have the authority to authorize a formal reunification. The facts of the case lead to the opposite conclusion. As the dissent pointed out, the terms of the Regulation are anything but clear, and the parties acted like the Regulations remained in effect. Most obviously, Article two conflicts with Article sixteen as to the duration of the Regulations. Unfortunately, the majority did not address this discrepancy in its analysis. Plaintiffs at oral arguments before the Second District conceded that some provisions of the Regulations were not clear and contained ambiguous parts, although per-
haps the conflicting terms were explainable as wishful thinking on the part of parties hoping for reunification.\textsuperscript{161} In regard to the appointment of Bishop Longin as administrator over the Metropolitan Diocese by the Serbian Church,\textsuperscript{162} and his election as Diocesan Bishop a year later,\textsuperscript{163} the majority neglected to address this timeline. To say that the Regulations expired in 1995, even though the appointment and election of Bishop Longin took place in 1998 and 1999 in accordance with Articles Five and Six of the Regulations, is puzzling.\textsuperscript{164} At trial, Bishop Longin presented the evidence of the Metropolitan Diocese’s newspaper and his participation in the 1999 meetings with the Serbian Church on behalf of the Metropolitan Diocese, which also serves to undermine the majority’s conclusion that the Regulations had expired four years earlier.\textsuperscript{165} A picture begins to emerge, and it is not one of a hostile takeover by a hierarchical authority, but that a meaningful reunification had transpired guided by the Regulations.

The majority believed it was worth mentioning that the Regulations allotted for a “specific time and place” to meet where the Regulations would expire,\textsuperscript{166} yet it did not determine if evidence existed that such a meeting or confirmed termination of the Regulations ever took place. Plaintiffs did not assert that such a meeting took place. Additionally, a rather significant, yet not unexpected, opinion comes from a New Jersey appellate court where Bishop Longin was likewise a defendant against a former parishioner.\textsuperscript{167} Although the viability of the Regulations was not part of the dispute, reunification was accepted as fact in that the court dictated:

\begin{quote}
In 1991, the Free Serbian Orthodox Church reunified with the Mother Church in Belgrade and recognized the Mother Church as the supreme authority. Subsequently, the Mother Church sent defendant Longin from Belgrade to the United States as an auxiliary bishop in 1997. Shortly thereafter, on May 5, 1999, he became bishop of the diocese.\textsuperscript{168}
\end{quote}

What makes \textit{Beljakovic v. Longin} significant is how the facts of the process of reunification and Bishop Longin’s appointment and election in

\begin{itemize}
\item \textsuperscript{161} Oral Arguments at 07:36, 21:26, \textit{Puskar}, 2013 IL App (2d) 120847-U, \url{http://multimedia.illinois.gov/court/AppellateCourt/Audio/2013/2nd/040313_2-12-0847.mp3}.
\item \textsuperscript{162} \textit{Puskar}, 2013 IL App (2d) 120847-U, ¶ 2; \textit{id.} ¶ 60 (Spence, J., dissenting).
\item \textsuperscript{163} \textit{Id.}
\item \textsuperscript{164} \textit{See id.} ¶ 8.
\item \textsuperscript{165} \textit{Id.} ¶¶ 28, 47.
\item \textsuperscript{166} \textit{Puskar} v. Krco, 2013 IL App (2d) 120847-U, ¶ 47 (majority opinion).
\item \textsuperscript{168} \textit{Id.} (emphasis added).
\end{itemize}
Puskar support the exact assertion made by the New Jersey appellate court: that a reunification took place. The difference is only that in Beljakovic reunification was accepted without the need to litigate over the admittedly confusing and conflicting terms of the Regulations. The contract dispute over the Regulations tends only to distract from the fact that the churches were not organizationally separate entities, and that the Metropolitanate Diocese submitted to the wide-ranging authority Bishop Longin had been given.

The history of the two churches is of vital importance in order to understand the significance of the process of reunification that took place. In 1921, the American-Canadian branch of the Serbian Orthodox Church was formally established. In 1927, in a unifying effort among Serbian congregations in America and Canada, a constitution was adopted to govern the American-Canadian branch. From 1921 through the breakup of the branch in 1963, “each bishop who governed the American-Canadian Diocese was a Yugoslav citizen appointed by the Mother Church without consultation with Diocesan officials.” Furthermore, according to the 1927 constitution, an appointed bishop had “extensive powers with respect to both religious matters and control of Diocesan property.” The significance of the former hierarchical relationship and the ability for the Serbian Church to appoint a bishop cannot be glossed over considering that the Metropolitanate Diocese sought out reunification in the early 1990s and, once again, allowed the Serbian Church, i.e., the Mother Church, to appoint a bishop over them. A comparison to Duncan where the Moody Church did not have authority over the Hope Church at any point in time is inappropriate given the history and present circumstances of Puskar. It is undisputed that the Metropolitanate Diocese was completely autonomous from the Serbian Church for a period of almost thirty years, in large part due to the government in the former Yugoslavia. Yet, it is also undisputed that the leadership of the Metropolitanate Diocese in 1992 approved the Regulations thereby submitting the Metropolitanate Diocese to the Serbian

169. See id. (matter-of-factly asserting “[s]oon after the reunification”).
170. See Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich, 426 U.S. 696, 700 (1976). The American-Canadian branch of the Serbian Orthodox Church was the predecessor organization to the Metropolitanate Diocese prior to the disbandment from the Mother Church in Serbia in 1963. See id. at 704-05; Puskar, 2013 IL App (2d) 120847-U, ¶ 3.
171. Milivojevich, 426 U.S. at 700.
172. Id. at 700-01.
173. Id. at 701.
174. See Puskar, 2013 IL App (2d) 120847-U, ¶¶ 6, 8.
176. See Puskar, 2013 IL App (2d) 120847-U, ¶¶ 6-8; Milivojevich, 426 U.S. at 704, 706.
Church’s authority. The Regulations included Articles five and six which allowed the Serbian Church to appoint an administrator or bishop to a vacant position within the Metropolitanate Diocese, a method that appears almost identical to the articles of the 1927 constitution. The control over property and governance given to a diocesan bishop under the 1927 constitution and the Regulations is also similar. It is unsound to agree with Puskar that no official reunification had transpired and that the Regulations had expired before Bishop Longin was appointed administrative Bishop and later elected Diocesan bishop over the Metropolitanate Diocese. Moreover, unlike Diocese of Quincy where, despite a relationship which appeared hierarchical, the Diocese’s constitution and other documents did not give the Episcopal Church formal authority, here the Regulations reestablished the former hierarchical authority, even if they were to be used only until the constitution could be enacted.

Puskar’s dissenting Justice alluded to the fact that the court was not in a position to determine the viability of the Regulations without violating the ecclesiastical abstention doctrine since it was not clear the Regulations still governed the Metropolitanate Diocese, although the dissent did go on to assess why evidence supported that the Regulations remained in effect. In

177. See Puskar, 2013 IL App (2d) 120847-U, ¶¶ 6-7 (citing Article two, the opinion stated, “the Metropolitanate Diocese shall be governed based on the ‘Holy Scripture and Holy Tradition’ of the [Serbian] Church; the Regulations recognized and adopted by the [Serbian] Church; the Transitional Regulations ‘in the spirit of the Constitution’ of the [Serbian] Church; and the provisions of the Metropolitanate Diocese’s Constitution that did not conflict with the Transitional Regulations.” Id. ¶ 64.).

178. Id. ¶ 7.

179. See Milivojevich, 426 U.S. at 701.

180. Compare Puskar, 2013 IL App (2d) 120847-U, ¶¶ 7-9, 15 (“[I]n his role as bishop, Bishop Longin had possession and control of this property and other tangible and intangible property belonging to the Metropolitanate Diocese. The Bishop also had exclusive control over who could conduct religious services in the Monastery and who had access to the seminary building, picnic grounds, and cemetery. In addition, all dues collected by the Metropolitanate Diocese were forwarded to him.”), with Milivojevich, 426 U.S. at 701 (“Bishop [had] extensive powers with respect to both religious matters and control of Diocesan property.”).


183. See Puskar, 2013 IL App (2d) 120847-U, ¶¶ 56-60 (Spence, J., dissenting). The dissent cited St. Mark Coptic Orthodox Church v. Tantios to support the proposition that “the autonomy of the Metropolitanate Diocese” could not be determined by analyzing the Regulations “without improperly delving into issues of church doctrine and polity” based on Tantios’s specific ecclesiastical issue of whether a new set of bylaws had been adopted. Id. ¶ 56 (Spence, J., dissenting) (citing St. Mark Coptic Orthodox Church v. Tantios, 572 N.E.2d 283, 293 (Ill. App. Ct. 2d Dist. 1991)). But the dissent may have been conflating a court inquiring into a religious issue compared to a court determining whether deference should be
a similar vein to the dissent’s concern, a potential problem does arise. The thoroughly reasoned opinion *Bruss v. Przybylo* quoted *Milivojevich* to warn against a court entangling itself in ecclesiastical matters by studying church polity in an attempt to understand a hierarchical structure.\(^{184}\) *Bruss*’s alternative is to “rest the abstention decision entirely on the subject matter of the dispute,” which is true and will be discussed.\(^{185}\) The warning against entanglement, even if used for the purpose of applying abstention supplemental to the subject matter, should certainly be taken under advisement,\(^{186}\) yet it is not entirely applicable to *Puskar* for two reasons. First, the subject matter of the dispute itself in *Puskar* offers adequate reason for abstention.\(^{187}\) Second, in order for the court to defer to a decision of the highest ecclesiastical authority, the court would need to be sure it knows the answer to the question, “deference to whom?” Ensuring reunification had occurred or that the Regulations remained in effect was central to deference to the proper authority. Without any likelihood of reunification, Bishop Longin would have owed a duty to the governing body of the Metropolitan Diocese; yet if reunification had occurred in whole or while still under the governance of the Regulations his duty would be to the Serbian Church.\(^{188}\)

An auxiliary concern is Justice Brennan’s concurrence in the plurality opinion *Maryland & Virginia Eldership of the Churches of God (“Maryland & Virginia Churches”)* which, according to *Diocese of Quincy*, stated that deference was impermissible when a court could not easily discern a church’s hierarchal structure.\(^{189}\) Yet, *Maryland & Virginia Churches*, as cited by *Milivojevich*, prohibits a court from inquiring into the hierarchal structure of a church to the extent that it would be interpreting “ambiguous religious law and usage.”\(^{190}\) Understanding reunification in *Puskar* or the

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185.  *Id.* at 1121.
186.  *See id.*
Regulations would not require the court to cross that line into impermissible interpretation. The unique circumstances of *Puskar* make the examinations into the Regulations, the history of the Metropolitanate Diocese and the Serbian Church, and the hierarchical structure necessary only to the extent required to determine whether some authoritative relationship existed. The *Diocese of Quincy*’s use of a neutral principles approach if the hierarchical structure was not easily discernible is applicable to *Puskar* to the extent the court would need to analyze the hierarchical structure for purposes of discerning an ecclesiastical authority, but *Puskar* would ultimately reach a conclusion opposite to *Diocese of Quincy*.  

The warnings expressed in *Bruss* and *Maryland & Virginia Churches* have not been interpreted as strict prohibitions. It is clear that a court may look at necessary documentation or relevant evidence in order to determine whether an ecclesiastical issue is present or deference needs to be applied, even if religious documentation on its face appears religiously incorporated. As far as the dissent’s concern with impermissibly determining the viability of the Regulations, *Clay* and *Diocese of Quincy*, among others, advance the notion that a court is permitted to initially look at all necessary documents and terms before deciding whether the ecclesiastical abstention doctrine need be applied.

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194. *E.g.*, *Diocese of Quincy*, 2014 IL App (4th) 130901, ¶¶ 6, 20-27, 46-48 (court assessed founding documents, each church constitution, and other evidence to determine whether a formal hierarchical structure existed before it could decide the ownership of bank account); *Susan v. Romanian Orthodox Episcopate of Am.*, 2012 IL App (1st) 120697-U, ¶¶ 1, 8, 10 (court looked at the bylaws and hierarchical structure of the church to conclude religiously incorporated bylaws required deference to the higher authority’s decision).  
196. *The Diocese of Quincy* court looked at church constitutions and canons, the contract between the Diocese and the bank, the Diocese articles of incorporation, relevant witness testimony, and the structure of the relationship of the churches to ultimately conclude ecclesiastical abstention doctrine did not apply. *See Diocese of Quincy*, 2014 IL App (4th) 130901, ¶¶ 6-8, 19-26, 48, 52, 54.  
B. THE APPLICATION OF ECCLESIASTICAL ABSTENTION OR DEFERENCE

The ecclesiastical abstention doctrine may be applied in two forms: a civil court might need to either abstain from inserting itself into a religious dispute or defer to the appropriate religious authority. Such a realization is important when considering the fact that it underlines the general application of the ecclesiastical abstention doctrine, and the fact that Puskar could have been dismissed through either of the doctrine’s applications. As will be elaborated upon, the ecclesiastical abstention doctrine should have been triggered since the subject matter of Plaintiff’s complaint was religious in nature because it concerned the role and responsibility of Bishop Longin, a clergy member, and the Serbian Church has an established hierarchical authority.

Given that sufficient evidence existed to cast doubt on the Puskar majority’s conclusion that the Regulations expired almost fifteen years prior to commencement of the litigation, whether the ecclesiastical abstention doctrine applied to the subject matter of the dispute could have been addressed. In addition to the authoritative structure, the heart of the Plaintiffs’ complaint concerned the proper role and authority of Bishop Longin in his capacity as bishop. In fact, asking a court to determine Bishop Longin’s duty of loyalty to either the Metropolitanate Diocese or the Serbian Church comprises an identical ecclesiastical question. Another issue present in Puskar was the amended Affidavit of Organization Bishop Longin filed in 1998 on behalf of the Metropolitanate Diocese, which stated that since 1992 the Metropolitanate Diocese had been governed by the Regulations under the hierarchical authority of the Serbian Church. An Affidavit of Organization has a significant legal effect for a church or religious organization.

198. See Tanios, 572 N.E.2d at 293-94 (deferring to the decision of what the parties agreed was as the church's highest authority); accord Bruss v. Przybylo, 895 N.E.2d 1102, 1123, 1125 (Ill. App. Ct. 2d Dist. 2008) (abstaining from a decision because the suit's subject matter of a pastor's fitness was ecclesiastical in nature). See also Stepek v. Doe, 910 N.E.2d 655, 668 (Ill. App. Ct. 1st Dist. 2009) (whether alleged statements were defamatory was not an inherently religious matter, yet since the statements were made in a church tribunal adjudicatory deference was required).


201. See supra text accompanying notes 133-97.

202. See Puskar, 2013 IL App (2d) 120847-U, ¶¶ 15-16, 31 (plaintiffs asking for injunction that Bishop Longin owed a duty of loyalty to the Metropolitanate Diocese).

203. See id. ¶¶ 20, 25; id. ¶ 62 (Spence, J., dissenting).

204. E.g., 805 ILL. COMP. STAT. 110/46b (effective July 7, 1999) (incorporating a religious organization under Illinois law).
The majority dismissed the relevance of Bishop Longin’s actions regarding the Affidavit of Organization since the Regulations had already expired, while the dissent believed determining the validity of Bishop Longin’s actions would be an impermissible inquiry into an ecclesiastical matter. The last potential ecclesiastical issue would be the ability for the Serbian Church to restructure the Metropolitanate Diocese into an existing diocese. Questions of both ecclesiastical deference and abstention run throughout Puskar because of the hierarchical nature of the church and Bishop Longin’s functioning as a clergy. The following Illinois appellate court cases examine the ecclesiastical and neutral principle approaches.

Five Second District cases offer insight into whether the ecclesiastical abstention doctrine would be triggered. The court in three of the cases was barred from exercising subject matter jurisdiction due to the ecclesiastical abstention doctrine, while the other two cases were able to adjudge the dispute based on neutral principles. St. Mark Coptic Orthodox Church v. Tanios involved a property control dispute between two factions within the St. Mark Coptic Orthodox Church of Chicago (“Chicago parish”), which was a part of the Coptic Orthodox Church of Egypt. Among other issues, the “Church faction” and the “Tanios faction” disagreed whether the 1988 version of the Chicago parish’s constitution and bylaws had taken effect when they had been adopted by most of the Chicago parish’s board, but never by the Pope of the Coptic Orthodox Church of Egypt. The 1988 bylaws could have allowed the Tanios faction to seize control of church property and bank accounts. The court ultimately affirmed the application of strict deference to the religious authority’s decision rather than using a neutral principles approach. Although the disagreement between the two factions involved control of property, the “hierarchical nature of the Coptic Orthodox Church” required approval from the highest religious authority as stated in the 1969 and 1978 bylaws, yet such approval had not been given.

Hines v. Turley addressed a congregational dispute over support for the pastor and his use of church funds, and whether to dissolve the church due to disruptions in the services and a lack of leadership. The trial court characterized the issue as a disagreement over “property rights between

205. See Puskar, 2013 IL App (2d) 120847-U, ¶ 47 (majority opinion); id. ¶¶ 54, 63 (Spence, J., dissenting).
206. See id. ¶ 14, 20.
208. Id. at 287-89, 292.
209. See id. at 287-90.
210. Id. at 290, 294.
211. Id. at 291-92, 294-95.
factions of a church” finding that the application of neutral principles was appropriate.\footnote{213} Since no discernible leadership was operating the church, the trial court would have ruled in favor of dissolution because “the church had been abandoned by its members and therefore its purposes were frustrated.”\footnote{214} Arriving as an interlocutory appeal, the \textit{Hines} court instead noted the foundational issue was “who [would] be the pastor” of the church.\footnote{215} Even though the church had not followed its own procedures in voting and church purposes were disrupted, the “underlying dispute” was ecclesiastical in nature and therefore the First Amendment precluded jurisdiction.\footnote{216}

An important case for the Second District, and also one mentioned by the majority and dissent in \textit{Puskar},\footnote{217} is \textit{Bruss v. Przybylo}.\footnote{218} Former members of a church brought suit against the priest and members of the board alleging that the priest should be terminated for reasons that he was no longer fit to remain in his position.\footnote{219} The court characterized the disagreement as whether it was “ultimately about property rights” because church property and assets were at stake, or whether it was “principally about [the priest’s] fitness as a pastor” and if certain members were qualified to vote.\footnote{220} \textit{Bruss} undertook a lengthy and in-depth analysis of constitutional history and relevant jurisprudence.\footnote{221} Even though control of property could be affected by the outcome, the court would have been required to “judge the qualifications and fitness” of the pastor, thus the ecclesiastical abstention doctrine applied.\footnote{222}

The two examples of a neutral principles analysis are \textit{Apostolic New Life Church of Elgin v. Dominquez}\footnote{223} and \textit{Duncan}.\footnote{224} \textit{Duncan} was able to apply neutral principles since the subject matter of false light invasion of

\begin{itemize}
\item \footnote{213} Id. at 1257.
\item \footnote{214} Id.
\item \footnote{215} Id. at 1257, 1260.
\item \footnote{216} See id. at 1259-61.
\item \footnote{217} See \textit{Puskar v. Krco}, 2013 IL App (2d) 120847-U, ¶¶ 39, 65.
\item \footnote{218} \textit{Bruss v. Przybylo}, 895 N.E.2d 1102 (Ill. App. Ct. 2d Dist. 2008).
\item \footnote{219} See id. at 1105-07.
\item \footnote{220} See id. at 1111, 1124.
\item \footnote{221} See id. at 1111-22, 1125. The \textit{Bruss} court first reviewed Supreme Court history of the ecclesiastical abstention doctrine. See id. at 1111-19. Since after its review, the applicability of the ecclesiastical abstention doctrine to congregational churches rather than just hierarchical churches was left unresolved, the court looked to various lower court decisions. See \textit{Bruss v. Przybylo}, 895 N.E.2d 1102, 1119-23 (Ill. App. Ct. 2d Dist. 2008). It determined that the doctrine equally applied to hierarchical and congregational churches. See id. at 1123.
\item \footnote{222} See id. at 1123-25.
\item \footnote{223} \textit{Apostolic New Life Church of Elgin v. Dominquez}, 686 N.E.2d 1187, 1188 (Ill. App. Ct. 2d Dist. 1997).
\item \footnote{224} See supra text accompanying notes 136-43.
\end{itemize}
privacy was determined to not be an ecclesiastical issue, and the lack of an interchurch conflict meant ecclesiastical deference was not involved.\footnote{225} In\textit{ Dominquez}, members of a congregationally-structured church voted unanimously to merge with the former parent church, and two years later a majority “voted to change title to the church property and to dissolve” their present church as a religious corporation.\footnote{226} When no prohibited religious issues appeared present, the court applied neutral principles to determine the validity of the congregational vote and “who own[ed] and control[led] the church property.”\footnote{227} After examining “the constitutions and bylaws, state statutes, the deed conveying the church property in question, and other evidence,” the court concluded the merger and dissolution were proper.\footnote{228} Neither the constitution nor bylaws of the former church authorized or prohibited a merger, thus it was sufficient that no statutes prohibited the transition and other evidence proved a majority of members had given approval.\footnote{229}

Three cases from the First District provide adequate comparison to \textit{Puskar}, two of which applied the ecclesiastical abstention doctrine. \textit{Ervin v. Lilydale Progressive Missionary Baptist Church} concerned the church board’s removal of Reverend Ervin for improper alcohol use in violation of the church employee handbook.\footnote{230} The problem, though, was that the bylaws of the church required congregational approval in order to terminate a pastor.\footnote{231} Referencing back to the “constitutional protection” against improper methods of selecting clergy from \textit{Kedroff} in 1952, the \textit{Ervin} court stated that selection of clergy must adhere to a church’s own laws.\footnote{232} Therefore, since the court was only required to interpret church bylaws, which could be done using neutral principles, and since the church had not adhered to its own bylaws, the Reverend’s termination was held to be improper.\footnote{233}

\begin{itemize}
\item \footnote{225}{See Duncan v. Peterson, 947 N.E.2d 305, 312, 314 (Ill. App. Ct. 2d Dist. 2010).}
\item \footnote{226}{\textit{Dominquez}, 686 N.E.2d at 1192-94, 1195-96.}
\item \footnote{227}{Id. at 1191.}
\item \footnote{228}{Id. at 1195-96.}
\item \footnote{229}{See id. at 1192-96.}
\item \footnote{230}{Ervin v. Lilydale Progressive Missionary Baptist Church, 813 N.E.2d 1073, 1074-75 (Ill. App. Ct. 1st Dist. 2004).}
\item \footnote{231}{Id. at 1074.}
\item \footnote{232}{Id. at 1077. It is worth noting that \textit{Bruss} disagreed with \textit{Ervin’s} characterization of a court looking into whether a church followed its own procedures. See \textit{Bruss} v. Przybylo, 895 N.E.2d 1102, 1115 n.8 (2008). \textit{Bruss} believed \textit{Ervin} cited outdated dicta from \textit{Kedroff} and misconstrued \textit{Milivojevich}, because \textit{Milivojevich} stated a court could not examine whether an ecclesiastical tribunal followed its own church laws, even though \textit{Ervin} allowed such an inquiry. See id.}
\item \footnote{233}{\textit{Ervin}, 813 N.E.2d at 1078.}
\end{itemize}
In an unreported decision which distinguished itself from Ervin, the court in Susan v. Romanian Orthodox Episcopate of America addressed the transfer of an allegedly disloyal priest to an alternative diocese by the Archbishop of the hierarchical church. The priest claimed that the church alone could transfer a priest for disciplinary reasons. Unlike Ervin, the Romanian Orthodox Church did not release its jurisdiction and the bylaws gave the Archbishop implied authority for such a transfer; yet the bylaws also incorporated the “Holy Canons of the Orthodox Christian Church.”

The court saw the issue as precisely the type the ecclesiastical abstention doctrine forbade, because the Archbishop’s authority to transfer the priest or handle disciplinary matters was derived not only from the bylaws, but also church canonical law, which the court was prohibited from interpreting.

In Stepek v. Doe, a former priest brought a defamation claim against two former parishioners who claimed the priest had sexually abused them when they were minors. A Catholic review board heard the allegations against the priest, upon which the Archbishop of Chicago decreed to remove the priest from his role in ministry. The ecclesiastical nature of the dispute was not because the court was prohibited from interpreting the relevant church doctrines. Instead, the key distinction was that jurisdiction was precluded because the claims were made during an “internal church disciplinary proceeding,” and a religious tribunal had determined the priest’s fate.

From the Third District, Jenkins v. Trinity Evangelical Lutheran Church addressed a contract dispute over whether the church had adhered to the negotiated severance pay with its former pastor. The church argued the contract claim was related to the pastor’s dismissal but a neutral principles approach was appropriate. The reasons for the pastor’s resignation were not involved, and so the court stated “[t]he contractual issue of com-

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235. Id. ¶ 3.
236. See id. ¶¶ 8-11.
237. See id. ¶¶ 1, 9-10.
239. See id. at 659-61.
240. See id. at 668.
241. See id. at 667-69 (the court distinguished the facts from the Second District case Duncan v. Peterson because the unfitness of the priest was handled entirely from within the church).
243. See id. at 1211.
pensation due” was not an ecclesiastical issue.\textsuperscript{244} Significant also was that
the church’s bylaws specifically allowed civil court jurisdiction over non-
ecclesiastical contract disputes.\textsuperscript{245}

Lastly, in \textit{Bivin v. Wright}, the Bivins initiated a complaint against the
pastor of the First Baptist Church of Energy for the pastor’s extramarital
affair with Mrs. Bivin during the course of marriage counseling.\textsuperscript{246} As a
result of the affair, the Bivins alleged psychological damage to the marriage
and medical expenditures related to Mrs. Bivin contracting two sexually
transmitted diseases.\textsuperscript{247} The court overturned the trial court’s dismissal of
the complaint because the pastor’s “sexual misconduct was not rooted in
the church’s religious beliefs,” and therefore on remand neutral principles
would be appropriate so long as no other religious issues were present.\textsuperscript{248}
\textit{Stepek v. Doe} later drew a distinction between its facts and \textit{Bivin} because of
the context in which the sexual misconduct allegations were put forth in a
disciplinary tribunal.\textsuperscript{249}

C. APPLICATION OF ECCLESIASTICAL ABSTENTION AND
DEFERENCE TO \textit{PUSKAR}

The aforementioned Illinois appellate cases examined next to \textit{Puskar}
show how both ecclesiastical abstention based on the subject matter of \textit{Pus-
kar} and ecclesiastical deference could have applied. \textit{Susan v. Romanian
Orthodox Episcopate of America} out of the Third District is the quintessen-
tial example of the application of the ecclesiastical abstention doctrine
through both deference and abstention, and one that is a fitting comparison
to \textit{Puskar}. The ecclesiastical nature of the dispute in \textit{Susan} was the Arch-
bishop’s authority under the religiously incorporated constitution and by-
laws, which could be stated the same for \textit{Puskar}.\textsuperscript{250} The court in \textit{Susan} was
therefore prohibited from determining the validity of the disciplinary trans-

\begin{itemize}
  \item \textsuperscript{244} Id. at 1212-13.
  \item \textsuperscript{245} See id. at 1211-13.
  \item \textsuperscript{246} Bivin v. Wright, 656 N.E.2d 1121, 1123 (Ill. App. Ct. 5th Dist. 1995).
  \item \textsuperscript{247} See id.
  \item \textsuperscript{248} See id. at 1124-25.
  \item \textsuperscript{250} Susan v. Romanian Orthodox Episcopate of Am., 2012 IL App (1st) 120697-U,
     ¶ 16 (“The bishop’s authority over disciplinary and personnel matters springs not only from
     the constitution and bylaws of the ROEA but also from OCA canon law, so any inquiry that
     we were to make in this case would require us to construe matters of religious doctrine.
     That is something that we cannot do.”). With \textit{Puskar}, the Regulations could be considered to be
     religiously incorporated since they specifically reference the “Holy Scriptures and Holy
     Tradition” of the Serbian Church, in addition to the fact that both the Metropolitanate Dio-
     cese’s and the Serbian Church’s constitutions also incorporated religious doctrine. See Puskar
\end{itemize}
fer of the priest, and with *Puskar*, Bishop Longin’s responsibility towards church property and even his filing of the amended Affidavit of Organization would be impermissible inquiries into matters of religious doctrine.\(^{251}\)

The *Susan* court’s deference to an ecclesiastical authority came in the form of the court being barred from looking into a tort claim based on statements made during a disciplinary tribunal;\(^{252}\) likewise, in *Puskar* the higher authority that would trigger the courts need for ecclesiastical deference was the Serbian Church by way of reunification or the Regulations.\(^{253}\)

*Puskar* resembles *Tainos* in considering that the Metropolitanate Diocese was in a legally similar position to the Tainos faction.\(^{254}\) The Tainos faction incorrectly claimed control of property under the 1988 bylaws, which had never been formally enacted;\(^{255}\) whereas Plaintiffs in *Puskar* claimed Bishop Longin owed only the Metropolitanate Diocese a duty of loyalty concerning control of property,\(^{256}\) despite the evidence that would demonstrate the Regulations had not expired after three years.\(^{257}\)

Like in *Tainos* where deference to the decision of the Coptic Orthodox Church of Egypt regarding the 1988 bylaws was required, the Serbian Church would hold final authority over Bishop Longin’s activity as a result of either reunification or the continuing governance under the Regulations. *Tainos* is a more straightforward decision since the parties agreed the Coptic Orthodox Church of Egypt was the hierarchical authority,\(^{258}\) but, as discussed, following the necessary analysis the same could be said regarding the hierarchical authority of the Serbian Church.

A congregation split over support for a church leader that could determine the outcome of the continued existence of the church was ecclesiastical...
cal in nature.\textsuperscript{259} Hines echoes the reality that a disagreement over the proper selection and continued role as a clergy remain ecclesiastical issues.\textsuperscript{260} Hines’s comparability with Puskar is evident in the way the dispute was not soluble by neutrally determining who controlled property or by interpreting a contract; it should have instead turned on the proper appointment of Bishop Longin and his actions as a clergy, which are ecclesiastical issues.\textsuperscript{261}

Similar to Hines, Bruss dealt with an issue of determining a pastor’s fitness to lead a church disguised as a dispute over church property, which triggered the court’s abstention.\textsuperscript{262} The facts of Bruss are distinguishable from Puskar, to the extent the dissent recognized, because whether Bishop Longin was fit to serve in his position as bishop was not at issue.\textsuperscript{263} However, also noted by the dissent, Bruss offers a key component of the rule of law apropos to Puskar—that the selection and retention of clergy is strictly ecclesiastical\textsuperscript{264}—because Bishop Longin’s selection as bishop and his role therein are at issue.\textsuperscript{265} Bishop Longin was first appointed and then elected as bishop over the Metropolitanate Diocese thereby receiving control over conducting worship services and control over property according to the doctrinally incorporated Regulations.\textsuperscript{266} Whether Bishop Longin exceeded the scope of his authority as bishop over the Metropolitan Diocese is, as

\begin{itemize}
\item \textsuperscript{259} See generally Hines v. Turley, 615 N.E.2d 1251 (Ill. Ct. 2d Dist. 1993).
\item \textsuperscript{260} See Hines, 615 N.E.2d at 1260-61 (determining who would be the pastor of the church was an ecclesiastical matter regardless of if bylaws had been violated by the pastor and the pastor's supporters or if the court did not need to inquire about the church's religious positions).
\item \textsuperscript{262} See generally Bruss, 895 N.E.2d 1102.
\item \textsuperscript{263} See Puskar, 2013 IL App (2d) 120847-U, ¶ 65 (Spence, J., dissenting).
\item \textsuperscript{264} See Bruss, 895 N.E.2d at 1124-25 (“The case law is almost entirely consistent. Ministerial qualifications and appointments to church offices are essentially and entirely doctrinal decisions.”) (quoting 1 WILLIAM W. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW § 7.25 (1997)). Bruss went on to survey each Federal Circuit to support its claim that pastoral fitness and the status between a pastor and a church are ecclesiastical matters. See id.
\item \textsuperscript{265} See Puskar, 2013 IL App (2d) 120847-U, ¶ 65 (Spence, J., dissenting) (citing Bruss for its requirement that application of the ecclesiastical abstention doctrine rests on the subject matter of the dispute); Bruss, 895 N.E.2d at 1124-25. But cf. Bivin v. Wright, 656 N.E.2d 1121, 1124 (Ill. App. Ct. 5th Dist. 1995) (ecclesiastical abstention doctrine was not triggered because the pastor's actions involved sexual misconduct which did “not call into question the church's religious beliefs or practices or subject them to analysis or scrutiny,” nor was the court required to interpret “church doctrine or any regulation of the ecclesiastical activity”).
\item \textsuperscript{266} See Puskar, 2013 IL App (2d) 120847-U, ¶¶ 7-9, 15, 66.
\end{itemize}
far as Bruss is concerned, an entirely ecclesiastical matter. Bruss also clearly stands for the rule that the subject matter of the dispute alone controls the application of the ecclesiastical abstention doctrine, and in Puskar the subject matter concerned the ecclesiastical issues of the role and loyalty of a clergy.

Concluding the Second District cases is Clay, where the concepts of deference and abstention underlie the application of the ecclesiastical abstention doctrine. Clay’s value to Puskar is seen in the way Clay deferred to the hierarchical authority of the Illinois District Council and was required to abstain from answering the religious question of what it meant to function as an Assemblies of God church. Puskar, post analysis of the application of the Regulations or reunification, should have deferred to the Serbian Church’s hierarchical authority and refrained from addressing the ecclesiastical nature of Bishop Longin’s authority and actions within the Metropolitanate Diocese in like fashion to Clay. The language of “ceased to function as an Assemblies of God Church” was written into the church constitution in Clay, and Bishop Longin’s authority and control over property appears regulated by the Regulations and each respective constitution, but it is also inherent in the history of the church. An advantageous difference for Puskar is that in Clay the trustees of the local church had purchased the property in question and actual ownership of the property was involved in the dispute, but in Puskar the Metropolitanate Diocese gave control of property to an appointed bishop, not ownership. The outcome of a complete organizational disassociation and transfer of property, the likes of which occurred as a result of Milivojevich, does not need to be speculated upon here whether the Metropolitanate Diocese and the Serbian Church desired such a total separation. Application of the ecclesiastical abstention doctrine to Puskar would mean only that the issues surrounding Bishop Longin needed to be resolved by the churches, not Illinois courts.

The subject matter of Stepek is distinguishable from Puskar in the same way Bivin is distinguishable, because Stepek and Bivin both turned on

267. See Puskar, 2013 IL App (2d) 120847-U, ¶ 65 (Spence, J., dissenting) (citing Bruss, 895 N.E.2d at 1124-25).
268. See supra text accompanying notes 144-48.
270. See supra text accompanying notes 133-97.
271. Clay, 657 N.E.2d at 693.
273. See supra text accompanying notes 170-82.
274. See Clay, 657 N.E.2d at 689-91.
275. See Puskar, 2013 IL App (2d) 120847-U, ¶¶ 7-9, 15-16.
276. See id. ¶ 3.
the fitness of a clergy and allegations of sexual misconduct. Yet Stepek involved a religious tribunal and so the court granted ecclesiastical deference to the disciplinary proceedings, thus Stepek is an appropriate companion to Puskar to the extent each court could properly apply deference. Bishop Longin had been given authority by the Serbian Church by way of the Regulations, and so the decisions of the Serbian Church’s established authority would determine his operation as a bishop, just like the Catholic disciplinary board in determining the priest’s fate in Stepek. Application of ecclesiastical abstention in Puskar is further strengthened by the fact that its subject matter of the role of Bishop Longin is an ecclesiastical issue, which was lacking in Stepek. Bivin remains divergent from Puskar since its subject matter did not involve a religious issue that could have otherwise possibly precluded jurisdiction, and Bivin did not contain Stepek’s key distinction of an internal disciplinary, and thus, was able to apply neutral principles.

Next to Bivin, the Illinois appellate cases that applied neutral principles emerge as adequately dissimilar to Puskar. In Dominquez, the congregational majority voted to merge with another church and transfer its property and therefore the court was not prohibited from looking into and affirming the voting majority’s decisions. While Puskar could initially review the necessary documentation to detect the presence of an ecclesiastical issue in a semi-analogous manner to Dominquez, the ecclesiastical issues of a hierarchical authority and the role of a clergy weaved throughout Puskar differentiate it from Dominquez. Likewise, a libel suit due to allegations against a pastor’s fitness coming from outside the immediate church was not an impermissible religious inquiry for the Duncan court.

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278. Stepek, 910 N.E.2d at 668-69.
279. See id.
280. See id. at 668-69 (determining the former priest's defamation claim due to allegations of sexual misconduct would have been a “regulation of ecclesiastical activity,” but it was only because of the disciplinary tribunal that deference was mandated; it was not because church doctrine needed to be interpreted).
281. See Bivin, 656 N.E.2d at 1124-25 (pastor's actions involving sexual misconduct did “not call into question the church's religious beliefs or practices or subject them to analysis or scrutiny,” nor was the court required to interpret “church doctrine or any regulation of the ecclesiastical activity”); see also supra text accompanying notes 238-41, 246-49.
283. See id. at 1191, 1195; see also supra text accompanying notes 192-97.
284. See id. at 1195-96 (applying neutral principles was appropriate since the only issues presented concerned the reunification with a former church and the transfer of property).
is relevant to *Puskar* aside from the interchurch issue, because *Duncan* distinguished its subject matter from *Bruss.* When questions of reunification no longer cloud *Puskar’s* subject matter, *Duncan* would be equally distinguishable from *Puskar,* since the appointment and authority of clergy are inherently ecclesiastical.

*Ervin* applied neutral principles, yet the *Ervin* court only needed to look at the non-religious bylaws to determine whether they had been procedurally adhered to when the church dismissed the pastor. Although *Puskar* could at first seem similar to *Ervin’s* approach because merely looking at the Regulations to determine whether Bishop Longin had been properly appointed or dismissed does not appear to involve religious intricacies, the Regulations and respective constitutions are religiously incorporated, and the Second District does not observe *Ervin’s* procedural adherence rule. The Regulations incorporated the constitutions of both the Metropolitanate Diocese and the Serbian Church, which in themselves incorporated religious aspects, and the Regulations also referred to the Serbian Church’s “Holy Scripture and Holy Tradition.” And since *Bruss,* the Second District by extension disfavors the *Ervin* rule of law that procedural compliance could allow jurisdiction over what may have been otherwise precluded ecclesiastical subject matter. The only actual similarity to *Ervin* is the fact that *Ervin* would have applied the ecclesiastical abstention doctrine had it needed to decide whether the pastor violated church rules, which is like delving into Bishop Longin’s authority and whether he had adhered to church rules, *i.e.*, the Regulations or respective constitutions.

Finally, the neutral approach to a contract dispute over severance pay in *Jenkins* cannot be applied to *Puskar.* In *Jenkins,* the church bylaws specifically addressed the circumstances that such a contract claim may have arisen, but *Puskar* did not have a clear-cut provision unambiguously permitting civil court jurisdiction over either religious or non-religious issues. Further distinguishable is how *Puskar* involves ecclesiastical issues whereas *Jenkins* did not.

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286. *Id.* at 312-13 (stating *Bruss* required a court to focus on the subject matter of the dispute, and the subject matter in *Bruss* concerned the qualifications of a priest, compared to the subject matter in *Duncan* which concerned a false light invasion of privacy).

287. See *Bruss* v. Przybylo, 895 N.E.2d 1102, 1119-24 (Ill. App. Ct. 2d Dist. 2008); *see also supra* notes 251, 264.


290. See *Bruss,* 895 N.E.2d at 1115 n.8; *see also supra* note 232.

291. See *Ervin,* 813 N.E.2d at 1078.


293. See *id.* at 1212-13.
V. CONCLUSION

Puskar’s holding that the Regulations were no longer in effect is to state that the Serbian Church and the Metropolitanate Diocese were separate, distinct, and void of religious or hierarchical affiliation. Since the case was reversed and remanded, such a conclusion leaves the trial court in an impossible position. Forced to ignore the Regulations, the trial court would be stuck between adjudicating the authority and responsibilities of Bishop Longin towards the Metropolitanate Diocese, possibly through deference to the Metropolitanate Diocese’s former highest authority, the People’s Assembly, even though Bishop Longin was appointed and elected by the Serbian Church in accordance with the religiously incorporated Regulations.

The majority’s position is untenable because the court could have found the Regulations remained in effect or, moreover, that a meaningful reunification had transpired.294 A significant amount of evidence was known or available to the court to undermine its conclusion that the Regulations had expired after three years.295 The remarkable history of the Serbian Church and the Metropolitanate Diocese could also have been considered.296 And a detailed inquiry into all necessary evidence, even if religiously incorporated documentation were involved, would not defeat eventual application of the ecclesiastical abstention doctrine.297

Puskar could have, therefore, applied the ecclesiastical abstention doctrine.298 A wide array of Illinois appellate court cases have addressed the ecclesiastical abstention doctrine.299 The relevance of each case to Puskar varies, but the emerging rules of law supply adequate analysis for applying the ecclesiastical abstention doctrine to Puskar.300 The hierarchical authority of the Serbian Church would require ecclesiastical deference; and Bishop Longin’s selection as Diocesan Bishop, his loyalty to the Serbian Church while serving within the Metropolitanate Diocese, and his authority to file the amended Affidavit of Organization would all be ecclesiastical issues such as to require court abstention.301

294. See supra text and accompanying notes 133-97.
295. See supra text and accompanying notes 158-69.
296. See supra text and accompanying notes 170-82.
297. See supra text and accompanying notes 183-97.
298. See supra text and accompanying notes 198-206.
299. See supra text and accompanying notes 207-49.
300. See supra text and accompanying notes 250-93.
301. See supra text and accompanying notes 198-206, 250-93.