No. 13-1520

IN THE
Supreme Court of the United States

THE EPISCOPAL CHURCH, ET AL.,
Petitioners,

v.

THE EPISCOPAL DIOCESE OF FORT WORTH, ET AL.,
Respondents.

THE DIOCESE OF NORTHWEST TEXAS, ET AL.,
Petitioners,

v.

ROBERT MASTERSON, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

BRIEF IN OPPOSITION OF RESPONDENTS THE EPISCOPAL DIOCESE OF FORT WORTH, ET AL.

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QUESTIONS PRESENTED

1. Whether the First Amendment or *Jones* v. *Wolf*, 443 U.S. 595 (1979), requires courts resolving property-ownership disputes to enforce express trusts recited in general-church governing documents regardless whether the trusts are enforceable under neutral principles of state law.

2. Whether the Texas Supreme Court erred by declining to decide whether retroactive application of the neutral-principles approach infringes free-exercise rights, where that court remanded to the trial court for application of neutral principles in the first instance and observed that Texas law has long embraced the neutral-principles framework.

3. Whether the neutral-principles approach allowed by *Jones* should be overruled, notwithstanding its adoption by nearly every state that has considered the issue.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, none of the Respondents are publicly held corporations and none have any parent corporation or shareholder that owns 10% of its shares.

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BRIEF IN OPPOSITION OF RESPONDENTS THE EPISCOPAL DIOCESE OF FORT WORTH, ET AL.

INTRODUCTION

In *Jones* v. *Wolf*, 443 U.S. 595 (1979), this Court held that state courts may choose to apply neutral principles of state law to resolve church-property disputes without violating the First Amendment. Since *Jones*, nearly every court has done so, without complaint or difficulty. Petitioners certainly have not made a compelling case for overruling *Jones*, a precedent that courts and churches have relied upon for decades.

Petitioners allege that courts are divided over whether *Jones*'s neutral-principles approach requires that courts recognize the creation of a trust as a matter of federal law whenever a hierarchical church recites an express-trust interest in local church property, regardless whether the trust would be cognizable under state law. But there is no conflict; every state court confronted with an express-trust provision has evaluated its legal effect under state law. Any divergent outcomes are a product of state-law and factual differences among the cases, not a "split" on an issue of federal law requiring this Court's review. This Court has repeatedly denied certiorari on the questions presented here, and it should do so again.

STATEMENT

I. BACKGROUND

A. Legal background

This Court has long recognized that the First Amendment permits states to "adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." *Jones* v. *Wolf*, 443 U.S. 595, 602 (1979) (citation omitted). For over three decades, the Court has affirmatively approved at least two methods for adjudicating church-property ownership: "deference" and "neutral principles."

1. This Court outlined the deference approach in *Watson* v. *Jones*, 80 U.S. 679 (1872). That approach requires courts to place a church into one of two categories: those with a "congregational" polity and those with a "hierarchical" polity. *Id.* at 722–723. In "the case of a church of a strictly congregational or independent organization, governed solely within itself," a property dispute is settled by the "ordinary principles which govern voluntary associations." *Id.* at 724–725 (noting that relevant "principle of government" may be majority rule or rule by internal governing body). But in the case of a church "under [the] government and control" of a hierarchical denomination, courts resolve a property dispute by deferring to the property-ownership decision of the "highest * * * church judicator[y] to which the matter has been carried." *Id.* at 727.

2. Following *Watson*, this Court recognized that states could also apply "neutral principles of law" to settle church-property disputes. *Jones* v. *Wolf* is the Court's most extensive treatment of the neutral-principles approach, but the Court acknowledged in even earlier cases that neutral principles of state property law—applicable to all religious and secular entities alike—could resolve church-property litigation without offending the First Amendment. See *Presbyterian Church in the U.S.* v. *Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded."); *Md. & Va. Eldership of Churches* v. *Church of God of Sharpsburg, Inc.*, 396 U.S. 367, 367 (1970) (affirming reliance on "state statutory law governing the holding of property" to resolve hierarchical church-property dispute); *id.* at 370 (Brennan, J., concurring) ("Neutral principles of law * * * provide another means for resolving litigation over religious property").

The neutral-principles approach, *Jones* explained, "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." 443 U.S. at 603. Courts could examine, as relevant, "the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property." *Ibid.* Ordinarily, *Jones* observed, courts could perform neutral-principles analysis without touching any religious question. *Id.* at 604. But to the extent that the relevant documents "incorporat[e] religious concepts in the provisions relating to the ownership of property," courts must do what the First Amendment always requires: "defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Ibid.*

Jones emphasized at least two ways that neutral principles are more faithful to the First Amendment than a rule of compulsory deference to a hierarchical church authority's property decision. First, neutral principles "free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Id.* at 603. Unlike the deference method, which requires courts to classify churches as congregational or hierarchical, neutral principles may be applied to "all forms of religious organization and polity." *Ibid.* This eliminates the need for courts to "review ecclesiastical doctrine and polity to determine where the church has placed ultimate authority over the use of church property." *Id.* at 605.

Second, "[u]nder the neutral-principles approach, the outcome of a church property dispute is not foreordained" in favor of the general church in a hierarchical denomination. *Id.* at 606. Rather, when property ownership is governed by neutral principles of state law, general and local church entities may "orde[r] [their] rights and obligations to reflect the intentions of the parties."

Id. at 603. Before a dispute arises, "religious societies can specify what is to happen to church property in the event of a particular contingency" by drafting "appropriate reversionary clauses and trust provisions." *Ibid.* If they desire the general church to hold the property, "[t]hey can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church" or "the constitution of the general church can be made to recite an express trust" in its favor. *Id.* at 606. Courts "will be bound to give effect to the result indicated by the parties, *provided* it is embodied in some *legally cognizable* form." *Ibid.* (emphasis added).

3. Given the advantages of neutral principles, the overwhelming majority of states has adopted that approach to church-property disputes following *Jones*. See BIO App. 1a–6a (demonstrating that 39 states have chosen neutral principles, three states have rejected the approach, two states are unclear, and six states have not addressed the issue). Indeed, *every* state supreme court to decide a church-property dispute in the last 20 years has employed neutral principles of state law. *Ibid.*

B. Factual background

1. Petitioner The Episcopal Church ("the General Church") is a national religious association.[1] It is governed by a General Convention, which adopts and amends the General Church's constitution and canons. The General Convention consists of representatives from regional dioceses. Dioceses are likewise governed by diocesan conventions that adopt diocesan constitutions and canons. Each diocese is comprised of local churches

[1] "Petitioner(s)," "respondent(s)," and "decision below" refer to the parties and opinion in *The Episcopal Diocese of Fort Worth, et al.* v. *The Episcopal Church, et al.*, No. 11-0265 in the Supreme Court of Texas.

called parishes, missions, or congregations. Pet. App. 66a.

2. In 1979, the General Church adopted Canon I.7.4, known as the "Dennis Canon." It provides that "[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located." Pet. App. 77a. The General Church undisputedly enacted the Dennis Canon "[i]n response to *Jones*" (Pet. 9), purporting to establish for itself an express trust over local church properties that would satisfy neutral principles of law. See *Jones*, 443 U.S. at 606.

3. In 1982, The Episcopal Diocese of Dallas divided into two regions and created Respondent The Episcopal Diocese of Fort Worth ("the Diocese"). Pet. App. 66a. Under Texas law, the Diocese then formed the Corporation of the Episcopal Diocese of Fort Worth ("the Corporation"). The Corporation holds title to the property of the Diocese and its parishes. *Id.* at 67a. All property held by the Corporation at its inception was transferred from the Dallas diocese and had been purchased and used by the local congregations now assigned to the new Diocese; all subsequently-acquired property was also purchased with funds donated by local parishioners. 28 C.R. 5964–5965.[2] The General Church never contributed either property or funds to purchase property. *Ibid.*

The Diocese was admitted into union with the General Church upon acceding to its constitution and canons. Pet. App. 66a. But the General Church did not require *unqualified* accessions from new dioceses until January 1, 1983, after the Diocese was admitted. 20 C.R. 4044, 4071; 21 C.R. 4208; 28 C.R. 5959, 5964. There is also no

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[2] Citations to the Clerk's Record below are styled "[volume] C.R. [page number]."

rule in the General Church's charters that diocesan constitutions and canons "cannot conflict" (Pet. 9) with those of the General Church. The Diocese thus did *not* accede to the Dennis Canon. Instead, its constitution provided that the property held by the Corporation—which, unlike the Diocese, has never had any relationship with the General Church—could not be encumbered without written consent of the Corporation and the parish occupying the property. 28 C.R. 5981, 6056–6057. The General Church reviewed the Diocese's constitution before its admission and raised no objection. 28 C.R. 6162.

Five years later—and 20 years before this dispute—the Diocese again disavowed any General Church interest in local property. In 1989, the Diocese amended its canons to emphasize that:

> Property held by the Corporation for the use of a Parish, Mission or Diocesan School belongs beneficially to such Parish, Mission or Diocesan School only. *No adverse claim* to such beneficial interest by the Corporation, by the Diocese, or *by The Episcopal Church of the United States of America is acknowledged, but rather is expressly denied.*

28 C.R. 6122, 6154–6155 (emphasis added).

4. In 2007 and 2008, due to doctrinal disagreement with the General Church, the Diocese's convention voted overwhelmingly to disaffiliate from the General Church.[3] Pet. App. 67a. Those voting to withdraw represented almost 6,000 parishioners in scores of churches across the Fort Worth region. 32 C.R. 7007–7008. Recognizing that a handful of local congregations dissented, however, the

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[3] Two conventions were required to disaffiliate the Diocese from the General Church. Eighty-three percent of clergy and 77% of lay delegates at the 2007 convention, and 79% of clergy and 80% of lay delegates at the 2008 convention, voted to disaffiliate. 28 C.R. 5962.

Diocese sought amicable separation. Contrary to the General Church's dramatic declaration that "loyal parishioners * * * were locked out of the houses of worship they had long called home" (Pet. 12), the Corporation voluntarily transferred local properties to dissenting parishes. Pet. App. 68a n.1; 29 C.R. 6281; 31 C.R. 6785, 6790, 6801a.

II. PROCEEDINGS BELOW

A. Trial court proceedings

1. The General Church's Presiding Bishop soon interrupted the Diocese's conciliatory efforts. In 2009, the Presiding Bishop unilaterally convened a meeting of the minority within the Diocese that wished to remain affiliated with the General Church, and they elected new leaders whom the Presiding Bishop declared the duly constituted diocese in Fort Worth. Pet. App. 68a. The General Church and members of the minority faction (petitioners here and collectively "the General Church") then filed this lawsuit in Texas state court against the Diocese, the Corporation, and their leadership (respondents here and collectively "the Diocese"), seeking title to and possession of the church properties held by the Corporation. *Id.* at 69a. At most of those properties, not a single worshipper wished to affiliate with the General Church. 28 C.R. 7007–7008.

2. The parties filed cross-motions for summary judgment. Pet. App. 69a. The General Church urged the trial court to defer to the Presiding Bishop's view that the minority loyal to the General Church was entitled to hold property in the diocese. *Ibid.* Alternatively, the General Church argued that it owned the property under *Jones*'s neutral-principles approach because the Dennis Canon recited an express trust in its favor. *Ibid.* The Diocese responded that the court should apply neutral principles of Texas property law and that those principles affirmed the Corporation's ownership of the disputed

property. *Id.* at 69a–70a. Alternatively, the Diocese contended that the General Church was not entitled to the property even under *Watson*'s deference approach because the Diocese, not the General Church, is the highest hierarchical authority over property within Episcopal polity. *Ibid.*

3. The trial court granted the General Church's motion in part and denied the Diocese's motion. The court applied the deference approach, rather than neutral principles, to resolve the property dispute. *Id.* at 131a. It held that The Episcopal Church is a hierarchical denomination and that, under deference, the individuals in the Diocese whom the General Church's Presiding Bishop deemed "loyal to the hierarchical church body" were entitled to diocesan property. *Ibid.* Property held by a subordinate entity within a hierarchical church, the court held, "may be used only for the mission of the [General] Church." *Ibid.* The court ordered respondents to surrender all diocesan property and control of the Corporation to petitioners. *Id.* at 132a.

B. The Texas Supreme Court's decision

1. On direct appeal, the Texas Supreme Court reversed the trial court's grant of summary judgment. Relying on its decision in *Masterson* v. *The Diocese of Northwest Texas*, 422 S.W.3d 594 (Tex. 2013), a companion case decided on the same day, the court held that "Texas courts should use only the neutral principles methodology" to resolve church-property disputes. Pet. App. 73a.

In *Masterson*, the court recognized that it had employed the neutral-principles approach since its decision in *Brown* v. *Clark*, 116 S.W. 360 (Tex. 1909). *Id.* at 23a. In *Brown*, the deed to church property vested title in a local church. *Id.* at 21a. "[U]sing principles of Texas law," *Brown* concluded that "whatever body is identified

as being the church to which the deed was made must still hold the title." *Id.* at 21a, 23a. Because the property dispute's resolution turned, under neutral principles of Texas law, on the local church body's identity—an ecclesiastical matter—the court deferred to the national denomination's understanding of the church's identity. *Id.* at 21a–22a; see *Jones*, 443 U.S. at 604 (confirming that if neutral principles of state law require resolution of religious question, courts must defer to ecclesiastical authorities).

"The method by which this Court addressed the issues in *Brown*," the Texas Supreme Court held, "remains the appropriate method for Texas courts." Pet. App. 23a. Echoing *Brown* and this Court's precedents, the court emphasized that courts "do not have jurisdiction to decide questions of an ecclesiastical or inherently religious nature" and "must defer to decisions of appropriate ecclesiastical decision makers." *Id.* at 23a–25a. But courts must apply neutral principles of state law to answer non-ecclesiastical questions about "land titles, trusts, and corporation formation, governance, and dissolution" involving religious entities. *Id.* at 24a.

2. The Texas Supreme Court then remanded to the trial court to apply neutral principles of Texas property and trust law to this case in the first instance, finding the record insufficiently developed to support rendition of judgment for either party. *Id.* at 74a–75a. The court acknowledged the General Church's contention that retroactive application of neutral principles to a church-property dispute may violate the First Amendment, but held that "[b]ecause neutral principles have yet to be applied in this case, we cannot determine the constitutionality of their application." *Id.* at 73a–74a. The court also expressed doubt that application of neutral principles *could be* retroactive here, given that its "analysis and

holding" in *Brown* v. *Clark* "substantively reflected the neutral principles methodology." *Id.* at 79a.

3. Finally, the Texas Supreme Court offered guidance to the trial court on remand. Noting the General Church's argument that the Dennis Canon established an express trust in its favor over diocesan property, the court referred the trial court to its decision in *Masterson*. *Id.* at 77a–79a. There, the court rejected the General Church's contention that, under *Jones*'s neutral-principles methodology, a general church's express-trust recitation is automatically sufficient as a matter of "federal common law" (*id.* at 76a) to create a trust interest in local church property, irrespective of state-law requirements. *Id.* at 38a. But, the court concluded, "even assuming a trust was created" by the Dennis Canon, trusts are revocable in Texas unless expressly made irrevocable. *Id.* at 41a, 79a. The Dennis Canon, the court observed, "does not contain language making the trust expressly irrevocable." *Ibid.* The court therefore directed the trial court to consider the parties' contentions regarding trust creation and revocation under Texas law, including the Diocese's argument that its constitution and canons revoked any express trust that the Dennis Canon had established. *Id.* at 78a.

REASONS FOR DENYING THE PETITION

Although neutral principles of Texas law have not yet been applied to this case to decide who owns the disputed property, the General Church contends that this Court should intervene and resolve three questions concerning the application of neutral principles to church-property disputes. None of those questions warrants this Court's review.

State courts have not split over whether *Jones* holds as a matter of federal law that courts must recognize the creation of a trust anytime a general church's governing

documents recite an express-trust interest in local church property. Rather, as *Jones* plainly instructs, courts consistently analyze whether such provisions establish a "legally cognizable" trust under neutral principles of *state* law, applied to each case's diverse facts. And even if courts had divided over a federal question about the creation of trusts under *Jones*, the decision below would not implicate that conflict because it turns on the subsequent *revocation* of any trust created by the General Church—a state-law question that the trial court must consider on remand.

As the General Church recently argued when successfully opposing certiorari on the same questions presented here, state courts' fact-bound application of state property law to local church-property disputes does not merit this Court's review. See *The Falls Church* v. *The Protestant Episcopal Church in the United States of Am.*, No. 13-449 (cert. denied Mar. 10, 2014); *Gauss* v. *The Protestant Episcopal Church in the United States of Am.*, No. 11-1139 (cert. denied June 18, 2012); see also *Timberridge Presbyterian Church, Inc.* v. *Presbytery of Greater Atlanta, Inc.*, No. 11-1101 (cert. denied June 18, 2012). There is no reason for a different result here, just because the General Church did not win a summary judgment as a matter of Texas law.

This Court also should not grant review to consider whether retroactive application of *Jones*'s neutral-principles approach violates the free-exercise rights of a religious organization that relied on *Watson*'s deference regime when it arranged its property affairs. Neutral principles of law have not yet been applied in this case on remand, so there is no opinion below deciding the constitutionality of their application in the first instance. When they are applied, it will not be retroactive because the Texas Supreme Court authoritatively interprets its precedent as having applied the neutral-principles method for

the last century. And any application of neutral principles here would certainly not infringe the General Church's free-exercise rights, for it has purposefully structured its property affairs to comply with the neutral-principles approach for years. This is simply not the vehicle for considering the constitutionality of neutral principles as retroactively applied.

Nor should this Court accept the General Church's invitation to overrule the Court's 35-year-old decision in *Jones* and reject the neutral-principles approach that the Court has affirmed for even longer. When churches ask courts to adjudicate a property matter, *Jones*'s neutral-principles framework, unlike *Watson*'s compulsory-deference regime, permits courts to apply familiar state-law rules to the facts presented, respects the parties' pre-dispute property arrangements, and abides the First Amendment's limitations, neither impairing free-exercise rights nor entangling courts in ecclesiastical issues. For these reasons, the neutral-principles approach is the choice of virtually every state court to consider the issue, and none echo the General Church's complaint that *Jones* is "confusing and difficult to apply" (Pet. 29). There is no constitutional chaos demanding this Court's attention—only a church seeking to upend a working system because, in this isolated case, it failed to comply with a simple state-law provision requiring persons who desire an *irrevocable* trust to say so. Certiorari should be denied.

I. THERE IS NO CONFLICT OVER WHETHER A GENERAL CHURCH'S EXPRESS-TRUST CANON ESTABLISHES A TRUST UNDER *JONES* IRRESPECTIVE OF STATE-LAW REQUIREMENTS

A. State courts have not split over whether *Jones* requires courts to recognize a trust as a matter of federal law

1. The General Church asserts a split among state supreme courts over whether "*Jones* or the First Amendment require" courts to treat a general church's express-trust recitation as "dispositive" of its trust interest in local church property, regardless whether that recitation establishes a trust under state law. Pet. 4, 16. But as the General Church argued when it recently *opposed* certiorari on this very question, "there is no conflict among the states' highest courts." Brief in Opposition of Respondents The Episcopal Church et al. at 1, *Gauss* v. *The Protestant Episcopal Church in the United States of Am.*, No. 11-1139 (cert. denied June 18, 2012).[4] Contrary to the General Church's current contentions (Pet. 18), there are no cases in which the existence of an express-trust canon like the Dennis Canon "end[s] * * * the inquiry" as a matter of federal law. Rather, courts applying *Jones* have uniformly evaluated whether the Dennis Canon, *along with* other relevant legal documents and the parties' course of conduct, creates a trust under neutral principles of *state* law.

a. The Georgia Supreme Court's decision in *Rector, Wardens, and Vestrymen of Christ Church in Savannah* v. *Bishop of the Episcopal Diocese of Georgia*, 718 S.E.2d 237 (2011), is illustrative. There, the court concluded that a regional Episcopal diocese had a trust interest in local church property. But far from holding that "all" the dio-

[4] None of the cases in the General Church's now-alleged split postdate its brief in *Gauss*.

cese needed to do was invoke the Dennis Canon's "express trust" (Pet. 18–19), the court emphasized that it did "not rely exclusively on the Dennis Canon." *Christ Church*, 718 S.E.2d at 254. Rather, the court found an "implied trust," "not contradicted by the title instruments at issue," and "derive[d] from the specific provisions of the governing documents adopted by the local and national churches," the parties' "understanding of them as revealed by their course of conduct," and "the policy reflected in [Georgia Code] §§ 14-5-46 and 14-5-47." *Id.* at 254, 255. See also *Presbytery of Greater Atlanta, Inc.* v. *Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446, 458 (Ga. 2011) (issued contemporaneously with *Christ Church* and applying same analysis). In other words, the court simply applied neutral state-law principles to the documents and facts in that case.

Contrary to the General Church's contention, the Georgia Supreme Court never stated that the diocese need not "fully comply with [state law]" to hold local property in trust. Pet. 19 (quoting *Christ Church*, 718 S.E.2d at 244) (alteration in Pet.). The court observed only that the diocese need not "fully comply *with OCGA § 53-12-20*," the state's generic trust statute. *Christ Church*, 718 S.E.2d at 244 (emphasis added). But that was only because the diocese had established a trust under *other* neutral principles of state trust law: Georgia Code §§ 14-5-46 and 14-5-47, statutes that specifically "govern[ed] the holding of church property." *Id.* at 245 (citation omitted); see also *id.* at 255 (emphasizing that "our decision derives from * * * the policy reflected in [Georgia Code] §§ 14-5-46 and 14-5-47").

b. Nor has the California Supreme Court "interpreted *Jones* to mandate enforcement of the Dennis Canon" (Pet. 19) regardless of state law. In *Episcopal Church Cases*, 198 P.3d 66 (Cal. 2009), the court held that California courts should apply *Jones*'s neutral-principles ap-

proach to church-property disputes, considering not only "the general church's constitution, canons, and rules," but also "the deeds," "the local church's articles of incorporation," and "relevant statutes." *Id.* at 79. The court then held that two factors "support the conclusion" that the general church held local property in trust: the Dennis Canon *and* "a California statutory provision," Corporations Code § 9142, which specifically governed religious property and expressly validated general-church trusts. *Id.* at 79, 80–83. Nothing in the opinion suggests that the California Supreme Court considered the Dennis Canon dispositive apart from the provisions of state law as applied to all relevant documents.

c. The New York Court of Appeals in *Episcopal Diocese of Rochester* v. *Harnish*, 899 N.E.2d 920 (2008), likewise did not find the Dennis Canon controlling over contrary state-law provisions. In that case, the court reaffirmed its view that neutral principles requires not only examination of the general church's Dennis Canon, but also "the deeds, the terms of the local church charter, [and] *the State statutes* governing the holding of church property." *Id.* at 924 (emphasis added). Only after considering these other "factor[s]"—none of which established *or* foreclosed a trust—did the court find the Dennis Canon, and the "significant" fact that the local church "never objected to" or "remove[d] itself from the reach of" the canon, "dispositive." *Id.* at 924–925.

d. The Connecticut Supreme Court also has not held the Dennis Canon sufficient to establish a trust under *Jones* irrespective of state law. Instead, the court in *Episcopal Church in the Diocese of Connecticut* v. *Gauss*, 28 A.3d 302 (Conn. 2011), adopting the neutral-principles approach, explained that it relies on "state statutes and common-law principles." *Id.* at 316. The court then applied Connecticut's unique state-law principles to the Dennis Canon, "considered together" with the

other facts and documents in that case. *Id.* at 319–320. The court's finding that the general church held a trust was consistent with Connecticut common law, the court emphasized, and distinguishable from other states' cases, which turned on their own "statutory and common law." *Id.* at 324–326.

The General Church incorrectly insists that the *Gauss* court considered itself "bound" by federal law to enforce the Dennis Canon, notwithstanding state law. Pet. 19. But that is not what the General Church told this Court when it opposed certiorari in *Gauss*. In that case, the General Church argued that the Connecticut Supreme Court "did *not* base its decision on [the] constitutional law" notion "that it was 'bound' under [*Jones*] to enforce" the Dennis Canon. Brief in Opposition of Respondents The Episcopal Church et al. at 1, *Gauss* v. *The Protestant Episcopal Church in the United States of Am., et al.*, No. 11-1139 (cert. denied June 18, 2012) (emphasis added). Instead, the General Church contended, the court found a trust "as a matter of state law." *Ibid.*; see also *id.* at 6 (arguing that "[t]he Connecticut court's decision * * * involved an application of state law principles"). The General Church was correct then about *Gauss*'s state-law ground of decision and the absence of any conflict over whether *Jones* renders a general church's express-trust recitation dispositive as a matter of federal law. Nothing has changed except the General Church's litigating position.

2. No court has acknowledged a "deep" or "entrenched" split (Pet. 18, 21) over whether a general church's express-trust recitation creates a trust under federal constitutional law. In *Masterson*, the Texas Supreme Court noted the General Church's "argu[ment] that" some courts interpret express-trust provisions to create a trust under *Jones* regardless of state law (Pet. App. 35a–36a), but it never agreed with the General

Church's characterization of those cases or indicated that it was joining one side of any split. See *id.* at 35a–38a. A footnote in *Presbytery of Ohio Valley* v. *OPC, Inc.*, 973 N.E.2d 1099 (Ind. 2012), fleetingly suggested that some courts have "apparently" read *Jones* to require a trust when a general church enacts an express-trust canon, but the court cited only *Gauss* and the Georgia Supreme Court's *Timberridge* decision to support that proposition (*id.* at 1106 n.7), and neither does so. See *supra* at 14–17.

Some state courts *have* "disagreed * * * over the legal implications of" the Dennis Canon, including *Harnish* and *All Saints Parish Waccamaw, Inc.* v. *Protestant Episcopal Church in the Diocese of South Carolina*, 685 S.E.2d 163 (S.C. 2009), the two cases that the General Church highlights. Pet. 21–22 (quoting *Hope Presbyterian Church of Rogue River* v. *Presbyterian Church (U.S.A.)*, 291 P.3d 711, 721 (Ore. 2012)). But their disagreement over the Dennis Canon's effect simply stemmed from their application of different state laws to different facts, not from any conflict over whether *Jones* always mandates enforcement of a general church's express-trust provision as a matter of federal constitutional law. Both *Harnish* and *All Saints*, for example, recognized that *Jones*'s neutral-principles methodology authorizes states to resolve church-property disputes according to the dictates of their own property and trust laws. See *Harnish*, 899 N.E.2d at 924 (explaining that New York courts must consult "State statutes governing the holding of church property"); *All Saints*, 685 S.E.2d at 172–174 (applying South Carolina statute of uses and common law of trusts). In *Harnish*, New York law did not preclude a finding that the Dennis Canon and the local church's acquiescence thereto via its governing documents and conduct established a trust. 899 N.E.2d at 924–925. In *All Saints*, by contrast, "axiomatic principle[s]" of South Carolina common law rendered the Den-

nis Canon ineffective to secure a diocese's claim to property that it had deeded to the local church. 685 S.E.2d at 174. Such fact-bound applications of state property law to local church-property disputes do not merit this Court's review.

3. It is unsurprising that no state courts have read *Jones* to create a federal trust interest in local church property, irrespective of state law, whenever a general church recites an express trust. After all, *Jones* did not turn *Erie* on its head by "purporting to establish substantive property and trust law that state courts must apply to church property disputes." Pet. App. 38a.

"Under our federal system, property ownership is not governed by general federal law, but rather by the laws of the several States." *State Land Bd.* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378–379 (1977). While the First Amendment limits the content and application of those state laws, within those limits it does not require that they all be the same or produce the same outcome. As *Jones* recognized, so long as "civil courts [do not] resolv[e] church property disputes on the basis of religious doctrine and practice," "the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes." 443 U.S. at 602; see also *id.* at 609 (in remanding to the Georgia Supreme Court to apply neutral principles, "[t]his Court, of course, does not declare what the law of Georgia is.")

Jones's description of the "neutral principles of law" method further confirms that the Court understood those principles to consist of state, rather than federal, law. The Court emphasized that "[t]he method relies *exclusively* on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Id.* at 603 (emphasis added). That could only mean *state*-law concepts, for there is no objective, well-established, and familiar body of federal trust and property law. Indeed,

the Court noted that the neutral-principles approach it approved in *Sharpsburg* involved a state court's application of "state statutes governing the holding of church property." *Ibid.*

Jones did not *sub silentio* override 50 states' property and trust laws by constitutionally requiring state courts to find a trust whenever a hierarchical church enacts an express-trust provision in its favor, thereby destroying the very polity neutrality that commended neutral principles in the first place. Although the entire thrust of *Jones* is that states may apply their own neutral legal principles to church-property disputes, the General Church argues that *Jones* mandates recognition of an express trust recited by a general church *regardless* of state-law requirements. In support, the General Church isolates *Jones*'s statement that a general church "can ensure" its ownership of church property by "recit[ing] an express trust in favor of the denominational church." Pet. 23 (quoting 443 U.S. at 606). But the General Church ignores *Jones*'s qualification that such recitations are only effective if "embodied in some legally cognizable form." 443 U.S. at 606. Again, given the absence of a federal common law of trusts, *Jones* could only have meant that express-trust canons must be legally cognizable under *state* law—and that is exactly how courts have uniformly understood *Jones*.

B. Even if there were a split on an issue of federal law, this case turns on a separate question of *state law* that remains to be decided on remand

1. The General Church's petition alleges a conflict among state courts concerning whether a hierarchical church's express-trust canon creates a trust interest under federal law, regardless whether the canon is sufficient to establish a trust under state law. The petition then asks this Court to resolve that conflict in this case because the Texas Supreme Court concluded in *Master-*

son and in the decision below that *Jones* does not mandate recognition of a trust interest whenever a general church recites an express trust. Pet. 22; see Pet. App. 36a–38a, 76a. That conclusion, the General Church contends, was dispositive of this case's outcome. "Had Texas joined the other side of the split," the General Church would be entitled to the properties at issue here. Pet. 22.

That is incorrect. Even if there were a split over whether the Dennis Canon establishes an express trust as a matter of federal law—and there is not—this case differs in material ways from the four supreme court cases on the other side of the supposed split. Unlike Georgia, California, and New York, Texas has no statutes specifically governing ownership of religious property and favoring general-church trusts. See *Christ Church*, 718 S.E.2d at 245; *Episcopal Church Cases*, 198 P.3d at 80–83; *Harnish*, 899 N.E.2d at 924. Moreover, while the local churches in the Georgia, New York, and Connecticut cases acquiesced to the Dennis Canon by consistent predispute conduct (*Christ Church*, 718 S.E.2d at 254; *Harnish*, 899 N.E.2d at 924–925; *Gauss*, 28 A.3d at 319–320), the Diocese here repeatedly disavowed the General Church's interest in local property (28 C.R. 5981, 6056–6057, 6122, 6154–6155). And none of the four cases was postured similarly to this one, where neutral principles of state law have not even been applied to direct the final disposition of any property. In short, the General Church has not demonstrated that Georgia, California, New York, or Connecticut's high courts would have resolved this case differently from the Texas Supreme Court.

2. Even more fundamentally, this Court lacks jurisdiction to review the Texas Supreme Court's decision below because its holding turned on a pure issue of state law, not on its position in the purported conflict over whether the Dennis Canon creates an express trust as a

matter of federal law. For purposes of its decision, the court "assum[ed] a trust was created as to parish property by the Dennis Canon"—exactly the result that the General Church says *Jones* requires. Pet. App. 79a. But the court noted that—unlike most other states, including those the General Church favors in the alleged split—Texas law presumes the *revocability* of a trust unless it contains "express terms making it irrevocable." *Ibid.* (quoting *Masterson*, 422 S.W.3d at 613). The court held that any trust the Dennis Canon created was revocable because the Dennis Canon "simply does not contain" such terms. *Ibid.* The court then remanded to the trial court to consider whether any trust created by the Dennis Canon had been revoked. *Id.* at 78a.

That state-law determination does not implicate a federal question, let alone any decisional conflict. Whatever *Jones* says about an express-trust canon's creation of a trust in favor of a general church, it says nothing about the revocability of that trust. And there is certainly no other case holding that the First Amendment requires states to always treat a general church's express-trust interest as irrevocable. Accordingly, the few state supreme courts to consider the revocability of a general church's express trust have, like the Texas Supreme Court, applied state law to resolve the question. See *Hope Presbyterian Church*, 291 P.3d at 726–727 (holding that trust was presumed irrevocable under state common law and that local church had not reserved power of revocation); *St. Paul Church, Inc.* v. *Bd. of Trs. of the Alaska Missionary Conference of the United Methodist Church, Inc.*, 145 P.3d 541, 557 (Alaska 2006) (same).[5]

[5] Even if the Dennis Canon's revocability involved a federal question, it would rarely recur because Texas is one of only a few states to presume a trust revocable rather than irrevocable. See, *e.g.*, Mark

The Texas Supreme Court's state-law ground of decision here is analogous to that of the Virginia Supreme Court in *The Falls Church* v. *The Protestant Episcopal Church in the United States of America*, No. 13-449 (cert. denied Mar. 10, 2014). The petitioner in that case—there, the local church—asked this Court to resolve the same purported conflict over *Jones*'s treatment of express-trust provisions that the General Church alleges here. See Petition for a Writ of Certiorari of Petitioner The Falls Church at i, 1–2. But even though Virginia's high court had determined that the Dennis Canon was ineffective to create an express trust under state law, the court went on to hold that the general church had a constructive trust interest under state-law equitable principles. See *The Falls Church* v. *The Protestant Episcopal Church in the United States of Am.*, 740 S.E.2d 530, 539–542 (2013). Then-respondent the General Church argued, successfully, that review was unwarranted because "[t]he decisional conflict cited in the petition has nothing whatsoever to do with the factbound, state law decision below." Brief in Opposition of Respondents The Protestant Episcopal Church in the United States of America, et al. at 1; see also *id.* at 10–15. The same is true here.

3. In fact, this case is even less worthy of review than *Falls Church*, and the Court's jurisdiction is even more questionable, because neutral principles of state law have not yet been applied to resolve this property dispute. After holding that the trial court should have applied neutral principles of state law, including principles of trust revocability, the Texas Supreme Court remanded to the trial court with instructions to do so and to consider, among other things, whether the Diocese had validly re-

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R. Siegel, *Unduly Influenced Trust Revocations*, 40 Duquesne L. Rev. 241, 243 n.16 (2002).

voked any trust created by the Dennis Canon. Pet. App. 78a. That live state-law issue is yet another factor strongly counseling against certiorari.

II. THIS CASE IS A POOR VEHICLE TO CONSIDER WHETHER RETROACTIVE APPLICATION OF NEUTRAL PRINCIPLES IS UNCONSTITUTIONAL

When this Court affirmed the neutral-principles approach in *Jones*, it noted that "this case does not involve a claim that retroactive application of a neutral-principles approach infringes free-exercise rights." 443 U.S. at 606 n.4. The General Church did raise that claim below, however, and it now asks the Court to decide whether "retroactive application of 'neutral principles' violates the Free Exercise Clause." Pet. 24. But the General Church alleges no split over that question, and this case is a poor vehicle to resolve it for at least three independent reasons.

1. First, the Texas Supreme Court never decided the constitutionality of applying neutral principles retroactively. The General Church wrongly insists that, after holding that Texas employs only the neutral-principles approach in church-property disputes, the Texas Supreme Court "applied that approach retroactively to commitments made decades earlier." *Id.* at 3; see also *id.* at 26. To the contrary, the court never applied neutral principles of state law to this case: it found the record insufficient to sustain a neutral-principles summary judgment for either party and remanded for the parties to "develop the record" and for the trial court to "apply neutral principles" in the first instance. Pet. App. 66a, 74a–75a, 78a. The court then concluded that "[b]ecause neutral principles have yet to be applied in this case, we cannot determine the constitutionality of their application." *Id.* at 74a. Accordingly, if this Court were to "review" in this case whether retroactive application of neutral principles infringes free exercise, it would do so without the

benefit of a lower-court opinion (a) applying neutral principles, or (b) assessing the constitutionality of that application. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (emphasizing oft-cited principle that this Court is one "of review, not of first view").

2. Second, the trial court's application of neutral principles of Texas law on remand will not be retroactive. The Texas Supreme Court explained in *Masterson*, and again in the decision below, that it applied the neutral-principles methodology as early as its 1909 *Brown* v. *Clark* decision. Pet. App. 21a–23a, 79a. The General Church disagrees, insisting that "Texas was a deference jurisdiction" until this case. Pet. 25. But Texas's highest court—not the General Church—has the final say about the interpretation of the court's own state-law precedent. See *Green* v. *Biddle*, 21 U.S. 1, 64 (1823) (emphasizing oft-repeated principle that it is the "peculiar province" of state courts to interpret their own statutory and common law). The Texas Supreme Court's authoritative view that a century-old decision it authored "substantively reflected the neutral principles methodology" (Pet. App. 79a) makes this a particularly undesirable case for evaluating any constitutional problems posed by retroactive application of neutral principles.

3. Third, application of neutral principles could not possibly violate the General Church's free-exercise rights because the parties consciously organized their property rights under neutral principles well before this dispute. The General Church argues that the neutral-principles methodology is only constitutional if churches "can structure their affairs" under that approach "in advance" of a dispute. Pet. 24. But that is exactly what the General Church and the Diocese did here. As the General Church repeatedly concedes, it enacted the Dennis Canon in 1979 "in response to *Jones*" (*id.* at 9–10; see also *id.* at 3, 20), purporting to "recite an express trust" "cognizable" un-

der neutral principles of law. *Jones*, 443 U.S. at 606. A few years later, the Diocese enacted constitutional and canonical provisions intended to disavow any General Church property interest created by the Dennis Canon. See 28 C.R. 5981, 6056–6057, 6122, 6154–6155. Whether the parties successfully effectuated their respective intentions under state legal principles remains to be seen, but one thing is clear: they did *not* "arrang[e] their affairs under a deference regime." Pet. 25. Consequently, this case presents no opportunity to review the retroactivity question, which, in any event, has not divided lower courts.

III. *JONES* WAS RIGHTLY DECIDED, AND ITS NEUTRAL-PRINCIPLES APPROACH HAS BEEN THE UNIVERSAL CHOICE OF COURTS FACING CHURCH-PROPERTY DISPUTES FOR DECADES

The General Church's first question presented asks this Court to adopt the approach to express-trust canons purportedly found in four state supreme court decisions—decisions that tout the advantages of *Jones*'s neutral-principles framework and apply it to church-property disputes. But in its third question presented, the General Church urges the Court to overrule *Jones*, jettison neutral principles, and return to *Watson*'s rule of blanket deference to a hierarchical church's property-ownership decisions. Pet. 28–29. That drastic action is necessary, the General Church contends, because the neutral-principles approach has entangled courts in ecclesiastical matters and produced "insoluble confusion" and "massive inconsistency" in the resolution of church-property disputes. *Id.* at 29. The cure for these woes, the General Church unsurprisingly says, is compulsory *Watson* deference to the General Church's declaration that *it* owns the disputed property. *Id.* at 34–36.

This Court should decline the General Church's invitation to discard well-established, correctly-decided prece-

dent. In the decades since *Jones*, state courts have uniformly chosen the neutral-principles approach to church-property disputes, and churches have organized their affairs in reliance on that framework. The neutral-principles approach is not the malady the General Church laments, and even if it were, *Watson* deference to hierarchical churches' resolution of non-ecclesiastical property questions is certainly not the remedy. *Stare decisis* should prevail.

1. According to the General Church, *Jones*'s neutral-principles framework invites courts to "giv[e] their own interpretations to deeply religious texts" and, worse, to "overrule churches on who constitutes the true church." Pet. 31 (italics omitted). That is untrue. *Jones* specifically requires courts to "defer to the authoritative ecclesiastical body" if secular or religious documents relevant to the property dispute "incorporat[e] religious concepts" and their interpretation "would require the civil court to resolve a religious controversy." 443 U.S. at 604. Moreover, like *Watson* and all of the Court's church-property cases, *Jones* affirmed the general principle that courts must defer to the ecclesiastical authority on *any* "issues of religious doctrine or polity." *Id.* at 602. Thus, contrary to the General Church's assertion (Pet. 35), *Jones* is perfectly consistent with this Court's holding in *Hosanna-Tabor Evangelical Lutheran Church and School* v. *Equal Employment Opportunity Commission*, 132 S. Ct. 694, 704–705 (2012), that courts must defer to a church's determination of who is its minister. Nothing in *Hosanna-Tabor*, moreover, suggests that courts cannot constitutionally apply neutral principles of state law to church-property disputes.

Jones simply recognized that in many cases—like this one—"no issue of doctrinal controversy [is] involved" in resolving church-property disputes under neutral principles of state law. 443 U.S. at 605. Notably, the petition

does not allege that *this* property dispute will require the state court to interpret religious concepts or referee religious controversies in any relevant legal documents. See Pet. 31–32. The General Church does argue that, to resolve this case, the Texas Supreme Court had to second-guess the General Church Presiding Bishop's assertion that the Diocese is no longer the "true" Episcopal diocese of Fort Worth. *Id.* at 34. But the court never touched that issue, for the parties *agree* that the Diocese is not the "continuing" representative of the General Church (*id.* at 3, 34); after all, the Diocese disagrees with the national denomination's doctrine and has thus *disaffiliated* from the General Church. More fundamentally, the "true" diocese's identity is irrelevant to the property dispute under neutral principles of Texas law. Instead, this case involves whether the property's titleholder—a Texas corporation with a secular identity distinct from the church—retains ownership of the property because, among other things, the Diocese revoked any trust created by the Dennis Canon's undisputed terms.

That *some* church-property disputes may turn on religious questions is no reason to retreat to *Watson* and deem *all* church-property disputes ecclesiastical matters over which courts can never exercise jurisdiction. To the extent that this or any church-property case requires the resolution of a religious question, courts can apply the deference on ecclesiastical issues that is built into *Jones*'s neutral-principles methodology. See Greek Orthodox *Amicus* Br. 8, 10 (alleging that its property disputes turn on religious questions). And any violation of those principles by courts in isolated cases can be handled on an as-applied basis. See Pet. 31–32 (alleging that some courts have improperly addressed religious questions when applying neutral principles and citing two cases); Episcopal Church in S. Carolina *Amicus* Br. 18–19 (same and citing one case). But "occasional problems in application" of

neutral principles, rare because states and churches generally recognize their obligation to "structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions," *Jones*, 443 U.S. at 604, do not support replacing the scalpel of *Jones* deference with the sledgehammer of *Watson* deference.

2. That is especially true because *Watson* deference offers none of the "nonentanglement and neutrality inherent in the neutral-principles approach." *Ibid.* While *improper* application of *Jones*'s neutral-principles methodology *may* entangle a court in religious questions, even *proper* application of *Watson*'s deference approach *often* will. That is because *Watson* requires courts to first examine whether a church's polity is "congregational" or "hierarchical" before deferring to a hierarchical authority's property-dispute resolution. 80 U.S. at 722–723; see also Black's Law Dictionary 1277 (9th ed. 2009) (*Watson* deference, "the polity approach," requires courts to "examin[e] the structure of the church to determine whether the church is independent or hierarchical").

That inherently ecclesiastical inquiry is frequently plagued with difficulty. *Watson* falsely assumes only two flavors of church polity: congregational and hierarchical. Perhaps that was true in 1872, but not today; a denomination may, for example, use a hierarchical regional polity and a congregational national polity, or a hierarchical polity for some issues and a congregational polity for property issues. Moreover, even if a court could accurately classify a church as hierarchical, *Watson* requires the court to "determine *where* the church has placed ultimate authority over the use of church property" before it can defer to that authority. *Jones*, 443 U.S. at 605 (emphasis added). Here, both the General Church and the Diocese moved for summary judgment on *Watson*-deference grounds, each arguing that it is the authority over property issues within Episcopal polity. Pet. App.

69a–70a. *Watson* deference requires courts to resolve all of these religious questions.

Watson deference also "foreordain[s]" the outcome of a hierarchical church-property dispute in the general church's favor. *Jones*, 443 U.S. at 606. The property "intentions of the parties" expressed before the dispute arose, *id.* at 603, are irrelevant. "[I]n every case, *regardless of the facts*, compulsory deference would result in the triumph of the hierarchical organization." *Bjorkman* v. *Protestant Episcopal Church*, 759 S.W.2d 583, 586 (Ky. 1988) (emphasis added). By permitting a general church to ignore its pre-dispute property arrangements with local churches, *Watson* deference threatens to convert courts "into handmaidens of arbitrary lawlessness." *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 727 (1976) (Rehnquist, J., dissenting).

Ironically, the General Church charges that the neutral-principles approach is biased toward local congregations, permitting them to ignore their longstanding agreements to hold property for the general church. Pet. 32–36. But neutral principles *honor* the parties' pre-dispute intentions—including reversionary clauses and trust provisions "in favor of the general church"—so long as those intentions are "appropriate[ly]" "embodied in some legally cognizable form." *Jones*, 443 U.S. at 603, 606. Here, far from "consent[ing]" to the General Church's stated trust interest in local property only to "abscond" with the property following a schism (Pet. 33), the Diocese repeatedly *rejected* the General Church's property interest decades *before* this dispute. Whose intentions are "legally cognizable" will properly be resolved on remand by neutral principles of Texas law, not by the hierarchical bias that the General Church prefers.

3. The requirement that the General Church comply with neutral state property rules to effectuate its property desires does not burden its free-exercise rights. The

General Church complains that "gross disparity" in state courts' treatment of the Dennis Canon burdens its free exercise of religion by making it difficult to predict the disposition of disputed church property. *Id.* at 30. But as *Jones* rightly held, the First Amendment does not demand that a general church win every property fight against a local church regardless of state law. 443 U.S. at 602. Rather, *Jones* "approved of possibly different outcomes in different jurisdictions" applying neutral state-law principles and contemplated that courts could "develop still other approaches that might comport with local circumstances." *Gauss*, 28 A.3d at 316. And in any event, if the General Church ultimately loses this case, it will not be because Texas law precluded it from "predictabl[y]" effectuating its religious intentions for its property (Pet. 31). Rather, it will be because the General Church failed to expressly describe the Dennis Canon's trust interest as irrevocable—hardly a "tremendous" burden. *Ibid.* If satisfying neutral state-law principles gives rise to something more than the "minimal burden" *Jones* described in a future case, 443 U.S. at 606, then courts can address those concerns on an as-applied basis. The answer is not to throw the baby out with the bathwater by overruling *Jones*'s long-established framework.

4. *Jones* permits state courts to "adopt *any* one of various approaches for settling church property disputes." *Id.* at 602. Yet they have almost universally chosen *Jones*'s neutral-principles approach. See BIO App. 1a–6a. That gravely undermines the General Church's claim that *Jones* is fundamentally flawed. The General Church variously asserts that *Jones* is "confusing," is "difficult to apply," and has "entangled" courts in religious questions. Pet. 29, 31. But the General Church cites no *court* that has thought so, only the criticisms of a handful of academic articles—including one that ultimately concludes that the Court should retain *Jones*'s

neutral-principles approach.[6] Because the very courts that must apply neutral principles have not perceived the problems conjured by the General Church and its academic allies, there is no compelling reason to abandon a precedent that has commanded decades of reliance by churches and courts alike. Cf. *Montejo* v. *Louisiana*, 556 U.S. 778, 792 (2009) (noting that "traditional ground for overruling" precedent is that "decision has proved 'unworkable'" (citation omitted)); *Payne* v. *Tennessee*, 501 U.S. 808, 828 (1991) (emphasizing that "[c]onsiderations in favor of *stare decisis* are at their acme in cases involving property * * * rights, where reliance interests are involved").

CONCLUSION

The petition for a writ of certiorari should be denied.

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[6] See Jeffrey B. Hassler, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in a Time of Escalating Interdenominational Strife*, 35 Pepp. L. Rev. 399, 454–456 (2008).

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APPENDIX

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A. States adopting *Jones*'s neutral-principles approach

1. Alabama. See *African Methodist Episcopal Zion Church* v. *Zion Hill Methodist Church, Inc.*, 534 So.2d 224, 225 (Ala. 1988); see also *Mountain Lakes Dist.* v. *Oak Grove Methodist Church ex rel. Green*, 126 So.3d 172, 182 (Ala. Civ. App. 2013).

2. Alaska. See *St. Paul Church, Inc.* v. *Bd. of Trs. of Alaska Missionary Conference of United Methodist Church*, 145 P.3d 541, 553 (Alaska 2006).

3. Arizona. See *Rashedi* v. *General Bd. of Church of Nazarene*, 54 P.3d 349, 353 (Ariz. Ct. App. 2002).

4. Arkansas. See *Ark. Presbytery* v. *Hudson*, 40 S.W.3d 301, 306 (Ark. 2001).

5. California. See *In re Episcopal Church Cases*, 198 P.3d 66, 79 (Cal. 2009).

6. Colorado. See *Bishop & Diocese of Colo.* v. *Mote*, 716 P.2d 85, 96 (Colo. 1986).

7. Connecticut. See *Episcopal Church in Diocese of Conn.* v. *Gauss*, 28 A.3d 302, 316 (Conn. 2011).

8. Delaware. See *E. Lake Methodist Episcopal Church, Inc.* v. *Trs. of Pa.-Del. Annual Conference of United Methodist Church*, 731 A.2d 798, 810 (Del. 1999).

9. District of Columbia. See *Meshel* v. *Ohev Sholom Talmud Torah*, 869 A.2d 343, 354 (D.C. 2005).

10. Georgia. See *Rector, Wardens, Vestrymen of Christ Church in Savannah* v. *Bishop of Episco-*

pal Diocese of Ga., Inc., 718 S.E.2d 237, 241 (Ga. 2011).

11. Hawaii. See *Redemption Bible Coll.* v. *Int'l Pentecostal Holiness Church*, 309 P.3d 969 (Table), at *6 n.6 (Hawai'i Ct. App. July 23, 2013).

12. Illinois. See *Diocese of Quincy* v. *Episcopal Church*, No. 4–13–0901, 2014 WL 3672970, at *8 (Ill. App. Ct. July 24, 2014).

13. Indiana. See *Presbytery of Ohio Valley, Inc.* v. *OPC, Inc.*, 973 N.E.2d 1099, 1107 (Ind. 2012).

14. Iowa. See *Freedom Church* v. *Cent. Dist. Conference of Evangelical Free Church of Am.*, 734 N.W.2d 487 (Table), at *4 (Iowa Ct. App. 2007).

15. Kansas. See *Gospel Tabernacle Body of Christ Church* v. *Peace Publishers & Co.*, 506 P.2d 1135, 1137–1138 (Kan. 1973).

16. Louisiana. See *Fluker Cmty. Church* v. *Hitchens*, 419 So.2d 445, 447 (La. 1982).

17. Maine. See *Attorney Gen.* v. *First United Baptist Church*, 601 A.2d 96, 99 (Me. 1992).

18. Maryland. See *From the Heart Church Ministries, Inc.* v. *African Methodist Episcopal Zion Church*, 803 A.2d 548, 565 (Md. 2002).

19. Massachusetts. See *Maffei* v. *Roman Catholic Archbishop of Boston*, 867 N.E.2d 300, 310 (Mass. 2007).

20. Minnesota. See *Piletich* v. *Deretich*, 328 N.W.2d 696, 701 (Minn. 1982).

21. Mississippi. See *Schmidt* v. *Catholic Diocese of Biloxi*, 18 So.3d 814, 824 (Miss. 2009).

22. Missouri. See *Presbytery of Elijah Parish Lovejoy* v. *Jaeggi*, 682 S.W.2d 465, 467 (Mo. 1984); see also *Heartland Presbytery* v. *Gashland Presbyterian Church*, 364 S.W.3d 575, 581 (Mo. Ct. App. 2012).

23. Montana. See *Hofer* v. *Mont. Dep't of Pub. Health & Human Servs.*, 124 P.3d 1098, 1103 (Mont. 2005); see also *New Hope Lutheran Ministry* v. *Faith Lutheran Church of Great Falls, Inc.*, 328 P.3d 586, 595 (Mont. 2014).

24. Nebraska. See *Medlock* v. *Medlock*, 642 N.W.2d 113, 128–129 (Neb. 2002).

25. New Hampshire. See *Berthiaume* v. *McCormack*, 891 A.2d 539, 547 (N.H. 2006).

26. New Jersey. See *Stoupine* v. *Petrovsky*, 2012 WL 1468615, at *4 (N.J. Super. Ct. App. Div. Apr. 30, 2012) (per curiam); see also *Scotts African Union Methodist Protestant Church* v. *Conference of African Union First Colored Methodist Protestant Church*, 98 F.3d 78, 94 (3d Cir. 1996).

27. New York. See *Blaudziunas* v. *Egan*, 961 N.E.2d 1107, 1109 (N.Y. 2011).

28. North Carolina. See *Harris* v. *Matthews*, 643 S.E.2d 566, 570 (N.C. 2007).

29. Ohio. See *Hudson Presbyterian Church* v. *Eastminster Presbytery*, 2009 WL 249791, at *2 (Ohio Ct. App. 2009).

30. Oklahoma. See *Griffin* v. *Cudjoe*, 276 P.3d 1064, 1069 (Okla. Civ. App. 2012).

31. Oregon. See *Hope Presbyterian Church of Rogue River* v. *Presbyterian Church (U.S.A.)*, 291 P.3d 711, 721 (Ore. 2012).

32. Pennsylvania. See *In re Church of St. James the Less*, 888 A.2d 795, 805–806 (Pa. 2005); see also *Peters Creek United Presbyterian Church* v. *Washington Presbytery of Pa.*, 90 A.3d 95, 118–119 (Pa. Commw. Ct. 2014).

33. South Carolina. See *All Saints Parish Waccamaw, Inc.* v. *Protestant Episcopal Church*, 685 S.E.2d 163, 171 (S.C. 2009).

34. South Dakota. See *Foss* v. *Dykstra*, 342 N.W.2d 220, 222 (S.D. 1983).

35. Tennessee. See *Protestant Episcopal Church in the Diocese of Tenn.* v. *Rector, Wardens, and St. Andrew's Parish*, No. M2010–01474–COA–R3–CV, 2012 WL 1454846, at *9 (Tenn. Ct. App. 2012).

36. Utah. See *Jeffs* v. *Stubbs*, 970 P.2d 1234, 1250–1251 (Utah 1998).

37. Virginia. See *Falls Church* v. *Protestant Episcopal Church in the U.S.*, 740 S.E.2d 530, 537 (Va. 2013).

38. Washington. See *Kidisti Sekkassue Orthodox Tewehado Eritrean Church* v. *Medin*, 118 Wash. App. 1022, 2003 WL 22000635, at *9 (Wash. Ct. App. 2003).

39. Wisconsin. See *Wis. Conference Bd. of Trs. of United Methodist Church* v. *Culver*, 627 N.W.2d 469, 475–476 (Wis. 2001).

B. States rejecting *Jones*'s neutral-principles approach

1. Michigan. See *Chabad-Lubavitch of Mich.* v. *Schuchman*, ___ N.W.2d ___, No. 312037, 2014 WL 2134581, at *6 (Mich. Ct. App. May 22, 2014).

2. Nevada. See *Tea* v. *Protestant Episcopal Church in Diocese of Nev.*, 610 P.2d 182, 184 (Nev. 1980).

3. West Virginia. See *Original Glorious Church of God* v. *Myers*, 367 S.E.2d 30, 34 (W. Va. 1988).

C. States that are unclear

1. Florida. See *New Jerusalem Church of God, Inc.* v. *Sneads Cmty. Church, Inc.*, ___ So.3d ___, No. 1D12–2603, 2013 WL 4859091, at *4 (Fla. 1st Dist. Ct. App. Sept. 12, 2013, rev. pend.); *Word of Life Ministry, Inc.* v. *Miller*, 778 So.2d 360, 362 (Fla. 1st Dist. Ct. App. 2001).

2. Kentucky. See *Kant* v. *Lexington Theological Seminary*, 426 S.W.3d 587, 596 (Ky. 2014) (employment case); *Kirby* v. *Lexington Theological Seminary*, 426 S.W.3d 597, 618 (Ky. 2014) (employment case); *Bjorkman* v. *Protestant Episcopal Church*, 759 S.W.2d 583, 585–586 (Ky. 1988); but cf. *Cumberland Presbytery of Sinod* v. *Branstetter*, 824 S.W.2d 417, 419–422 (Ky. 1992).

D. States that have not addressed the issue

1. Idaho
2. New Mexico
3. North Dakota
4. Rhode Island
5. Vermont
6. Wyoming