No. __-____

In the Supreme Court of the United States

THE RECTOR, WARDENS AND VESTRYMEN OF CHRIST CHURCH IN SAVANNAH, *ET AL.*, PETITIONERS

v.

THE EPISCOPAL CHURCH, *ET AL.*, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a trust allegedly imposed on local church property by provisions in denominational documents must be treated as legally cognizable under the "neutral principles" doctrine of *Jones* v. *Wolf*, 443 U.S. 595 (1979), and the First Amendment, even where such provisions do not satisfy generally applicable rules of state property and trust law.

PARTIES TO THE PROCEEDING

Petitioners include the Rector, Wardens and Vestrymen of Christ Church in Savannah; Marcus B. Robertson; Samuel B. Adams; Thomas R. Cooper, Jr.; Bryan S. Creasy; Stephen P. Dantin; Elizabeth M. Glass; George D. Hardison; Cynthia M. Jones; Michael T. Lee; Corley H. Nease; Francis Eugene Prevatt; R. Clay Ratterree; Carol Rogers Smith; Nancy L. Solana; and Don H. White, Jr.

Respondents include the Bishop of the Episcopal Diocese of Georgia, Inc.; The Episcopal Church (also known as The Protestant Episcopal Church in the United States of America); and Christ Church Episcopal and the Rector, Wardens and Vestry of Christ Church Episcopal.

Amici curiae in the court below included the Becket Fund for Religious Liberty; the Presbyterian Lay Committee; the American Anglican Council; the African Methodist Episcopal Church; the Church of God; the Greek Orthodox Metropolis of Atlanta, Inc.; and the Board of Trustees of the South Georgia Annual Conference of the United Methodist Church, Inc.

RULE 29.6 STATEMENT

The Rector, Wardens and Vestrymen of Christ Church in Savannah has no parent corporation, and no publicly held company owns 10% or more of its stock.

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INTRODUCTION

This case raises a critical and recurring question that has deeply divided the lower courts: whether the neutral-principles doctrine of the First Amendment compels civil courts to enforce a "trust" imposed on affiliated churches' properties by provisions in denominational documents, even when those provisions would not otherwise have any effect under generally applicable rules of state property and trust law.

In *Jones* v. *Wolf*, 443 U.S. 595 (1979), this Court held that the First Amendment is fully satisfied when state courts resolve church property disputes by applying "neutral principles of law"—"objective, well-established concepts of trust and property law" that are "developed for use in all property disputes." *Id.* at 599, 602-603 (citation omitted). *Jones* rejected the notion that having to comply with "neutral provisions of state law" imposes more than a "minimal" burden on denominations or "'inhibit[s]' the[ir] free exercise." *Id.* at 606. Thus, courts in church property cases need not "defer to the resolution of an authoritative tribunal of the hierarchical church," or to the denomination's "laws and regulations." *Id.* at 597, 609. Instead, whether denominational rules are enforceable turns on whether they are "embodied in some legally cognizable form" under state law. *Id.* at 606.

Yet the lower courts are squarely divided over the meaning of this rule, and the split is well-developed. At least five state supreme courts and one federal circuit hold that a neutral-principles approach requires courts to apply the State's ordinary trust and property law, without deference to church law or canons. By contrast, four state supreme courts hold that requiring denominations to comply with generally ap-

plicable state laws is "inconsistent" with neutral principles. Pet. 13a. This turns *Jones* on its head.

Not only does the decision below deepen the lower-court split and conflict with this Court's precedents, it also raises issues of tremendous practical importance to thousands of local congregations across a host of religious denominations. "Neutral principles" are supposed to entail a straightforward analysis of familiar concepts of secular property and trust law. Due to the uncertainty in current law, however, neither local churches nor denominations can predict how courts will determine ownership. As a result, they must spend precious resources—resources that both sides would prefer to devote to mission—on costly litigation. Moreover, the uncertainty affects third parties—*e.g.*, lenders, buyers, and tort claimants—who cannot begin to ascertain who owns church property without looking beyond publicly recorded documents and examining often-arcane denominational rules. Finally, the uncertainty discourages local churches from acting in accordance with conscience concerning whether to change denominational affiliations, or even from affiliating with denominations in the first place—to the detriment of religious choice.

Certiorari is warranted.

OPINIONS BELOW

The Supreme Court of Georgia's opinion (Pet. 1a-121a) is reported at 290 Ga. 95. The Georgia Court of Appeals' opinion (Pet. 122a-143a) is reported at 305 Ga. App. 87. The Chatham County Superior Court's opinion (Pet. 144a-168a) is unreported.

JURISDICTION

The Supreme Court of Georgia entered judgment on November 21, 2011. On February 8, 2012, Justice Thomas extended the time to petition for certiorari to March 22, 2012. This Court has jurisdiction under 28 U.S.C. §1257(a). Although the case has been remanded to the trial court (for further proceedings on claims against the individual petitioners and control of the corporate entity in light of the decision below), "the federal issue"—the First Amendment question presented here—has been "finally decided by the highest Court in the State," and "will survive and require decision regardless of the outcome of future state court proceedings." *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 480 (1975).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

STATEMENT

A. Christ Church Savannah

Petitioner Christ Church Savannah ("Church"), the "Mother Church of Georgia," is a former affiliate of respondents, the Episcopal Diocese of Georgia ("Diocese") and The Episcopal Church ("TEC"). Christ Church has held sole legal title to its property for over 200 years. In fact, the Church came to own its church building property—the main property at issue—before the Diocese or TEC even existed.

Christ Church was founded in 1733 by the Church of England, when English General James Oglethorpe designated for worship the land where the Church

still stands. Pet. 21a. In 1758, the Church was granted its initial property and incorporated by the English Crown. Pet. 21a-22a.

In 1789, after disestablishment and the Revolutionary War, Christ Church was incorporated by the Georgia legislature. Pet. 23a. The Act of Incorporation declared certain individuals "a body corporate, by the name and style of the Church Wardens and Vestry Men of the Episcopal church in Savannah, called Christ church."[1] R-1460-1462. The Act further provided that they

> shall be invested with all manner of property, both real and personal; all monies due or to grow due, donations, gifts, grants, hereditaments, privileges and immunities whatever, which may belong to the said church, or for building a new church; or which may hereafter be given, granted, conveyed or transferred for rebuilding the said church, or for building a new church, in Savannah, or which may be made or transferred to them, or to their successors in office: *To Have and to Hold* the same, for the proper use, benefit and behoof of the said church.

Ibid. The Act also granted Christ Church authority to "us[e] all necessary legal steps for recovering and defending any property whatever." *Ibid.*

TEC was formed in October 1789. Georgia sent no delegation to the founding convention, and Christ

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[1] The legislature used the term "Episcopal church" to connote the church's form of worship, or its former relationship with the Church of England. It is undisputed that the Act conveyed no interest to the denomination. Pet. 126a-127a, 152a; R-2538.

Church played no role in TEC's formation. It is undisputed that Christ Church was not affiliated with TEC as of December 1789, and that the Church had "full control of its property" upon incorporation. R-2101, R-2117.

B. Denominational affiliation: 1823 through 2007

In 1823, Christ Church's rector, wardens, and vestry chose to affiliate the Church with the denomination. The Diocese never acted to approve Christ Church's status as a parish; it was Christ Church that founded the Diocese. Pet. 25a-26a.

TEC, then as now, was an unincorporated voluntary association of dioceses. R-6. At the time of Christ Church's affiliation, neither Diocesan nor TEC canons asserted any interest in parish property. R-2121. Nor did Christ Church take any step to transfer any property interest to either entity. R-2119.

In 1918, Christ Church amended its articles to "accede to the doctrine, discipline, and worship and the Constitution and Canons of [TEC and the Diocese]." Pet. 131a. But unlike the "30 something congregations" whose property is held by the Diocese, the Church did not grant the denomination any interest in its property. R-2233-2234. Nor, in contrast to parishes that join the Diocese today, did Christ Church agree to adhere to future changes in discipline. Christ Church thus reserved the right then provided under Georgia law to disaffiliate in the event of the denomination's "departure from doctrine." Although Georgia later abandoned that theory (see *Presbyterian Church* v. *Eastern Heights Presbyterian Church*, 225 Ga. 259 (1969), on remand from *Presbyterian*

Church v. *Hull Church*, 393 U.S. 440 (1969)), Christ Church's accession was revocable when made.

Christ Church has always retained the right to amend its charter without approval from the Diocese, and in March 2006 the Church did so. Responding to doctrinal changes at TEC's 2003 General Convention, Christ Church repealed its 1918 articles and withdrew its accession to the denomination's discipline, adopting instead a doctrine-based affiliation statement. Pet. 36a-37a. As the courts below recognized (Pet. 141a, 161a), this amendment satisfied Georgia corporations law.

In September 2007, the Church's vestry adopted a resolution disaffiliating from the denomination. Pet. 37a. In October 2007, the congregation affirmed that decision by an 87% positive vote. *Ibid.*

C. Denominational claims and discipline

TEC, the Diocese, and some dissenting members then sued Christ Church, its rector, and its vestry members (also petitioners here). The suit sought a declaration that the Church's property is held in trust for the denomination, based on two sets of canons.

First, respondents rely on "anti-alienation canons," which date to 1868 and purport to bar parishes from selling consecrated church buildings. Pet. 26a-28a & n.13. These canons, however, do not purport to affect ownership—legal or beneficial—of parish property, and they say nothing about any trust. Nor do these canons purport to restrict parishes' right to disaffiliate. *Ibid.*

Moreover, according to TEC's own official canon law reporter, anti-alienation canons have no civil law effect. R-1839; accord *Bjorkman* v. *PECUSA Diocese*

of Lexington, 759 S.W.2d 583, 586 (Ky. 1988). Recognizing this, in 1871 TEC adopted a resolution recommending that its dioceses "take such measures as may be necessary, by State legislation, or by recommending such forms of devise or deed or subscription, as may secure the Church buildings, grounds, and other property, real and personal." R-1843. Here, however, the Diocese's canons provide: "Nothing in these Canons shall prejudice the legal rights of any Parish or Vestry already existing by act of incorporation." Pet. 165a.

Second, respondents invoke TEC's 1979 "Dennis Canon," which purports to place all parish property "in trust for th[e] [Episcopal] Church and the Diocese." Pet. 32a-33a. This canon, however, provides no means for parishes to consent to the creation of a trust. Further, it is undisputed that TEC's parishes, including Christ Church, were given no advance notice that this canon would be voted on at TEC's 1979 convention. Pet. 163a. The Diocese explained that "[it] does not believe that it notified its parishes and missions that the Dennis Canon would be voted on at the 1979 General Convention for the reason that it does not believe it was aware that the Dennis Canon would be voted on." R-1766. And by adopting the Dennis Canon by canonical rather than constitutional amendment, TEC avoided giving parishes a three-year window in which to object or react to the provision before its formal adoption. R-1816.

D. Christ Church's property and financial self-sufficiency

Christ Church holds sole legal title to all property at issue: the church building property, secured by the 1789 Act; an endowment fund, funded by its pari-

shioners; and three other pieces of real estate, each conveyed by deed to Christ Church alone and held in its formal corporate name, "*The Rector, Church Wardens and Vestrymen of Christ Church in Savannah*." Pet. 7a-9a, 35a. No funding for purchase or maintenance of any of Christ Church's properties has *ever* come from TEC or the Diocese. Money flowed entirely, and substantially, in the other direction. R-1525-1526, R-1767, R-2314-2315.

E. The decisions below

1. On cross motions for summary judgment, the trial court acknowledged that Christ Church holds sole legal title to all parish property (Pet. 147a), but held that respondents are nonetheless entitled to the property's beneficial use. A Georgia statute (OCGA §14-5-46) provides that "deeds of conveyance" for "lots of land" to churches or religious societies "for the purpose of erecting churches or meeting houses" are held "by them or their trustees for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies."[2] Although *none* of Christ Church's property meets the statutory description (its principal property was transferred by land grant, not deed, and its other properties are not used for the statutorily designated purposes), the court held that this statute subjected Christ Church's property to denominational discipline, giving rise to a legally enforceable trust. Pet. 154a.

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[2] OCGA §14-5-47 adds that trustees receiving conveyances "for the purposes expressed in [OCGA §14-5-46]" are "subject to the authority of the church or religious society for which they hold the same in trust."

In addition—without considering generally applicable rules of state property or trust law—the court concluded that TEC's canons created a trust when Christ Church amended its charter in 1918 to accede to denominational discipline, and when it re-filed that charter in 1981. Pet. 156a-157a. Although the court recognized that Christ Church complied with all requirements of Georgia law in amending its corporate charter in 2006 to revoke this accession, it held that the denominational trust survived this amendment. Pet. 161a-162a.

2. The Georgia Court of Appeals affirmed, largely adopting the trial court's opinion. Pet. 123a. Sharing the trial court's erroneous views of OCGA §14-5-46 (as applicable) and "neutral principles" (as a standard independent of normal rules of state law), the appellate court concluded that canon law trumped Christ Church's corporate charter and the instruments by which the Church holds its property. Pet. 126a, 130a, 143a.

3. The Georgia Supreme Court granted certiorari "to decide whether the trial court and the Court of Appeals erred in applying the neutral principles doctrine, particularly with respect to OCGA §§ 14-5-46 and 14-5-47." Pet. 4a; see Pet. 171a-172a. The majority agreed that "none of the title instruments in this case create a trust in favor of the Episcopal Church." Pet. 9a. It agreed that the lower courts "may have erred to some extent in their reliance on OCGA §§ 14-5-46 and 14-5-47." Pet. 4a. And it agreed that "a trust was not created under our State's generic express (or implied) trust statutes." Pet. 16a. Based on its perception of the mandates of *Jones*, however, the majority held Georgia statutory law inapplicable or irrelevant (Pet. 9a-17a), engaged in a

troubling assessment of church history (Pet. 19a-37a), and concluded that it was bound by *Jones* to give legal effect to "church governing documents" (Pet. 14a-15a, 38a-42a).

First, the majority found it unnecessary to decide whether OCGA §§ 14-5-46 and 14-5-47 applied. The majority acknowledged that *Jones* "focused on 'the state statutes governing the holding of church property,' of which OCGA §§ 14-5-46 and 14-5-47 are the most prominent." Pet. 16a-17a (citation and emphasis omitted). It further acknowledged that "[o]ne or more of CCS's arguments against directly applying [these statutes] to some or all of the property at issue in this case may have merit." Pet. 11a. Ultimately, however, the majority concluded that it "need not decide that issue," because *Jones* compelled "looking to 'the mode of church government or rules of discipline' in applying neutral principles." Pet. 12a (quoting statutes).

Second, the majority acknowledged that "a trust was not created" under Georgia's general trust laws, but deemed this irrelevant. Pet. 16a. According to the majority, "requiring strict compliance with [OCGA] § 53-12-20 [Georgia's general trust statute] to find a trust under the neutral principles analysis would be inconsistent with the teaching of *Jones* v. *Wolf* that the burden on the general church and its local churches to provide which one will control local church property in the event of a dispute will be 'minimal.'" Pet. 13a (quoting 443 U.S. at 606); see also Pet. 15a (asserting that the burden of amending deeds and corporate charters "would not be minimal, but immense"). The majority did not attempt to reconcile this conclusion with the fact that the Diocese's corporation holds deeded title to 30-plus local church

properties (R-2233-2234), or with this Court's statement in *Jones* that, to ensure denominational control, the parties "can *modify the deeds or the corporate charter* to include a right of reversion or trust in favor of the general church" and "[*t*]*he burden involved in taking such steps will be minimal*." *Jones*, 443 U.S. at 606 (emphasis added).

In the majority's view, setting aside normal state trust law was necessary to avoid "unconstitutionally interfer[ing] with the free exercise rights 'of those who have formed the association and submitted themselves to its authority.'" Pet. 14a (quoting *Jones*, 443 U.S. at 618 (Powell, J., dissenting)). "[W]hile local churches *may* modify their deeds, amend their charters, or draft separate legally recognized documents to establish an express trust," the majority reasoned, they may not be *required* to do so because "[t]hat is not how the *Jones* v. *Wolf* Court envisioned that the neutral principles doctrine would be applied in conformity with the First Amendment." Pet. 14a-15a.

In other words, *Jones* grants denominations a constitutional right to impose a trust "through the general church's governing law." *Ibid*. Yet the majority refused even to consider whether the Dennis Canon is enforceable despite the denomination's undisputed failure to notify parishes before the canon's adoption, in violation of otherwise applicable state law. Pet. 39a n.17.

In sum, based on denominational "history" and "governing documents," and without regard for generally applicable rules of state law, the majority concluded that Christ Church's property is held in trust for the denomination.

4. Judge Brown, sitting by designation, dissented. He disagreed with the majority's understanding of "neutral principles under *Jones*," and with its refusal to follow "Georgia laws governing trusts and property transfers." Pet. 55a.

First, the dissent rejected the view that having to do more than adopt canons to create a trust would unconstitutionally "burden" the denomination's religious exercise. Pet. 78a-81a. As he explained, preparing and recording a deed for Christ Church's $5 million church building property would cost only $200 —"a cost/benefit ratio of 25,000!" Pet. 79a, 81a.

Second, the dissent noted that, "[u]nder the majority's reasoning, it appears that all settlors of trusts, except for hierarchical churches, would be required to comply with the applicable state statutes, requiring deeds, signed by the grantor, the creation of a trust interest in writing, etc." Pet. 110a. Granting such "highly preferential treatment" and "special privileges" to denominations, however, "favor[s] one type of religion over other religions or non adherents" and "run[s] afoul of the Establishment Clause." Pet. 109a-110a.

Third, the dissent noted that "[church] [h]istory is necessarily subjective," "not religion neutral," "not a proper basis for investigating whether the parties intended to form a trust," and "fraught with the danger of overstepping the clear boundaries of the First Amendment." Pet. 46a, 54a.

Finally, the dissent elaborated on the uncertainty and surprise created by excusing denominations from "having to obtain or record any deed in order to claim a trust interest." Pet. 68a-69a. For example, with respect to a $950,000 loan taken by Christ Church for

renovations, "the [denomination] never informed either CCS or the lender that the National Church claimed a trust interest for its own benefit on the subject property," and never obtained or recorded a deed. Pet. 68a. "As a result, the lender had no notice of the [denomination's] claimed trust interest when it took an interest in this property as security for the loan." *Ibid*. The decision thus "[leaves] lender[s] unprotected along with everyone else so as [to] grant privileges to [denominations]." Pet. 69a.

The Georgia court thus recognized that (1) Christ Church holds sole legal title to all of its property, including property acquired decades before its denominational affiliation; (2) the Dennis Canon was adopted without prior notice to parishes, including Christ Church; (3) Christ Church's charter amendment and disaffiliation were proper under Georgia corporations law; and (4) no trust was created under Georgia's general trust statutes. Indeed, *none of this is disputed*. Yet the court subordinated neutral principles of state law to an incorrect reading of the First Amendment—in conflict with this Court's decisions and the decisions of at least five state supreme courts and one federal circuit.

REASONS FOR GRANTING THE PETITION

I. In the 33 years since *Jones* was decided, "neutral principles" has become the dominant approach to resolving church property disputes.[3] Yet the lower courts cannot agree on the meaning of "neutral principles," and the disagreement turns not on differences in state law, but on the meaning of *Jones*.

On one side of the split, at least five state supreme courts and one federal circuit read *Jones* to hold that courts need enforce trust provisions in denominational documents *only if* the provisions create a trust under "objective, well-established concepts of trust and property law" that are "developed for use in all property disputes." 443 U.S. at 599, 603. On the other side of the split, four state supreme courts (including the court below) read *Jones* to mandate enforcing denominational documents asserting a trust *regardless of whether* those documents are otherwise "embodied in some legally cognizable form." *Id*. at 606.

This split is square, entrenched, and on full display here. The Georgia Supreme Court interpreted *Jones* as mandating that States suspend their usual rules of property and trust law and instead apply canon law. This holding is wrong: *Jones* prescribed use of the very statutes set aside below, called compliance therewith a "minimal" burden, and *rejected* the view "that the First Amendment requires the States to adopt a rule of compulsory deference to religious au-

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[3] See Jeffrey Hassler, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in a Time of Escalating Intradenominational Strife*, 35 Pepp. L. Rev. 399, 457 (2008) (appendix collecting and categorizing approach prevailing in each State).

thority in resolving church property disputes." *Id.* at 605-606. More importantly, however, the decision below squarely departs from decisions of several other state supreme courts in the name of the same decision of this Court—*Jones*.

II. The urgency of resolving this split is underscored by the recent rise in church property litigation and the prevailing uncertainty surrounding ownership under current law—points that numerous commentators have noted. *Jones* rested on the premise that neutral-principles analysis would turn on "concepts of trust and property law familiar to lawyers and judges," facilitating a straightforward determination of ownership. *Id.* at 603. In reality, however, local churches in denominations across the theological spectrum cannot predict whether courts will recognize them as owners of property titled in their own names and maintained with their own resources.

This uncertainty has several pernicious effects: It forces both churches and denominations—nonprofits having limited resources—to wage costly battles over property; it discourages local churches from expanding their buildings; it discourages local churches from acting in accordance with their conscience concerning whether to remain affiliated with their current denominations; and it discourages local churches from affiliating with denominations in the first place—all to the detriment of religious freedom. Moreover, if ownership under neutral principles turns on church law, then third parties such as lenders, buyers, and tort claimants can never determine who the owner is —even where title is clear of recorded encumbrances —without examining all relevant denominational rules, past and present. That is no small task, and it may not yield a clear answer.

III. The decision below cannot be reconciled with *Jones*, or with this Court's free exercise and establishment jurisprudence more generally. As *Jones* recognized, free exercise is not implicated by "neutral provisions of state law governing the manner in which churches own property." *E.g.*, 443 U.S. at 606. Indeed, insofar as free exercise analysis is principally concerned with laws that "impose[] special disabilities on the basis of * * * religious status" (*Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 533 (1993) (citation omitted)), it is *allowing* denominations to create trusts by means not available to others that implicates the Constitution. See also *Larkin* v. *Grendel's Den, Inc.*, 459 U.S. 116, 117, 127 (1982) (barring States from "vesting in the governing bodies of churches" any "unilateral and absolute" power over others' property rights).

This Court's review is warranted.

I. The lower courts are deeply divided over the meaning of *Jones*.

The lower courts are deeply divided over whether *Jones* requires enforcing "trust" provisions contained in denominational documents, regardless of whether those provisions satisfy neutral state laws. At least five state supreme courts and the Eighth Circuit have held that *Jones* does *not* require this result. *All Saints Parish Waccamaw* v. *Protestant Episcopal Church*, 385 S.C. 428 (2009), cert. dismissed, 130 S. Ct. 2088 (2010); *Arkansas Presbytery of the Cumberland Presbyterian Church* v. *Hudson*, 344 Ark. 332 (2001); *Church of God in Christ, Inc.* v. *Graham*, 54 F.3d 522 (8th Cir. 1995) (Missouri law); *Berthiaume* v. *McCormack*, 153 N.H. 239 (2006); *St. Paul Church, Inc.* v. *Bd. of Trustees of the Alaska Missionary Con-*

ference of the United Methodist Church, Inc., 145 P.3d 541 (Alaska 2006); *In re Church of St. James the Less*, 585 Pa. 428 (2005).

Four state supreme courts disagree. In addition to the decision below and *Presbytery of Greater Atlanta, Inc.* v. *Timberridge Presbyterian Church* ("*Timberridge*"), 290 Ga. 272 (2011), petition for cert. filed (March 6, 2012) (No. 11-1101), see *Episcopal Church in Diocese of Conn.* v. *Gauss*, 302 Conn. 408 (2011), petition for cert. filed (March 14, 2012) (No. 11-1139); *Episcopal Diocese of Rochester* v. *Harnish*, 11 N.Y.3d 340 (2008); *Episcopal Church Cases*, 45 Cal.4th 467 (2009).

We quote the critical passage from *Jones* in full:

> The dissent * * * argues that a rule of compulsory deference is necessary in order to protect the free exercise rights "of those who have formed the association and submitted themselves to its authority." This argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust

> in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

Jones, 443 U.S. at 605-606 (internal citation omitted).

A. Following this Court's direction that trusts need be enforced only if "embodied in legally cognizable form," the high courts of South Carolina, Arkansas, Alaska, and Pennsylvania, as well as the Eighth Circuit (applying Missouri law), take trust provisions in church documents and hold them up to the light of state law. *If* such provisions satisfy generally applicable state law, *then* they are enforced. And in New Hampshire, such provisions will not be considered *at all* unless purely secular documents are unclear.

In *All Saints*, for example, the South Carolina Supreme Court recognized that "the neutral principles of law approach permits the application of property, corporate, and other forms of law to church disputes." 385 S.C. at 444. Thus, in marked contrast to the court below, the court in *All Saints* set aside TEC's discipline based on the "axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another." *Id.* at 449. The court held that "neither [a notice of interest recorded by the diocese] nor the Dennis Canon has any legal effect." *Ibid.*

The Supreme Court of Arkansas took a similar approach in *Arkansas Presbytery*, ruling for a local church based on the deeds—and in spite of a trust

provision in the denomination's rules. As the court explained, "nothing in the language of the deeds reflects that the [local church's property] was held in trust for the Arkansas Cumberland [Presbytery] or the National Church." 344 Ark. at 341. Claiming property conveyed in 1968 and 1977, the denomination invoked a 1984 amendment to its constitution that purported to "impose[] a trust in favor of the National Church upon property previously held by the local congregations." *Id.* at 343. The court, however, refused to consider it: state law did not "allow a grantor to impose a trust upon property previously conveyed without the retention of a trust," and *Jones* did not overthrow the "long held" state law rule "that parties to a conveyance have a right to rely upon the law as it was at that time." *Id.* at 343-344.

The Eighth Circuit read *Jones* the same way in *Church of God*, rejecting the denomination's position that "its decree governs the property issue and failure to defer to that disposition would alter its polity, thereby violating the First Amendment." 54 F.3d at 525-526. Applying "objective, well-established concepts of trust and property law," the court explained, does not "run afoul of the First Amendment." *Id.* at 526 (citing *Jones*, 443 U.S. at 603). "[S]tates are not required to defer to an ecclesiastical determination of property ownership." *Id.* at 526 (citing *Jones*, 443 U.S. at 605). Accord *Heartland Presbytery* v. *Gashland Presbyterian Church*, __ S.W.3d __, 2012 WL 42897, *10-12 (Mo. Ct. App. Jan. 10, 2012) ("*Jones* contemplates * * * that the applicable law—like American property and trust law in general—would be *state*, rather than *federal*, law"), application for transfer denied (Mo. Feb. 28, 2012); *Carrollton Presbyterian Church* v. *Presbytery of South La.*, 77 So.3d 975, 981 (La. Ct.

App. 2011) (applying "Louisiana's Trust Code" and rejecting "the Presbytery's contention that the requirement of a 'legally cognizable form' was met simply by the PCUSA's amending its constitution"), writ denied (La. Feb. 18, 2012).

Even when ruling for denominations, several other state supreme courts interpret *Jones* to prescribe a neutral application of state property and trust law. In *Berthiaume*, for example, the court sided with the Roman Catholic Church based solely on a review of state statutes and the relevant deed, which (as is typical in Catholic churches) placed title in the bishop. Stating "that the Supreme Court has left it to the States to 'adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters,'" the court determined to "first consider *only* secular documents such as trusts, deeds, and statutes," and to determine ownership on that basis if at all possible. 153 N.H. at 248 (quoting *Jones*, 443 U.S. at 602) (second emphasis added). "[O]nly if these documents leave [ownership] unclear," the court continued, "will we consider religious documents, such as church constitutions and by-laws, *even when such documents contain provisions governing the use or disposal of church property*." *Ibid.* (emphasis added).

Likewise, in *St. Paul Church* the Alaska Supreme Court ruled for the denomination—but only after finding under state law that the local church's members clearly intended to grant the Methodist denomination a trust, and only after applying the rule, then prevailing in Alaska, that trusts are presumed irrevocable unless the trust instrument says otherwise. "[U]nder different facts," the court stated, "we might determine that in accordance with [a later-enacted,

non-retroactive, generally applicable state trust law] a trust created by a local church in favor of a parent church is revocable." 145 P.3d at 557.

Similarly, in *St. James* the Pennsylvania Supreme Court reaffirmed that "courts of this Commonwealth are to apply the same principles of law as would be applied to non-religious associations." 585 Pa. at 446 (citation omitted). The main issue there was whether the parish was bound by the Dennis Canon. Like *All Saints*, and unlike the decision below, the Pennsylvania court subjected the canon to state law: "a member of a voluntary association is bound by amendments to the association's rules so long as the amendments (1) are duly enacted; and (2) do not deprive the member of vested property rights without the member's explicit consent." *Id.* at 448. The court concluded that "the Dennis Canon does not deprive St. James of its vested property rights." *Id.* at 452.

Unlike Christ Church, however, the parish in *St. James* had adopted a corporate charter automatically excluding from membership anyone who disclaimed denominational authority, and further requiring that the parish "obtain the Diocese's consent for amendments." *Id.* at 449-450. The court thus sided with TEC under state law, based on "a trust relationship that was implicit in St. James' Charter." *Id.* at 451 (citation omitted). This reasoning conflicts sharply with that adopted below. Indeed, in assessing TEC's canon under the law of voluntary associations and holding that "we are not simply deferring to a religious canon to override the rights of parties under civil law" (585 Pa. at 452 (citation and internal quotation marks omitted)), the Pennsylvania court undertook precisely the analysis that the court below deemed unconstitutional (Pet. 39a n.17).

In sum, at least five state supreme courts and the Eighth Circuit have squarely rejected the reading of *Jones* adopted below.

B. The high courts of Georgia, Connecticut, New York, and California, by contrast, understand *Jones* as mandating enforcement of "trust" provisions in church documents. These courts read *Jones* to *answer* a question (whether trust provisions in denominational discipline are legally cognizable) as a matter of *federal constitutional* law, whereas the courts above read *Jones* simply to *pose* that question as one to be answered under *state* "trust and property law." 443 U.S. at 603.

Most recently, rejecting a parish's argument that "a denomination's self-serving declaration of trust" is not cognizable under neutral legal principles, the Connecticut Supreme Court held that *Jones* requires deferring to the Dennis Canon: "*Jones* * * * not only gave general churches explicit permission to create an express trust in favor of the local church, but stated that civil courts would be *bound* by such a provision, as long as the provision was enacted *before* the dispute occurred." *Gauss*, 302 Conn. at 446. The court thus set aside the parish's numerous state law defenses as "no longer relevant." *Id.* at 451.

The New York Court of Appeals adopted the same view of "neutral principles" in *Harnish*, awarding parish property to TEC on the theory that *Jones* imposed a constitutional mandate to enforce denominational canons. The court found no trust in the deeds, corporate articles, or state statutes, explaining: "[T]here is nothing in the deeds that establishes an express trust in favor of the Rochester Diocese or National Church. [The parish's] certificate of incorpora-

tion, further, does not indicate that the church property is to be held in trust for the benefit of either the Rochester Diocese or the National Church. Nor does any provision of the Religious Corporations Law conclusively establish a trust." 11 N.Y.3d at 351.

Yet the court held the Dennis Canon "dispositive," reasoning that *Jones* "*requires* that we look to the constitution of the general church concerning the ownership and control of church property." *Id.* at 351-352 (emphasis added) (citation and internal quotation marks omitted).

The California Supreme Court's decision in the *Episcopal Church Cases* is to the same effect. Like the New York and Connecticut courts, the court there relied on the parish's accession to TEC's discipline decades before the Dennis Canon's adoption. 45 Cal.4th at 485-486. Based on *Jones*' "reference to what the 'parties' can do" in arranging ownership of church property, the parish argued that denominational canons were not enforceable under a proper neutral-principles approach. *Id.* at 487. The court disagreed, stating: "We do not so read the high court's words." Rather, "making the general church's constitution recite the trust * * * could be done by whatever method the church structure contemplated," and courts must enforce it because requiring parishes "to ratify the change"—even if required by generally applicable civil law—"*would* infringe on the [denomination's] free exercise rights." *Ibid.*

As noted by the concurring justice—whose opinion rested on a state statute authorizing denominations to declare trusts for themselves (*id.* at 488, 492)—this reasoning "is not based on neutral principles of law. No principle of trust law exists that would allow the

unilateral creation of a trust by the declaration of a nonowner of property that the owner of the property is holding it in trust for the nonowner." *Id.* at 495.

Finally, in ruling for the denomination, the court below reasoned that "requiring strict compliance with [Georgia's trust statute] to find a trust under the neutral principles analysis would be inconsistent with the teaching of *Jones* v. *Wolf* that the burden on the general church and its local churches to provide which one will control local church property in the event of a dispute will be 'minimal.'" Pet. 13a (quoting 443 U.S. at 606). "[C]hurches *may* modify their deeds, amend their charters, or draft separate legally recognized documents to establish an express trust," but *requiring* churches to do so "is not how the *Jones* v. *Wolf* Court envisioned that the neutral principles doctrine would be applied in conformity with the First Amendment." Pet. 14a-15a. Thus, "the fact that a trust was not created under our State's generic express (or implied) trust statutes does not preclude the implication of a trust on church property under the neutral principles of law doctrine," and a trust imposed "through the general church's governing law" must be given civil law effect. Pet. 16a, 14a.

That analysis makes this case an ideal vehicle to resolve the split. The court below agreed with Christ Church that "a trust was not created under our State's generic express (or implied) trust statutes," yet found a trust "under the neutral principles of law doctrine." Pet. 16a. Further, the court deemed it unconstitutional to apply ordinary property law, corporations law, trust law, or even church property law to a religious denomination—all in the name of *Jones*. Pet. 12a-17a.

Making matters worse, the court below held that "secular courts cannot adjudicate the merits of [the] claim that the procedures used by the Episcopal Church to adopt the Dennis Canon were flawed" under the civil laws that govern other voluntary associations. Pet. 39a n.17. In other words, courts *must* defer to denominational trust provisions, but *cannot* inquire whether those provisions are validly adopted under neutral principles of secular law—such as the requirement that affected members be given advance notice when voluntary associations change their rules in a way that affects members' property rights.

That is *not* a neutral-principles analysis. It is granting denominations—and them alone—the right to exempt themselves from generally applicable laws governing voluntary associations, property, and the creation of trusts. Far from requiring that result, the First Amendment forbids it. And the notion that it is required by *Jones*, while consistent with high court rulings in Connecticut, New York, and California, cannot be reconciled with the interpretation of that decision adopted by the Eighth Circuit or the South Carolina, Arkansas, Alaska, Pennsylvania, and New Hampshire supreme courts.

In sum, not all approaches declared "neutral" are actually neutral. Courts across the country have interpreted "neutral principles" in irreconcilable ways, all in the name of *Jones*. And as the foregoing precedent shows, the issue is of concern to a wide range of denominations—Episcopalian, Presbyterian, Methodist, Pentecostal, and others—further underscoring the need for this Court to resolve the split.

II. The division over the neutral-principles approach generates uncertainty in private property rights and inhibits free exercise.

The foregoing split raises important and recurring issues of national concern. To begin with, it is generating severe uncertainty concerning the ownership of valuable private property across a host of denominations. The investment-backed expectations of local churches are often betrayed by a "neutral principles" standard that renders normal property and trust law null. All agree that "neutral principles" is constitutional. But the civil courts' varied readings of neutral principles leads to "nonuniform and unpredictable" results, "divergences on these questions much greater than one might imagine from reading Supreme Court opinions," and a far greater likelihood that each successive dispute will land in court. Kent Greenawalt, *Hands Off! Civil Court Involvement In Conflicts Over Religious Property*, 98 Colum. L. Rev. 1843, 1883 (1998).

These problems have been much remarked upon.[4] Further, these disputes are at an all-time high, affect denominations across the spectrum, and are only

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[4] *E.g.*, Hassler, 35 Pepp. L. Rev. at 416-426 (state courts apply "neutral-principles" in "widely divergent ways" that "can yield different results given the same facts"); Ashley Alderman, Note, *Where's the Wall? Church Property Disputes Within the Civil Courts and the Need for Consistent Application of the Law*, 39 Ga. L. Rev. 1027, 1028 (2005) ("Because of [*Jones*'] ambiguous instructions, state court decisions have become more and more disparate, as national churches face increasing threats of division.") (internal footnotes omitted).

likely to increase in the near term.[5] Indeed, three petitions on this Court's docket present similar questions regarding the metes and bounds of *Jones*. See *supra* at 17. And disputes raising similar issues are pending in the Indiana and Texas Supreme Courts.[6]

Moreover, the uncertainty created by current law affects not only churches, their members, and denominations, but also third parties. As the dissent below recognized (Pet. 68a-69a, 75a), it starts as a notice problem. If the denomination need not record its supposed property interests (as the court below held), then lenders and buyers cannot begin to determine who owns church property without examining all relevant church canons and historical precedents—a difficult and indeterminate task. And insofar as the available scope of recovery for tort claims often depends on who exactly owns the property on which the tort occurred, the effect of the ruling below (and others like it) is to force judges and juries to examine, interpret, and apply church canons to determine who is responsible.

Uncertainty is fundamentally inconsistent with the very concept of "neutral principles." The neutral-

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[5] See Hassler, 35 Pepp. L. Rev. at 402-404; Calvin Massey, *Church Schisms, Church Property, and Civil Authority*, 84 St. John's L. Rev. 23, 33 (2010); Ira Lupu *et al.*, Pew Forum on Religion & Public Life, *Churches in Court: The Legal Status of Religious Organizations in Civil Lawsuits* 4, 10-11 (March 2011), www.pewforum.org/uploadedFiles/Topics/Issues/Church-State_Law/Pillar_Autonomy.pdf.

[6] *Masterson* v. *Diocese of Northwest Texas*, No. 11-0332 (Texas) (oral argument rescheduled; date pending); *Presbytery of Ohio Valley, Inc.* v. *OPC, Inc.*, No. 82S02-1105-MF-314 (Ind.) (argued Sept. 1, 2011).

principles approach was supposed to be "completely secular in operation" and "obviate[] entirely the need for an analysis or examination of ecclesiastical polity or doctrine." *Jones*, 443 U.S. at 603, 605. It was supposed to "rel[y] exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Id.* at 603. It was supposed to be the means to a straightforward, predictable disposition of church property.

Naturally, there will always be difficult cases at the margin. But the "promise of nonentanglement and neutrality inherent in the neutral-principles approach" (*id.* at 604) is betrayed when civil courts enforce denominational rules without regard to secular law. In States that purportedly follow neutral principles, churches reading *Jones*—seeing that "neutral principles" are "secular," "objective," and "familiar to lawyers and judges"—would have no inkling that *canon law* could govern property disputes. If "neutral principles" is just deference by another name, that is confusing, surprising, and unfair.

It is also expensive—in terms of both dollars and religious liberty. Many religious organizations, particularly at the local level, can ill afford to litigate. And even those that can would rather not be forced to turn to the courts. Everyone involved, on both sides, would prefer that precious resources now spent on legal counsel be spent on mission. And beyond the financial costs, allowing denominations to obtain civil enforcement of church law chills local churches both from affiliating with denominations in the first place, and from leaving denominations—even though their members might otherwise wish to do so.

In *Jones*, this Court predicted that "problems in application" would be "gradually eliminated." 443 U.S. at 605. That will not come to pass unless the Court intervenes. This case presents a prime opportunity to do so—to correct *Jones*' ambiguity and elaborate a clear rule that will settle the matter once and for all. If the Court forgoes this opportunity, property conflicts will multiply, litigation will proliferate, confusion in the lower courts will deepen, and entanglement will increase.

III. The decision below conflicts with this Court's precedents.

Review is also warranted to address the conflict between the ruling below and this Court's own decisions. By holding itself bound to enforce church discipline and barred from applying generally applicable state property and trust law, the court below did not follow *Jones*; it contradicted it. Moreover, the ruling below cannot be reconciled with this Court's free exercise or establishment jurisprudence more generally.

A. The decision below conflicts with *Jones*.

The ruling below conflicts with numerous aspects of *Jones*. We highlight just four here.

First, *Jones* rejected the notion that "compulsory deference" to the denomination's rules was "necessary in order to protect the free exercise rights 'of those who have formed the association and submitted to its authority.'" 443 U.S. at 605-606 (citation omitted). As this Court explained, the "burden involved" in "modify[ing] the deeds or the corporate charter to include a right of reversion or trust in favor of the general church" is "minimal." *Id.* at 606. Thus, "[t]he neutral-principles approach cannot be said to 'inhibit' the free exercise of religion *any more than do other*

neutral provisions of state law governing the manner in which churches own property." *Ibid.* (emphasis added). Remarkably, in reading *Jones* to hold that "requiring strict compliance" with Georgia's general trust statutes would violate the denomination's free exercise rights (Pet. 13a), the court below replaced the italicized language just quoted with an ellipsis (Pet. 14a) and announced that the "burden" of having to obtain deed or charter amendments "would not be minimal, but immense" (Pet. 15a).

Second, *Jones* reaffirmed that States may resolve church property disputes by applying "formal title" doctrine, which does not take account of denominational constitutions or canons *at all*, much less treat them as dispositive. 443 U.S. at 603 n.3; accord *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 723 n.15 (1976); *Maryland & Va. Eldership* v. *Church of God at Sharpsburg*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring) ("Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws.").[7] The decision below cannot be reconciled with this aspect of *Jones*.

Third, *Jones* taught that "the neutral-principles approach" is "completely secular in operation," "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and

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[7] As *Jones* explained, even under *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 722-723 (1872)—a federal common-law decision that granted greater deference to denominations—"regardless of the form of church government, it would be the 'obvious duty' of a civil tribunal to enforce the 'express terms' of a deed, will, or other instrument of church property ownership." 443 U.S. at 603 n.3.

judges," "obviates entirely the need for an analysis or examination of ecclesiastical polity," and "promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." 443 U.S. at 603, 605. But these statements cannot be true if *Jones* requires reviewing and enforcing church polity and canon law.

Fourth, while *Jones* acknowledged that "the constitution of the general church can be made to recite an express trust in favor of the denominational church," its statement that "courts will be bound" was followed by this language—"to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.* at 606. Thus, courts need only enforce trust language that reflects the intent of the "parties" (*plural*) and only if that intent is "embodied in some legally cognizable form." *Ibid.* Deciding what is "legally cognizable," of course, entails applying neutral state laws. Yet the court below found a trust "under the neutral principles of law doctrine" despite "the fact that a trust was not created under our State's generic express (or implied) trust statutes." Pet. 16a.

In sum, *Jones* did not grant denominations a constitutional right to control church property without complying with the States' ordinary legal norms. Rather, *Jones* distinguished between true matters of "doctrine or polity" and "church property issues," and held, contrary to the decision below, that States may resolve the latter by applying generally applicable state law. Cf. *Hosanna-Tabor Evangelical Lutheran Church & School* v. *EEOC*, 132 S. Ct. 694, 706 (2012) ("Requiring a church to accept or retain an unwanted minister * * * interferes with the internal governance of the church, depriving the church of control over the

selection of those who will personify its beliefs."). The best way for civil courts to avoid interfering with internal church doctrine is to resolve property disputes under ordinary state rules of property and trust law, rather than to interpret and enforce canon law or to make judicial determinations about the respective rights and powers of layers of church authorities under ecclesiastical documents.

B. The decision below conflicts with this Court's free exercise and establishment jurisprudence.

This Court's precedent since *Jones* only confirms that religious denominations have no constitutional right to enforcement of church law in civil property disputes. In *Employment Division* v. *Smith*, 494 U.S. 872, 879 (1990), for example, the Court held that "the right of free exercise does not relieve [a party] of the obligation to comply with a 'valid and neutral law of general applicability.'" 494 U.S. 872, 879 (1990); see also *Lukumi*, 508 U.S. at 531. Ordinary rules of trust and property law are textbook examples of neutral and generally applicable laws. See *Jones*, 443 U.S. at 606. Thus, the Free Exercise Clause does not permit denominations to declare themselves exempt from such laws.

Indeed, the absence of any free exercise problem here is confirmed by the fact that the Diocese holds title to *30-plus* local church properties. R-2233-2234. Thus, even under the most generous understanding of free exercise, the Diocese cannot establish that its religious exercise is substantially burdened by having to comply with Georgia property law. See *Wisconsin* v. *Yoder*, 406 U.S. 205, 215-216 (1972) ("[free exercise] claims must be rooted in religious belief," not in

"philosophical and personal" considerations or a desire to avoid inconvenience). As the dissent below recognized: "Perhaps the [denomination] could not obtain a deed *because CCS would not give it a deed*, but this has nothing to do with the burdens or costs associated with the [denomination's] drafting and recording a deed." Pet. 79a. In any event, "imagined burdens" cannot "excuse the [denomination] from being required to comply with the laws that exist to protect all citizens." *Ibid.*

Nor can the decision below be reconciled with this Court's establishment jurisprudence. As the Court explained in *Larkin*, States may not grant "unilateral and absolute power" to "a church" on "issues with significant economic and political implications" for the property rights of others. 459 U.S. at 117, 127. Yet permitting denominations to create a trust in congregational property by immunizing them from neutral state laws does just that. Indeed, it does more—it actually transfers beneficial ownership of property to which the denomination lacks title.

No other entity, secular or religious, enjoys that power. As the dissent recognized, "[a]ll other legal entities—individuals, corporations, trusts, partnerships, LLCs, and investment clubs—have to pay for properly recorded deeds." Pet. 81a. "Granting a privilege for hierarchical churches to establish a trust on the property of others, even their own member churches, represents a dangerous preference in favor of hierarchical churches in violation of the Establishment Clause"—"a troubling effort to favor one type of religion over other religions or non adherents." Pet. 110a.

Affording denominations such special privileges is not neutral. It is not even mere deference. It is giving a religious entity unilateral power to rewrite civil property and trust law. "[B]oth the Free Exercise and the Establishment Clauses compel[] the State to pursue a course of neutrality toward religion, favoring neither one religion over others nor religious adherents collectively over nonadherents." *Board of Educ. of Kiryas Joel Village Sch. Dist.* v. *Grumet*, 512 U.S. 687, 696 (1994) (internal citations and quotation marks omitted) (quoted at Pet. 110a). By stripping local churches of their property via extra-legal means available to no one but denominations, the interpretation of *Jones* adopted below violates the requirement of neutrality and "'impose[s] special disabilities on the basis of * * * religious status.'" *Lukumi*, 508 U.S. at 533 (quoting *Smith*, 494 U.S. at 877). Such an approach is not even constitutional, much less the application of "neutral principles of law, developed for use in all property disputes." *Jones*, 443 U.S. at 602-603 (citation omitted).

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In the 33 years since *Jones* was decided, the lower courts have become intractably divided over how to read that decision. At least five state supreme courts and the Eighth Circuit hold that *Jones* does *not* require enforcing trust provisions in church documents, whereas four state supreme courts hold that it does. The decisions involve multiple denominations, across the theological spectrum, and affect thousands of local churches. For as long as the law remains uncertain, both sides in these disputes must divert resources from their mission to costly, protracted, and distracting litigation.

If the decision below is correct, moreover, it means religious denominations have a constitutional right to transfer beneficial ownership of the property of thousands of parishes in all 50 States in one fell swoop—simply by passing a church canon. Indeed, it means denominations have a right to do so without giving parishes opt-out rights or even notifying them that the canon will be voted on. And it means that denominations have a right to enjoy the benefits of local church property ownership without the attendant burdens—such as having to pay the mortgage or being identifiable on publicly recorded documents when third parties seek to hold the local church liable in contract or tort. No other entity, secular or religious, has such breathtaking power over property titled in others' names. Granting denominations such power may not even be constitutionally *permitted*. At a bare minimum, it is not constitutionally *required*. This Court's intervention is needed to make that clear.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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