Nos. 20-534 & 20-536

IN THE

Supreme Court of the United States

ALL SAINTS EPISCOPAL CHURCH (FORT WORTH),
Petitioner,

v.

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

THE EPISCOPAL CHURCH, ET AL.,
Petitioners,

v.

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

On Petitions for Writs of Certiorari to the Supreme Court of Texas

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the First Amendment or *Jones* v. *Wolf,* 443 U.S. 595 (1979), requires civil courts in church property-ownership disputes to enforce trusts recited in general-church charters that are not enforceable or legally cognizable under well-established state property and trust laws.

2. Whether the First Amendment or *Jones* requires courts to treat issues of state corporate law as ecclesiastical matters of church polity that require deference to the church authorities in suits purely about property control rather than church control.

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 has any parent corporation or shareholder that owns 10% or more of its shares.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Page

STATUTES

TABLE OF AUTHORITIES—Continued

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BRIEF IN OPPOSITION

INTRODUCTION

In *Jones* v. *Wolf*, 443 U.S. 595 (1979), this Court held that the First Amendment permits state courts to apply neutral principles of state law to resolve church-property disputes. Since *Jones*, nearly every state court has elected to do so, without complaint or difficulty, while few have opted for the constitutionally troubling deference regime of *Watson* v. *Jones*, 80 U.S. 679 (1871). Petitioners have not made a persuasive—much less compelling—

case for mandating deference and overruling *Jones*'s neutral-principles approach, which churches have relied upon for decades.

Nor do alleged conflicts over *Jones*'s application warrant review. Divergent outcomes on the issues petitioners raise are a product of state-law and factual differences among the cases, not a split on any issue of federal law. This Court has repeatedly denied certiorari on the questions presented here. 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*, 443 U.S. at 602. For four decades, the Court has approved at least two methods for adjudicating church-property ownership: "deference" and "neutral principles."

1. This Court outlined the deference rubric in *Watson*, 80 U.S. 679. That approach requires courts to place a church into one of two categories: it is either "congregational" or "hierarchical." *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. But in the case of a church "under [the] government and control" of a hierarchical denomination, courts must defer to the property-ownership decision of the "highest * * * church judicatories to which the matter has been carried." *Id.* at 727.

2. This Court later recognized that states could also apply neutral principles of law to settle church-property disputes. *Jones* is the Court's most extensive treatment of that approach, but earlier cases acknowledged that neutral principles of state property law—applicable to religious and secular entities alike—could resolve church-property litigation without offending the First Amendment. See *Md. & Va. Eldership of Churches* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 367 (1970) (per curiam) (affirming reliance on "state statutory law governing the holding of property" to resolve hierarchical church-property dispute); *Presbyterian Church in 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.").

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 "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 where the relevant documents "incorporat[e] religious concepts in the provisions relating to the ownership of property," courts must "defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Ibid.*

Jones emphasized two ways that neutral principles are more faithful to the First Amendment than a rule of compulsory deference to a hierarchical church's property decision. First, neutral principles "free civil courts com-

pletely 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 (citation omitted).

Second, "[u]nder the neutral-principles approach, the outcome of a church property dispute is not foreordained" in favor of a local or a general church, regardless of the parties' pre-dispute arrangements. *Id.* at 606. Rather, 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.* Neutral principles thus best "ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members." *Id.* at 604.

3. The overwhelming majority of states has adopted the neutral-principles approach. See BIO App. 1a-6a (demonstrating that 36 states and D.C. have chosen neutral principles, three states have rejected that approach, five 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 quarter-century has employed neutral principles of state law. *Ibid.*

B. Factual Background

Petitioner The Episcopal Church ("the General Church") is a national religious association. It is governed by a General Convention, which adopts and amends the General Church's constitution and canons. GC Pet. App. 3a.[1] Regional dioceses are likewise governed by diocesan conventions that adopt diocesan constitutions and canons. *Ibid.* Each diocese is comprised of local churches called parishes, missions, or congregations. *Id.* at 3a-4a. Petitioner All Saints Episcopal Church represents the faction of that parish that chose to remain aligned with the General Church. AS Pet. 8.

In 1979, the General Church, acting "in direct response" to *Jones* (GC Pet. 10), adopted Canon I.7.4, known as the "Dennis Canon." GC Pet. App. 6a. 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." *Ibid.*

In 1982, respondent Episcopal Diocese of Fort Worth ("the Diocese") was formed as an unincorporated association under Texas law after the Episcopal Diocese of Dallas voted to divide into two parts. *Id.* at 4a. The Diocese then formed the Corporation of the Episcopal Diocese of Fort Worth ("the Corporation"). *Ibid.* Under the trust recited in the Diocese's constitution ("Diocesan Trust"), the Corporation holds title to the disputed properties in trust for the use and benefit of the local parishes and missions in union with the Diocese's Convention made up of clergy and lay delegates. *Id.* at 4a, 14a; 17 C.R. 6091.

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[1] "GC" refers to the General Church and "AS" refers to All Saints.

All property held by the Corporation at its inception had been purchased and used by the local congregations that comprised the new Diocese; all later-acquired property was also purchased with funds donated by local parishioners. 30 C.R. 10530-10531. 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. GC Pet. App. 6a. The Diocese's constitution provided that property held by the Corporation could not be encumbered without written consent of the Corporation and the parish occupying the property. 17 C.R. 6102. The General Church reviewed the Diocese's constitution before its admission and raised no objection. 17 C.R. 6052-6054.

In 1989—long before this dispute arose—the Diocese disavowed any General Church interest in local property. Specifically, 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.*

29 C.R. 10169, 10239 (emphases added). Amendments to the Diocese's organizational documents need no approval from the General Church. GC Pet. App. 27a-28a, 30a, 36a.

In 2007 and 2008, due to doctrinal disagreement with the General Church, the Diocese's Convention voted

overwhelmingly to disaffiliate from the General Church.[2] *Id.* at 8a. Those voting to withdraw represented thousands of parishioners in scores of churches across the Fort Worth region. 8 C.R. 2780; 19 C.R. 6719. Recognizing that a handful of local congregations dissented, however, the Diocese sought amicable separation. Contrary to the General Church's dramatic declaration that "parishioners [were] locked out of their houses of worship" (GC Pet. 24), the Corporation voluntarily transferred local properties to three parishes that wished to remain in union with the General Church. GC Pet. App. 9a n.10; 30 C.R. 10533. The Diocese sought a similar amicable resolution with others, including petitioner All Saints, which rejected the Diocese's overtures and threatened to arrest the Diocese's bishop if he entered the All Saints property to discuss the matter. 38 C.R. 13493-13498.

II. PROCEEDINGS BELOW

A. *EDFW I*

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. GC Pet. App. 9a-10a. They conceded these actions "did not comport" with the Diocese's organizational documents. *Id.* at 9a. The General Church and members of the minority faction (petitioners here and collectively "the General Church") pursued legal action in Texas state court against the Diocese, the Corporation, and their leadership (respondents here

[2] 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. 29 C.R. 10170.

and collectively "the Diocese"), seeking title to and possession of the church properties held by the Corporation, claiming equitable title under the Diocesan Trust and the Dennis Canon. *Id.* at 10a. At most properties, not a single worshipper wished to affiliate with the General Church. 2 S.C.R. 238.

The parties filed cross-motions for summary judgment. GC Pet. App. 10a. 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 all property in the diocese. *Id.* at 233a. Alternatively, the General Church argued that it owned the property under neutral principles because the Dennis Canon recited an express trust in its favor. *Id.* at 241a. The Diocese responded that the court should apply neutral principles of Texas property law, that under those principles the Dennis Canon was either invalid or had been revoked, and thus that the Corporation's disposition of the disputed property was controlling. *Id.* at 234a; 7 C.R. 2055-2059. Respondents argued that the majority faction controlled the Diocese's Convention under Texas unincorporated-association law and, consequently, that parishes and missions affiliated with the majority faction equitably owned the property under the Diocesan Trust. 7 C.R. 2059-2068.

The trial court applied the deference approach, holding that the individuals in the Diocese whom the General Church's Presiding Bishop deemed "loyal to the hierarchical church body" were entitled to the diocesan property. GC Pet. App. 262a. The court granted summary judgment and ordered respondents to surrender all diocesan property and control of the Corporation to petitioners. *Id.* at 263a.

2. The Texas Supreme Court reversed and remanded. Relying on its companion decision in *Masterson* v.

The Diocese of Northwest Texas, 422 S.W.3d 594 (Tex. 2013), the court held that "Texas courts should use only the neutral principles methodology" to resolve church-property disputes. GC Pet. App. 237a.

In *Masterson*, the court recognized that it had employed the neutral-principles approach since *Brown* v. *Clark*, 116 S.W. 360 (Tex. 1909). *Masterson*, 422 S.W.3d at 605. 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 605-606. 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 606.

The Texas Supreme Court offered guidance to the trial court for applying neutral principles on remand. Noting the General Church's argument that the Dennis Canon established an express trust over diocesan property, the court referred the trial court to its decision in *Masterson*. GC Pet. App. 241a-243a. There, the court rejected the General Church's contention that a general church's express-trust recitation is automatically sufficient as a matter of "federal common law" (*id.* at 240a) to create a trust interest in local church property, irrespective of state-law requirements. *Masterson*, 422 S.W.3d at 612. Moreover, the court concluded, "even assuming a trust was created" by the Dennis Canon, a trust governed by Texas law is revocable absent "express terms making it irrevocable." GC Pet. App. 243a (citing Tex. Prop. Code Ann. § 112.051). The Dennis Canon, the court observed, "does not contain language making the trust expressly irrevocable." *Ibid.* The court directed the trial court to consider the parties' contentions regarding trust creation and revocation under Texas law. *Id.* at 242a.

The General Church sought this Court's review, urging *Jones*'s overruling and asserting a split with respect to *Jones*'s application to general-church trusts. The Court denied certiorari. *Episcopal Church* v. *Episcopal Diocese of Fort Worth*, 574 U.S. 973 (2014).

B. *EDFW II*

1. On remand, the trial court awarded all property to respondents. GC Pet. App. 226a. It held that under Texas law, the General Church had no trust interest in the properties and that respondents were the legal representatives of the unincorporated association known as the Episcopal Diocese of Fort Worth. *Id.* at. 227a.

2. Texas's Second Court of Appeals reversed in part. *Id.* at 39a. In a single-judge opinion, the court held that: property ownership must be determined based on the individual deeds (*id.* at 203a n.104); the Dennis Canon did not establish a trust in favor of the General Church under Texas law (*id.* at 179a); and the First Amendment required deference to the General Church's opinion of who constitutes the Texas unincorporated nonprofit association known as the Episcopal Diocese of Fort Worth (*id.* at 203a-205a). The court rendered judgment on two of 121 disputed deeds as exemplars and remanded to the trial court to resolve ownership of the remaining properties. *Id.* at 207a.

3. The Texas Supreme Court unanimously reversed and rendered judgment for respondents. The court noted that after 10 years of litigation, all parties agreed the Diocesan Trust placed equitable title in the congregations in union with the Convention of the local Diocese. *Id.* at 14a. The issue was thus whether respondents control that Convention or whether petitioners do. *Id.* at 2a.

Noting that *Jones* held majority rule involved no doctrinal inquiry or violation of the First Amendment, the court applied that rule of Texas unincorporated-

associations law as it was the rule originally chosen by the parties. *Id.* at 25a. Accordingly, the court recognized that "the majority faction is the Fort Worth Diocese" as a legal matter and thus that "parishes and missions in union with that faction hold equitable title to the disputed property." *Id.* at 30a.

The court expressly deferred to the General Church's "determinations as to which faction is the true diocese loyal to the church." *Ibid.* But it explained that in "applying neutral principles to the organizational documents, the question of property ownership is not entwined with or settled by" affiliation with the General Church. *Ibid.* Rather, the Diocesan Trust's terms required affiliation with the local Convention; since the majority represented that Convention under neutral principles of Texas associations law, equitable title belonged to them. *Id.* at 4a, 26a.

The court then considered the General Church's argument "that the Dennis Canon creates a trust in its favor" over the Diocese's property. *Id.* at 30a. The court reiterated its holding in *Masterson*: "[E]ven assuming the Dennis Canon is a valid trust, it is revocable under Texas law because it was not made expressly irrevocable." *Id.* at 31a-32a. The court concluded that the Diocese's 1989 amendment, to which the General Church "lodged no objection," constituted a valid revocation of any trust imposed by the Dennis Canon. *Id.* at 33a-34a.

REASONS FOR DENYING THE PETITIONS

None of the questions presented merits review. State courts have not split over whether *Jones* holds that courts must enforce a trust any time a general church's governing documents purportedly recite an express-trust interest in local church property. Rather, as *Jones* 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. Differing outcomes are driven by factual and state-law differences, not disagreements over constitutional law. The General Church has repeatedly argued as much in successfully *opposing* certiorari on this very question. See *The Falls Church* v. *The Protestant Episcopal Church in the U.S.*, No. 13-449 (cert. denied Mar. 10, 2014); *Gauss* v. *The Protestant Episcopal Church in the U.S.*, No. 11-1139 (cert. denied June 18, 2012). Now that it lost a case on unique facts under Texas trust law, the General Church sings a different tune.

Nor have state courts divided over whether a court is permitted to resolve questions of church polity. Courts instead uniformly follow *Jones*'s instruction that they must "defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." 443 U.S. at 602. The Texas Supreme Court followed this course as well, and petitioners merely seek factbound review of the court's correct determination that no issue of polity arose here.

Lastly, this Court should decline petitioners' invitation to overrule its 41-year-old decision in *Jones* and mandate that state courts apply deference to property disputes. *Jones*'s neutral-principles framework, unlike *Watson*'s compulsory-deference regime, permits courts to apply familiar state-law rules, respects the parties' pre-dispute property arrangements, and honors 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. Neutral principles impose no unconstitutional burden on churches; indeed, petitioners seek to upend neutral principles because they failed to comply with a simple state-law

provision requiring persons who desire an irrevocable trust to say so. Certiorari should be denied.

I. THE PETITIONS DO NOT IMPLICATE ANY FEDERAL-LAW CONFLICT OVER WHEN A GENERAL CHURCH'S EXPRESS-TRUST CANON ESTABLISHES AN ENFORCEABLE TRUST

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

1. Petitioners assert a split among state supreme courts over whether *Jones* requires courts to treat a general church's express-trust recitation as dispositive of its trust interest in local church property, regardless whether that recitation validly establishes a trust under state law. GC Pet. 18; AS Pet. 19. But as the General Church argued when it opposed certiorari on this precise 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 U.S.*, No. 11-1139 (cert. denied June 18, 2012) (hereinafter "Gauss BIO").[3] Contrary to the General Church's current contentions (GC Pet. 22), there are no cases in which courts gave "conclusive effect to 'express-trust canon[s]' like the Dennis Canon" as a matter of federal law. Rather, courts applying *Jones* have carefully 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.[4]

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[3] Only one of the cases in the General Church's now-alleged split post-dates its *Gauss* brief.

[4] Trusts may be created by conduct in many states, though not for real or personal property in Texas. Compare Restatement (Third) of Trusts § 13 cmt. b (2003) ("Except as otherwise provided by statute, * * * the required manifestation of intention to create a trust

The Georgia Supreme Court's decision in *Rector, Wardens, & Vestrymen of Christ Church in Savannah* v. *Bishop of the Episcopal Diocese of Georgia*, 718 S.E.2d 237 (2011), is illustrative. Far from holding that the Dennis Canon controlled the trust issue, the court emphasized that it did "not rely exclusively on the Dennis Canon." *Id.* 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) (same). 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 strategically altered quotation, the Georgia Supreme Court never stated that the diocese need not "fully comply with [state trust law]" to hold local property in trust. GC Pet. 19 (quoting *Christ Church*, 718 S.E.2d at 244-245) (alteration in GC Pet.). The court observed instead 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 Georgia Code §§ 14-5-46 and 14-5-47, statutes that specifically "govern the holding of church property." *Id.* at 245 (citation omitted); see al-

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may be by written or spoken words or by conduct."), with Tex. Prop. Code Ann. § 112.004 ("A trust in either real or personal property is enforceable only if there is written evidence of the trust's terms bearing the signature of the settlor or the settlor's authorized agent.").

so *id.* at 255 (emphasizing that "our decision derives from * * * the policy reflected in [Georgia Code] §§ 14-5-46 and 14-5-47").

Nor has the California Supreme Court interpreted *Jones* to mandate enforcement of the Dennis Canon "as a matter of federal law." AS Pet. 20-21. In *Episcopal Church Cases*, 198 P.3d 66 (Cal. 2009), the court held that California courts should apply *Jones*'s neutral-principles approach, 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 governs religious property and expressly validates general-church trusts. *Id.* at 79-83. Nothing in the opinion suggests that the California Supreme Court considered the Dennis Canon dispositive apart from state law as applied to all relevant documents.

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 in spite of state-law provisions. The court reaffirmed its view that neutral principles require not only examination of the 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 "factor[s]"—none of which 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.

Similarly, in *Episcopal Church in the Diocese of Connecticut* v. *Gauss*, 28 A.3d 302 (2011), the Connecticut

Supreme Court adopted neutral principles and explained that it relies on "state statutes and common-law principles." *Id.* at 316. The court then applied Connecticut law to the Dennis Canon and "considered [it] together" with other relevant facts and documents. *Id.* at 319-320.

The General Church incorrectly insists that the *Gauss* court considered itself "bound" by federal law to enforce the Dennis Canon, notwithstanding state law. GC Pet. 19. But that is not what the General Church said when it opposed certiorari in *Gauss*. Then, 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. Gauss BIO 1, 7 (emphasis added). Instead, the General Church contended, the court found a trust "as a matter of state law." *Id.* at 1. The General Church was correct then about *Gauss*'s state-law ground of decision and the absence of any conflict. Nothing has changed except the General Church's litigating position.

Nor has the Tennessee Supreme Court held that church trust provisions are enforceable irrespective of state law. In *Church of God in Christ, Inc.* v. *L.M. Haley Ministries, Inc.*, 531 S.W.3d 146 (Tenn. 2017), the court held that in applying neutral principles, "courts may consider any relevant statutes, the language of the deeds and any other documents of conveyance, charters and articles of incorporation, and any provisions regarding property ownership that may be included in the local or hierarchical church constitutions or governing documents." *Id.* at 170. Although the court noted that the trust language need not appear in a "deed or other civil legal document" and may instead appear in church governing documents, it required that trust language sufficient under state law must appear *somewhere* in order to create a valid trust. *Id.* at 171.

The Kentucky Supreme Court's decision in *Cumberland Presbytery of Synod of the Mid-West of Cumberland Presbyterian Church* v. *Branstetter*, 824 S.W.2d 417 (1992), does not evidence a split over the application of *Jones* because it is doubtful that Kentucky courts even follow neutral principles. Instead, the court applied the "compulsory deference rule" and declared that the faction "sanctioned by the central body * * * must prevail." *Id.* at 420 (quotation marks omitted). To the extent that opinion alternatively applied the neutral-principles approach, nothing suggests that the church's trust did not comply with state law. See *id.* at 421-422.

The General Church relegates Colorado and Delaware to a footnote for good reason. GC Pet. 20 n.1. The Colorado Supreme Court's statement that evidence of a trust may be considered even if "not couched in the traditional forms and language of trust law" merely reflects the idea that *Jones* "did not restrict the inquiry [into the existence of a trust] to a search for explicit language of [an] *express* trust." *Bishop & Diocese of Colo.* v. *Mote*, 716 P.2d 85, 100 (1986) (emphasis added). Rather, under Colorado law, "the intent to create a trust can be inferred from the nature of property transactions, the circumstances surrounding the holding of and transfer of property, the particular documents or language employed, and the conduct of the parties." *Ibid.* Similarly, the Delaware Supreme Court stated that "[t]he existence of an implied trust may be reached through reliance on neutral principles of law, specifically, evidence found in the deeds, corporate charters, church documents, and state statutes." *E. Lake Methodist Episcopal Church, Inc.* v. *Trs. of Peninsula-Del. Ann. Conf. of United Methodist Church, Inc.*, 731 A.2d 798, 809 (1999). Nothing indicates that those states would ratify trusts that are invalid under state law.

2. No court has acknowledged a "deep" or "entrenched" split (AS Pet. 2, 19; GC Pet. 22) over whether a general church's purported express-trust recitation creates a trust under 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, 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 422 S.W.3d at 611-612. *Church of God in Christ* merely noted inconsistencies among the states about *where* state-law-compliant trust language must appear, not whether it is required at all. 531 S.W.3d at 168. And a footnote in *Presbytery of Ohio Valley* v. *OPC, Inc.*, 973 N.E.2d 1099 (Ind. 2012), 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 *Timberridge* to support that proposition (*id.* at 1106 n.7), and neither does so. See *supra* at 14-16.

To be sure, some state courts *have* "disagreed * * * over the legal implications of" church trusts. *Hope Presbyterian Church of Rogue River* v. *Presbyterian Church (U.S.A.)*, 291 P.3d 711, 721 (Ore. 2012)). But that disagreement stems from courts' application of different state laws to different facts, not from any conflict over whether *Jones* federally mandates enforcing a general church's express-trust provision without regard to state law.

As the Connecticut Supreme Court recognized, *Jones* "implicitly approved of possibly different outcomes in different jurisdictions" and "did not seem to regard the lack of uniform outcomes as a disadvantage." *Gauss*, 28 A.3d at 316. The factbound and state-law-specific nature of decisions applying neutral principles explains why the

Court has repeatedly denied certiorari, rejecting petitions by local congregations and general churches alike.[5]

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 allegedly 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." *Masterson*, 422 S.W.3d at 612.

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[5] See *Protestant Episcopal Church in the Diocese of S.C.* v. *The Episcopal Church*, No. 17-1136 (cert. denied June 11, 2018); *Episcopal Church* v. *Episcopal Diocese of Fort Worth*, No. 13-1520 (cert. denied Nov. 3, 2014); *The Falls Church* v. *The Protestant Episcopal Church in the U.S.*, No. 13-449 (cert. denied Mar. 10, 2014); *Presbytery of Ohio Valley, Inc.* v. *OPC, Inc.*, No. 12-907 (cert. denied Apr. 29, 2013); *Presbytery of S. La.* v. *Carrollton Presbyterian Church of New Orleans*, No. 11-1393 (cert. denied Oct. 1, 2012); *Timberridge Presbyterian Church, Inc.* v. *Presbytery of Greater Atlanta, Inc.*, No. 11-1101 (cert. denied June 18, 2012); *Rector, Wardens & Vestrymen of Christ Church in Savannah* v. *Bishop of Episcopal Diocese of Ga., Inc.*, No. 11-1166 (cert. denied May 21, 2012); *Gauss* v. *The Protestant Episcopal Church in the Diocese of Conn.*, No. 11-1139 (cert. denied June 18, 2012); *Green* v. *Campbell*, No. 09-986 (cert. denied Apr. 15, 2010); *St. Luke's of the Mountains Anglican Church in La Crescenta* v. *Episcopal Church*, No. 09-708 (cert. denied Mar. 1, 2010); *Ark. Annual Conference of the African Methodist Episcopal Church, Inc.* v. *New Direction Praise & Worship Ctr., Inc.*, No. 08-1352 (cert. denied Oct. 5, 2009); *Kim* v. *Synod of S. Cal. & Haw.*, No. 08-1508 (cert. denied Oct. 5, 2009); *Rector, Wardens & Vestrymen of St. James Par. in Newport Beach* v. *Protestant Episcopal Church in Diocese of L.A.*, No. 08-1579 (cert. denied Oct. 5, 2009); *African Methodist Episcopal Zion Church* v. *From the Heart Ministries, Inc.*, No. 02-798 (cert. denied Jan. 27, 2003); *Ark. Presbytery of Cumberland Presbyterian Church* v. *Hudson*, No. 01-8 (cert. denied Oct. 1, 2001).

Jones's description of the neutral-principles method 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." *Jones*, 443 U.S. at 603 (emphasis added). That could only mean *state*-law concepts, for "[u]nder our federal system, property ownership is not governed by general federal law, but rather by the laws of the several States." *Oregon ex rel. State Land Bd.* v. *Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378-379 (1977).

Petitioners nonetheless isolate *Jones*'s statement that a general church "can ensure" ownership of church property by "recit[ing] an express trust in favor of the denominational church." GC Pet. 23 (quoting 443 U.S. at 606); AS Pet. 27 (same). But petitioners ignore *Jones*'s qualification that such recitations are effective only if "embodied in some legally cognizable form." 443 U.S. at 606. All Saints ignores that phrase altogether, while the General Church addresses it in passing, apparently interpreting it to mean "that the document is framed in secular rather than religious terms." GC Pet. 21. Petitioners cannot identify any federal rule of decision that would separate valid trusts from invalid ones, reflecting that their novel approach would create more problems than it solves. 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 consistently understood *Jones*.

B. Even if there were a split on how courts must assess trust creation under *Jones*, it is not implicated here

1. Even if there were a split over whether constitutional law governs the creation of general-church trusts irrespective of state law, this case does not present it. Petitioners propose a split regarding the requisites to establish an enforceable trust in the first instance. But the Texas Supreme Court "assum[ed] the Dennis Canon is a valid trust."[6] GC Pet. App. 31a. The court's decision turned on the fact that the Dennis Canon "is revocable under Texas law because it was not made expressly irrevocable" and that the Diocese had validly revoked it. *Id.* at 31a-32a.

Petitioners allege no split over whether federal law forecloses state trust-revocability principles, and *Jones* does not specifically address the matter. Indeed, the state supreme courts that considered 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 revocation power); *St. Paul Church, Inc.* v. *Bd. of Trs. of the Alaska Missionary Conf. of the United Methodist Church, Inc.*, 145 P.3d 541, 557 (Alaska 2006) (same). No court has suggested that federal law prohibits applying neutral principles of state revocability law. Thus, at a minimum, this case presents a poor vehicle for wading

[6] Because they identify no jurisdiction that has held the Dennis Canon invalid under state law, petitioners cannot accurately assert that courts have divided over the Dennis Canon's "validity." AS Pet. 19.

into a supposed split over how to assess the *creation* of church-property trusts.[7]

2. The facts and state law at issue here further illustrate the illusory nature of the alleged split. This case differs importantly from cases on the other side of the asserted conflict. Unlike Georgia, California, and New York, Texas has no statutes specifically 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; cf. GC Pet. App. 29a n.66. Moreover, while local churches in the Georgia, New York, Connecticut, Tennessee, Delaware, and Colorado cases acquiesced to the general-church trust by consistent pre-dispute conduct (*Christ Church*, 718 S.E.2d at 254; *Harnish*, 899 N.E.2d at 924-925; *Gauss*, 28 A.3d at 319-320; *Church of God in Christ*, 531 S.W.3d at 173; *E. Lake Methodist Episcopal Church*, 731 A.2d at 810; *Mote*, 716 P.2d at 104-107), the Diocese repeatedly disavowed the General Church's interest in local property (17 C.R. 6102; 29 C.R. 10169, 10239). These state-law and factual differences drive the outcomes in this field, as the General Church acknowledged when the shoe was on the other foot. Brief in Opposition of Respondents The Protestant Episcopal Church in the U.S., et al. at 1, *The Falls Church* v. *The Protestant Episcopal Church in the U.S.*, No. 13-449 (cert. denied Mar. 10, 2014) ("The decisional conflict cited in the petition has nothing whatsoever to do with the factbound, state law decision below.").

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[7] The narrow revocability question presented here would infrequently recur because Texas is a rare state that presumes trusts revocable. Siegel, *Unduly Influenced Trust Revocations*, 40 Duquesne L. Rev. 241, 243 n.16 (2002). This has been Texas law since 1943. See Act of April 19, 1943, 48th Leg. R.S., ch. 148, § 41, 1943 Tex. Gen. Laws 232, 246 (currently Tex. Prop. Code Ann. § 112.051(a)).

II. All Courts Agree That Matters Of Church Polity Are Ecclesiastical Issues Beyond The Reach Of State Law

The General Church perceives a second split, which All Saints omits. It argues that several states "grant conclusive deference to the church's determinations on questions of polity, even where the religious body disagrees with state law," while others "follow state law even in the face of a directly conflicting determination by the church's highest governing body." GC Pet. 25. Not so. The General Church is manufacturing a split where none exists by mixing cases that concern ecclesiastical-polity issues with those that address secular matters such as the corporate status of the legal entity that controls church property. On the former, all courts—including the court below—agree that state law cannot overrule ecclesiastical determinations. On the latter, outcomes diverge due to state-law differences and whether a state follows deference or neutral principles. But *that* sort of divergence was foreseen and sanctioned by *Jones* and does not evidence any federal-law conflict.

A. Jurisdictions that purportedly embody the General Church's preferred approach were either applying the deference approach or faced purely ecclesiastical issues that merit deference even under neutral principles.

Three cases cited by the General Church applied *Watson* deference to church-property disputes. See *Church of God of Madison* v. *Noel*, 318 S.E.2d 920, 924 (W. Va. 1984); *Tea* v. *Protestant Episcopal Church in Diocese of Nev.*, 610 P.2d 182, 184 (Nev. 1980); *Protestant Episcopal Church in Diocese of N.J.* v. *Graves*, 417 A.2d 19, 24-25 (N.J. 1980). To the extent those cases "conflict" with outcomes from jurisdictions following neutral principles, that is unsurprising given the different decisional rules under the two approaches.

The other cases cited by the General Church involve ecclesiastical issues that all courts agree warrant deference even under *Jones*. 443 U.S. at 602 (stating that the First Amendment "requires that civil courts defer to the [hierarchical church's] resolution of issues of religious doctrine or polity"). In *Church of God in Christ*, the Tennessee Supreme Court deferred to the highest ecclesiastical body's decision as to "whether Bishop Hall [was] the duly appointed pastor of Temple COGIC." 531 S.W.3d at 173. It was undeniably mandatory for the court to defer to the church's determination as to the identity of its ministers. See *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 185 (2012).

Similarly, in *Harris* v. *Matthews*, 643 S.E.2d 566 (N.C. 2007), the court declined to decide whether church officials had improperly used church funds because the court "would be required to interpose its judgment as to both the proper role of these church officials and whether each expenditure was proper in light of Saint Luke's religious doctrine and practice." *Id.* at 571. Because those ecclesiastical matters formed the core of the dispute, the court recognized that "no neutral principles of law exist to resolve plaintiffs' claims" and deferred to the church's judgment. *Ibid.*

Another corollary case, *Hutterville Hutterian Brethren, Inc.* v. *Waldner*, 791 N.W.2d 169 (S.D. 2010), involved questions of religious doctrine and belief that "pervade[d] the corporate governance issue." *Id.* at 179. Church membership was a prerequisite for membership in the corporation. *Id.* at 178. To determine the corporate-governance issues, the court "would have to determine the validity of the Appellants' purported excommunications." *Ibid.* Those are classic ecclesiastical matters that require deference even under *Jones*.

B. None of the cases cited by the General Church on the other side of the claimed split decided a polity issue or other ecclesiastical question. They instead involved secular issues regarding the legal status of corporate entities, which may properly be addressed under neutral principles of state law.

The courts in *St. Paul*, 145 P.3d at 56, and *Aldrich ex rel. Bethel Lutheran Church* v. *Nelson ex rel. Bethel Lutheran Church*, 859 N.W.2d 537, 541 (Neb. 2015), recognized that churches have two natures: one corporate and one religious.[8] Both addressed only corporate-entity questions. The *St. Paul* court, for example, determined under neutral principles that St. Paul "exist[ed] as a legal entity independent of its affiliation with" the United Methodist Church, and the court therefore did not need to delve into "matters of power allocation within" the United Methodist Church. 145 P.3d at 561. The court held only that St. Paul Church was entitled to "control of the St. Paul corporate entity and the name 'St. Paul.'" *Id.* at 559.

Aldrich likewise recognized that neutral principles of law could be applied to determine which faction in a church controlled the "nonprofit corporation under Nebraska law" and its attendant property. 859 N.W.2d at 541. The case did not "involve a doctrinal dispute." *Id.* at 540-541.

C. Nor is a split evidenced by the decision below or *Masterson*. The decision below affirmed that "[c]ourts applying the neutral principles methodology defer to religious entities' decisions on ecclesiastical and church polity issues." GC Pet. App. 22a. And the court recognized that a church may arrange its affairs "so that ecclesiastical decisions effectively determine the property issue."

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[8] See *Matthew* 22:21.

Ibid. (emphasis omitted). But here, "the parties arranged the diocese's affairs so that a majority of the diocese and its convention control the unincorporated association." *Id.* at 25a. The court therefore applied the Texas Uniform Unincorporated Nonprofit Association Act and determined that respondents as the majority controlled the unincorporated association under the organizational documents. *Ibid.*[9] *Jones* permits states to apply a majority-rule approach under the neutral-principles framework. 443 U.S. at 607.

The Texas Supreme Court thus had no occasion to decide ecclesiastical matters regarding whether the Diocese is the "true" church or the "continuing" representative of the General Church. GC Pet. 12, 34. After all, there is no dispute that respondents are not the true affiliate of the General Church; they unequivocally chose to disassociate from that church. Contrary to petitioners' framing, then, this is not a case about "who represents [the General Church's] own subordinate bodies." GC Pet. 25; cf. *Roman Catholic Archdiocese of San Juan* v. *Acevedo Feliciano*, 140 S. Ct. 696, 702 (2020) (Alito, J., concurring) (flagging issue of "a religious body's own understanding of *its* structure") (emphasis added). It concerns only who controls an unincorporated association under Texas law.

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[9] To be clear, the court did not "determine[] that [the majority faction] 'immediately vacated' their offices upon voting to secede." GC Pet. 29 (quoting GC Pet. App. 27a). In fact, it held the opposite, concluding that "[n]o provision in any of the organization documents * * * precluded [the majority faction's actions]." GC Pet. App. 27a-28a; see also *id.* at 11a (holding that the General Church's later ruling that the majority faction was no longer in good standing "did not necessarily determine whether the earlier actions of the corporate trustees were invalid under Texas law").

Similarly, the *Masterson* court recognized that the bishop's ruling on "which faction of believers was recognized by and was the 'true' church loyal to" The Episcopal Church concerned an ecclesiastical matter and was entitled to deference. 422 S.W.3d at 610. But the court affirmed that separate questions of corporate status and property ownership did not merit deference. *Ibid.*

Petitioners disagree with the Texas Supreme Court's unanimous conclusion that addressing ecclesiastical-polity questions was unnecessary to resolve this particular case, but that is a dispute about the application of settled law to a discrete record. And that fact-specific issue—which the court below decided correctly—is unsuitable for certiorari.

III. *JONES*'S NEUTRAL-PRINCIPLES APPROACH IS CONSTITUTIONALLY SOUND AND HAS BEEN THE OVERWHELMING CHOICE OF COURTS FACING CHURCH-PROPERTY DISPUTES FOR DECADES

Petitioners urge 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. GC Pet. 31-35; AS Pet. 31-32. That drastic action is necessary, petitioners contend, because the neutral-principles approach has entangled courts in ecclesiastical matters and produced "insoluble confusion" and "massive inconsistency" in church-property disputes. GC Pet. 33-34.

This Court should decline petitioners' invitation to discard the well-established and constitutionally sound neutral-principles framework. In the decades since *Jones*, state courts have overwhelmingly chosen neutral principles to resolve church-property disputes, and churches have organized their affairs in reliance on that framework. As those choices reflect, the neutral-principles approach is not the malady petitioners lament, while *Wat-*

son deference raises profound constitutional concerns. *Stare decisis* should prevail.

A. According to the General Church, *Jones* invites courts to "giv[e] their own interpretations to deeply religious texts" and "second-guess[] religious denominations' determinations of who constitutes the 'true' church." GC Pet. 34. That is untrue. *Jones* requires courts to "defer to the * * * authoritative ecclesiastical body" if 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. Courts must defer to the ecclesiastical authority on any "issues of religious doctrine or polity." *Id.* at 602.

Jones recognized, however, 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. *Id.* at 605. That *some* church-property disputes may turn on ecclesiastical questions is no reason to deem *all* church-property disputes ecclesiastical matters over which courts can never exercise jurisdiction. If a church-property case requires resolving doctrinal questions, courts can apply the deference on ecclesiastical issues that is built into *Jones*'s neutral-principles methodology. See Greek Orthodox *Amicus* Br. 7-11 (asserting that its property disputes turn on religious questions).[10] Even if courts erroneously stray into religious questions in isolated cases, no legal doctrine is wholly immune from judicial mistakes, and those "occasional

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[10] *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 727 (1976), falls into that category: "[C]ontrol of church property was merely an 'incidental effect' of deciding who ran the church itself because church charters vested control in the denominational leader, which only the Mother Church had authority to select." GC Pet. App. 22a.

problems in application," *Jones*, 443 U.S. at 604, do not support replacing the scalpel of *Jones* deference with the sledgehammer of *Watson* deference. Cf. Rutherford *Amicus* Br. 10 (alleging that some courts have improperly addressed religious questions when applying neutral principles and citing two cases); Presbyterian Church et al. *Amicus* Br. 13 (same and citing one case).

B. That is especially true because *Watson* deference offers none of the "nonentanglement and neutrality [benefits] inherent in the neutral-principles approach." *Jones*, 443 U.S. at 604. While courts that *mis*apply *Jones* may occasionally encroach on religious questions, *Watson* by design *requires* courts to plunge into ecclesiastical matters. Under *Watson*, courts' very first task is deciding whether a church's polity is "congregational" or "hierarchical." 80 U.S. at 722-723.

That quintessentially ecclesiastical inquiry is fraught with difficulty. *Watson* falsely assumes only two flavors of church polity. If that were ever true, it is 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. See McConnell & Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 328-329 (2016). Even the Episcopal Church exhibits elements of both hierarchical and congregational governance. See Ecclesiology Committee of the House of Bishops of the Episcopal Church, A Primer on the government of The Episcopal Church and its underlying theology (Jan. 2016) (describing the church's government as "at once democratic and hierarchical").[11] Non-Christian religions are even harder to classify, assigning judges an impossible task of plumbing unfamiliar reli-

[11] https://episcopalchurch.org/files/documents/primer.on_.tec_.pdf

gious concepts. *E.g.*, *Singh* v. *Singh*, 9 Cal. Rptr. 3d 4, 19 n.20 (Ct. App. 2004) (Sikh temples have both congregational and hierarchical aspects); *Congregation Yetev Lev D'Satmar, Inc.* v. *Kahana*, 879 N.E.2d 1282, 1289 (N.Y. 2007) (Smith, J., dissenting) (hierarchical authority unclear in Hasidic Jewish group). This Court has rightly resisted allowing secular courts to apply one-size-fits-all rules to our pluralistic religious landscape. *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2064 (2020) (rejecting significance of the "minister" title due to inability of judges to evaluate multitude of religious offices). Petitioners urge the Court to march in the opposite direction.

Watson deference also improperly "foreordain[s]" the outcome of hierarchical church-property disputes in the general church's favor. *Jones*, 443 U.S. at 606. The "intentions of the parties" expressed before the dispute arose, *id.* at 603, are irrelevant, infringing the free-exercise rights of congregations who never consented to hierarchical disposition of property. See McConnell & Goodrich, *supra*, at 314-315, 334-337. "[I]n every case, *regardless of the facts*, compulsory deference would result in the triumph of the hierarchical organization." *Bjorkman* v. *Protestant Episcopal Church in the U.S. of Diocese of Lexington*, 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). This case exemplifies that danger: The General Church insists that Texas courts bow to its directives "regardless of what the Fort Worth Diocese's governing documents say." GC Pet. App. 27a. Yet two decades before the dispute arose, the Diocese disavowed any General Church control

over local property, and the General Church "lodged no objection." *Id.* at 33a. *Watson* deference would trample that pre-dispute understanding.

Equally troubling, the wholesale exemption of church property from state corporate law could cripple a church's ability to operate in the marketplace, creating further free-exercise problems. Basic proprietary functions like entering contracts or obtaining loans would become difficult, if not impossible. After all, counterparties would be unable to determine the church's legal representatives or property holdings by examining its corporate documents. See McConnell & Goodrich, *supra*, at 340. And any contract would be subject to the church's cancellation if it retroactively determined that some other person or body who did not sign the contract in fact represents the church's legal entity. Given these constitutional infirmities, the Court may wish to consider whether applying compulsory deference to church-property disputes violates the First Amendment. See Pet. for Cert., *Schulz* v. *Presbytery of Seattle*, No. 20-261 (filed Aug. 28, 2020) (presenting this question). It certainly should not *mandate* the *exclusive* use of deference.

C. Requiring churches to comply with neutral state property rules does not burden their free-exercise rights. The General Church complains that "disparate results" 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. GC Pet. 33-34; but see *supra* n.6. But petitioners did not lose below because Texas law precluded the General Church from predictably effectuating its intentions for its property. Rather, the General Church failed to follow black-letter Texas law and expressly describe the Dennis Canon's trust interest as irrevocable—hardly an "immense" burden. AS Pet. 27. Nor did the General Church

take action to preserve its supposed intentions when respondents revoked the trust in 1989.

The General Church also claims that requiring church-property trusts to comply with state law "effectively disable[s]" churches from adopting canons that are effective in every state. GC Pet. 24. But other denominations have overcome this imagined hurdle. The Methodist Church includes an express trust provision that complies with the law of the relevant state in the deeds themselves.[12] The Roman Catholic Church and the Church of Jesus Christ of Latter-day Saints follow the "standard practice" of "plac[ing] title in the name of a denominational official, such as a diocesan bishop." McConnell & Goodrich, *supra*, at 342-343. In short, "there is no reason to assume that churches alone—unique among all voluntary associations—are incapable of embodying their intent in the relevant legal documents." *Id.* at 334.

All Saints, for its part, laments the purported free-exercise costs stemming from the anticipated loss of its property to an alleged parish minority. But it passed up the chance to maintain its property through an amicable separation that other parishes accepted. 38 C.R. 13493-13498. And All Saints minimizes the harm to the majority in numerous other parishes who would lose their property if petitioners get their way, discounting it as the "unavoidable consequence of a schism." AS Pet. 33-34 & n.5. That has it backwards, for the Diocese expressly disclaimed General Church control of its property long before this dispute, without objection from the General Church. Only a misbegotten judicial enforcement of deference—which is certainly state action—would overturn that pre-dispute settlement and inflict free-exercise inju-

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[12] See Reist et al., *The Book of Discipline of the United Methodist Church* 734-735, ¶ 2503 (2016).

ry on the overwhelming majority of the Convention, which rightfully controls the unincorporated association under Texas law.[13] All Saints should direct its frustration to the General Church, which opted not to pursue the myriad options for ensuring that local property would remain under hierarchical control in the event of schism.

D. *Jones* permits state courts to "adopt *any* one of various approaches for settling church property disputes." 443 U.S. at 602. They have almost universally chosen neutral principles. See BIO App. 1a-6a. The outcome of that marketplace of ideas undermines the General Church's claim that *Jones* is fundamentally flawed. The General Church asserts that *Jones* is "confusing," "impossible to predict," and has "entangle[d]" courts in religious questions. GC Pet. 33, 34 (alteration in pet.). But it cites no *court* that has thought so, nor any Justice of this Court that has questioned neutral principles in the decades since *Jones*. Because the very courts that must apply neutral principles have not perceived the problems conjured by petitioners and their academic allies, there is no compelling reason to abandon a precedent that has commanded decades of reliance by churches. *Montejo* v. *Louisiana*, 556 U.S. 778, 792 (2009) ("traditional ground for overruling" precedent is that "decision has proved 'unworkable'" (citation omitted); *Payne* v. *Tennessee*, 501 U.S. 808, 828 (1991) ("Considerations in favor of *stare decisis* are at their acme in cases involving property * * * rights, where reliance interests are involved.").

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[13] It does not matter how a majority in a single congregation like All Saints voted, as they were a small minority of the Convention, and have rejected any affiliation with the Convention representing the majority. Under the Diocese's charters, All Saints's sanctuary has never been owned by parishioners, and is controlled by the Convention majority from whom they disaffiliated.

E. Petitioners repeatedly claim that *Jones* is "out of step with this Court's recent jurisprudence," including *Our Lady of Guadalupe* and *Hosanna-Tabor*. AS Pet. 31; see GC Pet. 31-32, 35. "But this criticism conflates two fundamentally different types of disputes." McConnell & Goodrich, *supra*, at 336. Those cases dealt with a church's ability to determine the identity of its ministers—an unquestionably ecclesiastical determination. *Our Lady of Guadalupe*, 140 S. Ct. at 2060-2062; *Hosanna-Tabor*, 565 U.S. at 185-189. Matters of church property, in contrast, are not inherently religious questions. That is why neither *Our Lady of Guadalupe* nor *Hosanna-Tabor* even mentioned *Jones*.[14]

Moreover, unlike ministerial-exception cases or *Employment Division* v. *Smith*, 494 U.S. 872 (1990), "[c]hurch property cases do not present a conflict between the civil law and an internal church decision; they present a conflict between two church entities over what the church's decision was in the first place." McConnell & Goodrich, *supra*, at 336. "The laws of trust and property" simply "discern what [the church's decision] was and give legal effect to it." *Ibid.* Accordingly, the neutral-principles framework provides "the maximum of religious liberty and the minimum of government interference for all religious organizations." Br. of *Amicus Curiae* Becket Fund for Religious Liberty 2, *Schulz*, No. 20-261 (filed Oct. 2, 2020).

F. Petitioners urge the Court "at minimum" to prohibit "retroactive" application of neutral principles. GC Pet. 35-36; AS Pet. 29-30; see *Jones*, 443 U.S. at 606

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[14] Churches need neither approval nor excuse to organize themselves and hire or fire ministers as they please. But when they form legal entities to hold property, they must comply with state laws if they wish civil courts to enforce their property rights. No constitutional or federal code exists to replace them.

(reserving that issue). But petitioners allege no split on that question, and this case does not present it.

The Texas Supreme Court's application of neutral principles was not retroactive. The court explained in *Masterson* that it applied the neutral-principles methodology as early as its 1909 *Brown* decision. *Masterson*, 422 S.W.3d at 605-606 ("The method by which this Court addressed the issues in *Brown* remains the appropriate method for Texas courts."). The General Church disagrees, insisting that "Texas was a deference jurisdiction" until *Masterson*. GC Pet. 36. But the Texas Supreme Court's authoritative view that a century-old decision "substantively reflected the neutral principles methodology" (GC Pet. App. 243a) makes this a particularly unsuitable case for evaluating any constitutional problems posed by retroactive application of neutral principles. To resolve the question, this Court would first have to reverse the *Texas* Supreme Court's understanding of *Texas* law and then decide in the first instance whether retroactive application is unconstitutional. But see *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

Even if *Brown* did not apply neutral principles, petitioners suffered no free-exercise injury from retroactive application. Indeed, the General Church consciously organized its property rights *under neutral principles* well before this dispute. As petitioners concede, the General Church enacted the Dennis Canon in 1979 "in direct response" to *Jones*. GC Pet. 10; AS Pet. 2. Petitioners therefore did not "arrang[e] their affairs under a deference regime." GC Pet. 35. Consequently, this case presents no opportunity to review the retroactivity question, which, in any event, has not divided lower courts.

CONCLUSION

The petitions for certiorari should be denied.

Respectfully submitted.

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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 in Am., Inc.* v. *Zion Hill Methodist Church, Inc.*, 534 So.2d 224, 225 (Ala. 1988).

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

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

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

5. California. See *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 Peninsula-Del. Ann. Conf. of United Methodist Church, Inc.*, 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, 2013 WL 3863104, at *6 n.6 (Haw. Ct. App. 2013) (Tbl.).

12. Illinois. See *Nelson* v. *Brewer*, 138 N.E.3d 220, 232 (Ill. App. Ct. 2019); *Diocese of Quincy* v. *Episcopal Church*, 14 N.E.3d 1245, 1256 (Ill. App. Ct. 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. Conf. of Evangelical Free Church of Am.*, 734 N.W.2d 487, 2007 WL 914038, at *4 (Iowa Ct. App. 2007) (Tbl.).

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

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

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

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

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

20. Mississippi. See *Presbytery of St. Andrew* v. *First Presbyterian Church PCUSA of Starkville*, 240 So.3d 399, 404 (Miss. 2018).

21. Missouri. See *Presbytery of Elijah Par. Lovejoy* v. *Jaeggi*, 682 S.W.2d 465, 467 (Mo. 1984).

22. Montana. See *Hofer* v. *Mont. Dep't of Pub. Health & Human Servs.*, 124 P.3d 1098, 1103 (Mont. 2005).

23. Nebraska. See *Aldrich ex rel. Bethel Lutheran Church* v. *Nelson ex rel. Bethel Lutheran Church*, 859 N.W.2d 537, 541 (Neb. 2015).

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

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

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

27. Ohio. See *Ohio Dist. Council, Inc. of the Assemblies of God* v. *Speelman*, 47 N.E.3d 954, 964-965 (Ohio Ct. App. 2016); *Hudson Presbyterian Church* v. *Eastminster Presbytery*, 2009 WL 249791, at *2 (Ohio Ct. App. 2009).

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

29. Oregon. See *Hope Presbyterian Church of Rogue River* v. *Presbyterian Church (U.S.A.)*, 291 P.3d 711, 720-721 (Or. 2012).

30. 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. *Wash. Presbytery of Pa.*, 90 A.3d 95, 118-119 (Pa. Commw. Ct. 2014).

31. South Carolina. See *All Saints Par. Waccamaw, Inc.* v. *Protestant Episcopal Church in the Diocese of S.C.*, 685 S.E.2d 163, 171 (S.C. 2009).

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

33. Tennessee. See *Church of God in Christ, Inc.* v. *L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 170 (Tenn. 2017).

34. Texas. See *Episcopal Diocese of Fort Worth* v. *Episcopal Church*, 602 S.W.3d 417, 426 (Tex. 2020).

35. Utah. See *Jeffs* v. *Stubbs*, 970 P.2d 1234, 1250-1251 (Utah 1998); *Laumalie Ma'oni'oni Free Wesleyan Church of Tonga* v. *Ma'afu*, 440 P.3d 804, 819 (Utah Ct. App. 2019).

36. Virginia. See *Pure Presbyterian Church of Wash.* v. *Grace of God Presbyterian Church*, 817 S.E.2d 547, 553 (Va. 2018).

37. Wisconsin. See *Wis. Conf. 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 *Bennison* v. *Sharp*, 329 N.W.2d 466, 474 (Mich. App. 1982).

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 In Christ, Inc. of Apostolic Faith* 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.*, 147 So.3d 25, 29 (Fla. Dist. Ct. App. 2013); *Word of Life Ministry, Inc.* v. *Miller*, 778 So.2d 360, 362 (Fla. Dist. Ct. App. 2001).

2. Kansas. See *Gospel Tabernacle Body of Christ Church* v. *Peace Publishers & Co.*, 506 P.2d 1135, 1137-1138 (Kan. 1973); *Heartland Presbytery* v. *Presbyterian Church of Stanley, Inc.*, 390 P.3d 581, 596 (Kan. Ct. App. 2017).

3. 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 in the U.S. of Diocese of Lexington*, 759 S.W.2d 583, 585-586 (Ky. 1988). But cf. *Cumberland Presbytery of Synod of the Mid-West of Cumberland Presbyterian Church* v. *Branstetter*, 824 S.W.2d 417, 419-422 (Ky. 1992).

4. New Jersey. See *Chomsky* v. *Sewitch*, 2013 WL 3791707, at *5 (N.J. Super. Ct. App. Div. July 23, 2013); *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. *Conf. of African Union First Colored Methodist Protestant Church*, 98 F.3d 78, 94 (3d Cir. 1996). But see *St. Cyrillus & Methodius Czecho Slovak Nat'l Catholic Church of Perth Amboy, Inc.* v. *Polish Nat'l Catholic Church, Inc.*, 2020 WL 1900485, at *3 (N.J. Super. Ct. App. Div. Apr. 17, 2020).

5. Washington. See *Presbytery of Seattle* v. *Schulz*, 449 P.3d 1077, 1083-1084 (Wash. Ct. App. 2019), pet. for cert. pending, No. 20-261 (filed Aug. 28, 2020). But see *Kidisti Sekkassue Orthodox Tewehado Eritrean Church* v. *Medin*, 118 Wash. App. 1022, 2003 WL 22000635, at *9 (Wash. Ct. App. 2003).

D. States that have not addressed the issue

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