No. 20-____

IN THE
Supreme Court of the United States

THE EPISCOPAL CHURCH, ET AL.,
Petitioners,

v.

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

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The First Amendment limits civil courts' authority to resolve disputes within a church. For more than a century, this Court respected those limits by mandating deference to the appropriate ecclesiastical body's resolution of church-property disputes. *See Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). The Court changed course in *Jones* v. *Wolf*, 443 U.S. 595 (1979). There, by a 5-4 vote, the Court held that states may *either* defer *or* apply "neutral principles of law." *Id.* at 602. The Court identified two safeguards, however, that it said would "protect the free exercise rights" of churches and their congregants: first, a church may "ensure" it retains control of property by amending its governing documents to "recite an express trust"; and, second, courts "must defer" to religious bodies on questions of "doctrine or polity." *Id.* at 602, 604-606. State high courts are now split over whether and how to apply those safeguards. The questions presented are:

1. Whether the First Amendment requires courts to enforce express trusts in church governing documents (as some jurisdictions hold, in line with *Jones*'s first safeguard), or whether state law may render such trusts unenforceable (as others hold).

2. Whether the First Amendment requires courts to defer to churches on questions of polity (as some jurisdictions hold, in line with *Jones*'s second safeguard), or whether courts may apply state law to determine the structure of a church (as others hold).

3. Whether the neutral-principles approach may constitutionally be applied—either prospectively or retroactively—to resolve church-property disputes.

PARTIES TO THE PROCEEDINGS

1. The following petitioners on review were also plaintiffs-respondents-conditional-cross-petitioners below:

a. The Episcopal Church and The Most Rev. Katharine Jefferts Schori.

b. The Rt. Rev. Rayford B. High, Jr.; The Rt. Rev. C. Wallis Ohl; Robert Hicks; Floyd McKneely; Shannon Shipp; David Skelton; Whit Smith; The Rt. Rev. Edwin F. Gulick, Jr.; Robert M. Bass; The Rev. James Hazel; Cherie Shipp; The Rev. John Stanley; Dr. Trace Worrell; Margaret Mieuli; Walt Cabe; Anne T. Bass; The Rev. Frederick Barber; The Rev. Christopher Jambor; The Rev. David Madison; Kathleen Wells; and their successors in office (collectively, "the Local Episcopal Parties").

c. The Rev. Christopher Jambor and Stephanie Burk, individually and as representatives of All Saints' Episcopal Church (Fort Worth); Cynthia Eichenberger as representative of All Saints Episcopal Church (Weatherford); Harold Parkey as representative of Christ the King Episcopal Church (Fort Worth); Bill McKay and Ian Moore as representatives of Episcopal Church of the Good Shepherd (Granbury); Ann Coleman as representative of Episcopal Church of the Good Shepherd (Wichita Falls); Constant Robert Marks, IV, and William Davis as representatives of St. Alban's Episcopal Church (Arlington); Vernon Gotcher as representative of St. Stephen's Episcopal Church (Hurst); Sandra Shockley as representative of St. Mary's Episcopal Church (Hamilton); Sarah Walker as representative of Episcopal Church of the Holy Apostles (Fort Worth); Linda Johnson as representa-

tive of St. Anne's Episcopal Church (Fort Worth); Larry Hathaway individually and as representative of St. Luke-in-the-Meadow Episcopal Church (Fort Worth); David Skelton as representative of St. Mary's Episcopal Church (Hillsboro); All Saints' Episcopal Church (Wichita Falls); All Saints' Episcopal Church (Weatherford); Christ the King Episcopal Church (Fort Worth); Episcopal Church of the Good Shepherd (Granbury); St. Alban's Episcopal Church (Arlington); St. Simon of Cyrene Episcopal Church (Fort Worth); St. Stephen's Episcopal Church (Hurst); St. Mary's Episcopal Church (Hamilton); St. Anne's Episcopal Church (Fort Worth); St. Luke-in-the-Meadow Episcopal Church (Fort Worth); St. Mary's Episcopal Church (Hillsboro); Episcopal Church of the Ascension & St. Mark (Bridgeport); Episcopal Church of the Good Shepherd (Brownwood); Holy Comforter Episcopal Church (Cleburne); St. Elisabeth's Episcopal Church (Fort Worth); Holy Spirit Episcopal Church (Graham); Holy Trinity Episcopal Church (Eastland); Our Lady of the Lake Episcopal Church (Laguna Park); Trinity Episcopal Church (Dublin); Trinity Episcopal Church (Henrietta); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Anthony of Padua Episcopal Church (Alvarado); St. Alban's Episcopal Church (Hubbard); St. Andrew's Episcopal Church (Fort Worth); St. Andrew's Episcopal Church (Breckenridge); St. Andrew's Episcopal Church (Grand Prairie); St. Barnabas the Apostle Episcopal Church (Keller); St. Gregory's Episcopal Church (Mansfield); St. John's Episcopal Church (Fort Worth); St. John's Episcopal Church (Brownwood); St. John the Divine Episcopal Church (Burkburnett); St. Joseph's Episcopal Church (Grand Prairie); St.

Laurence's Episcopal Church (Southlake); St. Luke's Episcopal Church (Mineral Wells); St. Mark's Episcopal Church (Arlington); St. Matthew's Episcopal Church (Comanche); St. Michael's Episcopal Church (Richland Hills); St. Paul's Episcopal Church (Gainesville); St. Patrick's Episcopal Church (Bowie); St. Peter-by-the-Lake Episcopal Church (Graford); St. Peter and St. Paul Episcopal Church (Arlington); St. Phillip the Apostle Episcopal Church (Arlington); St. Thomas the Apostle Episcopal Church (Jacksboro); St. Timothy's Episcopal Church (Fort Worth); St. Vincent's Episcopal Church (Bedford); St. Stephen's Episcopal Church (Wichita Falls); Episcopal Church of the Holy Apostles (Fort Worth); and Episcopal Church of the Good Shepherd (Wichita Falls); and those individuals' successors in office (collectively, "the Local Episcopal Congregations").

2. The following respondent was also plaintiff-respondent-conditional-cross-petitioner below: All Saints' Episcopal Church (Fort Worth).

3. The following respondents on review were defendants-petitioners-conditional-cross-respondents below: The Episcopal Diocese of Fort Worth; The Corporation of the Episcopal Diocese of Fort Worth; Franklin Salazar; Jo Ann Patton; Walter Virden, III; Rod Barber; Chad Bates; The Rt. Rev. Jack Leo Iker; Judy Mayo; Julia Smead, The Rev. Christopher Cantrell; The Rev. Timothy Perkins; The Rev. Ryan Reed; The Rev. Thomas Hightower; St. Anthony of Padua Church (Alvarado); St. Alban's Church (Arlington); St. Mark's Church (Arlington); Church of St. Peter & St. Paul (Arlington); Church of St. Philip the Apostle (Arlington); St. Vincent's Cathedral (Bedford); St. Patrick's Church (Bowie); St. Andrew's

Church (Breckenridge); Good Shepherd Church (Brownwood); St. John's Church (Brownwood); Church of St. John the Divine (Burkburnett); Holy Comforter Church (Cleburne); St. Matthew's Church (Comanche); Trinity Church (Dublin); Holy Trinity Church (Eastland); Christ the King Church (Fort Worth); Holy Apostles Church (Fort Worth); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Andrew's Church (Fort Worth); St. Anne's Church (Fort Worth); Church of St. Barnabas the Apostle (Fort Worth); St. John's Church (Fort Worth); St. Michael's Church (Richland Hills); Church of St. Simon of Cyrene (Fort Worth); St. Timothy's Church (Fort Worth); St. Paul's Church (Gainesville); Good Shepherd Church (Granbury); Church of the Holy Spirit (Graham); St. Andrew's Church (Grand Prairie); St. Joseph's Church (Grand Prairie); St. Laurence's Church (Southlake); St. Mary's Church (Hamilton);Trinity Church (Henrietta).; St. Mary's Church (Hillsboro); St. Alban's Church (Hubbard); St. Stephen's Church (Hurst); Church of St. Thomas the Apostle (Jacksboro); Church of Our Lady of the Lake (Laguna Park); St. Gregory's Church (Mansfield); St. Luke's Church (Mineral Wells); Church of St. Peter by the Lake (Graford); All Saint's Church (Weatherford); All Saint's Church (Wichita Falls); Church of the Good Shepherd (Wichita Falls); Church of St. Francis of Assisi (Willow Park); and Church of the Ascension & St. Mark (Bridgeport).

RELATED PROCEEDINGS

District Court of Texas (141st Judicial District, Tarrant County):

Episcopal Church v. *Salazar*, No. 141-252083-11 (July 27, 2015)

Episcopal Church v. *Salazar*, No. 141-237105-09 (Feb. 8, 2011) (severed on Apr. 5, 2011 and transferred to No. 141-252083-11)

Court of Appeals of Texas (Second District, Fort Worth):

Episcopal Church v. *Salazar*, No. 02-15-00220-CV (Apr. 5, 2018)

Supreme Court of Texas:

Episcopal Diocese of Fort Worth v. *Episcopal Church*, No. 18-0438 (May 22, 2020)

Episcopal Diocese of Fort Worth v. *Episcopal Church*, No. 11-0265 (Aug. 30, 2013), *reh'g denied*, Mar. 21, 2014

Supreme Court of the United States:

Episcopal Church v. *Episcopal Diocese of Fort Worth*, No. 13-1520 (Nov. 3, 2014)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Texas.

INTRODUCTION

Nearly 150 years ago, this Court held that civil courts must defer to religious bodies' resolution of internal church disputes. *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727 (1871). For over a century, that rule "radiate[d] * * * a spirit of freedom for religious organizations," securing for churches the right to resolve for themselves any "disputes over church property." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 186 (2012) (citation omitted). But in *Jones* v. *Wolf*, 443 U.S. 595 (1979), a narrow majority of this Court carved out an exception to that principle. Over a vigorous dissent, it held that states may adjudicate intra-denominational property disputes using so-called

"neutral principles of law"—that is, by attempting to interpret deeds and religious documents "in purely secular terms." *Id.* at 602, 604.

The Court recognized that this new methodology would not be "free of difficulty," but it identified two guardrails that it said would "protect the free exercise rights 'of those who have formed [a religious] association and submitted themselves to its authority.'" *Id.* at 604-606 (citation omitted). First, religious entities may "ensure" that property remains with those loyal to the denomination by amending their governing documents to "recite an express trust in favor of the denominational church." *Id.* at 606. Second, courts "must defer" to a denomination's governing body on any questions of "religious doctrine or polity." *Id.* at 602, 604. The majority predicted that, with these safeguards, the "occasional problems" in applying the neutral-principles approach would be "gradually eliminated." *Id.* at 604. Writing in dissent, Justice Powell was less sanguine; he warned that the majority's approach was "more likely to promote confusion than understanding," and that the better course was to "accept established principles" of deference. *Id.* at 610, 612 (Powell, J., dissenting).

Four decades have borne out Justice Powell's prediction. In recent years, there has been a marked escalation of intrachurch conflict in the United States, as several major denominations have undergone divisions over church doctrine. Jeffrey B. 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, 402 (2008). Time and

again, these doctrinal splits have led to property disputes between breakaway factions and the churches they left. And too often, the *Jones* guardrails have failed to keep courts on the right path.

This case is illustrative of the problems *Jones* has wrought. In the mid-2000s, a group of dissenting members of the Episcopal Diocese of Fort Worth left The Episcopal Church over doctrinal disagreements, and purported to take with them the Diocese and all of its property. The Church, whose doctrine forbids secession by constituent parts of the Church and deems schism a grave sin, stripped the breakaways of their religious offices and recognized loyal Episcopalians as the true leaders of the Diocese. It also invoked a church canon—adopted decades earlier at *Jones*'s express suggestion—that placed local-church property in trust for loyal Episcopalians and the national church. Together, the Church's ecclesiastical determination and its express-trust canon should have been sufficient, under the safeguards set out in *Jones*, to prevent the breakaways from absconding with over $100 million in church property.

But the *Jones* guardrails did not stop the Texas Supreme Court. First, the court held that the Church's express-trust canon was "not good enough" under state law to prevent the dissenting members from revoking the trust at will. Pet. App. 243a. Further, it refused to defer to the Church's determination that the loyal faction governed the Diocese; instead, the court rendered judgment requiring *the ecclesiastical officers recognized by the Church* to "desist from holding themselves out as leaders of the Diocese." *Id.* at 228a. The result? The Church's loyal members have been stripped of authority over

the Diocese, deprived of more than $100 million of church property, and exiled from many of their houses of worship.

This Petition asks the Court to resolve three questions. Two of those questions ask whether the *Jones* guardrails retain any strength. The third question is whether, if its safeguards are not working, *Jones* should be abandoned outright.

First, courts are intractably split over whether state law can negate "an express trust" that a church added to its governing documents pursuant to *Jones*. 443 U.S. at 606. Six states have taken *Jones* at its word and held that an express-trust canon is dispositive in establishing ownership for the church. Eight jurisdictions, including Texas, enforce trust provisions only if they comply with every jot and tittle of each state's law. This split is widely recognized, highly consequential, and rooted in disagreement over the correct interpretation of a critical aspect of the *Jones* decision. It is time for this Court to step in and resolve it.

Second, courts are also split over whether they can override a church's decision about its own internal "polity"—that is, about matters of "internal church government." *Id.* at 602; *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 721 (1976). Five states read *Jones* to entitle churches to conclusive deference on questions of polity, including who governs a congregation in the case of schism. Three states, Texas among them, hold that courts should apply state law to determine the leaders of a church body, even in the teeth of a directly contrary ecclesiastical determination. This dispute—about courts' authority to "question a religious body's own under-

standing of its structure"—strikes at the heart of principles of religious freedom. *Roman Catholic Archdiocese of San Juan* v. *Acevedo Feliciano*, 140 S. Ct. 696, 702 (2020) (Alito, J., concurring). It too "merit[s] [this Court's] review." *Id.*

These questions point to fundamental failings of the neutral-principles approach. Unfortunately, they are only the tip of the iceberg. Justice Blackmun's opinion in *Jones* was deeply flawed from the start, and time has only highlighted its deficiencies: *Jones* has led to disarray in the lower courts and proven unpredictable in application, and its purported guardrails have failed to "protect [churches'] autonomy with respect to internal management decisions that are essential to [their] central mission." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). Rather than attempting to repair the holes in the *Jones* regime, the Court should return to the deference rule from which *Jones* departed. At minimum, the Court should mitigate *Jones*'s worst excesses by holding that courts may not spring the neutral-principles approach on churches "retroactive[ly]," as the Texas Supreme Court did here. *Jones*, 443 U.S. at 606 n.4.

It has been 41 years since *Jones* turned away from traditional deference principles and set out on the neutral-principles path. Since then, religious organizations nationwide have increasingly found that the question of who will occupy their churches, temples, and mosques turns not on the words in their governing documents or the decisions of their highest tribunals, but on idiosyncratic applications of the First Amendment in jurisdictions where disputes happen to erupt. The Court should grant the peti-

tion and set forth clear guidance about what the First Amendment requires.

OPINIONS BELOW

The Texas Supreme Court's decisions (Pet. App. 1a-36a, 229a-260a) are reported at 602 S.W.3d 417 and 422 S.W.3d 646. The Texas intermediate court's decision (Pet. App. 37a-224a) is reported at 547 S.W.3d 353. The district court's initial order (Pet. App. 261a-263a) is unreported, and its final judgment (Pet. App. 225a-228a) is available at 2015 WL 13722015.

JURISDICTION

The Texas Supreme Court entered judgment on May 22, 2020. Pet. App. 1a. Pursuant to this Court's order of March 19, 2020, the deadline to file a petition for certiorari was extended to October 19, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment provides, in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * * ."

STATEMENT

A. Legal Framework

1. "[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). The reason is simple: "[d]isputes among church members over the control of church property arise almost invariably out of disagreements regarding doctrine and

practice." *Jones*, 443 U.S. at 616 (Powell, J., dissenting).

This constraint on judicial intervention traces to the earliest days of the Republic, *see Hosanna-Tabor*, 565 U.S. at 184-185, and first found recognition by this Court in the 1871 decision of *Watson* v. *Jones*. That case arose when a local Presbyterian church divided into antislavery and proslavery factions. 80 U.S. at 683-684. Both factions claimed the right to control church property, and the denomination's governing body, the Presbyterian General Assembly, recognized the antislavery faction as the legitimate leaders of the church. *Id.* at 691-692. This Court held that it was bound to defer to that judgment. *Id.* at 734.

"In this country," the Court held, "[t]he right to organize voluntary religious associations * * * and to create tribunals * * * for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned." *Id.* at 728-729. "[I]t * * * would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Id.* at 729. Accordingly, "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of the[] church judicatories to which the matter has been carried," the Court held, "the legal tribunals much accept such decisions as final, and as binding on them." *Id.* at 727.

Watson "radiate[d] * * * a spirit of freedom for religious organizations" and "an independence from secular control." *Kedroff* v. *St. Nicholas Cathedral of*

Russian Orthodox Church in N. Am., 344 U.S. 94, 116 (1952). And for more than a century, it stated the approach—commonly known as the "deference approach"—that this Court applied in resolving intra-denominational disputes over church property. *Id.*

2. In 1979, the Court sanctioned a departure from this principle. Writing for a 5-4 majority in *Jones*, Justice Blackmun acknowledged that the deference approach remained one permissible means of resolving intrachurch property disputes. 443 U.S. at 602. But the majority held that states could also choose to tackle such disputes by applying "neutral principles of law"—that is, by using secular law to interpret church constitutions, local church charters, and other documents bearing on the ownership of church property. *Id.* at 602-603.

The majority acknowledged that this approach was not "wholly free of difficulty," but it asserted that two key safeguards would "protect the free exercise rights 'of those who have formed the association and submitted themselves to its authority.'" *Id.* at 604-606 (citation omitted). "At any time before the dispute erupts," the Court wrote, a church can "ensure * * * that the faction loyal to the hierarchical church will retain the church property," by taking the "minimal[ly]" burdensome step of revising its "constitution * * * to recite an express trust in favor of the denominational church." *Id.* at 606. In addition, the Court held, courts following the neutral principles approach must "defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." *Id.* at 602.

Four Justices—Justice Powell, joined by Chief Justice Burger and Justices Stewart and White—filed a sharp dissent. They predicted that the neutral-principles approach would "make the decision of these cases by civil courts more difficult" and "invite intrusion into church polity forbidden by the First Amendment." *Id.* at 610 (Powell, J., dissenting). Religious documents, they noted, are typically "drawn in terms of religious precepts," not "the language of trust and property law." *Id.* at 611-614. Further, "[d]isputes among church members over the control of church property arise almost invariably out of disagreements regarding doctrine and practice." *Id.* at 616. Attempting to resolve such disputes "in purely secular terms" was thus "more likely to promote confusion than understanding." *Id.* at 612. Rather than forging this "new" path, the dissenters would have adhered to the Court's "established" approach since *Watson*: the deference approach. *Id.* at 610.

The dissenters' fears proved prescient. Over the last several decades, the "problems" that the majority identified have not been "occasional" and certainly have not been "eliminated." *Id.* at 604. Instead, courts have ignored churches' expressed intentions and overridden their decisions on matters of church polity. *See infra* pp. 20-22, 27-29. That is just what befell Petitioners here.

B. Factual Background

1. The Episcopal Church is a hierarchical religious denomination, formed in the 1780s, that has thousands of worshipping congregations. Pet. App. 3a. It is organized in three tiers: The General Convention on top; over 100 regional dioceses in the middle; and

more than 6,000 congregations at the base. *Id.* at 3a-4a. The General Convention—composed of bishops, clergy, and lay diocesan representatives—periodically amends the Church Constitution and Canons, which apply to all dioceses and congregations. *Id.* at 3a. Each diocese, in turn, is governed by a Diocesan Convention, which may amend the diocese's constitution and canons, provided the amendments do not conflict with the Church's Constitution and Canons. *Id.*

The Episcopal Church holds as a doctrinal concept that breaking the unity of the Church is sin. CR 1:255. Although *individuals* are free to leave the denomination, the Church's governing body has long held that "diocesan leaders have no authority to remove their *dioceses* from The Episcopal Church," and that any bishop who "abandons communion" with the Church may be deposed by the Church's Presiding Bishop. Pet. App. 43a-44a, 70a (emphasis added). Reflecting these principles, the Constitution and Canons have established detailed requirements to ensure that dissenting local members may not unilaterally remove property from the denomination. *See, e.g.*, *id.* at 264a-265a (Canons I.6(3) & II.7(2) (1979)). In 1979, just months after *Jones* and in direct response to that decision, the Church shored up its already-clear property regime by adopting Canon I.6(4), commonly known as the "Dennis Canon," which 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." *Id.* (Canon I.6(4) (1979)).

2. In 1982, the Church formed the Episcopal Diocese of Fort Worth by ratifying the division of the Diocese of Dallas into two dioceses. *Id.* at 49a, 51a. As a condition of admission into the Church, the new Diocese and all of its parishes adopted a diocesan Constitution, in which they "fully subscribe[d] to and accede[d] to the Constitution and Canons of The Episcopal Church," including the Dennis Canon. *Id.* at 4a-6a. The diocesan Constitution expressly defined the Diocese as consisting of "those Clergy and Laity of the Episcopal Church" who reside in the Fort Worth region. *Id.* at 190a-191a.

To help manage the Diocese's affairs, the diocesan Constitution established a diocesan corporation, which would be managed by an elected Board of Trustees, "all of whom are * * * Lay persons in good standing of a parish or mission" or Clergy in the Diocese, with the bishop as chair. *Id.* at 52a (footnote omitted); *see id.* at 54a-56a. The diocesan Constitution further provided—in a canon commonly known as the "Diocesan Trust"—that all diocesan property, including property held for local congregations, would be "vested in [the] Corporation," "subject to control of the Church in the Episcopal Diocese of Fort Worth." *Id.* at 51a. Following unanimous adoption of these provisions, a local court transferred approximately $100 million of the Diocese of Dallas's property to the Diocese of Fort Worth, subject to its agreement to abide by the Church Constitution and Canons. *See id.* at 56a.

3. In the mid-2000s, doctrinal disagreements led a faction of the Diocese's members to sever ties with The Episcopal Church and join a different denomination. The breakaways included the bishop and the

Corporation's Trustees, who purported to amend the corporation's bylaws and articles of incorporation to remove references to the Church. *Id.* at 62a-66a. On November 15, 2008, the diocesan Convention held a vote purporting to withdraw the Diocese and most of its congregations from The Episcopal Church. *Id.* at 71a-72a.

The Church took immediate action. Its Presiding Bishop removed the breakaway bishop from all positions of Church authority. *Id.* at 73a. Shortly thereafter, she facilitated the calling of a diocesan Convention for the Church's many still-loyal members. *Id.* at 74a. The Convention reversed the amendments purporting to distance the Diocese from the Church and filled the offices left vacant by the withdrawing faction. *Id.* at 74a-76a. The Episcopal Church has repeatedly recognized the leaders chosen by the reorganized diocesan Convention and their successors as the representatives of the continuing Episcopal Diocese of Fort Worth. *Id.* at 76a.

But the breakaway faction continues to hold itself out as leading the "Episcopal Diocese of Fort Worth." The defecting bishop has ignored his removal from office, claiming that the Presiding Bishop "has no authority over me." *Id.* at 73a. And his faction retains control over substantially all of the diocesan property, including the assets of 47 parishes across 24 counties and more than $100 million in real and personal property.

C. *EDFW I* and *Masterson*

Petitioners—the Church and its continuing diocese—did not stand idly by while the breakaways absconded with the Church's property and asserted

control over its Diocese. In 2009, they filed suit in Texas court to get their property back.

1. The trial court ruled in Petitioners' favor. Under principles of deference "applied in Texas to hierarchical church property disputes since 1909," the "constituent part of a hierarchical church" in the event of a schism "consists of those individuals remaining loyal to the hierarchical church body." *Id.* at 262a (citing *Brown* v. *Clark*, 116 S.W. 360 (Tex. 1909)). The court thus declared "*ultra vires* and void" the actions of the breakaway faction, and ordered it to "surrender all Diocesan property" to Petitioners. *Id.* at 262a-263a.

2. The Texas Supreme Court granted a direct appeal and heard the case alongside *Masterson* v. *Diocese of Nw. Texas*, 422 S.W.3d 594 (Tex. 2013), a similar case involving the Episcopal Diocese of Northwest Texas. In a pair of divided decisions, the Texas high court reversed the judgments of the lower courts and remanded the cases for further proceedings.

a. The court laid out the bulk of its reasoning in *Masterson*. It began by holding that Texas would no longer follow the deference approach in resolving church property disputes. 422 S.W.3d at 606-607. Although it acknowledged that Texas courts had long interpreted the Texas Supreme Court's 1909 *Brown* decision "as applying a deference approach," the court read *Brown* as "substantively reflect[ing] the neutral principles methodology" established 70 years *later* in *Jones*. *Id.* at 605, 608 n.7. It thus held that Texas courts should use neutral principles in all church-property disputes, regardless of when they arose. *Id.* at 607-608.

A narrow 5-justice majority went on to offer "guidance" on how the lower courts should apply the neutral-principles approach on remand. *Id.* at 609 (citation omitted). The court first held that the Dennis Canon was "not good enough" to irrevocably vest property rights in the Church. *Id.* at 613. The majority acknowledged that "other state courts" have read *Jones* as holding that "express trust canon[s] like [the Dennis Canon]" are dispositive in establishing property rights. *Id.* at 611. But the court's view "coincide[d]" with that of courts that interpret *Jones* as holding that trust canons are enforceable only if they comply with state "property and trust law." *Id.* at 612. The court thus refused to give effect to the Dennis Canon because it does not contain "language making the trust *expressly* irrevocable," as Texas law ostensibly requires. *Id.* at 613.

The Texas Supreme Court further held that the Church's decision "identifying the loyal faction" as the true representatives of its congregation did not necessarily "determine the property ownership issue." *Id.* at 610. It acknowledged that courts were required to defer to the Church's determination, "as an *ecclesiastical* matter," which faction "was the 'true' church." *Id.* (emphasis added). But it distinguished that issue from the "secular legal questions" of whether the corporate "vote[s]" and "amend[ments]" by the breakaway faction effectively removed the congregation from the Church. *Id.* It held that courts should resolve that question by applying Texas law. *Id.*

b. The court took the same approach in the direct appeal in this case ("*EDFW I*"). A majority of the court reiterated that Texas courts would use "only"

the neutral-principles approach. Pet. App. 237a. Four of the nine justices then offered "guidance" on how the lower courts should apply that approach in this case. *Id.* at 229a, 239a-240a. Quoting *Masterson*, they stated that the Dennis Canon was "not good enough" to irrevocably vest property rights in the Church. *Id.* at 243a. They also stated that lower courts were not required to defer to the Church's determination that the breakaway faction no longer controlled the Diocese; as in *Masterson*, the justices stated that this was a question governed by "Texas law." *Id.* at 240a-241a.

c. Four justices filed or joined separate opinions. Dissenting in *Masterson*, Justice Lehrmann and Chief Justice Jefferson argued that the Dennis Canon did "exactly what" *Jones* held was sufficient to protect property from intrachurch disputes, and that the Church's determination that the local congregations could not withdraw was "a binding ecclesiastical decision" that effectively settled the property question. 422 S.W.3d at 618, 622 (Lehrmann, J., dissenting). Justice Boyd and Justice Willett concurred, saying that it was "premature" to consider the application of the neutral-principles approach. *Id.* at 614 (Boyd, J., concurring).

3. Petitioners sought immediate review of both interlocutory decisions. Respondents opposed review, emphasizing that the judgment was not final. Br. in Opp. 23-24, *Episcopal Church* v. *Episcopal Diocese of Fort Worth*, No. 13-1520 (Sept. 2014). This Court denied certiorari. 574 U.S. 973 (2014).

D. *EDFW II*

The parties returned to the Texas courts to litigate the application of the neutral-principles approach on remand.

1. The district court ruled for the breakaway faction. Pet. App. 227a. In a terse opinion, it held that respondents were "the proper representatives of the Episcopal Diocese of Fort Worth," and ordered Petitioners—including the Church's own recognized ecclesiastical officials—"to desist from holding themselves out as leaders of the Diocese." *Id.* at 227a-228a.

2. The Texas intermediate court reversed in part. *Id.* at 39a. After reviewing the applicable legal standards, *id.* at 97a-176a, it held that it was constitutionally required to defer to the Church as to both the identity of "the Episcopal Diocese of Fort Worth" and whether individual congregants were "member[s] in good standing." *Id.* at 203a-205a, 218a. It therefore held that any property placed in trust for "the Diocese" belonged to those loyal to the Church, *id.* at 202a-206a, and that the Church's recognized representatives continued to control the diocesan Corporation, *id.* at 218a-219a.

3. The Texas Supreme Court once again reversed. *Id.* at 2a-3a ("*EDFW II*"). It reaffirmed its conclusion that the Dennis Canon was unenforceable because it had been validly revoked under Texas law. *Id.* at 30a-34a. It thus held that "the only issue" relevant to determining who held property under the Diocesan Trust was "which faction constitutes the continuation of the Fort Worth Diocese." *Id.* at 15a. The court concluded that The Episcopal Church was not entitled to deference on that question. *Id.* at 24a-

25a. It reasoned that because the Diocese is an "unincorporated association" under Texas law, courts should apply "Texas Associations law" to determine its "identity." *Id.* at 23a-24a, 30a. Applying that law, the court found—in direct contravention of the Church's judgment—that "the majority faction is the Fort Worth Diocese" and accordingly holds "equitable title to the disputed property under the Diocesan Trust." *Id.* at 30a.

REASONS FOR GRANTING THE PETITION

The decisions below give rise to three questions about what happens to church property when a church fractures. First: Must civil courts enforce trusts that religious denominations have enshrined in their governing documents at *Jones*'s express suggestion? Second: May civil courts apply state law to override a religious denomination's determination as to who leads its subordinate bodies? Third: Has "neutral principles" proven to be a constitutional means of resolving church-property disputes—or is it time to reconsider *Jones* or limit its application?

Each issue is worthy of certiorari standing alone. Together, they present an ideal opportunity for this Court to clean up the constitutional debris *Jones* left in its wake. The First Amendment rights of countless groups and individuals hang in the balance.

I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE AN INTRACTABLE SPLIT OVER THE EFFECT OF EXPRESS-TRUST PROVISIONS IN CHURCH DOCUMENTS.

In *Jones*, this Court made clear that a religious denomination "can ensure * * * that the faction loyal to the hierarchical church will retain the church

property" by modifying its "constitution * * * to recite an express trust in favor of the denominational church." 443 U.S. at 606. The Court reasoned that the burden of taking such action would be "minimal." *Id.* And it stated that courts would be "bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.*

This holding has given rise to an oft-litigated—and deeply unsettled—question: May state courts disregard an express-trust canon in a church's governing documents because it "does not satisfy the formalities" of each state's trust law? *Church of God in Christ, Inc.* v. *L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 168 (Tenn. 2017). States are deeply divided, six-to-eight, on the answer. That split is widely recognized and intractable. Its resolution is critical to ensuring that the neutral-principles approach actually "protect[s] the free exercise rights" of religious bodies and their members. *Jones*, 443 U.S. at 605. And the decisions below put Texas on the wrong side of the split. This Court's review is urgently needed.

1. The high courts of at least six States "have * * * read *Jones* as an affirmative rule *requiring* the imposition of a trust whenever the denominational church organization enshrines such language in its constitution." *Presbytery of Ohio Valley, Inc.* v. *OPC, Inc.*, 973 N.E.2d 1099, 1106 n.7 (Ind. 2012) (emphasis in original), *cert denied*, 569 U.S. 958 (2013). Following *Jones*'s instruction, these states "simply enforce the intent of the parties as reflected in their own governing documents," recognizing that "to do anything else would raise serious First Amendment concerns." *Presbytery of Greater Atlanta, Inc.* v.

Timberridge Presbyterian Church, Inc., 719 S.E.2d 446, 458 (Ga. 2011).

Take Georgia. The Georgia Supreme Court has twice held that religious denominations need not "compl[y] with" the requisites of Georgia trust law "to establish a trust in favor of the national church." *Id.* at 452. Instead, "parties can ensure that local church property will be held in trust for the benefit of the general church" simply by amending "the general church's governing law" to "recite an express trust." *Rector, Wardens & Vestrymen of Christ Church in Savannah* v. *Bishop of Episcopal Diocese of Georgia, Inc.*, 718 S.E.2d 237, 244 (Ga. 2011) (Nahmias, J.) (quoting *Jones*, 443 U.S. at 606). If "hierarchical denominations" had to "fully comply with [state trust law] to enable the general church to retain control of local church property in the event of a schism," the court reasoned, the "burden on the * * * free exercise of religion would not be minimal but immense." *Id.* at 244-245.

Connecticut has reached the same conclusion. In *Episcopal Church in Diocese of Connecticut* v. *Gauss*, 28 A.3d 302 (Conn. 2011), the Connecticut Supreme Court rejected the contention that the Dennis Canon was not in "legally cognizable form" because it failed to comply with certain requirements of state law. *Id.* at 325 (quoting *Jones*, 443 U.S. at 606). The court reasoned that *Jones* "not only gave general churches explicit permission to create an express trust * * * but stated that civil courts would be *bound* by such a provision." *Id.*

The high courts of California, New York, Kentucky, and Tennessee have also heeded *Jones*'s admonition about express trusts. In *Episcopal Church Cases*,

198 P.3d 66 (Cal. 2009), the California Supreme Court read *Jones* to stand for the proposition that a church may "recite [a] trust * * * by whatever method the church structure contemplate[s]." *Id.* at 80. The high courts of New York and Kentucky have likewise held that an express-trust provision is "dispositive" in establishing an express trust in favor of the national Church, even if "nothing in the deeds" or "any provision" of state law establishes a trust. *Episcopal Diocese of Rochester* v. *Harnish*, 899 N.E.2d 920, 924-925 (N.Y. 2008); *see Cumberland Presbytery of Synod of the Mid-West of Cumberland Presbyterian Church* v. *Branstetter*, 824 S.W.2d 417, 421 (Ky. 1992) (deeming express trust provision "[d]ecisive" without inquiring into state law). Tennessee recently joined this view: After surveying the split, it aligned itself with those jurisdictions that "enforce trust language contained in * * * [church] governing documents" regardless whether they "satisfy the formalities [of] civil law." *Church of God in Christ*, 531 S.W.3d at 168-170.[1]

2. At least eight state high courts have squarely disagreed. These courts have fastened onto *Jones*'s statement that trusts must be "embodied in some legally cognizable form." 443 U.S. at 606. In the view of these courts, "legally cognizable form" means

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[1] The high courts of Colorado and Delaware have taken a similar approach, holding that canons evincing an intent to hold property in trust are enforceable even if they are "not couched in the traditional forms and language of trust law." *Bishop & Diocese of Colorado* v. *Mote*, 716 P.2d 85, 100 (Colo. 1986); *see E. Lake Methodist Episcopal Church, Inc.* v. *Trs. of Peninsula-Delaware Ann. Conf. of United Methodist Church, Inc.*, 731 A.2d 798, 809 (Del. 1999).

not simply that the document is framed in secular rather than religious terms, *see, e.g.*, *Gauss*, 28 A.3d at 325, but that it complies with "the trust laws of the 50 states," *Hope Presbyterian Church of Rogue River* v. *Presbyterian Church (U.S.A.)*, 291 P.3d 711, 722 (Or. 2012).

Oregon's high court, for instance, has rejected the contention that "the recitation of an express trust in favor of the denominational church * * * necessarily creates an express trust." *Id.* Instead, it has looked to the details of "Oregon trust law" to "determine whether a trust exists * * * under Oregon law." *Id.*

Likewise, Maryland's highest court has "rejected" the rule that where the Church's codification of rules and regulations "contains trust language," civil courts need "resort only to the" church's trust. *From the Heart Church Ministries, Inc.* v. *African Methodist Episcopal Zion Church*, 803 A.2d 548, 570 (Md. 2002). Rather, it has held that such language is enforceable only if it satisfies Maryland trust law. *Id.* at 571.

The high courts of Indiana, Arkansas, Pennsylvania, Alaska, and New Hampshire have all adopted the same position. In *Presbytery of Ohio Valley*, the Indiana Supreme Court refused to enforce an express trust provision in the Presbyterian constitution because it did not satisfy an Indiana-law rule that trusts "be evidenced by a writing * * * signed by the owner." 973 N.E.2d at 1112. Similarly, in *Arkansas Presbytery of Cumberland Presbyterian Church* v. *Hudson*, 40 S.W.3d 301 (Ark. 2001), the Arkansas Supreme Court found an express trust provision unenforceable because Arkansas law does not "allow a grantor to impose a trust upon property previously

conveyed without the retention of a trust." *Id.* at 309; *accord In re Church of St. James the Less*, 888 A.2d 795, 807-810 (Pa. 2005); *St. Paul Church, Inc.* v. *Bd. of Trs. of Alaska Missionary Conf. of United Methodist Church, Inc.*, 145 P.3d 541, 554 (Alaska 2006); *Berthiaume* v. *McCormack*, 891 A.2d 539, 547 (N.H. 2006).

In the decisions below, the Texas Supreme Court joined this side of the split. It expressly disagreed with "other state courts" that have given conclusive effect to "express trust canon[s]" like the Dennis Canon, and instead aligned itself with courts that read *Jones* as requiring the trust canon to comply with "state * * * law." *Masterson*, 422 S.W.3d at 611-612 (citation omitted). It then held that the Dennis Canon was "not good enough" to establish an irrevocable trust "under Texas law," and that the breakaway diocese could therefore revoke it at will. *Id.* at 613; *see* Pet. App. 33a-34a.

3. This split is entrenched, growing, and consequential. Courts have acknowledged it time and again. *See, e.g.*, *Church of God in Christ*, 531 S.W.3d at 168; *Hope Presbyterian Church*, 291 P.3d at 685; *Presbytery of Ohio Valley*, 973 N.E.2d at 1106 n.7. So have scholars—even those with divergent views on the merits. *See, e.g.*, Hassler, *supra*, at 419-426; Michael M. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 322-327 (2016); Douglas Laycock, *Church Autonomy Revisited*, 7 Geo. J.L. & Pub. Pol'y 253, 257-258 nn.35-38 (2009). And as intra-denominational strife has increased in recent years, the split has only continued to widen: Of the at least 14 state high courts to take a position on this question, all but

one have done so in the last two decades—with six newly joining the fray in the last nine years.

This split is frequently outcome-determinative. The decisions below are illustrative: Whereas many courts have deemed the Dennis Canon "dispositive" in establishing a trust in favor of The Episcopal Church, *e.g.*, *Harnish*, 899 N.E.2d at 924-925—a rule that would have conclusively resolved this case in Petitioners' favor years ago—the court below found the very same trust "not good enough" under state law to secure property rights in the Church against a schismatic faction's attempt to revoke the trust, *Masterson*, 422 S.W.3d at 613. The difference stems from these states' divergent views of when the First Amendment, as construed in *Jones*, requires state law to yield.

4. Texas has chosen the wrong side of the split. *Jones* predicted that neutral principles would not "frustrate the free-exercise rights of the members of a religious association" in part *because* of its holding that "the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property." 443 U.S. at 606. How? Among other "minimal[ly]" burdensome options, "the constitution of the general church can be made to recite an express trust in favor of the denominational church." *Id.*

The Episcopal Church followed the Court's instruction when, just months after *Jones*, it adopted the Dennis Canon. Texas and the jurisdictions it sided with, however, have not heeded the Court's instruction. By refusing to enforce parties' pre-dispute commitments, these jurisdictions have eradicated the very mechanism that, per the *Jones* majority, made

"neutral principles" constitutionally acceptable. The result could hardly be further from the "minimal burden" and avoidance of church-state entanglement the *Jones* majority envisioned.

5. The issue is exceedingly important. Many billions of dollars of property are at stake—including more than $100 million in this case alone. But more important than the properties' monetary value is their religious significance. Indeed, to parishioners locked out of their houses of worship, little could matter more. If express-trust canons may be disregarded based on contrary state law, then churches, cemeteries, and other priceless assets of religious denominations will be vulnerable to seizure by breakaway factions. And religious denominations will be effectively disabled—contrary to *Jones*'s assurance—from adopting canons that will reliably protect their property from intrachurch conflict in all 50 states.

This petition presents a clean vehicle to resolve this issue. The decision below is now final. The Texas Supreme Court expressly took sides on a well-aired division of authority. And that split was outcome-determinative, as demonstrated by the Texas Supreme Court's acknowledgment that "other state courts" have given conclusive effect to the same trust canon it deemed unenforceable notwithstanding contrary state law. *Masterson*, 422 S.W.3d at 611. The Court should step in and seize this opportunity to bring clarity to an issue of recurring importance to religious organizations and their congregants.

II. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE A SPLIT OVER WHETHER COURTS MUST DEFER TO A RELIGIOUS DENOMINATION'S DETERMINATION OF WHO REPRESENTS ITS OWN SUBORDINATE BODIES.

This case also presents a second question meriting this Court's review. *Jones* held that courts applying the neutral-principles approach 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. But courts have divided over how to apply this second safeguard on the neutral-principles approach. At least five jurisdictions grant conclusive deference to the church's determinations on questions of polity, even where the religious body disagrees with state law. But several States, including Texas, follow state law even in the face of a directly conflicting determination by the church's highest governing body. This issue is of the utmost importance, dictating not only the scope of a church's property rights in the case of schism but fundamental principles of religious independence. Indeed, just last Term, two Justices wrote that the scope of courts' authority "to question a religious body's own understanding of its structure and the relationship between associated entities * * * may well merit our review." *Roman Catholic Archdiocese*, 140 S. Ct. at 702 (Alito, J., concurring). This case presents a suitable opportunity for the Court to take up that issue.

1. At least five jurisdictions hold that courts must defer to a church's determination regarding its own hierarchy and leadership, irrespective of what state

law provides. In *Harris* v. *Matthews*, 643 S.E.2d 566 (N.C. 2007), for example, the North Carolina Supreme Court held that it was "constitutionally prohibited" from using North Carolina law to determine "the proper role of * * * church officials" in a dispute over church funds. *Id.* at 571-572. This was an "ecclesiastical question[ ]," the court explained, on which courts were required to "defer to the church's internal governing body." *Id.* at 570-571 (citation omitted). And it made no difference that the church was organized as "a nonprofit corporation"; a church does not "forfeit its fundamental First Amendment rights" simply by "incorporat[ing]" under state law. *Id.* at 572.

The West Virginia Supreme Court of Appeals has likewise held that "civil courts [a]re bound to abide by th[e] decision" of "the proper church authorities" in a dispute over "the proper trustees" of a local congregation. *Church of God of Madison* v. *Noel*, 318 S.E.2d 920, 924 (W. Va. 1984). In *Church of God*, a group of former trustees sought to "retain control of [church] property for the benefit of the disaffiliated members of the local congregation" by arguing that the church's efforts to replace them were "defect[ive]" under state law. *Id.* at 922. But "this [wa]s solely a matter of internal church government," the court concluded, and the court thus "had no authority to substitute its judgment for that of the church." *Id.* at 923.

The high courts of South Dakota, Tennessee, New Jersey, and Nevada agree. The South Dakota Supreme Court held that the First Amendment barred it from using state corporate law to resolve a disagreement between a church and its excommunicated

members over "what is the true *** Church *** and who are its 'true' elders," as these were "obvious religious questions." *Hutterville Hutterian Brethren, Inc.* v. *Waldner*, 791 N.W.2d 169, 178 (S.D. 2010). Similarly, the Tennessee Supreme Court has held that where "[a]n Ecclesiastical Council *** determined that [a bishop] was *** the duly appointed pastor," the court's role was "simply to defer." *Church of God in Christ*, 531 S.W.3d at 173; *see also Protestant Episcopal Church in Diocese of New Jersey* v. *Graves*, 417 A.2d 19, 24-25 (N.J. 1980); *Tea* v. *Protestant Episcopal Church in Diocese of Nevada*, 610 P.2d 182, 184 (Nev. 1980).

2. At least three States, including Texas, have taken a starkly different view. These jurisdictions hold that courts may apply state law to determine who governs a subordinate religious body for purposes of determining property rights, even in the face of a conflicting determination by the church's governing body.

The Alaska Supreme Court followed this approach in *St. Paul Church*. There, the court concluded that a breakaway faction of the United Methodist Church had gained "control" of an incorporated local church called St. Paul, despite the denomination's "own interpretation of its authority under the [Church] Discipline to succeed" to control of St. Paul once the local leaders disassociated themselves. 145 P.3d at 560. The court reasoned that "there is an analytical distinction between the corporation as a separate legal entity and the religious society." *Id.* Applying "neutral principles" of Alaska law, the court then "award[ed] the St. Paul corporate existence and name" to the breakaway faction. *Id.*

Similarly, in *Aldrich ex rel. Bethel Lutheran Church* v. *Nelson ex rel. Bethel Lutheran Church*, 859 N.W.2d 537 (Neb. 2015), the Nebraska Supreme Court declined to grant deference to a "synod council's decision" that a local congregation did not "leave the [Evangelical Lutheran Council of America]" when a majority of its members voted to disaffiliate. *Id.* at 540. Because the congregation was "a nonprofit corporation organized under Nebraska law," the court reasoned, the issue of the congregation's affiliation should be decided "using neutral principles of law," not principles of deference. *Id.* at 540-541.

The Texas Supreme Court took a similar approach in *Masterson* and the decision below. In *Masterson*, it held that The Episcopal Church was "not entitled to deference" on the question whether dissenting members controlled a local parish for purposes of determining "property ownership." 422 S.W.3d at 610. Because the parish was "incorporated pursuant to secular Texas corporation law," the court reasoned, the determination of who controlled the parish in its corporate capacity was a "secular legal question[]," not an "ecclesiastical decision[]." *Id.* at 610, 613. Two justices dissented, arguing that the majority's approach "permit[ted] civil courts to conduct an end-run around the First Amendment's prohibition against inquiry into *** matters of church polity." *Id.* at 618 (Lehrmann, J., dissenting); *see also Protestant Episcopal Church in Diocese of South Carolina* v. *Episcopal Church*, 806 S.E.2d 82, 89 & n.6 (S.C. 2017) (opinion of Pleicones, J.) (agreeing that *Masterson*'s approach "relies on a false dichotomy between parish as ecclesiastical unit and parish as a corporate entity").

Yet in the decision below, the Texas high court extended its error. It held that, under "Texas Associations law," the breakaway faction "constitutes the continuation of the Fort Worth Diocese." Pet. App. 23a-24a, 26a. The court acknowledged that the Church had declared the actions of the breakaways "null and void," and determined that they "*immediately* vacated" their offices upon voting to secede. *Id.* at 27a. But because the court thought the dissenting faction's secession vote was "valid under Texas law," it concluded that the Church's directly contrary determination was "not entitled to deference," *id.* at 29a, and affirmed an order requiring Petitioners to "desist from holding themselves out as leaders of the Diocese," *id.* at 228a.

3. This Court's intervention is warranted. Jurisdictions have sharply split on their authority to question the judgments of a religious denomination as to whether local congregations have disaffiliated from the denomination. And they have specifically disagreed as to whether the use of the corporate form makes a difference—with some deeming it a matter of dispositive significance, *see St. Paul Church*, 145 P.3d at 560, while others hold that a denomination does not "forfeit" its right to determine its own organization when its local congregations incorporate, *Harris*, 643 S.E.2d at 572.

This issue is of considerable importance. When a local church splits into competing factions, the determination of "which faction * * * ha[s] control of the local church" is often dispositive in resolving disputes over ownership. *See Jones*, 443 U.S. at 614 (Powell, J., dissenting). And the question can be of profound religious significance, as well. As Professor

Laycock has written, "[d]ifferences in church governance reflect deep theological disagreements"; "the wars of religion were fought in part" over questions such as "whether to have bishops" and "whether to have elected assemblies." Laycock, *supra*, at 258. The Court has repeatedly intervened in recent years to ensure that civil courts do not overstep their authority in matters relating to a church's leadership and structure. *See Roman Catholic Archdiocese*, 140 S. Ct. 696; *Our Lady of Guadalupe*, 140 S. Ct. 2049; *Hosanna-Tabor*, 565 U.S. 171. The stakes in this case are no less significant.

4. The Court's intervention is also warranted because Texas's position is wrong. *Jones* held that the First Amendment "requires that civil courts defer" to a church's governing body on questions of "polity." *Jones*, 443 U.S. at 602. And as this Court has since made clear, such deference is required even where a "neutral law of general applicability" would otherwise restrict the church's authority to select its leaders. *Hosanna-Tabor*, 565 U.S. at 190. Applying state law to override a church's determination of who governs its own diocese flatly contravenes these commands.

The Texas Supreme Court suggested that these principles are relaxed when determining leadership of a church entity in its capacity as a corporation or an "unincorporated association." Pet. App. 23a. But in *Milivojevich*, this Court specifically rejected a bishop's efforts to dispute his ouster as "principal officer" of "property-holding corporations" in the Serbian Eastern Orthodox Church, explaining that the bishop's removal from his corporate leadership positions was part and parcel of "an ecclesiastical

decision that is not subject to judicial abrogation." 426 U.S. at 709, 720. As the North Carolina Supreme Court explained, religious bodies cannot be put to the choice between forgoing the benefits of a legal form and "forfeit[ing] *** fundamental First Amendment rights." *Harris*, 643 S.E.2d at 572.

Furthermore, as the facts of this case illustrate, questions of church polity are often inextricably bound up with questions of religious doctrine. *See* Laycock, *supra*, at 257-258. The governing body of The Episcopal Church concluded that the Diocese did not secede from the Church because, as a precept of faith, it could not; under Episcopal law and doctrine, secession is sin, and the church officials who voted to secede "*immediately* vacated their offices." Pet. App. 27a. To hold that the validity of a secession vote is a "secular legal question[ ]," *id.* at 29a, impermissibly diminishes the Church's beliefs and denies it the power to structure itself in accordance with its faith.

III. THE COURT SHOULD GRANT CERTIORARI TO RECONSIDER OR LIMIT THE NEUTRAL-PRINCIPLES APPROACH.

Finally, this Court should grant certiorari to reconsider the neutral-principles approach itself—or at least limit its application to cases in which religious bodies received fair notice that they would be subject to that approach before arranging their affairs.

1. *Jones* marked a sharp departure from over a century of precedent in which this Court required deference to "the highest judicator[ies]" of a hierarchical religious body in any intra-denominational dispute over church property. *Watson*, 80 U.S. at 733-734. The majority's legal rationale for charting this novel approach was flawed from the start. It

contended that courts could resolve church property disputes without impinging on religious freedom by reading religious documents "in purely secular terms," and by refraining from deciding any questions of "doctrine or polity." *Jones*, 443 U.S. at 602, 604. But as the dissenters observed, attempting to give religious documents a "purely secular" construction is "more likely to promote confusion than understanding." *Id.* at 612 (Powell, J., dissenting). And church disputes "arise almost invariably out of disagreements regarding doctrine and practice"; "[w]hen civil courts step in to resolve intrachurch disputes over control of church property," they are bound to "support or overturn the authoritative resolution" of that question "within the church itself." *Id.* at 614, 616.

In the intervening 41 years, *Jones* has become only more discordant with this Court's precedents. In *Hosanna-Tabor* and *Our Lady of Guadalupe*, the Court relied heavily on the *Watson* line of cases—and conspicuously omitted any mention of *Jones* and neutral principles—in the course of holding that courts must defer to "a church's determination of who can act as its ministers." *Hosanna-Tabor*, 565 U.S. at 185-187; *see Our Lady of Guadalupe*, 140 S. Ct. at 2061-62. That holding reflects *Watson*'s teaching that protecting the free exercise of religion and preventing the establishment thereof requires deference to the internal decisions of religious organizations. *See* Douglas Laycock, Hosanna-Tabor *and the Ministerial Exception*, 35 Harv. J.L. & Pub. Pol'y 839, 853 (2012). And it is flatly inconsistent with *Jones*'s statement that courts can apply "neutral provisions of state law governing the manner in which churches * * * hire employees." 443 U.S. at

606. More generally, whereas *Jones* "explicitly rejected blanket deference to religious institutions," *Hosanna-Tabor* and *Our Lady of Guadalupe* held that such deference was necessary in the ministerial context to avoid unconstitutional entanglement with church polity. Caroline Mala Corbin, *The Irony of* Hosanna-Tabor Evangelical Lutheran Church and School *v.* EEOC, 106 Nw. U. L. Rev. 951, 957-958 (2012). If the "Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers," *Hosanna-Tabor*, 565 U.S. at 181, they likewise bar interference with the equally fundamental decision as to the identity of the rightful church.

2. *Jones's* predictions about the administrability of its new rule have also been disproven by time. More than most decisions, *Jones* depended for its validity on the premise that its rule would be "objective" and only "minimal[ly]" burdensome. 443 U.S. at 603-606. Yet *Jones* has produced "massive inconsistency," Hassler, *supra*, at 431, and led to "a welter of contradictory and confusing case law largely devoid of certainty," Hon. John E. Fennelly, *Property Disputes and Religious Schisms: Who Is the Church?*, 9 St. Thomas L. Rev. 319, 353 (1997). Outcomes in neutral-principles courts have been irreconcilable and impossible to predict, even in cases involving the very same religious organization and texts. *See, e.g.*, Cameron W. Ellis, *Church Factionalism and Judicial Resolution: A Reconsideration of the Neutral-Principles Approach*, 60 Ala. L. Rev. 1001, 1007 (2009).

Needless to say, such disparate results make it difficult for religious organizations to structure their

affairs, particularly across multiple states. And where the free exercise of religion is concerned, that difficulty cannot be dismissed as a mere casualty of federalism. "Predictability in the resolution of intrachurch disputes is essential to the First Amendment's guarantee of Free Exercise, because only with predictability will churches be truly free to exercise their ecclesiastical choices regarding polity and organization." Nathan Clay Belzer, *Deference in the Judicial Resolution of Intrachurch Disputes: The Lesser of Two Constitutional Evils*, 11 St. Thomas L. Rev. 109, 135 (1998).

While insoluble confusion is reason enough to reconsider *Jones*, it is not that decision's most pernicious progeny. Even worse: The neutral-principles approach has "entangle[d] the civil courts in matters of religious controversy." 443 U.S. at 608. In the name of neutral principles, courts have given their own interpretations to deeply religious texts. *See, e.g.*, *Fonken* v. *Cmty. Church of Kamrar*, 339 N.W.2d 810, 818 (Iowa 1983) (interpreting Presbyterian Book of Order). They have reached their own conclusions about questions of church doctrine. *See, e.g.*, *Gen. Convention of New Jerusalem in the U.S., Inc.* v. *MacKenzie*, 874 N.E.2d 1084, 1086-88 (Mass. 2007) (deciding whether a congregation's disaffiliation constituted a church dissolution). And—as this case illustrates—they have second-guessed religious denominations' determinations of who constitutes the "true" church. *See supra* pp. 27-29.

3. The Court should not allow this regime to persist. This Court has not hesitated to overrule opinions that "produced 'confusion.'" *United States* v. *Dixon*, 509 U.S. 688, 711 (1993) (citation omitted).

And the force of *stare decisis* is particularly weak where, as here, a decision is inconsistent with both preceding and succeeding case law. *See Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1405-06 (2020). Simply put, *Jones* was wrong from the start, and the past four decades have only highlighted its deficiencies. The Court should end the detour that *Jones* began, and return to the deference regime adopted by *Watson*, reaffirmed by *Hosanna-Tabor*, and mandated by the First Amendment.

4. At minimum, the Court should temper the severe costs of *Jones* by holding that states may not apply the neutral-principles approach "retroactive[ly]—that is, without "clearly enunciat[ing]" that they intend to follow that approach before the dispute erupts. 443 U.S. at 606 n.4.

Jones reasoned that "[t]he neutral-principles approach cannot be said to 'inhibit' the free exercise of religion" because religious organizations can embody their intentions "in some legally cognizable form" "before the dispute erupts." *Id.* at 606. But as the Court recognized, that logic suggested a constitutional problem with applying neutral principles "retroactive[ly]." *Id.* at 606 n.4. If the approach comports with the Free Exercise Clause because religious organizations can structure their affairs in advance, what about organizations that had no such chance, because they arranged their affairs under a deference regime? *Jones* did not have to answer that question, because "the Georgia Supreme Court [had] clearly enunciated its intent to follow the neutral-principles analysis" in earlier cases. *Id.* But this case squarely presents that issue.

From 1909 until 2013, Texas was a deference jurisdiction. In *Brown,* the Texas Supreme Court applied this Court's seminal deference case, *Watson,* to a church-property dispute. 116 S.W. at 365. For 100 years, Texas appellate courts "read *Brown* as applying a deference approach," *Masterson,* 422 S.W.3d at 605, and they "consistently followed the deference rule in deciding hierarchical church property disputes," *Schismatic & Purported Casa Linda Presbyterian Church* v. *Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 705, 707 (Tex. Ct. App. 1986).

But in the decisions below, the Texas Supreme Court abruptly changed course. It held that "Texas courts should use only the neutral principles methodology." Pet. App. 237a; *see Masterson*, 422 S.W.3d at 607. That about-face left Petitioners in the lurch. Decades ago, when the parties to this case arranged their affairs, Petitioners had every reason to believe deference would apply. And, as the trial court determined, Petitioners are plainly entitled to the church property under the deference rule they reasonably believed to govern. Pet. App. 262a-263a. But Petitioners are now told that the arrangements they made long ago are subject to new rules and secular attack.

The First Amendment forbids courts from effecting this bait-and-switch. As *Jones* indicates, a state must "clearly enunciat[e]" its approach before adopting neutral principles. 443 U.S. at 606 n.4. The Court should grant the writ and hold that, at minimum, retroactive application of the neutral-principles approach conflicts with *Jones* and the First Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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