No. 11-1101

In the Supreme Court of the United States

TIMBERRIDGE PRESBYTERIAN CHURCH, INC., ET AL.,
PETITIONERS

v.

PRESBYTERY OF GREATER ATLANTA, INC.

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Georgia courts' factbound resolution of a local church property dispute "on the basis of the language of the deeds, the terms of the local church charter[], the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership of and control of church property," *Jones* v. *Wolf*, 443 U.S. 595, 603 (1978), and without consideration of "religious doctrine and practice," violated the "neutral principles" doctrine set forth in *Jones* v. *Wolf*.

PARTIES TO THE PROCEEDING AND RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioners are Timberridge Presbyterian Church and Timberridge Presbyterian Church, Inc.

Respondent is the Presbytery of Greater Atlanta, Inc., a Georgia non-profit corporation that is not authorized to issue stock. It has no parent corporation and has not issued stock to any person or entity. It is a local presbytery of the Presbyterian Church (U.S.A.), a national religious denomination.

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The opinion of the Supreme Court of Georgia (Pet. App. 1-54) is reported at 719 S.E.2d 446. The opinion of the Court of Appeals of Georgia (Pet. App. 55-74) is reported at 705 S.E.2d 262. The trial court orders granting respondent summary judgment (Pet. App. 75-93 and Pet. App. 94-111) are unreported.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on November 21, 2011, and a timely petition for reconsideration was denied on December 8, 2011. Pet. App. 112. The petition for a writ of certiorari was filed on March 6, 2012. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATEMENT

Petitioners, Timberridge Presbyterian Church and Timberridge Presbyterian Church, Inc. ("TPC Inc."), ask this court to review the application by the Supreme Court of Georgia of the "neutral principles of law" doctrine set forth in *Jones* v. *Wolf*, 443 U.S. 595, 602-606 (1979), to its property dispute with the concededly hierarchical Presbyterian Church (U.S.A.) ("PCUSA"), Pet. 3. Concerned about "entanglement in questions of religious doctrine," the *Jones* Court endorsed a "neutral principles of law" approach to resolving church property disputes without regard to religious doctrine or worship practice. 443 U.S. at 602-606. This rule enabled churches to obtain the benefits of private-law systems by allowing them to order their "private rights and obligations to reflect the intentions of the parties." *Id.* at 603. Since this decision over three decades ago, many national churches have ordered their affairs by adopting pro-

visions in church constitutions and corporate documents that outline, in purely secular terms, their desired property-ownership arrangements with local churches that affiliate with the national organization. See, *e.g.*, *Rector, Wardens, and Vestrymen of Christ Church in Savannah* v. *Bishop of the Episcopal Diocese of Georgia*, 718 S.E.2d 237, 246-247 (Ga. 2011) (looking to secular provisions in Episcopal Church documents to resolve a property dispute); *In re Episcopal Church Cases*, 198 P.3d 66, 79 (Cal. 2009) (same).

Civil courts applying "neutral principles" must examine the unique facts of each case to "give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Jones*, 443 U.S. at 606. That is precisely what the Supreme Court of Georgia did here, applying the clear holding of *Jones* to "the specific facts presented in the record," Pet. App. 10. This case is, as *Jones* plainly contemplated, a factbound and state-law dependent application of a clearly established rule of law that even petitioners' *amicus* has recognized as "straightforward." Br. for The Becket Fund for Religious Liberty in Support of Appellants, *Church in Savannah* v. *Bishop of the Episcopal Diocese of Georgia, Inc.*, 718 S.E.2d 237 (Ga. 2011) (No. S10G1909), 2011 WL 1252216 at *5 ("Becket Fund *Savannah* Br.") 20.

This Court has recognized that "not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property." *Presbyterian Church* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian*

Church, 393 U.S. 440, 449 (1969). The decision of the Supreme Court of Georgia, which correctly stated and evenhandedly applied neutral principles of law, does not jeopardize First Amendment principles and did not decide an important question of federal law. Further review is not warranted.

1. Timberridge Presbyterian Church joined the Presbyterian Church of the United States ("PCUS"), the southern branch of the denomination, in 1880. Pet. App. 1-2. By early 1982, the southern and northern branches of the Presbyterian Church were meeting to discuss reunification. At around the same time, the PCUS was meeting to consider adding a provision to the PCUS Book of Church Order, which provided rules governing PCUS churches, stating that local churches hold their property in trust for the PCUS.

In June 1982, approximately three years after this Court decided *Jones*, the PCUS "amended the property provisions of its Constitution by adding Section 6-3 to the Book of Order," to state that "[a]ll property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association * * * is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States." Pet. App. 76-77. Timberridge's pastor and an elder "attended the meeting of the PCUS at which the property trust provision was adopted." *Id.* at 77. About two weeks later, the Presbytery of Greater Atlanta ("Presbytery") met to vote on reunification. Timberridge's pastor and an elder attended and voted in favor of reunification. *Id.* at 2-3.

2. a. On June 10, 1983, PCUS and the northern branch of the Presbyterian Church reunited to form PCUSA. PCUSA "is a hierarch[ic]al organization which is governed by a Constitution * * * [with] a representative form of government." Pet. App. 76; accord Pet. 3 (acknowledging that PCUSA is "hierarchical"). As part of the reunification process, PCUSA adopted a new Book of Order, which contained several sections relevant to this case. Section G-8.0201 of this Book of Order is virtually "identical" to Section 6-3 of the PCUS Book of Order (Pet. App. 23, 68) and states:

> All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association * * * is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Id. at 76-77. Section G-8.0301, in turn, provides that if a local church stops using its property as a church of the PCUSA, the property "shall be held, used, applied, transferred, or sold as provided by the presbytery." *Id.* at 4; see also *id.* at 78-79 (cited as G-8.031).

Section G-8.0701 "authorized churches, for a period of eight years from the date of reunion, * * * to opt out of a property provision *if the church was not subject to a similar provision under its former Constitution*." Pet. App. 79. Finally, Article XIII of the Articles of Agreement governing the reunion of the southern and northern branches of the Presbyterian Church, which was appended to the PCUSA Book of Order, allowed churches, "within a period of eight

years from the date of reunion, [to] petition to leave the denomination with its property." *Ibid.*

b. In June 1984, "pursuant to Section G-7.0401 of the PCUSA Book of Order," Timberridge formed TPC Inc., *ibid.*, whose stated "purpose [was] 'to be a church institution which is a member of the Presbytery of Atlanta of the [PCUSA] or any successor Presbytery thereof.'" Pet. App. 5 (quoting TPC Inc.'s Articles of Incorporation). Article VIII of the Articles of Incorporation for TPC Inc. "provided that members of the corporation would be the active members of the Church as defined by the PCUSA Book of Order," meaning persons who have "voluntarily submitted to the government of this [general] church." Book of Order § G-5.0202. And Article IX "provided that any bylaws adopted * * * shall not conflict with the Articles of Incorporation or with the Book of Order of the PCUSA." Pet. App. 79-80.

3. In November 1987, "Timberridge sent the Presbytery a letter stating that Timberridge had 'voted to take the "property exemption" as provided in the Book of Order, Section G-8.0700.'" Pet. App. 6. Timberridge received no response to that letter, but remained a member of PCUSA and did not attempt to use the procedures laid out in Article XIII of the reunification agreement for leaving the Church. *Ibid.* In 1999, pursuant to the PCUSA Book of Order, Timberridge conveyed church and cemetery property through warranty deeds to TPC Inc. and "its successors, heirs and assigns." *Id.* at 80.

From 1983 to 2007, Timberridge "functioned as a regular member of the national church," Pet. App. 6, "took part in the governance of the denomination," *ibid.*, and "experienced benefits of being associated

with the [PCUSA] such as participation in the representational governance * * * and the availability of the denomination's resources," *id.* at 6-7. It followed PCUSA process for the call of all of its pastors, who were all PCUSA-ordained ministers. *Id.* at 80-81. And it used the PCUSA logo on its church sign and letterhead. *Id.* at 81.

4. In 2007, TPC Inc. sued the Presbytery, seeking a declaratory judgment that "TPC Inc. owned all Timberridge property and did not hold it in trust for the benefit of the PCUSA," and later amended its complaint to add a quiet title action. Pet. App. 7. The Presbytery filed a counterclaim, contending that TPC Inc. held the property in trust for the benefit of PCUSA. *Ibid.* In November 2007, a majority of the Timberridge congregation voted to disaffiliate from PCUSA. *Ibid.* In January 2008, the Presbytery filed an ejectment action against the disaffiliated Timberridge Presbyterian Church. *Ibid.* In mid-2008, Timberridge Presbyterian Church affiliated with a separate denomination called the Evangelical Presbyterian Church. *Ibid.*

5. The trial court granted respondent summary judgment, concluding that the church property was held in trust for the benefit of PCUSA. Pet. App. 110-111. Applying established "neutral principles of law," the trial court examined deeds to the property, corporate documents of TPC Inc., the PCUSA Book of Order, and state statutes. *Id.* at 82-89; accord *Jones*, 443 U.S. at 602-604. After thoroughly reviewing each of those sources, see Pet. App. 82-89, the court concluded that Timberridge had, "through its actions, as well as [through] the Articles of Incorporation of TPC

Inc., obviously intended to be bound by [the PCUSA] constitution." *Id.* at 89.

The trial court concluded that "Sections G-8.0201 and G-8.0301 of the PCUSA Book of Order * * * created a trust in favor of the denomination as to any property held by the local church" because TPC Inc. was subject to a similar provision in the PCUS Constitution. Pet. App. 84. The court rejected Timberridge's argument that it "did not expressly consent to the inclusion of the property trust clauses" in the PCUS and PCUSA constitutions. *Id.* at 87. It noted that Timberridge was represented at the meeting where the Presbytery voted to adopt the PCUS trust provision and at the meeting to reunite with the northern branch of the church. *Ibid.* In any event, the corporate documents of TPC Inc., identified it as a church "affiliated with the PCUSA" with bylaws consistent with the PCUSA Book of Order, and thus "evidence[d] a clear intention that the church corporation was formed in accordance with the PCUSA Book of Order to be the civil arm of a PCUSA Church * * * and that it subjected itself to the rules of governance of the PCUSA." *Id.* at 84. The court concluded that Timberridge's November 1987 attempt to opt out of the property provisions "was not effective to opt it out of the property trust provisions of the PCUSA Book of Order," but rather applied only to a provision requiring written permission of the Presbytery before selling church property. *Id.* at 86-87. The court also noted that Timberridge had failed to exercise its option to leave PCUSA by "submitt[ing] a petition under Article XIII" of the denomination's constitution. *Id.* at 88.

Finally, the trial court examined two Georgia statutes: Ga. Code Ann. § 53-12-20, the State's "generic express trust statute," Pet. App. 15, and Ga. Code Ann. § 14-5-46, a statute dating to 1805 that addresses church property conveyances, see *id.* at 88-89. The trial court determined that, under Georgia precedent, the latter statute applied because it "specifically contemplates that conveyances of real property to churches shall be given effect in accordance with the mode of church governance or rules of discipline of such church." *Id.* at 89. The former statute, in contrast, had never been cited by a Georgia court as "controlling, or even applicable to, a church property trust dispute." *Ibid.*

6. The Court of Appeals of Georgia reversed. Pet. App. 55-74. It agreed with the trial court that neutral principles of law require examination of "the relevant statutes, applicable deeds, and the corporate and organizational documents of the local church as well as those of the national denomination to determine the intention of the parties," *id.* at 58, but reached a different conclusion about what intent those documents reflected, see *id.* at 73. The court held that Ga. Code Ann. § 14-5-46 applies only to "deeds of conveyance," and did not abrogate the requirements of the Georgia general trust statute, Ga. Code Ann. § 53-12-20, which requires "[a]n intention by a settlor to create a trust." Pet. App. 61, 63. The court concluded that "the absence of any trust language in the deeds * * * weighs against the creation of a trust" under Ga. Code Ann. § 53-12-20. *Id.* at 64. While noting that "[t]he trial court correctly observed that [TPC Inc.'s] articles of incorporation '*reference* * * * the PCUSA Book of Order and provide that the bylaws of the corporation shall not be inconsistent

with the PCUSA Book of Order,'" *id.* at 65, the court of appeals concluded those documents "do not express such clear intent to render the local church corporation subject * * * to the authority of the Presbytery or PCUSA." *Ibid.* Finally, it held that the Book of Order's trust provision was insufficient to show an intention to create a trust, *id.* at 71, concluding that Timberridge's unanswered 1987 letter reflected an "intention *not* to create a trust," *id.* at 73. The documents, in the court's view, failed to "show with 'reasonable certainty' an intention on the part of [TPC Inc.] to create an express trust" under Ga. Code Ann. § 53-12-20(b), and thus concluded no trust was created in favor of the national church. *Id.* at 71.

7. The Supreme Court of Georgia reversed. Pet. App. 1-54. Like the lower court, it agreed that the "neutral principles" inquiry required examining "relevant deeds, state statutes, and the governing documents of the local and general churches" with the "ultimate goal" to "determine 'the intentions of the parties' at the local and national level regarding beneficial ownership of the property at issue as expressed 'before the dispute erupt[ed]' in a 'legally cognizable form.'" *Id.* at 9-10 (quoting *Jones*, 443 U.S. at 603, 606).

The court concluded that the deeds were "of limited value" in making that determination, because they neither "show an intent by the grantors to create a trust," nor do they "expressly preclude the creation of one." Pet. App. 11. The court observed that it is "undisputed" that Timberridge voluntarily "affiliated with the PCUSA in 1983 and thus brought itself under the national church's constitution, which squarely states that local churches * * * hold their property in

trust for the PCUSA even if 'legal title is lodged in a corporation.'" *Ibid.* "Given that provision, Timberridge would have no reason to believe that its deeds needed to recite a trust in favor of the general church * * *." The court held, as a matter of state law, that the Court of Appeals had "relied heavily, and incorrectly, on Georgia's generic express trust statute [Ga. Code Ann. § 53-12-20]," *id.* at 15, concluding that, under Georgia precedent, "compliance with § 53-12-20 [is not] necessary to create a trust in favor of a national church," *id.* at 18. Although the Supreme Court of Georgia determined that it need not rely on the longstanding state provision governing church property disputes, Ga. Code Ann. § 14-5-46, "which date[s] back more than two centuries," it concluded that the statute "express[ed] this State's policy of looking to 'the mode of church government or rules of discipline' in resolving church property disputes." *Id.* at 14 (quoting Ga. Code Ann. § 14-5-46).

The court concluded that the Articles of Incorporation of TPC Inc. reflected Timberridge's intent to be subject to PCUSA's Book of Order, recognizing that Timberridge had founded TPC Inc. in 1984 to comply with the Book of Order's requirement that church property be held through corporations, and that the corporation's Articles of Incorporation specifically provided that: TPC Inc., would be "a church institution which is a member of the Presbytery of Atlanta of the [PCUSA], or any successor Presbytery"; its members would be required to be persons who had "voluntarily submitted to the government of this [general] church"; and its bylaws could not conflict with the Book of Order. Pet. App. 19-21 (quoting provisions in the Articles of Corporation and the Book of Order). Thus, by adopting the Articles of Incorpo-

ration, "TPC Inc., with unmistakable clarity, agreed to bind itself to the Presbytery and the PCUSA and to abide by the Book of Order, which has included the explicit property trust * * * provision[] since the PCUSA was established in 1983." *Id.* at 22. By the same token, "when Timberridge affiliated with the PCUSA" in 1983, "it agreed that it 'was a local expression of the universal church,' that it would be 'governed by this Constitution,' that its active members have 'voluntarily submitted to the government of this church,' and that it would 'function under the provisions of this Constitution.'" *Id.* at 23 (quoting provisions in the Book of Order).[1]

In light of these clear indications of Timberridge's voluntary decision to subject itself to the trust provisions, the court rejected the court of appeals' conclusion that PCUSA had "'unilateral[ly] impos[ed]' the trust provision without any assent by the local church."[2] Pet. App. 25. Thus, the Supreme Court of Georgia "simply enforce[d] the intent of the parties as reflected in their own governing documents," holding

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[1] The court concluded that Timberridge's purported 1987 opt-out was ineffective, both because the PCUSA constitution provided that the opt-out provision was inapplicable to local churches such as Timberridge that were subject to a trust provision under the PCUS constitution, Pet. App. 24 & n.4, and because the opt-out, as the trial court had concluded, was only effective to permit Timberridge to buy, sell, mortgage, or otherwise encumber real property without prior approval, *id.* at 86-87.

[2] The court thus did not "address the more difficult question of whether a general church may *amend* its governing documents, pursuant to procedures agreed upon by it and its member churches, to *add* an explicit property trust provision and make that trust apply to the property of its existing members." Pet. App. 25.

"that neutral principles of law demonstrate that an implied trust in favor of the PCUSA exists on the local church's property to which TPC Inc. holds legal title." *Id.* at 30-31.

Presiding Justice Carley dissented. Pet. App. 32-44. Though he did not deny that the majority had considered the "relevant documents," *id.* at 36, he concluded that with, "neither a dispositive statute nor any deed with clear trust language," the "other documentation [and] circumstances" were insufficient to show "the local church's intention to create a trust or to consent to trust provisions in national church documents," *ibid.* Superior Court Chief Judge Benefield, sitting by special designation, also dissented, concluding that both the court of appeals and the majority had been inattentive to the summary judgment standard, and argued that additional types of evidence should be considered. *Id.* at 49 & n.4.

REASONS FOR DENYING THE PETITION

A. The Supreme Court Of Georgia Correctly Applied Neutral Principles Of Law Under *Jones*

Petitioners contend that the analysis of the Supreme Court of Georgia conflicts with the "neutral principles of law" analysis of *Jones* v. *Wolf*, 443 U.S. 595 (1979), because it did not apply Georgia's "generally [applicable] * * * express and implied trust statutes" that apply to the creation of trusts involving non-church property. Pet. 26. According to petitioners, church property disputes must be resolved exclusively by applying the law governing the property of secular organizations—here, the state provision governing the establishment of express trusts, Ga. Code

Ann. § 53-12-20. But that argument cannot be squared with *Jones*. Addressing a church property dispute resolved under Georgia law, *Jones* expressly permitted consideration of the *very documents* that the Supreme Court of Georgia relied on below: "deeds, the terms of the local church charter[], 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." 443 U.S. at 603 (emphasis added). The Supreme Court of Georgia correctly applied settled "neutral principles" analysis to "the specific facts presented in the record," Pet. App. 10, and its fact-bound conclusion does not warrant further review.

1. *Jones* explained that the neutral principles of law approach functions solely as a prohibition against courts considering "religious doctrine and practice" in adjudicating church property disputes. 443 U.S. at 602. So long as state courts do not rely on religious inquiries to resolve such disputes, the particular factors a court considers do not constitute a federal question: "Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes." *Id.* at 602. In other words, the neutral-principles approach requires only "nonentanglement and neutrality" in adjudicating church property disputes—it does not further regulate the application of state law. *Id.* at 604.

Petitioners are therefore simply wrong that the First Amendment or *Jones* requires "a neutral system" to be one "where property rules for resolution of secular property disputes likewise apply to disputes when the parties happen to be churches." Pet. 27. To

the contrary, *Jones* plainly indicated it was permissible to consider "state statutes *governing the holding of church property*." 443 U.S. at 603 (emphasis added). Thus, there is no basis for petitioners' contention that the decision below should have applied only Georgia's generic trust statute in order to discern whether there was an implied trust. See *id.* at 602-604. *Jones* explicitly allows States "to adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.* at 602 (quoting *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring)). In fact, States are "constitutionally entitled" to fashion their own neutral principles of law to resolve church property disputes. *Id.* at 604.

Georgia law resolves church property disputes by looking to "neutral principles of law" to reveal "the intentions of the parties at the local and national level regarding beneficial ownership of the property at issue as expressed before the dispute erupted in a legally cognizable form." Pet. App. 10 (internal quotation marks omitted). Under Georgia law, that inquiry involves reviewing "the relevant deeds, state statutes, and the governing documents of the local and general churches." *Id.* at 9-10. Georgia's adoption of this particular neutral-principles method is not only its constitutional prerogative under *Jones*—it is also the *precise method* the Court approved in that case. *Jones* specifically stated that it "entailed 'no inquiry into religious doctrine'" to resolve church property disputes by examining "the language of 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." *Jones*, 443 U.S. at 603 (quoting *Md. & Va. Churches*, 396 U.S. at 368). Likewise, nothing in Georgia law requires inquiry into "religious doctrine and practice," *id.* at 602, to adjudicate a church property dispute.

2. The decision below faithfully applied these principles, examining "the relevant deeds, state statutes, and the governing documents of the local and general churches" to "determine 'the intentions of the parties' at the local and national level regarding beneficial ownership of the property at issue as expressed 'before the dispute erupt[ed]' in a 'legally cognizable form.'" Pet. App. 9-10 (quoting *Jones*, 443 U.S. at 603, 606).

As the Supreme Court of Georgia observed, it is "undisputed" that Timberridge voluntarily "affiliated with the PCUSA in 1983 and thus brought itself under the national church's constitution, which squarely states that local churches * * * hold their property in trust for the PCUSA even if 'legal title is lodged in a corporation.'" Pet. App. 11. It thus is not dispositive that the deeds did not expressly create a trust, because, "[g]iven that provision, Timberridge would have no reason to believe that its deeds needed to recite a trust in favor of the general church." *Ibid.* "[W]hen Timberridge affiliated with the PCUSA" in 1983, "it agreed that it 'was a local expression of the universal church,' that it would be 'governed by this Constitution,' that its active members have 'voluntarily submitted to the government of this church,' and that it would 'function under the provisions of this

Constitution.'" *Id.* at 23 (quoting provisions in the Book of Order).

Moreover, as the Supreme Court of Georgia concluded, the founding documents of TPC Inc. reflected Timberridge's explicit intent to be subject to PCUSA's Book of Order. Timberridge incorporated TPC Inc. in 1984 in order to comply with the Book of Order's requirement that church property be held through corporations. And TPC Inc.'s Articles of Incorporation reflected a clear intent to be bound by the Book of Order, specifically providing that Timberridge would be "a church institution which is a member of the Presbytery of Atlanta of the [PCUSA], or any successor Presbytery," that its members would be required to be persons who had "voluntarily submitted to the government of this [general] church," and that its bylaws would not conflict with the Book of Order. Pet. App. 19-20. Thus, the Supreme Court of Georgia correctly concluded that TPC Inc.'s Articles of Incorporation "unequivocally submit[ted] Timberridge and its property to the PCUSA as its governing authority," *id.* at 19, and that, "[b]y adopting these Articles of Incorporation, TPC Inc., with unmistakable clarity, agreed to bind itself to the Presbytery and the PCUSA and to abide by the Book of Order, which has included the explicit property trust and other governance provisions," *id.* at 22. Accordingly, "neutral principles of law demonstrate that an implied trust in favor of the PCUSA exists on the local church's property to which TPC Inc. holds legal title." *Id.* at 31.[3]

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[3] The Supreme Court of Georgia correctly determined (Pet. App. 24) that Timberridge's unanswered 1987 letter did not opt out of the trust provision, because PCUSA's opt-out provision was only available to local churches that were not previously

Petitioners are therefore mistaken that this case involves "[i]mposition of a trust absent a showing of intent," Pet. 27: the Supreme Court of Georgia focused its determination narrowly on the intent of the parties as expressed in the documents specified in *Jones*. Because the court below carefully assessed the evidence that Timberridge voluntarily subjected itself to the PCUSA Book of Order and its trust provisions, this case simply does not present the question whether a denomination may "add[] language to its church constitution unilaterally declaring a trust interest in the property of a local congregation."[4] Becket Fund Br. 6. Indeed, the Supreme Court of Georgia expressly declined to address "the more difficult question of whether a general church may *amend* its governing documents * * * to *add* an explicit property trust provision and make that trust apply to the property of its existing members." Pet. App. 25. Nor does the analysis employed below "put its thumb on the scale in favor of the national church." Pet. 16. As the Supreme Court of Georgia noted, the result of the

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subject to a trust provision. Timberridge indisputably was under the terms of the PCUS constitution, which contained just such a trust provision. In any event, there is no dispute that during that time Timberridge failed to follow the specified procedures set forth in Article XIII of the PCUSA Articles of Agreement for disaffiliating. Instead, Timberridge reaffirmed its intent to remain with PCUSA when, in 1999, it transferred its property to TPC Inc., an entity specifically created to comply with the terms of the PCUSA Book of Order. The court's fact-bound determination does not warrant further review.

[4] The Supreme Court of Georgia correctly rejected this characterization, as the "national church enacted the trust provision pursuant to rules of representative government that the local and national churches previously agreed to follow[], and in which the local church's representatives could and did participate." Pet. App. 26.

type of analysis this Court approved in *Jones* "is not pre-ordained; it depends on the deeds, statutes, and national and church governing documents" and thus allows denominations to structure property ownership however they wish. Pet. App. 30.

3. Petitioners base their argument on the mistaken premise that the finding of an implied trust in this case was contrary to state law. In Georgia, however, there are three ways for a trust to be created over church property in a hierarchical church[5]: by statute, Ga. Code Ann. § 14–5–46; by a generic express trust created in compliance with the State's general express trust provision, Ga. Code Ann. § 53–12–20; or through the implication of a trust on church property under Georgia common law, see Pet. App. 11-19. The court below principally relied on the common law—having determined it unnecessary to rely upon the church-specific statute, *id.* at 14-15 ("[A]lthough § 14-5-46 may weigh in favor of the trial court's judgments under our precedents, we need not rely on it to resolve this case.")—and held that the generic express trust statute was not applicable, *id.* at 19. See generally Pet. App. 11-12 (reproducing language of Ga. Code Ann. § 14-5-46).

The decision below comports with longstanding Georgia law. Georgia has long recognized the special relationship that exists within hierarchical church structures. The Georgia courts have interpreted their current statutory provisions, the predecessors of

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[5] A hierarchical church is one where "the local church is a part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulations." *Carnes* v. *Smith*, 222 S.E.2d 322, 335 (Ga. 1976). There is no dispute that PCUSA is hierarchical. See Pet. 3.

those provisions, and Georgia common law "as expressing this State's policy of looking to 'the mode of church government or rules of discipline' in resolving church property disputes, even when the statutory text [of Ga. Code Ann. § 14-5-46] does not squarely apply." Pet. App. 14. Indeed, Georgia law has embodied such a policy since 1805. *Ibid.* Just as this Court has noted, "[t]he neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such a church constitution, for language of trust in favor of the general church." *Jones*, 443 U.S. at 604. But in determining whether such a trust exists, the Georgia courts will not make an "inquiry * * * into religious doctrine." *Carnes* v. *Smith*, 222 S.E.2d 322, 327 (Ga. 1976), cited with approval in *Jones*, 443 U.S. at 600, 601, 606. Thus, in the case below, the Supreme Court of Georgia properly applied its long-standing common law to the church property dispute—common law that comports with the non-entanglement requirements of *Jones*.

B. There Is No Conflict

1. Petitioners claim that the lower courts are divided over whether "a trust may be imposed on church property . . . even though generally applicable property and trust law would not support the creation or an express or implied trust." Pet. 15. Not so—petitioners attempt to manufacture conflict simply by "contrasting" cases decided in favor of national churches with those decided in favor of local churches. See Pet. 17–22. But the fact that national churches win some property disputes and local churches win others does not mean that courts are divided over the application of *Jones* or its underlying

legal principles. To the contrary, it demonstrates that the neutral-principles doctrine is working just as *Jones* intended: Instead of "the outcome of a church property dispute [being] foreordained," "the civil courts [are] * * * giv[ing] effect to the result indicated by the parties." *Jones*, 443 U.S. at 606.

As petitioners would have it, some courts have read *Jones* "to alter the substantive rules for church property disputes, thereby establishing standards that depart from generally applicable property and trust principles," Pet. 17, while others "have held that, under 'neutral principles,' a general church's trust provision is binding only if it conforms to general trust laws," *id.* at 19. None of the decisions petitioners cite, however, stakes such a broad legal claim. Rather, as explained in more detail below, those decisions look to the individual facts and circumstances evidencing the parties' intent under the various state laws applicable in each case, including the local and national church documents and the parties' conduct over the years—just as *Jones* directed. *Jones*, 443 U.S. at 603 ("[T]he neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties."). Indeed, the decision below, far from supporting petitioners' purported conflict, explicitly recognized that "the outcome of these church property disputes usually turns on the specific facts presented in the record * * *." Pet. App. 10. In short, different facts produce different outcomes.

2. For instance, courts have determined that local churches intended to hold property in trust for the national church in cases in which local churches had

unequivocally submitted themselves to be bound by national church constitutions containing express trust provisions. In *Episcopal Diocese of Rochester* v. *Harnish*, 899 N.E.2d 920 (N.Y. 2008), the local church had previously agreed to "abide by all canonical and legal enactments"—without veto power—and "never objected to the applicability or attempted to remove itself from the reach of the [express trust provision] in the more than 20 years since the National Church adopted [it.]" *Id.* at 925 (internal quotation marks omitted). Based on the express trust agreement and the local church's agreement to abide by it, the court concluded the Diocese and National Church were "entitled to the real and personal property at issue." *Ibid.*

Similarly, in *Episcopal Church in the Diocese of Connecticut* v. *Gauss*, 28 A.3d 302 (Conn. 2011), the local church's actions demonstrated a commitment to abide by the church constitution's express trust provision and a continued practice of doing so. When the local parish joined the general church in 1956, it agreed that the church constitution and all future changes would bind it, because "there is no provision in the constitution and canons of the Episcopal Church or the Diocese expressing an intent to the contrary or excusing a parish, either explicitly or implicitly, from complying with the amendments or additions to the constitution." *Id.* at 320. In addition, because the local church had "always acted as though the Episcopal Church held a trust interest in the property" by seeking "approval from the Diocese *each and every time* it wished to purchase, finance or sell real property," the court decided that the "disputed property * * * [was] held in trust for the Episcopal Church and the Diocese." *Id.* at 319-321. Although

petitioners seize on language to suggest the court believed itself "bound" by the explicit trust provision alone, Pet. 19, this context makes clear the court engaged in a broader factual inquiry to determine the parties' intent. As in *Harnish*, the sum of the facts simply favored the national church. Reaching this result after a purely secular analysis of the documents and parties' actions is consistent with *Jones*, and has not, as petitioners assert, resulted in "entanglement in questions of religious * * * polity" or "sacrifice[d] neutrality." Pet. 26 (omission in original) (internal quotation marks and citations omitted).

Other facts and state laws favor local churches. For instance, in *Church of God in Christ, Inc.* v. *Graham*, 54 F.3d 522, 526 (8th Cir. 1995), the court affirmed the district court's finding that the local church was sufficiently independent to have avoided acquiescing in holding its property in trust for the larger church. The court examined the larger church's constitution and charter—as required under Missouri law—but determined that other circumstances surrounding the relationship were inconsistent with the imposition of a trust. *Ibid.* The local church had "explicitly declare[d] its independence" in its articles of incorporation, and the larger church never gave copies of its manual to the local church's pastors or members. *Ibid.* Unlike in *Harnish* and *Gauss*—and unlike here, where petitioners expressly and repeatedly reaffirmed their membership in the PCUSA and a commitment to its Book of Order—the local church never pledged to abide by the constitution of the National Church. Thus, as the district court found, the church members "[had no reason to] believe their property was held in trust [for the Na-

tional Church]." *Ibid.* (internal quotation marks omitted).

Likewise, in *Arkansas Presbytery of the Cumberland Presbyterian Church* v. *Hudson*, 40 S.W.3d 301 (Ark. 2001), the Supreme Court of Arkansas affirmed a finding that the local church held title to the property after "scrutiniz[ing] in purely secular terms" documents, such as the church constitution, to determine the intent of the parties. *Id.* at 307-310. There, the National Church had conveyed title to the local church decades earlier, in accordance with the National Church constitution favoring local control. *Id.* at 304-305. That fact trumped a later amendment to the National Church constitution creating a trust in favor of the National Church to all local church property. *Id.* at 309. Although the neutral-principles approach "includes consideration of *any* church constitutions," the earlier versions held more weight because "parties to a conveyance have a right to rely upon the law as it was at that time." *Id.* at 310 (emphasis added). *Hudson* involved a Presbyterian denomination other than the PCUSA. Unlike here, in *Hudson*, there were no local church Articles of Incorporation tying the church to the denomination and there were no state statutes creating a trust. See *id.* at 308.

Other outcomes vary based on a mix of facts and state law. On one hand, the California Supreme Court awarded property to the national church after it "consider[ed] sources such as the deeds to the property in dispute, the local church's articles of incorporation, [and] the general church's constitution, canons, and rules." *In re Episcopal Church Cases*, 198 P.3d 66, 70 (Cal. 2009). The local church's articles of

incorporation specifically stated that "the Constitution and Canons, Rules, Regulations and Discipline of [the National Episcopal Church] * * * shall * * * always form a part of the By-Laws and Articles of Incorporation of the corporation hereby formed and shall prevail against and govern anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline." *Id.* at 71. And, as in *Harnish*, the National Episcopal Church Constitution recited an express trust in favor of the National Church. See *id.* at 72. Thus the court "g[a]ve effect to the result indicated by the parties" when it decided the property belonged to the National Church. *Id.* at 80 (emphasis omitted) (quoting *Jones*, 443 U.S. at 606). All of that was consistent with California law, which allowed the imposition of a trust whenever "the governing instruments of a superior religious body or general church of which the [local religious] corporation is a member, so expressly provide."[6] *Id.* at 81 (emphasis omitted) (quoting Cal. Corp. Code § 9142(c)(2)). Because California property law required this result, there is no warrant for petitioners' claim that California is part of a "conflict over whether a trust may be imposed on church property that secular law would not allow." See Pet. at 17.

On the other hand, the Supreme Court of South Carolina in *All Saints Parish Waccamaw* v. *Protestant Episcopal Church in the Diocese of South Carolina*, 685 S.E.2d 163 (2009), cert. dismissed, 130 S. Ct. 2088 (2010), held that its own state property

[6] This Court has approved the use of "state statutory law governing the holding of property by religious corporations" so long as they "involve[] no inquiry into religious doctrine." *Md. & Va. Churches*, 396 U.S. at 367-368; see also *Jones*, 443 U.S. at 603.

law precluded the National Church from creating a trust for itself without holding legal title. The court concluded that the local church held title to the property after examining a centuries-old real estate transaction and a 1903 quit-claim deed. *Id.* at 172-174. The amendments to the National Church constitution and canons—passed after the local church gained control of the property—thus had no legal effect as a matter of South Carolina law. *Id.* at 174.[7]

3. Petitioners' *amicus* takes a different tack, claiming that some courts hold that "unilateral trust language is properly scrutinized under standard principles of state property and trust law," Becket Fund Br. at 6, while other courts have "interpreted *Jones* as requiring that they craft special rules for churches," *id.* at 7. This purported conflict fares no

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[7] The two intermediate state court opinions petitioners cite are of the same stripe. The Missouri Court of Appeals in *Heartland Presbytery* v. *Gashland Presbyterian Church*, No. WD 73064, 2012 WL 42897 (Mo. Ct. App. Jan. 10, 2012), held, pursuant to Missouri law, that the National Church's constitution could not be binding on the local church "without some effective expression of [the local church's] agreement to be bound by those provisions." *Id.* at *12. Finding no such "effective expression" in the record, the court concluded that no trust existed. *Id.* at *12-*13. The Louisiana Court of Appeal in *Carrollton Presbyterian Church* v. *Presbytery of South Louisiana of the Presbyterian Church, U.S.A.*, 77 So. 3d 975 (La. Ct. App. 2011), held, after examining the National Church's constitution, that the local church was exempt from the constitution's express trust provision by the constitution's own terms. *Id.* at 981. Alternatively, the court held that under Louisiana's Trust Code no trust existed because the local church held title to the property and no trust was mentioned in the deed or in any other legal filing. *Id.* at 981-982. As Justice Nahmias observed in the opinion below, the *Carrollton* court "cited no legal authority for its reasoning, which is simply wrong." Pet. App. 28 n.7.

better than petitioners'. As explained above, these decisions do not purport to debate whether *Jones* requires "special rules" for churches. Rather, they discern the intent of the parties under various applicable state laws.

That there is variation in state law and in outcomes should come as no surprise, because *Jones* expressly gave States significant freedom to determine how best to resolve church property disputes. See *Jones*, 443 U.S. at 602. Petitioners' *amicus* now claims that this portion of *Jones* is mere "*dictum*" (Becket Fund Br. 7) but makes no attempt to explain why the Court's explanation of the neutral-principles doctrine's application is anything less than a clear holding of that case. In fact, that very same *amicus* acknowledged just last year that "[t]he rule of *Jones v. Wolf* is *straightforward*: A state may select any method for settling church property disputes that it prefers, 'so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy.'" Becket Fund *Savannah* Br., 2011 WL 1252216 at *5 (quoting *Jones*, 443 U.S. at 608) (emphasis added).

Petitioners and their *amicus* not only disagree about how to frame this supposed conflict, but also about which cases should be claimed as supporting it. See Becket Fund Br. 6 n.4 (citing *St. Paul Church, Inc.* v. *Bd. of Trustees of Alaska Missionary Conference of United Methodist Church, Inc.*, 145 P.3d 541 (Alaska 2006); *Berthiaume* v. *McCormack*, 891 A.2d 539 (N.H. 2006); *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005)). By contrast, petitioners do not claim those cases are part of any conflict, and for good reason: they are still further factbound applica-

tions of the "straightforward" rule set forth in *Jones*. The Pennsylvania Supreme Court in *St. James*, for example, held that the local church expressly submitted to the authority of the National Church, and stated in its charter that anyone who "disclaim[ed] the authority of the [National Church could] no longer be a member of [the local church]." *St. James*, 888 A.2d at 808.[8]

4. That petitioners' alleged "conflict" consists only of factbound, state-law-specific applications of the neutral-principles doctrine is further demonstrated by the two other petitions for certiorari arising out of church property disputes that were filed around the time of this petition. See Petition for Writ of Certiorari, *Christ Church in Savannah* v. *Episcopal Church*, No. 11-1166; Petition for Writ of Certiorari, *Gauss* v. *Protestant Episcopal Church*, No. 11-1139. Far from presenting a common legal issue worthy of this Court's review, those petitions arise from dramatically different facts and circumstances that illustrate precisely why *Jones* praised the "flexibility" of the neutral-principles doctrine. See 443 U.S. at 603.

In *Gauss*, the Supreme Court of Connecticut rested its decision largely on the local parish's unqualified written agreement in its 1956 affiliation application "to abide by the constitution and canons of the

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[8] Similarly, in *St. Paul Church*, 145 P.3d 541, the Alaska Supreme Court held in favor of the National Church because the local church leaders were "fully cognizant" of the trust that would result from affiliation with the National Church. *Id.* at 553-554. And in *Berthiaume*, 891 A.2d 539, the New Hampshire Supreme Court construed a land grant to the Bishop of Manchester in favor of the diocese and against the local church because a state statute compelled that result. *Id*. at 249-250.

Episcopal Church," including such subsequently enacted provisions and amendments as the 1979 "Dennis Canon," which expressly created a trust in favor of the denomination and the diocese. *Gauss*, 28 A.3d 319-320, 325-327. The parish had also "sought approval from the Diocese *each and every time* it wished to purchase, finance or sell real property" pursuant to a provision of the Episcopal Church's constitution in force from 1940 to the present day. *Id.* at 320-321. Such approval would have been unnecessary, the court reasoned, if "Parish Members believed that they * * * could have entered into real property transactions *without* the approval of the Diocese because it had no interest in the property." *Id.* at 321.

In *Christ Church*, the Supreme Court of Georgia observed, as it did here, Pet. App. 10, that "the outcome of church property disputes usually turns on the specific facts presented in the record," 718 S.E.2d at 241. Like *Gauss*, that case involved the Episcopal Church. The decision turned on the "specific provisions of the governing documents adopted by the local and national churches, supported by the policy reflected in [specific state laws]" of "looking to the mode of church government or rules of discipline" in applying *Jones*. *Id.* at 243, 255 (internal citation omitted). In particular, "Christ Church repeatedly pledged its unequivocal adherence to the discipline of the parent church, including * * * in its formal corporate Articles of Amendment filed with the State of Georgia in 1918 and its Articles of Incorporation filed in 1981—two years after the Dennis Canon was enacted." *Id.* at 247. Also crucial to the court's discernment of the intent of the local church was that "the record show[ed] that at all times during the 180 years before [the] dispute began, Christ Church acted consistently * * *

[to] demonstrat[e] [its] understanding that it could not consecrate, alienate, or encumber—much less leave with—its property without the consent of the parent church." *Ibid.* (A motion to dismiss the petition in *Christ Church* pursuant to Rule 46 was filed May 4.)

* * *

In sum, the only "conflict" among the lower courts is as to result: Sometimes local churches win property disputes with national churches, and sometimes they lose. All of those decisions—including the opinion below—examined the facts and documents prescribed by *Jones* in light of the various state-law principles at play. None of those decisions delved into theological or liturgical issues that *Jones* declared off-limits. *Jones* remains just as "straightforward" as it has been for the 33 years since it was decided.

C. This Case Does Not Concern An Important Or Recurring Question Of Federal Law, And Its Outcome Would Be Sustained On Remand

1. Petitioners allege that "courts across the country have grappled with how to interpret [*Jones*]," and attempt to characterize this case as therefore presenting an "important and recurring issue under the First Amendment." Pet. 25. To the contrary, the suits petitioners cite arise not from any fundamental uncertainty or dispute regarding the meaning of *Jones*; rather, they are largely the unsurprising result of recent doctrinal and political disagreements within the Episcopal Church (USA) and, to a lesser extent, the Presbyterian Church (USA). That these disputes have produced a handful of different out-

comes depending upon case-specific facts and variation in applicable state law is not only consistent with *Jones*, it is exactly what *Jones* envisioned. See *Jones*, 443 U.S. at 602-605. Application of the neutral-principles doctrine is, after all, designed precisely to ensure that decisions in church property suits are not "foreordained" but instead "reflect the intentions of the parties." *Jones*, 443 U.S. at 603, 606.

For more than three decades, *Jones* has provided a "straightforward" (Becket Fund *Savannah* Br. at *5) yet "flexible" framework for this analysis and has allowed courts to efficiently resolve church property disputes on a case-by-case basis with "no consideration of doctrinal matters," *Jones*, 443 U.S. at 604 (internal citation omitted). A temporary uptick in litigation hardly means that this long-standing precedent has suddenly sewn "deep and persistent conflict" that merits this Court's intervention. Pet. 23. To the contrary, as this case illustrates, churches have for decades relied on *Jones* in ordering their affairs. It would be the height of irony to grant review of the decision below, which presents no pressing legal issue, for the purported basis of providing certainty only to create uncertainty by destabilizing the legal regime upon which churches nationwide have justifiably relied for more than three decades.

2. Moreover, this case manifestly does not "provide an ideal vehicle" to resolve any alleged "conflict." Pet. 23. First, petitioners incorrectly assert that, "[h]ad the Georgia Supreme Court applied the approach to *Jones* embraced by the Eighth Circuit, the South Carolina Supreme Court, or the Arkansas Supreme Court[,] * * * it would have affirmed the Georgia Court of Appeals' judgment." *Ibid.* This case, as

discussed above, is readily distinguishable from decisions of those jurisdictions both on its facts and by virtue of the particular background state law. See pp. 22-32, *supra*. Petitioners are thus flat wrong to contend that the outcome here would have been different had it arisen in one of the jurisdictions that petitioners insist has adopted a contrary legal rule.

Second, the court below identified an alternative ground for its decision in favor of respondents—a ground that would leave even a reversal by this Court with little or no bearing on the final outcome of this case. As noted above, the court observed that, although it ultimately need not "rely" on Ga. Code Ann. § 14-5-46 (the long-standing state statute that it had "repeatedly applied * * * to church property disputes") "to resolve this case," that law would "weigh in favor of the trial court's judgments under our precedents [that petitioners' property was held in trust for respondents]." Pet. App. 11-15; see also p. 11, *supra*. The statute, which petitioners deemed "relevant" below, see Pet. App. 59; see also Pet. C.A. Br. 6-7 (No. S11G0587), but which escapes all mention in their petition to this Court, "recognizes and validates deeds conveying land for church purposes according to the limitations set out in the deed and for use 'according to the mode of church government or rules of discipline,'" *Carnes*, 222 S.E.2d at 327-328; accord Pet. App. 11-15. *Jones* explicitly confirms that States may, consistent with the First Amendment, enact statutes that specifically—and without "inquiry into religious doctrine," 443 U.S. at 603—address the conveyance of church property. On remand, then, petitioners' best hope would be merely to lose this case on a different ground.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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