No. 11-1101

IN THE

Supreme Court of the United States

TIMBERRIDGE PRESBYTERIAN CHURCH, INC., and TIMBERRIDGE PRESBYTERIAN CHURCH
Petitioners,

v.

PRESBYTERY OF GREATER ATLANTA, INC.
Respondent.

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

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

REPLY BRIEF

Petitioners Timberridge Presbyterian Church, Inc. and Timberridge Presbyterian Church ("Timberridge") previously showed that there is a deep conflict among state and federal courts of appeals over the requirements of the "neutral principles" doctrine for resolving church property disputes under the First Amendment. Pet. 3-4, 17-22. Petitioners further demonstrated that this case is an ideal vehicle to resolve that conflict because the decision below turns on the proper legal interpretation of "neutral principles." *Id.* at 23-24. Finally, Timberridge showed that review is warranted because the federal question presented is important and recurring and should not be permitted to vary depending on the location of the church property within the United States. *Id.* at 25. Respondent fails to undermine any of these points.

First, despite respondent's protestations, the lower courts have adopted conflicting *legal* interpretations of the "neutral principles" doctrine under this Court's decision in *Jones* v. *Wolf*. These courts reach conflicting "outcomes" based not on the esoteric facts plucked from each decision by respondent, but upon a fundamental disagreement about the meaning of "neutral principles" under the First Amendment. The decision below – joined by high court decisions from Connecticut, New York and California – reads *Jones* to impose a substantive obligation on state courts to modify their generic trust laws when resolving church property disputes. In contrast, decisions by the Eighth Circuit and the Supreme Courts of Arkansas and South Carolina hold that "neutral principles" under *Jones* require adherence to generic trust law when resolving these disputes.

Second, this case squarely implicates this settled conflict. The Georgia Supreme Court set aside the generic Georgia property and trust law because it concluded that *Jones* compelled that result. Pet. App. 16, 19. If the court below had adopted the holdings of the Eighth Circuit or the Supreme Courts of Arkansas and South Carolina (or several other intermediate state courts), then its conclusion that there was no trust under Georgia's generic trust statutes would have precluded imposition of a trust in favor of the national church. Resolution of the conflict is therefore outcome determinative and makes this case a perfect candidate for review by the Court.

Finally, given the decisional conflict implicated by this case, respondent's merits-based argument that the Georgia Supreme Court properly interpreted *Jones* provides no basis for denying certiorari. However the Court decides this case, it will have resolved the conflict. In all events, respondent is wrong because the Georgia Supreme Court's decision (1) misconstrues *Jones* v. *Wolf*, which presupposes the parties will express their intentions in a "legally cognizable form" (443 U.S. 595, 606 (1979)), and (2) undermines First Amendment protections in resolving church property disputes by putting a thumb on the scale of one party rather than adhering to "neutral principles" that would be applicable to resolve all property disputes.

I. THIS CASE IMPLICATES A DEEP CONFLICT AMONG THE STATE AND FEDERAL APPELLATE COURTS.

1. There is a conflict among the State high courts and one federal court of appeals over the meaning of the "neutral principles" doctrine for resolving church property disputes. Respondent dismisses this con-

flict, arguing that (1) "different facts produce different outcomes" and (2) the decisions can be reconciled based on "the individual facts and circumstances evidencing the parties' intent under the various state laws applicable in each case." Opp. 20. Respondent's argument is wishful thinking; the "different outcomes" in these cases turn on the adoption of *different legal interpretations* of the "neutral principles" doctrine under *Jones*.

In this case, the Georgia Supreme Court (1) acknowledged that a trust would *not* have been "created under [the] state's generic express (or implied) trust statutes," Pet. App. 11, 19, but (2) nevertheless imposed a trust because "[r]equiring compliance" with Georgia's generic trust statute requirements "would be inconsistent with the teaching of *Jones v. Wolf*." *Id.* at 16.[1] The Georgia Supreme Court concluded that *Jones* requires that result so "that the burden on a national church and its member churches to provide which one will control local church property in the event of a dispute will be 'minimal.'" *Id.* The court read *Jones* to impose a substantive obligation to alter generic trust law to make it easier to create a trust in cases involving church property.

In stark contrast, the Eighth Circuit, in *Church of God in Christ, Inc.* v. *Graham*, 54 F.3d 522 (8th Cir. 1995), held that requiring a local church "to hold its property in trust for another without proper notice as to that requirement" would violate "neutral principles of Missouri law." *Id.* at 526. Specifically, the

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[1] Under Georgia law, express and implied trusts are governed by statute, *see* Pet. 6-7 & n.1, and the Georgia Supreme Court concluded that those statutes had not been satisfied, *see id.* at 12.

Graham court concluded that *Jones* should not be read to "distort the application of neutral principles of Missouri law" to "wrest ownership from the [local congregation]." *Id.* The decision below and *Graham* are irreconcilable based not on idiosyncratic facts, but based on flatly conflicting interpretations of the requirements of "neutral principles" under *Jones*.[2]

Likewise, in *All Saints Parish Waccamaw* v. *Protestant Episcopal Church in the Diocese of South Carolina*, the South Carolina Supreme Court rejected reliance upon modifications to the national church's constitution, holding that they had no "legal effect on title to the [local] congregation's property" because "[i]t is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another." 685 S.E.2d 163, 174 (S.C. 2009); *accord In re Episcopal Church Cases*, 198 P.3d 66, 86 (Cal. 2009) (Kennard, J., concurring and dissenting) ("[n]o principle of trust law exists that would allow the unilateral creation of a trust by the declaration of a nonowner of property that the owner of the property is holding it in trust for the nonowner"). That holding conflicts directly with *Episcopal Church in the Diocese of Connecticut* v. *Gauss*, 28 A.3d 302

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[2] Respondent argues that *Graham* is distinguishable because "the [local] church members '[had no reason to] believe their property was held in trust [for the National Church].'" Opp. 22 (second and third alterations in original). As in *Graham*, the court in this case acknowledged that there was insufficient evidence that Timberridge intended to create a trust "under [Georgia's] generic express (or implied) trust statutes"; in contrast to *Graham*, however, the court below held that *Jones* authorized implication of a trust, in favor of the national church, notwithstanding the absence of intent necessary to impose such a trust under generic Georgia statutory law. Pet. App. 19.

(Conn. 2011), *petition for writ filed*, 80 U.S.L.W. 3550 (Mar. 14, 2012) (No. 11-1139), where the Connecticut Supreme Court held that *Jones* "gave general churches explicit permission to create an express trust in favor of the local church" and that "*civil courts would be bound by such a provision*." *Id.* at 325 (emphasis added). The *Gauss* court held that *Jones* compelled rejection of the same legal argument that the South Carolina Supreme Court embraced as dispositive under *Jones*: "'[O]nly the owner of property can place it in trust, not the purported beneficiary.'" *Id.* The "differing outcomes" in *All Saints* and *Gauss* are attributable to conflicting legal interpretations of "neutral principles" under *Jones*. See also Br. of *Amicus Curiae* Becket Fund 4-5, 7-9.

Finally, in *Arkansas Presbytery of Cumberland Presbyterian Church* v. *Hudson*, 40 S.W.3d 301 (Ark. 2001), the Arkansas Supreme Court rejected reliance upon a 1984 amendment to a national church's constitution that purported to create a trust in favor of the local church – years *after* the 1968 and 1977 property conveyances at issue – because, applying "neutral principles," the court had "long held that parties to a conveyance have a right to rely upon the law as it was at the time." *Id.* at 310.[3] In contrast, New York's high court held that the "dispositive" "factor" in resolving a church property dispute was the national church's adoption in 1979 of a constitutional amendment, which the court concluded, under *Jones*, imposed an express trust on the local church's property in favor of the national church even

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[3] Respondent argues that *Hudson* is distinguishable, in part, because "there were no state statutes creating a trust." Opp. 23. That "distinction" makes no difference because the court below likewise held that no Georgia statute supported the creation of a trust in this case. Pet. App. 16, 19.

though the amendment occurred more than 30 years *after* the local church had been recognized as a local parish. *Episcopal Diocese of Rochester* v. *Harnish*, 899 N.E.2d 920, 924-25 (N.Y. 2008); see also Pet. 17-18 (discussing analysis of Court of Appeals). Again, the differing outcomes in *Hudson* and *Harnish* depend upon the conflicting legal standards that those courts have embraced in applying "neutral principles" under *Jones*.

2. Contrary to Respondent's argument, Opp. 29-31, this case directly implicates the conflict. Respondent claims that these conflicting cases turn not on the application of *Jones*, but on "case-specific facts and variation in applicable state law." *Id.* at 30. That is incorrect. Here, and across these cases, the dispositive factor is whether the lower courts have correctly read *Jones* to permit special outcomes in church property disputes that the states' generic trust laws would not otherwise allow. See also Becket Fund Br. 7.

Under the interpretation of *Jones* adopted by the Eighth Circuit, and the Arkansas and South Carolina Supreme Courts, respondent's failure to satisfy the requirements for imposing a trust under generic Georgia law would have compelled entry of judgment for Timberridge. Here, the Georgia Supreme Court's analysis of the case-specific deeds and documents led it to conclude that there is insufficient evidence to demonstrate Timberridge's intention to create a trust in favor of respondent under state law as it would be applied in any ordinary case. Pet. App. 16, 19. Nonetheless, the Court held that *Jones* permits it to relieve respondent of "full[] compli[ance] with" secular state law to reduce the burden of establishing a trust in church property cases. *Id.* at 17. This case therefore tees up the constitutional issue perfectly

because the lower court's holding directly implicates the conflict among the lower courts.[4]

Finally, respondent mistakenly claims that "the court below identified an alternative ground for its decision in favor of respondent[]" so that "petitioners' best hope would be merely to lose this case on a different ground." Opp. 31 (discussing Ga. Code Ann. § 14-5-46). The Georgia Supreme Court did no such thing. Instead, the court avoided an analysis of the statutory text of § 14-5-46 by concluding that the court "need not rely on [§ 14-5-46] to resolve this case." Pet. App. 14-15.[5] Thus, the suggestion that Timberridge's "best hope" in seeking review to this Court "would be merely to lose this case on a different ground" on remand is again wishful thinking.

In any event, how this case might be resolved on remand is irrelevant to whether review of the federal

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[4] Respondent argues that petitioners' *amicus*, the Becket Fund, elsewhere described *Jones* as involving a "'straightforward'" rule. Opp. 30 (quoting Br. of Becket Fund, *Rector* v. *Bishop of the Episcopal Diocese of Ga., Inc.*, 2011 WL 1252216, at *5 (Ga. filed Mar. 14, 2011)). But what the Becket Fund described as "straightforward" in that case is precisely what the court below and other lower courts have misconstrued here: "The 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.'" 2011 WL 1252216, at *5 (quoting 443 U.S. at 608); *see id.* at *25.

[5] Respondent wrongly states that the court below concluded that § 14-5-46 "*would* 'weigh in favor of the trial court's judgments.'" Opp. 31 (emphasis added) (quoting Pet. App. 15). Rather, the court below acknowledged a lack of clarity in this Georgia law that it expressly did not purport to resolve, *id.* at 14, and then stated only that § 14-5-46 "*may* weigh in favor" of its judgment. Pet. App. 15 (emphasis added).

question actually decided below is warranted. This Court regularly decides federal questions that, as here, control the judgment before remanding to give lower courts the opportunity to address alternative bases for affirmance that they did not resolve in the first instance. See, *e.g.*, *Missouri* v. *Frye*, 132 S. Ct. 1399, 1411 (2012) (vacating decision based on federal question presented and remanding for court below to consider state-law issues); *accord Washington* v. *Recuenco*, 548 U.S. 212, 217-18 & n.1, 222 (2006); *L.A. Police Dep't* v. *United Reporting Publ'g Corp.*, 528 U.S. 32, 41 (1999); *Roberts* v. *Galen of Va., Inc.,* 525 U.S. 249, 253-54 & n.2 (1999) (per curiam). Indeed, the Court remanded *Jones* v. *Wolf* to the Georgia Supreme Court to address state-law issues relevant to the application of "neutral principles" doctrine. 443 U.S. at 609-10.

Review should be granted because the holding of the court below implicates a deep conflict over the proper interpretation of the "neutral principles" doctrine under *Jones*.

II. REVIEW IS WARRANTED TO RESOLVE THE CONFLICT OVER THE MEANING OF "NEUTRAL PRINCIPLES" UNDER *JONES*.

Finally, review should be granted notwithstanding respondent's argument that the court below correctly applied "neutral principles" to this case. Opp. 12-19.

Given the conflict among the lower courts, see *supra* at 2-6; Pet. 17-22, the asserted correctness of a lower court's decision is not a basis for denying review. See Sup. Ct. R. 10(b)-(c). Review is warranted to resolve the conflict implicated by the decision below without regard to how that conflict may be resolved on the merits.

In any event, on the merits, the Georgia Supreme Court misconstrued *Jones*. Georgia's secular trust law requires that the settlor (Timberridge) manifest a clear intent to establish a trust in favor of the beneficiary (respondent). See Pet. 6-7 (discussing Ga. Code Ann. §§ 53-12-20(b), -130). Yet, as Timberridge showed (*id.* at 11-13, 23-24) and as respondent admits (Opp. 18), the court below expressly exempted respondent from this core requirement of Georgia law: "[A] trust was not created under our state's . . . trust statutes." Pet. App. 19; see *id.* at 16 (holding that respondent is exempt from the "burden" applicable to secular parties).

Jones's endorsement of "neutral principles" for resolving church property disputes does not allow the Georgia Supreme Court to alter Georgia's generic trust law by putting a thumb on the scale in favor of one party to a church property dispute. *Jones* did not create a special, substantive rule of law that governs church property disputes and exempts parties from otherwise controlling generic property and trust law. Rather, *Jones* requires that the ordinarily applicable secular law be given effect in such disputes. See 443 U.S. at 603-06 (requiring parties to embody their intended result in "legally cognizable form"). The application of "neutral principles" means that the court applies the same rules "developed for use in all property disputes." *Presbyterian Church of the United States* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969).[6]

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[6] Respondent argues that States are free to jettison their generic rules for resolving property disputes under *Jones* because a court's consideration of "'state statutes *governing the holding of church property*'" would be consistent with the "neutral principles" approach. Opp. 13 (quoting 443 U.S. at 603); *id.* at 14 (same). The argument cannot assist respondent

Respondent asserts that the judgment is consistent with "neutral principles" because a trust on church property assertedly may be implied under Georgia common law, see Opp. 18 (citing Pet. App. 11-19), and because the court below resolved this case on the basis of that state common law, *id.* at 19. That is incorrect. The court below made no mention of a secular "common law" for forming a trust under Georgia law. See Pet. App. 11-19. Instead, the court read *Jones* – and cases from Georgia and elsewhere applying *Jones* – to impose an independent method of establishing a trust over church property. See, *e.g.*, *id.* at 19, 20 n.3.[7] It held that *Jones* itself relieves a religious party asserting that it is the beneficiary of a trust from the "burden" that applies to *all other parties* under Georgia's secular trust law. *Id.* at 16; see *id.* at 17-18. As described above, *supra* 9, *Jones* and *Hull Church* do nothing of the sort.

The Georgia Supreme Court's holding is based on its erroneous conclusion that *Jones* relieves respondent of burdens that otherwise would apply to

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because the court below expressly declined to rely on Georgia's statute governing conveyances of property to churches. Pet. App. 11-15; *see supra* at 7. Therefore, this case does not implicate a church-specific statute. *See* Opp. 18 (the court "determined it unnecessary to rely upon the church-specific statute").

[7] In suggesting that its earlier cases supported the conclusion that *Jones* created a special rule that relieved a party of compliance with Georgia's generic express or implied trust statutes, the court below reasoned: "our numerous church property cases either made no mention of the generic implied trust statutes, or explained that the requirements of those statutes were *not* met, and yet the Court still concluded that the local church property was held in trust." Pet. App. 18 (internal citations omitted); *see also id.* at 25. That statement confirms the Georgia Supreme Court's understanding that "neutral principles" under *Jones* exempt a national church seeking imposition of a trust against a local church from the requirements of generic trust law.

the formation of a trust under Georgia law. If the parties had been secular, the court below acknowledged that respondent could not establish a trust under Georgia law. Respondent nevertheless prevailed below because the Georgia Supreme Court concluded that *Jones* required a different result. This Court's review of that decision is plainly warranted.

CONCLUSION

For these reasons, and those stated in the petition, certiorari should be granted.

Respectfully submitted,

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