No. 17-582

IN THE

Supreme Court of the United States

PRESBYTERY OF THE TWIN CITIES AREA,

Petitioner,

v.

EDEN PRAIRIE PRESBYTERIAN CHURCH, D/B/A PRAIRIE COMMUNITY CHURCH OF THE TWIN CITIES,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Minnesota

BRIEF IN OPPOSITION

KIMBERLY A. JANSEN
JOEL D. BERTOCCHI
STACI M. HOLTHUS
HINSHAW & CULBERTSON LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601
(312) 704-3000

MARK T. BERHOW
Counsel of Record
HINSHAW & CULBERTSON LLP
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402
(612) 333-3434
mberhow@hinshawlaw.com

Counsel for Respondent

March 5, 2018

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED

As framed by Petitioner, the question presented for review is:

> whether the First Amendment and *Jones* [*v. Wolf*, 443 U.S. 595 (1979)] require courts to enforce express trust language recited in general church governing documents or whether such language is enforceable only when it otherwise complies with each state's trust law.

So framed, the Petitioner's question seeks nothing more than a fact-specific application of the question already decided by this Court in *Jones*:

> whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve [a church property] dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church.

Jones, 443 U.S. at 597.

CORPORATE DISCLOSURE STATEMENT

Respondent, Eden Prairie Presbyterian Church, d/b/a Prairie Community Church of the Twin Cities, is a Minnesota 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.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES

INTRODUCTION

The First Amendment to the United States Constitution guarantees that religious institutions will not be subjected to *burdens* not applicable to the community at large (the Free Exercise Clause), but also that such institutions will not be given *privileges* not available to the community at large (the Establishment Clause). See *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 839–46 (1995) (emphasizing requirement of Government neutrality toward religion under both Free Exercise Clause and Establishment Clause). That is, the First Amendment ensures that religious institutions in their civil interactions are both entitled and required to play by the same rules that apply to everyone else.

Instead of playing by the same rules as everyone else, Petitioner Presbytery of the Twin Cities Area asks this Court to allow it to play by its own rules: Petitioner asks this Court to depart from its settled approval of a "neutral principles" approach to church property disputes (see *Jones v. Wolf*, 443 U.S. 595, 604 (1979)) and instead declare, effectively as a matter of federal common law, that the unilateral proclamation by a denominational religious body of ownership over a local congregation's property is legally unassailable, regardless of how it would be addressed under the neutral principles of property and trust law established by state law. Such unchecked deference would improperly *privilege* denominational religious bodies by allowing them unilaterally to create their own laws for establishing and assuming property rights, regardless of what the neutral principles of governing state law provide. At the same time, such unchecked deference would improperly *burden* local congregations like Respondent by depriving them of the same

protection of their property rights as is granted by state law to other nonprofit corporations.

Petitioner claims that confusion has arisen in the wake of *Jones* as to whether governing documents adopted by a denominational religious entity must be enforced by the courts to the exclusion of neutral principles of state property law. But Petitioner's dissatisfaction with the answer given to that question in *Jones*—which dissatisfaction is all that Petitioner really ever expresses—does not mean that the rule established in *Jones* is unclear. Contrary to Petitioner's complaints, this is a simple case addressing a property dispute appropriately resolved by the Minnesota courts based on the application of neutral, state-law principles. Review here is unwarranted.

Despite Petitioner's representations to the contrary, the substantive issue decided by the Minnesota courts below involved no inquiry into church doctrine. Rather, those courts merely conducted a purely secular analysis of ownership rights and title to real and personal property held by a Minnesota corporation. The Minnesota courts' conclusion that Respondent Eden Prairie Presbyterian Church owns the disputed property, and that its ownership was not undermined by a declaration of trust from which Respondent has expressly opted out, was a determination made purely on the basis of neutral principles of Minnesota law without reference to any ecclesiastical doctrine or dispute. Because this dispute presents no significant or controverted issue of federal or constitutional law, the petition should be denied.

STATEMENT

A. Background of the Parties and the Property

Petitioner is "an incorporated representative of the Presbyterian Church (U.S.A.) (PCUSA)." (Pet. App. at 2a.) According to Petitioner, "[t]he PCUSA is a hierarchical church tracing its roots to the Protestant Reformation." (Pet. at 6.) Respondent has existed as a congregation in Eden Prairie, Minnesota for over 160 years, affiliated with at least five different Presbyterian denominations during its history. (Pet. App. at 2a.)

Throughout its existence, Respondent "paid for all real and personal property using only member gifts, tithes, and offerings." (Pet. App. at 3a.) While Respondent traces its property ownership back to the 1850s, it purchased the disputed real property in 1996 from Wheaton College, as trustee of the Hone Unitrust, and Ernest and Carol Hone. (Pet. App. at 4a.) Neither Petitioner nor PCUSA were parties to the purchase agreement. (Pet. App. at 4a.) The property was conveyed to Respondent through two warranty deeds, neither of which included either Petitioner or PCUSA. (Pet. App. at 4a.) At no point in Respondent's 160-year history did Petitioner, PCUSA, or any other denomination contribute money, land, or other property to Respondent.

When it first incorporated in 1958, Respondent was affiliated with the United Presbyterian Church, U.S.A. ("UPC"), whose constitution Respondent formally adopted the following year. (Pet. App. at 3a.) The constitution of UPC did not include or reference any trust clause with respect to church property. (Pet. App. at 3a).

In 1983, UPC merged with PCUSA. (Pet. App. at 3a.) As a result of this merger, Respondent became

affiliated with both PCUSA and Petitioner. (Pet. App. at 3a.) At this time, PCUSA's "Book of Order"[1] contained a "trust clause," which declared that "[a]ll property held by or for a congregation . . . is held in trust . . . for the use and benefit of" PCUSA. (Pet. App. at 3a.) Respondent did not adopt the Book of Order at that time. (Pet. App. at 3a.)

Respondent first recognized the Book of Order a little more than a decade later, when it amended its bylaws in 1994 to provide, *inter alia,* that: (1) Respondent recognized PCUSA's constitution as "obligatory" upon Respondent and its members; (2) Respondent's own by-laws remained subject to amendment; and (3) those by-laws could not be amended contrary to the provisions of PCUSA's constitution. (Pet. App. at 4a.)

In 1999, Respondent's articles of incorporation were amended to formally recognize PCUSA's trust clause, while at the same time retaining Respondent's right to amend those articles of incorporation in the future. (Pet. App. at 5a.) First, the articles declared that the "legal title to all property held by [Respondent] . . . is held in trust . . . for the use and benefit of [PCUSA]." (Pet. App. at 5a.) At the same time, the articles provided that they were subject to amendment "by a majority of the active members of the congregation." (Pet. App. at 5a.)

In 2010, Respondent called a special meeting of its congregation to vote on removing the trust language from both its articles of incorporation and bylaws. (Pet. App. at 5a.) The amendment passed by an overwhelming majority. (Pet. App. at 6a.)

---

[1] PCUSA's constitution is made up of two parts: (1) the Book of Confessions (creeds, confessions, and catechisms of PCUSA); and (2) the Book of Order (PCUSA's governance document). (Pet. App. at 7a.)

Two years later, Petitioner adopted "Gracious Separation" guidelines that established a two-step process for congregations wishing to separate from PCUSA. (Pet. App. at 6a.) The first step in this process required a determination that a majority of the departing congregation wished to separate from PCUSA. (Pet. App. at 6a.) The second step in the process required a "negotiation team" to evaluate the request for separation and propose a settlement recommendation. (Pet. App. at 6a.) The Gracious Separation policy required a congregation to "make an appropriate contribution to the Presbytery" before it could be dismissed. (Pet. App. at 6a.)

Respondent initiated the separation process in 2012. (Pet. App. at 6a). When settlement negotiations failed, Respondent's congregation voted—unanimously—to disaffiliate from PCUSA, and notified PCUSA of "the unilateral termination of its voluntary affiliation." (Pet. App. at 6a–7a.)[2]

B. The Litigation

In 2014, Petitioner initiated this litigation in the Minnesota (state) district court, seeking a declaratory judgment regarding ownership of Respondent's property and assets. Though it declined to address disputes related to the Gracious Separation process, the district court concluded that it could resolve the parties' property dispute by applying neutral principles of law. (Pet. App. at 7a.) Based on those neutral principles, the district court held that the disputed property was

[2] Respondent promptly thereafter became affiliated with the Covenant Order of Evangelical Presbyterians, one of the nearly 20 different and independent Presbyterian denominations in the United States.

not held in trust for PCUSA and was owned by Respondent. (Pet. app. at 7a–8a.)

Petitioner appealed. First, it argued that the "neutral principles" approach is available only in limited circumstances and that, therefore, the Court of Appeals should defer to Petitioner's own declaration of ownership of the property on the basis of the ecclesiastical abstention doctrine (Pet. App. at 9a). The Court of Appeals disagreed, concluding that *Jones* had permitted the district court to resolve the parties' dispute on the basis of neutral principles of state law and did not compel the court to defer to the governing ecclesiastical body under the ecclesiastical abstention doctrine. (Pet. App. at 9a.) The Court of Appeals additionally affirmed the district court's application of those neutral principles. (Pet. App. at 16a–23a.)

The Minnesota Supreme Court denied Petitioner's request for further review. (Pet. App. at 69a.) Respondent then petitioned this Court for a writ of certiorari.

REASONS FOR DENYING THE PETITION

Petitioner contends that review by this Court is necessary to address a supposed "entrenched, nationwide division on how to apply *Jones* and the neutral principles approach when there is express trust language in church governing documents." (Pet. at 10.) But a review of *Jones* itself, along with the cases that Petitioner believes reflect this "nationwide division," illustrates why review is unnecessary. The constitutional principles of decision outlined by this Court in *Jones* are perfectly clear, and the disparate conclusions reached in the various cases cited by Petitioner are simply the result of the disparate facts addressed by those courts under the particular neutral principles

of law applicable in each relevant State. Those different results reflect no division on any federal or constitutional principle.

I. UNDER *JONES*, APPLYING NEUTRAL PRINCIPLES OF STATE LAW TO RESOLVE A GARDEN-VARIETY PROPERTY DISPUTE DOES NOT FOSTER EXCESSIVE GOVERNMENT ENTANGLEMENT WITH RELIGION.

In *Jones*, the Court set out a clear framework for the resolution of property disputes between competing branches of a religious body. First, the Court recognized that "there can be little doubt about the general authority of civil courts to resolve" such property disputes given the States' "obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones*, 443 U.S. at 602, citing *Presbyterian Church v. Hull Church*, 393 U.S. 440, 445 (1969). But the Court also recognized "that 'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.'" *Jones*, 443 U.S. at 602, quoting *Presbyterian Church*, 393 U.S. at 449. In particular, the Court emphasized that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones*, 443 U.S. at 602, citing *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976).

As the Court explained in *Jones*, though, avoiding involvement in ecclesiastical disputes did not otherwise dictate the application of state law. While civil courts are required to "defer to the resolution of issues of *religious doctrine or polity* by the highest court of a

hierarchical church organization," the States are not required to follow any particular method for resolving church property disputes. *Jones*, 443 U.S. at 602 (emphasis added). Rather, states have leeway in selecting among various approaches to resolving church property disputes "so long as [the approach adopted] involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.*

Jones confirmed that the "neutral principles of law" approach conforms with these Constitutional requirements. *Id.* at 602–03. The "neutral principles" approach: (1) is "completely secular" while remaining "flexible enough to accommodate all forms of religious organization and polity;" (2) "promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice;" and (3) permits "a religious organization [to] ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members" through the use of "appropriate reversionary clauses and trust provisions" that "specify what is to happen to church property in the event of a particular contingency." *Id.* at 603.

To be sure, the Court recognized that "application of the neutral-principles approach [would not be] wholly free of difficulty," *Id.* at 604. To the extent a State's approach would require a court to "examine certain religious documents, such as a church constitution, for language of trust in favor of the general church," the court would be required to "take special care to scrutinize the document in purely secular terms." *Id.* But the Court anticipated that such difficulties "should be gradually eliminated as recognition is given to the obligation of 'States, religious organizations,

and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.'" *Id.*, quoting *Presbyterian Church*, 393 U.S. at 449.

II. THE PRESENCE OF EXPRESS TRUST LANGUAGE IN THE GOVERNING DOCUMENTS OF A RELIGIOUS BODY DOES NOT ALTER THE PRINCIPLES OUTLINED IN *JONES*.

The core holding in *Jones* was straightforward: "a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." *Jones*, 443 U.S. at 604. Petitioner does not claim that this holding is itself unclear. Rather, Petitioner claims that widespread confusion reigns as to how *Jones* applies where a religious institution's governing documents include express trust language. This "dispute," at least with respect to issues of federal or constitutional law, is entirely of Petitioner's own making.

As Petitioner sees it, the Court's holding in *Jones* established that "the existence of express trust language in the canons or constitutions of the denominational church is **dispositive** of who owns church property." (Double emphasis in petition, Pet. at 10.) In support of this proposition Petitioner relies on a statement in *Jones* suggesting that "the constitution of the general church can be made to recite an express trust in favor of the denominational church." (Pet. at 3–4, citing *Jones*, 443 U.S. at 606.) But Petitioner's quotation of *Jones* is selective; it ignores the Court's accompanying admonition that "the civil courts will be bound to give effect to the result indicated by the parties" in such an express statement of trust *only* "provided it is embodied in some legally cognizable

form." *Id.* at 606. Consistent with *Jones*, the Minnesota Court of Appeals in this case unambiguously concluded that PCUSA's general trust clause in its Book of Order was not a legally cognizable means of creating a trust under Minnesota law "[b]ecause Minnesota law requires an external expression of the *settlor's* intent" (that is, the intent of *Respondent*) and because "[t]he trust language in the Book of Order . . . is devoid of any language demonstrating the specific intent of [Respondent] to create a trust under Minnesota law." (Pet. at App. 17a.) In doing so the Court of Appeals applied that neutral principle of Minnesota law just as it would have in a case involving a secular institution, without reference to any religious principle or rule.

Hemmed in by *Jones*, Petitioner claims it recognizes that the decision of the Minnesota Court of Appeals in this case turned on the "require[ments] to establish that the trust was a valid express trust **under Minnesota law**." (Double emphasis in Petition, Pet. at 29, citing Pet. App. at 16a–17a.) Petitioner's position that the principles of Minnesota law must yield to the PCUSA's unilateral declaration of trust, and that this unilateral declaration must nonetheless be honored regardless of "the settlor's intent" does not square with *Jones*. Petitioner simply argues that, under *Jones*, the Minnesota courts were required to treat PCUSA's unilateral declaration of a trust in its own favor as dispositive, regardless of whether such a declaration is a legally cognizable method of creating a trust under Minnesota law. (Pet. at 28–29.) No consideration or construction of religious principles was necessary for the Minnesota courts to reject that contention based on neutral principles of Minnesota law.

Petitioner thus does not raise any question not already answered in *Jones*. Petitioner would like this Court to announce a rule that a unilateral declaration of express trust contained in a denominational church's governing documents is in and of itself dispositive on the issue of property ownership, regardless of whether neutral principles of state law agree. But the Court has already unambiguously said otherwise. While the Court recognized in *Jones* that the inclusion of an express trust in a religious institution's governing constitution may serve to resolve property disputes before they erupt, the Court also made clear that such provisions will be binding only when "embodied in some legally cognizable form." *Jones*, 443 U.S. at 606. Petitioner's argument that PCUSA's unilateral declaration of trust should prevail—regardless of both Respondent's intent and the neutral principles of Minnesota law that require that intent to be considered—amounts to a claim, flatly inconsistent with *Jones*, that any disagreement with a denominational church's pronouncements, even on secular issues, amounts to a "religious dispute."

III. THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND DECISIONS OF ANOTHER STATE COURT OF LAST RESORT OR FEDERAL COURT OF APPEAL.

Contrary to Petitioner's representation, the decision by the Minnesota Court of Appeals does not conflict with decisions of any state court of last resort or federal Court of Appeals on the governing constitutional rule of decision—the only issue of potential interest to the Court.

Federal Circuit courts applying "neutral principles" to intrachurch property disputes have consistently

adhered to the rule that purported transfers of title must be in legally cognizable form to be binding. Petitioner correctly notes that the United States Court of Appeals for the Eighth Circuit applied Missouri trust and property law in determining that a unilateral declaration of trust by the purported trust grantee was not binding. (Pet. at 17, citing *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522 (8th Cir. 1995).)

And the Eighth Circuit is not alone among the federal circuit courts in following this approach. The First Circuit, for example, considered federal law governing the express or implied transfer of copyright ownership in determining whether a monastic order within the Eastern Orthodox church had transferred ownership of copyrights to the bishops of the Russian Orthodox Church Outside of Russia. *Society of the Holy Transfiguration Monastery, Inc. v. Gregory*, 689 F.3d 29, 42–43 (1st Cir. 2012). The express terms of the Monastic Statutes providing that a monastery's "possessions will be handed over to the diocese" upon closing or liquidation did not alter this result because, under state law, the monastery did not close, liquidate, or otherwise cease to exist. *Id.* at 43.

The Third Circuit, similarly, upheld a district court's application of New Jersey law to resolve a property dispute between the Scotts African Union Methodist Protestant Church and the Conference of African Union First Colored Methodist Protestant Church. *Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church*, 98 F.3d 78, 95–96 (3d Cir. 1996) (property dispute resolved on basis of New Jersey "conflict rule" applicable where articles of incorporation conflicted with corporate bylaws). The fact that the Conference's Book of Discipline included

a provision declaring that properties owned by a local church were held in trust for the Conference was not controlling under New Jersey's "conflict rule." *Id.* at 95.

Accord *Kendysh v. Holy Spirit Byelorussian Autocephalic Orthodox Church*, 1988 U.S. App. LEXIS 9230, at *7 (6th Cir. 1988) (affirming resolution of property dispute based on Michigan law governing relationship between local parish and authority of a central hierarchical church); *Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar*, 179 F.3d 1244, 1249 (9th Cir. 1999) ("no issue arises when a court resolves a church property dispute by relying on state statutes concerning the holding of religious property, the language in the relevant deeds, and the terms of corporate charters" of religious organizations); *Bressler v. American Federation of Human Rights*, 44 F. App'x 303, 323–29 (10th Cir. 2002) (affirming district court's rejection of claim of express trust made by American order of an international religion based on established principles of Colorado statutory and common law). Meanwhile, no federal Circuit has held to the contrary.

State courts of last resort applying neutral principles of law to intrachurch property disputes likewise look to whether purported transfers of ownership are legally cognizable. Petitioner acknowledges the holdings to this effect of the highest courts of Alaska, Arkansas, Colorado, Indiana, New Hampshire, Oregon, and Texas. (Pet. at 17–19.)

In addition, the courts of last resort of numerous additional States have likewise applied neutral principles of law to determine whether statutes, deeds, corporate and organizational documents—including a religious organization's constitution or other foundational documents—establish a trust in favor of the

hierarchical church. See *Harris v. Apostolic Overcoming Holy Church of God, Inc.*, 457 So. 2d 385, 387–88 (Ala. 1984) (local congregation could not seek title to property acquired, pursuant to rules and guidelines of denominational church, "in the name of the 'Trustees of Apostolic Overcoming Holy Church of God'" where deed to property conveyed title to denominational church); *East Lake Methodist Episcopal Church, Inc. v. Trustees of the Peninsula-Delaware Annual Conf. of the United Methodist Church, Inc.*, 731 A.2d 798 (Del. 1998) (Delaware law governing implied trusts required court to ascertain parties' intention in order to find existence of implied trust in favor of denominational church); *Church of God Pentecostal v. Freewill Pentecostal Church of God*, 716 So.2d 200, 207–09 (Miss. 1998) (denominational church's bylaws directing that property of local church be held in trust for denomination, not dispositive in the absence of clear and convincing evidence showing intent of local congregation to adopt bylaws); *New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc.*, 328 P.3d 586 (Mont. 2014) (applying Montana trust law to find that language in denominational church's articles of incorporation did not create express trust); *Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church*, 489 A.2d 1317 (Penn. 1985) ("apply[ing] the same principles of law as would be applied to non-religious associations" to find no evidence of local congregation's intent to create trust in favor of denominational church); *Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, (Tenn. 2017) (finding local congregation's property held in trust for hierarchical authority where local congregation agreed to be bound by constitution and governing documents imposing trust). Collectively

these state and federal decisions evince no disagreement at all regarding how courts can resolve intrachurch property disputes without running afoul of the First Amendment, even though they may go on to apply disparate state rules and even reach different results.

Despite readily apparent unanimity in the understanding and following of *Jones*, Petitioner insists that there is a "nationwide division" among state supreme courts that have adopted the neutral-principles approach under *Jones*, specifically in situations wherein the church's governing documents contain "express trust language." (Pet. at 10). That is simply untrue. The fact that different jurisdictions have reached different outcomes in deciding whether and to what extent to honor such declarations does not suggest that they differ in their understanding that, under *Jones*, they should look to their own State's neutral legal principles to divine those outcomes—as they have relied on *Jones* for nearly four decades. Indeed, *Jones* anticipated this result when it acknowledged that "the First Amendment does *not* dictate that a [s]tate must follow a particular method of resolving church property disputes." *Jones*, 443 U.S. at 602. Rather, "a [s]tate may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." *Id*. at 602 (emphasis in the original). *Jones* thus implicitly embraced the possibility of different state courts reaching different conclusions applying their differing state law neutral principles, even in cases that involve similar church property disputes.

Significantly, even though *Jones* made clear that state courts could develop their own approaches free of doctrinal considerations to resolve church property

disputes, no court has done so. Rather, the state supreme courts continue to recognize the advantages of *Jones*' neutral-principles framework and the cases cited by Petitioner are no exception to this norm. The Georgia Supreme Court's decision in *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272 (2011) is illustrative. There, the court concluded that a local congregation held its property in trust for a national church. 290 Ga. at 284-85. More importantly, though, the court emphasized that in reaching its conclusion it did not rely exclusively on the state's generic trust statute. *Id.* at 280. Instead, the court recognized, as the *Jones* Court had, that the outcome of the case depended upon an analysis several "neutral principle factors," namely the relevant deeds, governing documents of both the local church and its national affiliate, *and* state statues. 290 Ga. at 276 (emphasis added). With this in mind, the court applied neutral principles of law to the documents and specific facts in order to "determine the intentions of the parties." *Id.* at 277.

In doing so, the Georgia Supreme Court did not, as Petitioner contends, imply that courts in its jurisdiction look "for the existence of an express trust" before considering other neutral principles, nor did it interpret *Jones* to mandate the imposition of a trust merely because the church's governing documents contain such language. (Pet. at 11-13). To the contrary, the *Timberridge* court made it clear that in, light of *Jones,* it would apply those neutral principle factors, bearing in mind that they are related, and with a lens toward determining the intent of the parties regarding ownership of the property "as expressed before the dispute erupt[ed] in a legally cognizable form." 290 Ga. at 276-77. Such an application of neutral-state principles of Georgia law to the particular documents and facts of

that case was entirely consistent with *Jones*—and with the analysis of the Minnesota court below—and Petitioners arguments to the contrary do not show otherwise.

Likewise, the California Supreme Court's decision in *Episcopal Church Cases*, 198 P.3d 66 (Cal. 2009), also did not interpret *Jones* simply to mandate enforcement of an express trust. (Pet. at 12.) In that case, the court concluded that the general (i.e., denominational) church owned the property at issue despite the fact that the local church, which disaffiliated itself from the general church, held record title. *Episcopal Church Cases*, 198 P.3d at 80. Had the court read *Jones* to require enforcement of trust language in church's governing documents, it could have resolved the dispute within the first paragraph of its analysis simply by quoting the trust provision found in the general church's canon. *Id.* at 79. But the court forged on, reviewing language contained within the constitution of the denominational church together with the application submitted by the local church in 1947 for admission to the general church as a parish wherein the local church "promise[d] and declare[d]" from its inception to be bound by the greater church's governing documents. *Id.* at 71, 79. Such a commitment, the court held, in conjunction with the other church documents, supported the conclusion that the general church owned the property. *Id.* at 81-82. Significantly, the court also noted that its own laws regarding church property, which were enacted in response to *Jones*, were in accord with the aforementioned conclusion. *Id.* at 81.

Petitioner's suggestion that *Episcopal Church Cases* is inconsistent with the decision below is simply wrong. Although the two cases reached different

results with respect to the effect of a general church's declaration of trust, they did so as a result of differing facts and differing neutral principles of state law. But they did not at all differ in their adherence to the holding in *Jones*—on the only issue of interest to the Court—that those neutral principles should guide their decision. Accordingly, Petitioner's insistence that *Episcopal Church Cases* is in conflict with the decision below is in error.

Moreover, even the very cases Petitioner asserts are at odds with *Episcopal Church Cases* are cited by *Episcopal Church Cases* to bolster its holding. 45 Cal. 4th at 490, citing as "persuasive" *Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85, 91 (Colo. 1986) (noting that First Amendment "does not dictate that a state must follow a particular method of resolving a church property dispute," and finding trust was created under Colorado law in favor of denominational church based on trust language in church canons and local church's agreement to accede to those canons); and *Daniel v. Wray*, 580 S.E.2d 711, 719 (N.C. App. 2003) (construing Canon I.7.4 of denominational church as establishing deed in trust under North Carolina law).

These cases, and others like them cited by Petitioner, are hardly indicative of a "nationwide division" on the application of *Jones*. (Pet. at 10). While some courts suggest that the courts of different states follow differing approaches to the application of "neutral principles," such variation does not reflect a conflict among the courts on an important federal question. *See Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 168 (Tenn. 2017) (suggesting "two versions of the neutral-principles approach have emerged"—the strict neutral-principles approach and the hybrid neutral-principles

approach), citing Michael W. McConnell and Luke W. Goodrich, On Resolving Church Property Disputes, 58 Ariz. L. Rev. 307, 324–25. *Accord Heartland Presbytery v. Presbyterian Church of Stanley, Inc.,* 390 P.3d 581, 596 (Kan. App. 2017). But the application of different approaches by different courts does not reflect a "conflict" with respect to the application of *Jones* but, rather, is expressly permitted by *Jones*: "a State may 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." *Jones*, 443 U.S. at 602, quoting *Md. & Va. Eldership of Churches of God v. Church of God, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring).

As *Episcopal Church Cases* and *Timberridge* clearly illustrate, any differing conclusions are merely a product of factual differences among the cases and variations in the specific approach adopted by state courts, not widespread confusion about how to apply the neutral principles approach under *Jones*.

* * *

Different results do not always indicate the application of a different rule of law. And this is especially so in the application of a holding like that in *Jones*, which expressly prescribed resort to the different rules of decision of 50 different States and which anticipated that those States might resolve similar issues differently. Contrary to Petitioner's insistence, though, *Jones* dictated a common method of deciding cases—by application of neutral state law principles and without involvement in religious disputes—but did not dictate a common result, with respect to governing churches' declarations of trust or any other state-law issue. Petitioner's contrary claims amount to the

assertion that any disagreement with a general church's declaration regarding property somehow treads on its religious hegemony, a contention *Jones* expressly rejected. Because the Minnesota Courts below applied *Jones* in a manner entirely consistent with all other courts, Petitioner cannot show a split of authority on the only issue—application of the First Amendment—that would merit review by the Court.

IV. GRANTING CERTIORARI WOULD BE IMPRUDENT WHERE PETITIONER IS THE WRONG PARTY TO BRING THESE CLAIMS.

Even when reviewing a state-court judgment, the Court "is bound by the requirements of case and controversy and standing associated with Art. III of the United States Constitution." *Bateman v. Arizona*, 429 U.S. 1302, 1305 (1976) (grant of certiorari unlikely in the face of "serious doubts" regarding petitioner's standing to raise issues presented to Court), citing *Doremus v. Board of Education*, 342 U.S. 429, 434 (1952). Federal standing may be lacking under the Art. III "case or controversy" requirement even where a state court has exercised jurisdiction to render a decision on a federal constitutional question. *Doremus*, 342 U.S. at 434. "[S]tanding in federal court is a question of federal law, not state law." *Hollingsworth v. Perry*, 570 U.S. 693, __, 133 S. Ct. 2652, 2667 (2013).

"To establish Article III standing, the plaintiff seeking compensatory relief must have '(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017). "[A] plaintiff must demonstrate that he possesses a legally cognizable interest, or 'personal

stake,' in the outcome of the action." *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013).

As Respondent argued below under state law (although neither the Minnesota district court nor the court of appeals addressed it), Petitioner's personal stake in this matter is doubtful at best. Petitioner argues that *Jones* dictates that Respondent's property is held in trust for PCUSA, not for Petitioner. Petitioner argues that "the *PCUSA* has lost millions of dollars of church-owned property to a disloyal faction" because Respondent "purported to take with it the building and other assets held in trust for the *PCUSA*." (Pet. at 5, emphasis added.) In other words, Petitioner's claims rest on an assertion that PCUSA suffered an injury in fact. But PCUSA did not bring this case and Petitioner has not identified any injury in its own right.

If review is granted, the issue of standing, now required by Article III, will at the very least cast serious doubt on whether the Court is even capable of granting Petitioner the relief it seeks. This dispute will complicate the resolution of this case, and thus militates against review.

CONCLUSION

The petition should be denied.

Respectfully submitted,

KIMBERLY A. JANSEN
JOEL D. BERTOCCHI
STACI M. HOLTHUS
HINSHAW & CULBERTSON LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601
(312) 704-3000

MARK T. BERHOW
Counsel of Record
HINSHAW & CULBERTSON LLP
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402
(612) 333-3434
mberhow@hinshawlaw.com

Counsel for Respondent Eden Prairie Presbyterian Church d/b/a Prairie Community Church of the Twin Cities

March 5, 2018