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 THE STATE OF MINNESOTA

REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS. i

TABLE OF CITED AUTHORITIES ii

INTRODUCTION. 1

I. Courts Nationwide Are Deeply Divided On How To Resolve Intra-Church Property Disputes In Accordance With *Jones* And The First Amendment 2

A. The Lower Courts Have Adopted Inconsistent Versions Of The Neutral-Principles Approach 2

B. *Jones* Did Not Sanction Inconsistent Versions Of Neutral Principles 7

II. This Nationwide Divide In Applying *Jones* Deserves This Court's Attention 8

III. Petitioner Has Standing Under Article III 10

CONCLUSION 12

TABLE OF CITED AUTHORITIES

Page

CASES

Bressler v. Am. Fed. Of Human Rights,
44 F. App'x. 303 (10th Cir. 2002). 5

Church of God in Christ, Inc. v. Graham,
54 F.3d 522 (8th Cir. 1995) 5

Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.,
531 S.W.3d 146 (Tenn. 2017) 1, 3, 4

E. Lake Methodist Episcopal Church, Inc. v. Trs. of the Peninsula-Delaware Annual Conf. of the United Methodist Church, Inc.,
731 A.2d 798 (Del. 1999) 5

Jones v. Wolf,
443 U.S. 595 (1979). . . . . *passim*

New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc.,
328 P.3d 586 (Mont. 2014) 4

Scotts African Union Methodist Protestant Church v. Conference of African Union First Colored Methodist Protestant Church,
98 F.3d 78 (3d Cir. 1996) 4

Page

OTHER AUTHORITIES

First Amendment 1, 2, 8

Honorable John E. Fennelly, Property Disputes and Religious Schisms: Who Is the Church?, 9 St. Thomas L. Rev. 319 (1997) 6

Jeffrey B. Hassler, A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in A Time of Escalating Intradenominational Strife, 35 Pepp. L. Rev. 399 (2008). 6

Michael W. McConnell & Luke W. Goodrich, On Resolving Church Property Disputes, 58 Ariz. L. Rev. 307 (2016) 6, 9

INTRODUCTION

There is an entrenched, acknowledged conflict in the lower courts about how to apply *Jones v. Wolf*, 443 U.S. 595 (1979). *See* Pet. 10–21. The conflict implicates billions of dollars in church property, and incorrect applications of *Jones*—as in this case—unconstitutionally restrict free exercise rights. *See* Pet. 21–24.

Respondent's own authorities acknowledge that the lower courts are divided. *See, e.g.*, *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 168 (Tenn. 2017) (noting "*massive inconsistency*" among courts applying *Jones*'s neutral-principles approach) (emphasis added)) (cited at Opp. 14, 18). And, in the final few pages of its brief in opposition, Respondent acknowledges it too. *See* Opp. 18 (admitting "variation" among "courts of different states" when applying neutral principles). Respondent's discussion of lower court decisions mostly just expounds on opinions that Respondent believes are supportive of its side of the split. But Respondent mistakes the problem for the solution. Regardless which side is correct, the state courts are in irreconcilable conflict about a recurring, important question of First Amendment law, as interpreted by this Court in *Jones*.

Respondent attempts to minimize the importance of the First Amendment issues at stake, arguing that churches should be required to "play by the same rules that apply to everyone else." Opp. 1. The only rule Petitioner seeks to play by is the one this Court set forth in *Jones*—under which a general church can enforce an express trust clause in its constitution. Had the Minnesota Court of Appeals applied that rule—as many other states

do—it would have enforced the trust clause in Petitioner's *Book of Order* and given effect "to the result indicated by the parties," as this Court instructed. *Jones*, 443 U.S. at 606. Instead, the lower court disregarded the *Book of Order*'s trust clause, in which Respondent had previously assented. This raises a serious First Amendment issue.

Respondent also attempts to contrive an issue to avoid review, claiming that Petitioner PTCA lacks standing to assert injuries to PCUSA. *See* Opp. 20–21. But Petitioner, as a presbytery, is the corporate expression of PCUSA in the Twin Cities Area, and, under the *Book of Order*, Petitioner has the sole authority to act for and on behalf of PCUSA in that district. There is no standing issue.

As the dissenting Justices in *Jones* observed, the neutral-principles approach left the state courts to "travel a course left totally uncharted by this Court." *Jones*, 443 U.S. at 616 (Powell, J., dissenting). The lower courts have followed divergent paths leading out from *Jones* and have arrived at different endpoints. This Court should grant review to restore uniformity in the application of the First Amendment to church property disputes.

I. Courts Nationwide Are Deeply Divided On How To Resolve Intra-Church Property Disputes In Accordance With *Jones* And The First Amendment

A. The Lower Courts Have Adopted Inconsistent Versions Of The Neutral-Principles Approach

Faced with the same facts, civil courts nationwide have adopted inconsistent versions of *Jones*'s "neutral principles of law." *See* Pet. 10–21. Though Respondent attempts to

deny the existence of this conflict, Respondent's own authorities repeatedly acknowledge it.

The extent of the conflict was discussed at length in *Church of God in Christ*, a recent case that Respondent cited. *See* Opp. 14, 18. There, the Supreme Court of Tennessee noted that "*massive inconsistency* exists among states adopting the neutral-principles approach, and courts have reached *different results given the same facts*, depending on how the court in question applies the standard." *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 168 (Tenn. 2017) (internal quotation marks omitted) (emphasis added).

As the Tennessee court explained, "two versions of the neutral-principles approach have emerged": (1) the "hybrid neutral-principles approach," under which *Jones*-style language in a church constitution is dispositive "even if it does not satisfy the formalities that the civil law normally requires"; and (2) the "strict neutral-principles approach," under which the same language in a church constitution is enforceable only if it "satisf[ies] the civil law requirements and formalities for imposition of a trust." *Church of God*, 531 S.W.3d at 168–69.

These incompatible versions of the neutral-principles approach will yield different outcomes even in states where the underlying facts and state law rules are identical. Take a *Jones*-style trust clause in a church constitution that does not satisfy state law requirements for the creation of a trust. A "strict" neutral-principles state would deem the failure to meet state law formalities to be dispositive. A "hybrid" neutral-principles state would deem it irrelevant. The sole, outcome-determinative

difference is how each state interprets the neutral-principles approach that this Court articulated in *Jones*. And while Respondent dances around the conflict, ultimately Respondent too acknowledges that "variations in the specific approach adopted by state courts" have led to "differing conclusions." Opp. 19.

The authorities Respondent relies on illustrate these inconsistent outcomes. *See* Opp. 11–14. The Tennessee Supreme Court enforced a *Jones*-type trust that did not comply with state law formalities because "the hybrid approach is most consistent with the analysis the Supreme Court reviewed and approved as constitutionally permissible in *Jones*." *Church of God*, 531 S.W.3d at 170. The Third Circuit, in contrast, adopted the strict approach and set aside a *Jones*-type trust recited in the African Union Methodist Protestants' *Book of Discipline* because it conflicted with the local church's certificate of incorporation, which had priority under state law. *See 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); *see also New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc.*, 328 P.3d 586, 600–01 (Mont. 2014) (*Jones*-type trust did not comply with state law requirements for express trusts).

Indeed, some of the authority Respondent relies on suggests an even deeper split, involving courts that consult not only documents or statutes but also church members' conduct to resolve property disputes. For example, the Tenth Circuit considered "the conduct of the relevant officials of the local and general church" and the degree of control the general church exercised over the parish,

even though the general church's canons contained a trust clause that would have been dispositive under a pure hybrid approach. *Bressler v. Am. Fed. Of Human Rights*, 44 F. App'x. 303, 325–26 (10th Cir. 2002) (non precedential).

Similarly, the Eighth Circuit in *Church of God in Christ* noted that while the general church had a *Jones*-type trust in its constitution, reliance on that clause was "severely diluted" because the constitution was not distributed to local pastors. *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522, 526 (8th Cir 1995). Though the court appeared willing to adopt the hybrid approach and set aside state law formalities in at least some cases, it ultimately held that "[t]o require the [local church] congregation to hold its property in trust for another without proper notice as to that requirement would too severely distort the application of neutral principles of Missouri law." *Id.* at 526; *see also E. Lake Methodist Episcopal Church, Inc. v. Trs. of the Peninsula-Delaware Annual Conf. of the United Methodist Church, Inc.*, 731 A.2d 798, 809–10 (Del. 1999) (considering a *Jones*-type trust clause in a church constitution as well as other evidence such as "the conduct of the members").[1]

1. Respondent also acknowledges the existence of this possible third approach in its discussion of *Timberridge* and *Episcopal Church Cases*. *See* Opp. 16–18. As Respondent points out, though the church constitutions in each case contained a *Jones*-type trust, both courts appeared to go beyond a pure hybrid approach and considered additional evidence of the parties' intent regarding the ownership of the properties. *Id.*

Legal scholars too have recognized the lower courts' conflicting approaches to neutral principles. In a recent article cited by Respondent, the authors not only acknowledged that a split existed but provided a tally of the competing approaches:

> The ambiguity in *Jones* has produced a split over how the neutral principles approach should be applied in practice. In the wake of *Jones*, 29 states adopted some version of the 'neutral principles' approach, while 9 retained the *Watson* approach, and 12 are unclear or undecided. Of the 29 states that adopted the neutral principles approach, 9 apply the 'strict' approach, 9 apply the 'hybrid' approach, and 11 are unclear or undecided.

Michael W. McConnell & Luke W. Goodrich, On Resolving Church Property Disputes, 58 Ariz. L. Rev. 307, 319 (2016); *see also* Jeffrey B. Hassler, A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in A Time of Escalating Intradenominational Strife, 35 Pepp. L. Rev. 399, 431–32 (2008) ("[T]he neutral-principles approach has yielded another result, unforeseen, or at least unmentioned by the Court in *Jones*: massive inconsistency in the application of the doctrine. This variance, which some commentators predicted shortly after *Jones* was handed down, stems primarily from a lack of guidance given by the Court for the application of the approach."); Honorable John E. Fennelly, Property Disputes and Religious Schisms: Who Is the Church?, 9 St. Thomas L. Rev. 319, 353 (1997) ("What has emerged is a welter of contradictory and confusing case law largely devoid of certainty, consistency, or sustained analysis.").

B. *Jones* Did Not Sanction Inconsistent Versions Of Neutral Principles

Respondent suggests that *Jones* allowed different outcomes by permitting courts to resolve church property disputes using "any one of various approaches." Opp. 19 (citing *Jones*, 443 U.S. at 602). But only one approach to these disputes is implicated by this Petition—neutral principles—and it owes its provenance to this Court's decision in *Jones*. *Cf.* Opp. 14–15 ("though *Jones* made clear that state courts could develop their own approaches . . . no court has done so"). It is this specific approach, which this Court articulated, that is being applied inconsistently in the lower courts.

Jones left no room for the incompatible versions of neutral principles that have now proliferated. When the *Jones* Court discussed how neutral principles would apply to a general church's constitution, it was resolving a problem identified by the dissenting justices. The dissent argued that abandoning mandatory deference under *Watson* "inevitably will increase the involvement of civil courts in church controversies" and "invite[] the civil courts" to interfere with "the resolution of religious disputes within the church." *Jones*, 443 U.S. at 611, 613–14 (Powell, J., dissenting). The majority discussed one way that churches could avoid this impermissible interference and the parties could ensure "before the dispute erupts . . . that the faction loyal to the hierarchical church will retain the church property"—"the constitution of the general church can be made to recite an express trust in favor of the denominational church." *Id.* at 606.

The parties here followed *Jones*'s instructions to the letter, but the outcome was the opposite of what *Jones* provided. The general church amended the *Book of Order* to include a *Jones*-style trust. Not only that, Respondent's by-laws adopted the *Book of Order,* and Respondent's articles of incorporation expressly recognized the trust in favor of the general church. *See* Pet. App. 4a–5a. In short, the parties here *did* ensure that property would remain with the hierarchical church in the event of a schism, in just the way that *Jones* recommended.

The lower courts held, however, that state law defeated the previously agreed upon and authoritative resolution of the dispute within the church. They determined that, under Minnesota law, the trust created in favor of the general church was valid but revocable, and that Respondent validly revoked it before the schism by excising the trust language from its articles of incorporation. *See* Pet. App. 19a, 22a. Under the "hybrid" neutral-principles approach that many states employ, these state-law trust formalities would be irrelevant. Under the "strict" approach the lower courts adopted in this case, they were dispositive.

II. This Nationwide Divide In Applying *Jones* Deserves This Court's Attention

The First Amendment issue presented by this Petition is sufficiently important to warrant review by this Court. It implicates not only billions of dollars in church property (millions in this case alone) but also the free-exercise rights of churches and their members—just as the *Jones* dissenters predicted. *See Jones*, 443 U.S. at 613–14 (Powell, J., dissenting).

Guided by *Jones* and its promise that courts must give effect to express trusts, many religious institutions modified their constitutions to include trust clauses. As a source cited by Respondent explained, they did so specifically to comply with *Jones*:

> This split has assumed far more practical importance than anyone could have imagined at the time of *Jones*, because several of the nation's oldest and largest religious denominations . . . quickly responded to *Jones*'s invitation to amend the 'constitution of the general church . . . to recite an express trust in favor of the denominational church,' and thereby attempt to resolve all property disputes with local congregations in one national move.

McConnell & Goodrich, *supra* at 319–20.

The lower court decisions disregarding *Jones*-style trust clauses place a state-law cloud over valuable church property. They also "reverse[] the decisions of doctrine and practice made in accordance with church law," just as the *Jones* dissent feared. *Jones*, 443 U.S. at 613 (Powell, J., dissenting). And, as the dissenting members of *Jones* explained, "[t]his indirect interference by the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice." *Id.*

This case provides a ready example. The lower courts did not only override the resolution of this dispute prescribed by the *Book of Order* and the ruling of "the ecclesiastical governing body." Pet. App. 11a. They also

explicitly rejected Petitioner's position that "the property dispute is a matter of polity or faith." Pet. App. 15a. In other words, the strict neutral-principles approach applied in this case led the courts to decide an intra-church dispute against the hierarchical church, in what the church itself views as an ecclesiastical matter.

III. Petitioner Has Standing Under Article III

At the close of its opposition, Respondent makes a fleeting challenge to standing because "Petitioner's claim rests on an assertion that PCUSA suffered an injury in fact." Opp. 21. Respondent ignores that Petitioner is "the corporate expression of PCUSA for congregations located within PTCA's district boundaries, which includes [Respondent]." Pet. App. 30a.

As explained in the *Book of Order*, PCUSA can act only with the approval of certain councils. *See* Add.42 (G-3.0101). One such council is a "presbytery," which serves as "the corporate expression of the church" within the presbytery's geographic district. *See* Add.51 (G-3.0301). Each presbytery "is responsible for the government of the church throughout its district." *Id.*

Petitioner is the presbytery for the Twin Cities Area, and its acts and decisions are considered the acts and decisions of PCUSA. *See* Add.42 (G-3.0101). Indeed, under the *Book of Order*, Petitioner—and only Petitioner—had the authority to:

- Dissolve the relationship between Respondent and PCUSA. *See* Add.53,56,57 (G-3.0303, G-4.0207);

- Review and correct the actions and decisions of Respondent that are inconsistent with the *Book of Order*. *See* Add.34,35,53 (F-3.0203, F-3.0206, G-3.0303);

- Take control of Respondent if it is unable or unwilling to manage its affairs consistent with the *Book of Order*. *See* Add.54 (G-3.0303(e)); and

- Decide the disposition of the property held by Respondent if Respondent ceases acting as a congregation of PCUSA, dissolves or becomes extinct, wants to sell or encumber its property, or becomes embroiled in an internal schism. *See* Add. 56,57 (G-4.0204, G-4.0205, G-4.0206, and G-4.0207).

Accordingly, when Respondent ceased acting as a congregation of PCUSA, Petitioner assumed control of the Respondent's session, and it determined the disposition of the property held by Respondent. When Respondent refused to acknowledge Petitioner's authority under the *Book of Order*, Petitioner filed this action as the corporate expression of, and relevant governing council for, PCUSA within the Twin Cities Area. Petitioner, therefore, has standing under Article III.

CONCLUSION

For these reasons, this Court should grant the Petition for a writ of *certiorari* and overturn the lower court's decision.

Dated: March 23, 2018.

Respectfully Submitted,

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