No. _____

IN THE
# Supreme Court of the United States

KENNETH SHELTON,
*Petitioner*,
v.
ANTHONEÉ PATTERSON,
*Respondent.*

On Petition for a Writ of Certiorari
to the Commonwealth Court of Pennsylvania

## PETITION FOR WRIT OF CERTIORARI


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## QUESTION PRESENTED

This Court has made plain that States may adjudicate disputes that arise within religious communities, so long as they can be resolved on "neutral principles." *Jones v. Wolf*, 443 U.S. 595, 602 (1979). But *Wolf* cautioned that where the resolution of a controversy even under a "neutral principles" approach requires the evaluation and interpretation of a religious matter, broadly construed, the civil courts must defer to the religious community on those issues, applying *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976). And then, in *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171, 195 n.4 (2012), this Court opined that church disputes over ministry are not *per se* exempt from judicial scrutiny under church autonomy principles, and that they should instead be treated as affirmative defenses, leading to further confusion in the application of this precedent in the lower courts.

After nearly a quarter century of litigation, the court below—ostensibly following "neutral principles" as contemplated by *Wolf*—has directed that a non-member of a religious community be installed in the highest leadership position of the Church of the Lord Jesus Christ of the Apostolic Faith, displacing its duly elected leader. The case below thus presents a matter for plenary review related to the inconsistent application of this Court's precedent:

> Whether this Court should clarify *Jones v. Wolf* and *Hosanna-Tabor v. E.E.O.C.*, given the doctrinal uncertainty and unpredictability reflected in inconsistent

application in federal and state courts, and limit the ability of courts to disregard core church autonomy principles in the adjudication of intra-church disputes.

## LIST OF PARTIES

The Petitioner, Bishop Kenneth Shelton, was the defendant below. The Respondent, plaintiff below, is Anthoneé Patterson.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Bishop Kenneth Shelton, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Commonwealth Court of Pennsylvania, No. 1312 C.D. 2016, filed on November 29, 2017.

## OPINION BELOW

The most recent opinion of the highest state court to review the merits, the Commonwealth Court of Pennsylvania, is reported at 175 A.3d 442, and appears at Appendix A (App. 1–15). The Commonwealth Court's December 22, 2017 Clarifying Order appears at Appendix B (App. 16). The denial of the Application for Rehearing appears at Appendix C (App. 18). The Supreme Court of Pennsylvania's order denying review is reported at 190 A.3d 592 (no published opinion) (July 31, 2018), and appears at Appendix D (App. 19).

## JURISDICTION

The Commonwealth Court of Pennsylvania issued the decision for which Bishop Shelton seeks review on November 29, 2017. (*See* App. at 1–15.) On December 13, 2017, Bishop Shelton timely filed an application for rehearing, which was denied on January 16, 2018. (*See* App. at 18.) The Supreme Court of Pennsylvania denied Bishop Shelton's timely Petition for Allowance of Appeal on July 31, 2018. (*See* App. at 19.) On October 22, 2018, pursuant to Rule 13.5, Justice Samuel A. Alito granted Bishop Shelton's application to extend the time to file this petition to and including December 28, 2018. This Court has jurisdiction under 28 U.S.C. 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]"

U.S. Const. amend. I.

## STATEMENT OF THE CASE

This case always has been and still is about the efforts of Respondent, Anthoneé Patterson, to have the civil courts depose the duly elected leader of the Church, Petitioner, Kenneth Shelton, in favor of Patterson, who is neither clergy nor a member of the Church. No civil court has authority to do that. Yet, that is the result of the decision for review here.

### A. Factual Background as to the Church

1. The Church of the Lord Jesus Christ of the Apostolic Faith (the "Church") was founded in 1919 by Bishop S.C. Johnson and its headquarters is located at "Apostolic Square," at 22nd and Bainbridge Streets in Philadelphia, Pennsylvania. The Church's organization is hierarchical in nature and has more than 50 satellite local churches throughout the continental United States. The "Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc." (the "Church Corporation") was incorporated as a Pennsylvania nonprofit corporation in 1947. As an article of faith, the Church community has one "Bishop" (spiritual leader for his lifetime) who must be elected as the General Overseer by the Church body at its annual General Assembly meeting. The General Overseer is

entrusted with the care and custody of the Church's property for the good of the Church. Thus, even though the Church created the Church Corporation to hold all of the Church's property in trust for the benefit of the Church, it has continued to embrace the special role of the General Overseer with respect to the Church's property.[1]

The Church's General Overseer, the highest spiritual and adjudicatory authority in the Church, manages all of the Church's affairs. According to the Church's Bylaws, and as noted above, the General Overseer is elected by the General Assembly[2] and is expected to serve for the rest of his life in that office. (*See* Bylaws at Article VII; App. at 75–76.) The Church Corporation's assets are managed by the President of the Board of Trustees and the Board of Trustees. Under the Church's Bylaws, whoever serves as the General Overseer of the Church also serves as the President of the Board of Trustees of

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[1] The Church's Bylaws appear at Appendix H (App. at 72.) The Church Corporation's Articles of Incorporation appear at Appendix I (App. at 82).

[2] The "General Assembly" is an annual session of the Church congregation at which matters of ecclesiastical governance and doctrine are reviewed and enacted. The General Assembly is also the name of the congregation. The Church's Bylaws provide that "[a]ny session called by the General Overseer shall also be designated as a general assembly and have all the rights and powers and authority of the annual general assembly." (Bylaws at Article I; *id.* at 72.) The Bylaws further provide that the "quorum for the transaction of business before the General Assembly shall be fifty members voting before matters of the General Assembly." (Bylaws at Article IV; *id.* at 73.)

the Church Corporation, also for the rest of his life. (Bylaws at Article XIV; *id.* at 78.) All other trustees of the Church Corporation are elected annually, and they hold their offices until their successors are elected by the General Assembly. (*Id.*)

From his election in 1947, Bishop S.C. Johnson was the General Overseer of the Church and President of the Board of the Church Corporation. Following Bishop Johnson's death in 1961, Bishop S. McDowell Shelton served as General Overseer and President of the Board of Trustees of the Church Corporation. When Bishop S. McDowell Shelton died in October 1991, a dispute arose over who was the rightful successor to the office of General Overseer.

2. At the September 1992 annual meeting of the General Assembly, following a series of internal disputes, Kenneth Shelton was duly elected General Overseer by a majority of approximately 5,000 Church members in attendance, in accordance with the Church's Articles of Incorporation and its Bylaws. Since 1992, Bishop Shelton has served as the General Overseer of the Church and President of the Board of the Church Corporation. Bishop Shelton has provided steadfast spiritual leadership and guidance to his parishioners, who have filled the pews in the Church's sanctuary every Sunday for decades. By all accounts, the Church is a thriving congregation that has enthusiastically coalesced around Bishop Shelton, depends on his leadership, and has no wish to disrupt the harmonious status quo.

3. Patterson is a former member of the Church who lives in Florida. Patterson was a member of a minority faction that in 1992 decided to dispute Bishop Shelton's proper election to the offices of

General Overseer and President of the Church Corporation.[3] Since 1995, Patterson has waged what can only be described as a crusade against Bishop Shelton, relentlessly pursuing duplicative and abusive legal actions across the country in an ongoing attempt to oust Bishop Shelton and gain control of the Church, the Church Corporation, and its assets.

## B. Proceedings Below

1. As a result of Patterson's ceaseless campaign to seize control of the Church, for nearly a quarter century the parties have been at odds about Bishop Shelton's election as the General Overseer of the Church, both in and out of the courts. But despite the numerous procedural twists and turns, for purposes of this case, this Court need not concern itself with the entire course of dealing and litigation—the only

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[3] Notwithstanding Patterson's claim to have been duly elected himself as General Overseer in 1994, that claim was never sustained, and the courts affirmatively recognized (based on the record in the litigation) that Bishop Shelton is the duly elected leader. Moreover, over twelve years ago, on August 31, 2006, the Church Council of Priests issued a Proclamation declaring that the Church "will not accept Anthonee Patterson or any of those who aid, abet or associate with him as members or officers of this Church, as they have demonstrated that they hold religious and doctrinal views contrary to our own." The Proclamation appears at Appendix J (App. at 86.) Among other significant religious differences between the Church and Patterson, the Church recognizes Jesus Christ as the living Son of God, while Patterson does not; the Church endorses Christmas celebrations, while Patterson does not; and the Church observes Easter as the holy recognition of the Resurrection of Jesus Christ, while Patterson does not.

matters that are germane are the original complaint and the 2006 arbitration, the 2008 vacatur of the arbitration decision as *ultra vires*, the 2015 dismissal of the case because the First Amendment deprives the courts of jurisdiction, and the 2017 decision to vacate the Commonwealth Court's 2008 opinion, on stated jurisdictional grounds.

2. In a 1995 Complaint, Patterson demanded, *inter alia*, (1) the appointment of a receiver to take control of the assets of the Church held by the Corporate Trustee; (2) an order requiring Bishop Shelton to issue annual financial reports for the years 1991 – 1994; (3) an accounting; (4) an order removing Bishop Shelton and substituting Patterson as General Overseer; and (5) an order that the Church hold elections for certain Church offices.[4] Issue 4 is at the heart of the instant dispute.

3. In December 2005, after a decade of litigation in the Pennsylvania courts, the parties submitted Patterson's claims under Pennsylvania's Nonprofit Corporation Law ("NPCL") to arbitration. The Church's Bylaws are silent on the use of arbitration or other alternative dispute resolution mechanisms. But, to attempt to move the then-10-year-old case forward, Bishop Shelton consented to arbitrate the NPCL issues. Patterson's NPCL claims (Issues 1-3 above) were ordered into arbitration and the case was dismissed.[5] From April 2006 to April 2007, the

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[4] Patterson's 1995 Complaint appears at Appendix K (App. at 87).

[5] The Court of Common Pleas of Philadelphia County's January 10, 2006 Order referring Patterson's 1995 Complaint to

arbitrator issued a series of adjudications, ultimately finding that Patterson "acted in harmony with the laws, usages, and customs of the General Assembly," and awarding Patterson the office of President of the Church Corporation.[6] Tacitly acknowledging the First Amendment's restrictions on the authority of civil magistrates, the arbitrator recognized that he could not displace the Church's General Overseer, and that he could adjudicate only matters related to the operation of the Church Corporation. What the arbitrator failed to recognize is that the presidency is an office explicitly reserved, *ex officio*, to the duly elected General Overseer of the Church. In effect, and in violation of Church doctrine, the arbitrator transferred control of the Church's assets and property to a non-member of the Church who was never elected to any such office by the Church's officers. That non-member was Patterson.

4. The parties had agreed that a final determination in the arbitration would not be subject to review except on the limited statutory grounds set forth under Pennsylvania law for common law arbitrations, including whether the arbitrator had exceeded his authority.[7] Bishop Shelton petitioned to

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arbitration appears at Appendix E (App. 20.) *See also* note 7, *infra*.

[6] The April 26, 2006 Arbitration Adjudication appears at Appendix L (App. 99–118).

[7] Under Pennsylvania law, common law arbitration awards may not be vacated "unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or

vacate the arbitration adjudication on that ground, explaining to the court that the arbitrator's authority did not extend to the governance of the Church or the Church Corporation, both in fact and as a matter of law, especially given the protected religious nature of the question of Church leadership. In January 2008, the Commonwealth Court of Pennsylvania agreed with Bishop Shelton and vacated the arbitration adjudications as *ultra vires*. The court further ordered that Patterson's claims under the NPCL be remanded for trial. *See Patterson v. Shelton*, Nos. 1967 C.D. 2006, 1968 C.D. 2006, 2008 WL 9401359, (Pa. Commw. Ct. Jan. 31, 2008) (*Patterson I*, or the "2008 Opinion"); App. at 34–43.[8] In so ruling, the court explained that "the only relief obtainable [in the arbitration], if Patterson prevailed . . . was the relief he sought pursuant to Sections 5553 and 5793(b) of the Nonprofit Corporation Law. . . [which was] an accounting for the years [1991 to 1994], and a determination as to whether Kenneth Shelton had misappropriated assets during that time period and an order requiring Kenneth Shelton to issue financial

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unconscionable award." 42 Pa. C.S.A. § 7341. A common law arbitration award may also be vacated, where, as here, "the arbitrator exceeds the scope of his authority." *Jefferson Woodlands Partners, L.P. v. Jefferson Hills Borough*, 881 A.2d 44, 48 (Pa. Commw. Ct. 2005).

[8] The 2008 Opinion appears at Appendix F (App. 22–43).

reports for the years [1991 to 1994]." *See Patterson I*, App. at 35–36.[9]

5. On remand to the trial court, Bishop Shelton renewed his motion to dismiss Patterson's claims for lack of subject matter jurisdiction, on the ground that resolution of Patterson's NPCL claims would impermissibly entangle the court in ecclesiastical and doctrinal matters. The trial court agreed and dismissed the complaint and, in December 2015, the Commonwealth Court affirmed that ruling. *See Patterson v. Shelton*, No. 2147 C.D. 2014, 2015 WL 9260536 (Pa. Commw. Ct. Dec. 18, 2015) (*Patterson II*, or the "2015 Opinion") (App. at 58–71).[10] Patterson proceeded to exhaust all available appeals of the 2015 Opinion, effectively disposing of any and all remaining claims and fully and finally concluding the litigation. *See Patterson v. Shelton*, 137 S.Ct. 297 (Oct. 11, 2016) (denying Patterson's petition for writ of certiorari of the 2015 Opinion). Or, at least, so Bishop Shelton thought.

### C. The Commonwealth Court's 2017 Opinion

1. In May 2016, Patterson filed a motion with the trial court on the closed docket of the original (twice dismissed and terminated) case, seeking to strike the Commonwealth Court's *2008* Opinion and order vacating the arbitration adjudications. The trial court

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[9] Patterson exhausted his appeals of the 2008 Opinion. *See Patterson v. Shelton*, 963 A.2d 471 (Pa. Oct. 14, 2008) (denying Patterson's petition for allowance of appeal of 2008 Opinion.)

[10] The 2015 Opinion appears at Appendix G (App. 44–71).

denied Patterson's motion. But then, in November 2017, the Commonwealth Court reversed the trial court, and struck its own ten-year-old order holding that the First Amendment deprives the courts of jurisdiction. *See Patterson v. Shelton*, 175 A.2d 442, 449–50 (Pa. Commw. Ct. 2017) (*Patterson III*, or the "2017 Opinion") (App. 13–15).

2. Rather than simply dismiss the entire case again as an unconstitutional exercise, the Commonwealth Court resurrected the vacated arbitration award, retroactively validating the award, but not the vacatur of the same award that it had ordered on statutory grounds in 2008. *Id.* If no court had the juridic authority to entertain a case about selecting a religious leader, the parties never would have agreed to submit the matter to arbitration, because the entire case was barred at the outset. Specifically, as the Commonwealth Court correctly reasoned in its holding below (*id.*):

> [A]fter the arbitrator ruled in Patterson's favor, . . . this Court reversed the trial court's decision, vacated the arbitration award, and remanded to the trial court for further proceedings related to these [NPCL] claims. However, because this Court affirmed the trial court's decision concluding that it lacked subject matter jurisdiction over his remaining [NPCL] claims on the basis that resolution of the same would require the trial court to interpret religious doctrine, something it was prohibited from doing under the First

> Amendment, any prior decisions relating to the same are null and void.

If the court below had stopped there, then the result and the rationale would both have been correct. But, in a befuddling subsequent passage of its opinion, the court made a remarkable about-face, holding (*id.*):

> As a result, the only valid, remaining determination in this case is the binding arbitration award, as agreed to by the parties in November 2005, and confirmed by the trial court. As noted above, the trial court, by order dated July 10, 2006, confirmed the arbitrator's award and entered judgment in favor of Patterson and against Shelton. Thus, Patterson's remedy lies with enforcement of that judgment.

3. Patterson has interpreted the 2017 Opinion and the Commonwealth Court's December 22, 2017 Clarifying Order (App. 16) as permitting him to execute retroactively upon the award of the Church Corporation's presidency in 2006, and he has attempted to seize control of the Church and transfer the Church's property to himself.[11] As a result—and

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[11] As set forth above, Bishop Shelton applied for both reargument with the Commonwealth Court and review to the Pennsylvania Supreme Court, but both applications were denied. He has also challenged the renewal of proceedings in the trial court and the denial of that relief is on appeal to the Commonwealth Court.

despite having been otherwise victorious over the course of this litigation—Bishop Shelton and the Church he has led since 1992 are facing the very real possibility that they could lose the Church to Patterson.

## REASONS FOR GRANTING THE PETITION

Although this decades-long litigation has a lengthy, labyrinthine history with dozens of twists and turns, the core dispute has always been a simple one: whether Patterson can use the civil courts to depose Bishop Shelton and transfer control of the Church to himself. But though the answer to that question should be straightforward under this Court's First Amendment jurisprudence—that courts lack the subject matter jurisdiction or competence to adjudicate such ecclesiastical disputes—the application of that doctrine in the federal and state courts has not been clear. These profound constitutional issues are central to church autonomy and governance and to the centuries-old bedrock principle that civil courts cannot encroach upon those areas of protected free exercise. This case therefore presents a rare opportunity for the Court to clarify its rulings, provide guidance to the lower courts on issues of widespread importance, and reconcile disparate, inconsistent views on whether, when, and how courts can enter the religious thicket.

### A. The Court Should Grant Certiorari To Determine Whether The First Amendment Bars Civil Courts From Adjudicating Disputes About Who Is the Rightful Leader Of A Church, When The Leader Was Duly Elected According To That Church's Ecclesiastical Doctrine.

1. Recognizing that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine or practice," the Court sanctioned a "neutral principles" approach for resolving religious property disputes in *Jones v. Wolf*. 443 U.S. at 602 (citing *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 710 (1976); *Maryland & Virginia Eldership of Church of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 449 (1969)). The Court set forth a "general outline" for application of neutral principles that permits courts to examine "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 ownership and control of church property." *Id.* at 602–03. The Court also explained that application of neutral principles:

> requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to

> scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

*Id.* at 604 (citing *Serbian Orthodox*, 426 U.S. at 709).

Thus, the Court allowed state courts to adopt a neutral-principles approach to resolving church property disputes, to the extent it is "consistent with the foregoing constitutional principles." *Id.* at 602. But, when in the course of such review a court encountered a religious issue, it was supposed to defer to the church's decision. *Id.* at 604.

Pennsylvania is a neutral-principles state but it follows a deference rule whenever a neutral review collides with a religious question. *See, e.g.*, *Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084, 1095–96 (Pa. 2009); *Presbytery of Beaver-Butler of United Presbyterian Church in U.S. v. Middlesex Presbyterian Church*, 489 A.2d 1317, 1323 (Pa. 1985). Importantly, the religious question does not have to

be Biblical or eschatological but can be something as basic as who is a faithful member or duly elected leader, as long as such issues are infused with religious meaning by the community of faith. *See Patterson II*, App. at 69 ("The Rules and the By-Laws of [the Church] make it clear that the Appellee as the General Overseer of the Church, is the highest spiritual leader in the church and has absolute discretion to make decisions regarding the use of Church funds.").

As the quoted passage above from *Wolf* makes clear, the stated goal of neutral-principles review is to allow courts and churches to review and resolve property disputes consistently and in accord with, not contrary to, a Church's beliefs. There is tension in these issues, not just between *Wolf* and *Serbian Orthodox*, but also in how to draw lines between the religious and the secular, which is evident in the confused and inconsistent application of these rules in the Commonwealth Court's own decisions below.

2. While Patterson's original 1995 Complaint has faded from view, the relief he seeks has been the same from the outset—Patterson wants the Pennsylvania courts to replace Bishop Shelton as General Overseer of the Church and President of the Board of the Church Corporation. (*See* Patterson's 1995 Complaint, App. at 97.) As this Court first recognized more than 150 years ago in *Watson v. Jones*, no court is competent to replace the head of a Church. 80 U.S. 679, 726 (1871) ("The rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which

the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.").

As explained above, in the year following Bishop S. McDowell Shelton's death in 1991, a majority of the General Assembly of approximately 5,000 Church members elected Kenneth Shelton as their General Overseer. When he was confirmed as General Overseer, Bishop Shelton automatically became President of the Board of the Church Corporation under the Bylaws. (*See* Bylaws at Article XIV, App. at 78.) In the lawsuit he filed against Bishop Shelton in 1995, Patterson sought to undo these valid General Assembly election results. Patterson claimed in his 1995 Complaint, among other things, that Bishop Shelton had violated several provisions of the NPCL and, consequently, he ought to be replaced as General Overseer (not corporate president) by Patterson. (*See* App. at 97.)

When the parties agreed to submit Patterson's NPCL claims to arbitration in January 2006, the only issues before the arbitrator were whether there should be an accounting of the Church Corporation's financial dealings from 1991 to 1994, whether Bishop Shelton misappropriated assets during that time period, and whether Bishop Shelton should be ordered to issue financial reports for 1991 to 1994. *See Patterson I*, App. at 35–36. The parties plainly could consent to arbitration of those claims under the rubric of "neutral principles" described above. The arbitrator, of course, clearly went beyond that scope, ordering the removal of the control of Church assets and property from the current Board of Trustees and

Bishop Shelton and into Patterson's hands. *Id.* at 36–38.

3. The Commonwealth Court is wrong about the nature of the constitutional objection and its role in the application of "neutral principles" under *Wolf*. The court had previously recognized that the 2006 arbitration adjudications were *ultra vires* under a neutral statutory principle, and that no court could properly adjudicate the underlying issues about leadership and succession. *Id.*; s*ee also Patterson II*, App. at 58–71 (applying deference to the issue of succession even though Pennsylvania is a "neutral principles" state). But the 2017 Opinion eviscerates the neutral principles regime by holding that, *because* it was required to defer to the Church's ecclesiastical doctrine under the First Amendment, no court could rule on the validity of the 2006 arbitration adjudications. According to the 2017 Opinion, therefore, the trial court orders confirming those adjudications are the "last valid judgments in this case." *Patterson III*, App. at 15. That such contradictory results could obtain under the same set of constitutional principles is an issue warranting review by this Court.

That language in the Commonwealth Court's 2017 Opinion appears to put the parties back where they were immediately after the arbitrator's *ultra vires* adjudications, with Patterson—a non-member—attempting to wrest control of the Church and its property away from its duly elected General Overseer, Bishop Shelton, through enforcement of the arbitration adjudications by the Pennsylvania courts, in violation of the Church's Bylaws, which (1) mandate that the General Overseer control the

Church's property, as President of the Church Corporation; and (2) provide explicitly that the Church Corporation holds the Church's property in trust for the benefit of the Church and its members. *See Patterson III*, App. at 13–15.

4. What led both the arbitrator and the court below astray is the lack of clarity about the application of *Wolf* and *Serbian* to resolve property claims without contradicting doctrinal rules. Fundamentally, the arbitrator's orders and the 2017 Opinion purporting to retroactively resurrect them violate both the Free Exercise Clause and the Establishment Clause of the First Amendment. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in Am.*, 344 U.S. 94, 106–08 (1952) (statute purporting to transfer control of New York cathedral church from central governing hierarchy to opposing faction violated the Free Exercise Clause). It is settled law that "the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive." *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929). *Wolf* is to the same effect. 443 U.S. at 602 ("[T]he [First] Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.") (citing *Serbian Orthodox*, 426 U.S. at 724–25 and *Watson v. Jones*, 80 U.S. 679, 733–34 (1871)). The contrary conclusion below turns settled principles of this Court's First Amendment jurisprudence on their heads, while paying mere lip service to their application.

### B. The Court Should Grant Certiorari To Resolve The Split In Authority In The Lower Courts Over Whether Church Autonomy Principles Act As A Jurisdictional Bar Or An Affirmative Defense.

The decision below also magnifies and exacerbates the split in the lower courts concerning whether the church autonomy doctrine[12] operates as a jurisdictional bar or as a (potentially) waivable affirmative defense. In its 2017 Opinion, the court below appears to have focused on the parties' agreement to arbitrate Patterson's NPCL claims "with no right to appeal." *Patterson III*, App. at 14. The Commonwealth Court explained that, when the trial court ordered certain issues to arbitration in January 2006 and dismissed the case, "[n]evertheless, after the Arbitrator ruled in Patterson's favor, Shelton filed a petition to vacate the arbitration award with the trial court." *Id.* Thus, the court continued, "the only valid, remaining determination in this case is the binding arbitration award, as agreed to by the parties in November 2005, and confirmed by the trial court." *Id.* The court ignored the application of Pennsylvania law to the arbitration in 2008 (a neutral principle), and any objections to the substitution of leaders (in violation of the Church's own rules) as a form of (waivable)

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[12] Illustrative of the confusion, in some jurisdictions, the "church autonomy doctrine" is referred to instead as the "religious autonomy doctrine," the "deference rule," or "ecclesiastical abstention." The terms are used interchangeably; consequently, this petition does as well.

affirmative defense, rather than a (non-waivable) jurisdictional bar. The court appeared implicitly to rule that, once the case was referred to arbitration, all objections on all issues disappeared in Pennsylvania.

But that ruling is sharply contradicted by the general principle that a party's ability to raise a fundamental constitutional bar is never waived, because it goes to the scope of a court's authority and competence to decide disputes consistent with the First Amendment. *See, e.g.*, *Lee v. Sixth Mt. Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 118 n.4 (3d Cir. 2018) (recognizing that the ministerial exception affirmative defense is not waivable because it is "rooted in constitutional limits on judicial authority"); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (explaining that a "constitutional protection is not a personal one; it is a structural one that categorically prohibits federal and state governments from becoming involved in religious leadership disputes.").[13] Indeed, since *Watson v. Jones*, when

[13] In fact, absent legislation, it is unconstitutional even to apply generally accepted administrative and secular rules involuntarily to a church that does not embrace them itself. *See Patterson II*, App. at 67 (citing *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 430–431 (D.C. 1996) ("Because the complaint does not adequately allege indisputable, universally applicable rules of accounting and financial reporting, the trial court could not have had subject matter jurisdiction unless the church itself had formally adopted the particular standards the [plaintiffs] seek to enforce through civil court action.".) Nothing in the Church's Bylaws provides for disputes to be decided by

this Court has addressed the issue directly, it tends to treat a violation of a church's core governance as a threshold jurisdictional issue. Most, but not all, lower courts across the country—including the Supreme Court of Pennsylvania—similarly hold that, because it is rooted in a civil court's constitutional competence, deference is a result of a threshold jurisdictional inquiry whether civil courts are competent to hear religious disputes. *See, e.g.*, *Connor*, 975 A.2d at 1095–96; *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 156–58 (Tenn. 2017); *Greater Fairview Missionary Baptist Church v. Hollins*, 160 So.3d 223, 232–33 (Miss. 2015); *Bilbrey v. Myers*, 91 So.3d 887, 890–91 (Fla. Dist. Ct. App. 2012). Accordingly, since a jurisdictional bar can be raised at any time, it cannot be waived.

Yet, other lower courts have made the same mistake the Commonwealth Court of Pennsylvania

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way of arbitration or mediation. (*See generally* Bylaws, App. at 72–81.) Consequently, Bishop Shelton's assent was required to submit the issue of whether he should remain as General Overseer to the arbitrator—assent that he did not give, as the Commonwealth Court recognized in its 2008 Opinion. *See Patterson I*, App. at 35–36 ("[T]he only relief remaining that was obtainable [in the arbitration], if Patterson prevailed, when this matter was reinstated was the relief he sought pursuant to Sections 5553 and 5793(b) of the Nonprofit Corporation Law. . . . [which were] an accounting for the years [1991 to 1994], and a determination as to whether Kenneth Shelton had misappropriated assets during that time period and an order requiring Kenneth Shelton to issue financial reports for the years [1991 to 1994].").

appears to have made, treating the deference rule as an affirmative defense that could possibly be waived, rather than a jurisdictional bar that never could be. The lower courts' confusion stems from a misreading of this Court's opinion in *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, where the Court opined in a footnote (on a question not presented or briefed in the case) that the ministerial exception "operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar [because] the issue presented by the exception is whether the allegations the plaintiff makes entitle him to relief, not whether the court has power to hear the case." 565 U.S. 171, 195 n.4 (2012) (citation and internal quotation and alteration omitted). Properly understood, that ruling does not allow a civil court to substitute one church leader for another or compel a church to accept someone whom the community itself has rejected. While the majority of lower courts have not conflated the ministerial exception's application as an affirmative defense with the church autonomy doctrine's jurisdictional bar, several others courts have, presenting a square split in authority and threatening religious autonomy through civil litigation, just as the Commonwealth Court's 2017 Opinion has below.

Recently, for example, the District Court in *Hubbard v. J. Message Grp. Corp.* highlighted the confusion among the lower courts as to whether the church autonomy doctrine functions as an affirmative defense or a jurisdictional bar. 325 F. Supp. 3d 1198, 1208–09 (D.N.M. 2018). "On one hand, several courts continue to rely on *Watson* and *Milivojevich* (which were discussed approvingly in *Hosanna-Tabor*) for

the proposition that the church autonomy doctrine precludes a court's subject matter jurisdiction over ecclesiastical matters." *Id.* (collecting cases). Relying instead, however, on the Tenth Circuit Court of Appeals' opinion in *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648 (10th Cir. 2002), and the New Mexico Court of Appeals' opinion in *Celnik v. Congregation B'Nai Israel*, 131 P.3d 102 (N.M. Ct. App. 2006)—as well as the Court's citation with approval to *Bryce* in *Hosanna-Tabor*—the *Hubbard* court concluded that "under the particular circumstances of this case—in which Plaintiff's claims . . . are premised [ ] on [defendant's] communications . . . about the state of Plaintiff's soul—that Defendant's church autonomy argument actually challenges this Court's jurisdiction in the manner of *Watson* and its progeny." *Id.* at 1209. "Nevertheless," the court continued, "insofar as it is reasonable to assume (if not decide) that the Supreme Court's citation to *Bryce* in footnote 4 of the *Hosanna-Tabor* decision reflects the Supreme Court's implicit determination that the church autonomy doctrine, like the ministerial exception, operates as an affirmative defense; and considering that the Defendants have raised and briefed the issue in a motion to dismiss under Rule 12(b)(6), the Court shall analyze the matter accordingly." *Id.* Although the *Hubbard* court ultimately reached the correct result—that it lacked subject matter jurisdiction over the religious dispute—its analysis predicated upon guesswork about the reach of footnote 4 in the

Court's *Hosanna-Tabor* opinion underscores the uncertainty among courts about how to apply the church autonomy doctrine and the need for intervention by this Court.[14]

The Supreme Court of Tennessee likewise emphatically expressed its uncertainty concerning whether to apply the ecclesiastical abstention doctrine (another name for "church autonomy") as an affirmative defense or a jurisdictional bar in *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146 (Tenn. 2017). There—after a survey of several lower court decisions in a subsection of its opinion entitled "The Ecclesiastical Abstention Doctrine: Subject Matter Jurisdictional Bar or

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[14] The Supreme Court of Oklahoma also viewed the church autonomy doctrine as an affirmative defense rather than a jurisdictional bar, based on a similar reading of the Court's citation to *Bryce* in *Hosanna-Tabor*. *See Doe v. First Presbyterian Church U.S.A. of Tulsa*, 421 P.3d 284, 291 n.11 (Okla. 2017.) The Oklahoma Supreme Court's opinion is the subject of a petition for a writ of certiorari currently pending before the Court. And the Supreme Court of Kentucky decided similar cases in opposite directions applying the ministerial exception on whether to dismiss or allow a case into discovery. *Compare Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 602 (Ky. 2014) (adopting the ministerial exception but ruling that, despite ministerial relationship with employee, employment contract precluded summary judgment) *with Presbyterian Church U.S.A. v. Edwards*, ---S.W.3d---; No. 2016-SC-000699-MR, 2018 WL 4628449, at *3 (Ky. Sept. 27, 2018) (reversing trial court's broad grant of discovery and holding that the trial court is only authorized to conduct the limited discovery necessary to determine whether the ministerial exception or ecclesiastical abstention doctrine bars the case).

Affirmative Defense?"—the court explained that this Court cited *Watson* with approval in *Hosanna-Tabor*, and "[n]o language in *Hosanna-Tabor* alters the well-established principle stated in *Watson* that civil courts have no jurisdiction over matters purely ecclesiastical in character." *Id.* at 156–58. Reaching the opposite conclusion from that of the *Hubbard* court, however, the *Church of God* court held that "until and unless the United States Supreme Court declares otherwise, the ecclesiastical abstention doctrine, where it applies, functions as a subject matter jurisdictional bar" that can be invoked at any time. *Id.* at 158–59.

If the church autonomy principle, under its various names, operates as a threshold jurisdictional issue that concerns the court's power to hear the case, then Bishop Shelton could never have waived his jurisdictional defenses to Patterson's 1995 Complaint, and the trial court never had the authority to issue *any* order, including the January 10, 2006 Order referring the matter to arbitration. Thus, when the Commonwealth Court determined in its 2015 Opinion that neither the trial court nor any other Pennsylvania court has subject matter jurisdiction over the dispute(s) at issue, every order in this case was void as having been issued without jurisdiction, including the arbitration order. That the Commonwealth Court in 2017 reached a contradictory (and erroneous) conclusion under both Pennsylvania law and the decisions of this Court lays bare the square split in authority and doctrinal uncertainty about whether *Hosanna-Tabor* altered the principles in *Wolf* and *Serbian Orthodox*. Plainly, the courts are divided on whether objections rooted in

constitutional competence are an affirmative defense or a jurisdictional bar. Only this Court can resolve that issue, and the instant case is a uniquely suitable vehicle for it to do so.

### C. The Court Should Grant Certiorari To Revisit And Clarify Its Ruling In *Jones v. Wolf* To Address Federal And State Courts' Inconsistent Application Of Its Holding.

1. The Commonwealth Court's 2017 ruling demonstrates the uncertainty in the lower courts over the proper application of the Court's ruling in *Jones v. Wolf*. In the more than three decades since the *Wolf* decision, state and federal courts have heard scores of church property disputes. But regardless of whether the dispute occurs in a jurisdiction applying the "neutral principles" approach, the "polity" approach, or a hybrid of the two, inconsistent results abound, even on identical sets of facts.

Indeed, the Commonwealth Court's opinion below is a prime example. As noted above, the Supreme Court of Pennsylvania adopted the neutral-principles approach for church property disputes in 1985, in its opinion in *Presbytery of Beaver-Butler of United Presbyterian Church in U.S. v. Middlesex Presbyterian Church*, 489 A.2d 1317 (Pa. 1985). The NPCL claims in the case were referred to arbitration and, applying a neutral statutory principle, the arbitrator's awards were vacated. It was not until November 2014—almost 20 years after Patterson filed his 1995 Complaint—that the Pennsylvania courts finally (if only provisionally given the 2017 Opinion) determined that any adjudication of Patterson's core complaint about leadership would

require the courts to construe the Church's religious doctrine concerning the General Overseer's ownership of Church property under the Church's governing documents, as well as the powers granted to the General Overseer as President of the Board of the Church Corporation. *See Patterson II*, App. at 62–71. As a result, in 2015, the Commonwealth Court held that Patterson's core claims could not be adjudicated using neutral principles, and it affirmed the trial court's opinion dismissing the action for lack of subject matter jurisdiction. *See id.*

The Pennsylvania courts failed to address whether they could adjudicate Patterson's 1995 Complaint using neutral principles of law for almost twenty years. But if they had done so—as Bishop Shelton urged and as is the court's duty if the church autonomy doctrine operates as a jurisdictional bar—then this decades-long litigation could potentially have been avoided. Instead, Bishop Shelton is faced with a situation where the Commonwealth Court has, in the name of that same neutrality principle, and despite the lack of subject matter jurisdiction over Patterson's claims, decided it can retroactively resurrect certain prior orders and judgments in the case, but not others. The cause of this problem is fairly traceable to the absence of more definitive doctrinal guidance from this Court.

2. The inconsistent application of *Jones v. Wolf* in the lower courts has attracted considerable scholarly attention. *See, e.g.*, Kent Greenwalt, *Hands Off! Civil Court Involvement In Conflicts Over Religious Property*, 98 COLUM. L. REV. 1843, (1998) (explaining that the neutral-principles approach "reveals significant variance in judicial attitudes, and

suggests how variable the results in similar cases may be under courts employing neutral principles in different ways"); Jeffrey B. Hassler, Comment, *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 (2008) ("While the particular promises of the *Jones* majority may have been fulfilled . . . the 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."); Ashley Alderman, Note, *Where's the Wall?: Church Property Disputes Within the Civil Courts and the Need for Consistent Application of the Law*, 39 GA. L. REV. 1027, 1029 (2005) ("Because the Court has left much freedom to the states, one state court might award church property to the general church, while another state court, working under a similar factual situation, might award the property to the local church.").

As these scholarly articles have elucidated, lower courts applying neutral principles often reach differing results on similar (if not identical) facts. The inconsistent results in the cases involving the schism in the Episcopal Churches is a paradigmatic example of the doctrinal disarray. For example, in *Masterson v. Diocese of Northwest Texas*, a local Episcopal church voted to disassociate from the national Episcopal Church. 422 S.W.3d 594, 598–99 (Tex. 2013), *cert. denied*, 135 S. Ct. 435 (2014). In doing so, the local church also voted to revoke any trusts that may have existed in favor of the national church. *Id.* The local church's real property was titled in its

name; nevertheless, the national Episcopal church claimed that one of its governing religious tenets—the Dennis Canon—imposed an irrevocable trust in the national church's favor for the local church's property. *Id.* at 610–11. The Supreme Court of Texas, while acknowledging that several others states' high courts hold that "an express trust canon like [the Dennis Canon] precludes the disassociating majority of a local congregation from retaining local parish property after voting to disaffiliate from the Church,"[15] held instead that "[w]e do not read *Jones* as purporting to establish substantive property and trust law that state courts must apply to church property disputes." *Id.* at 611–12.[16] Thus, even though the national Episcopal Church's sincerely held religious beliefs (in the form of canon law) prohibited the local church from revoking property rights bestowed by the irrevocable trust embodied in the national church's religious law, the court ruled that "[t]he Episcopal Leaders do not cite Texas law to support their argument that under the record before us [the local church] corporation was precluded from

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[15] *See, e.g.*, *The Episcopal Church in the Diocese of Conn. v. Gauss*, 28 A.3d 302 (Conn. 2011); *In re Episcopal Church Cases*, 198 P.3d 66 (Cal. 2009); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920 (N.Y. 2008); *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005); *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85 (Colo. 1986) (en banc).

[16] As the Supreme Court of Virginia recognized *infra*, the national Episcopal church enacted the Dennis Canon and established express trusts for the property of the local parishes in favor of the national denomination in response to the Court's opinion in *Wolf.*

revoking any trusts actually or allegedly placed on its property." *Id.* at 612. Simply put, the Supreme Court of Texas concluded that application of *Wolf* and neutral principles permitted a result that was contrary to the church's religious doctrine and its sincerely held beliefs.

The Supreme Court of Virginia, in contrast, on a nearly identical set of facts, reached the opposite conclusion in *Falls Church v. Protestant Episcopal Church in U.S.*, 740 S.E.2d 530 (Va. 2013), and held that the national Episcopal church's canon law established a trust in favor of the national church. There, like the local church in *Masterson*, the local church held title to its real property. *Falls Church*, 740 S.E.2d at 534. And, like the local church in *Masterson*, the local church voted to disaffiliate with the national Episcopal church. *Id.*

The Supreme Court of Virginia, recognizing that the national Episcopal church had codified the Dennis Canon in response to this Court's opinion in *Wolf*, held "we need look no further than the Dennis Canon to find sufficient evidence of the necessary fiduciary relationship" to support the express trust in favor of the national Episcopal church as it relates to the local church's property. *Id.* at 539–40.[17]

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[17] Two decades earlier, the Supreme Court of Colorado in *Bishop and Diocese of Colorado v. Mote*, highlighted the state courts' difficulties with determining whether an express trust existed in favor of the national church in the wake of the Court's opinion in *Wolf*: "On facts similar to those now before us, other courts have found a trust relationship or some other legal relationship divesting the local church of control of its property

2. Although these disparate opinions represent only a tiny fraction of the lower courts' inconsistent and contrary application of *Wolf*, they are emblematic of the need for this Court to clarify its ruling in that case. The *Masterson* court concluded that, despite the national church having enshrined in its religious law its intent to create an express trust in the local property favoring it (as this Court had recommended in *Wolf*), that it was nonetheless insufficient under a neutral-principles review to have done so. The *Falls Church* court, on the other hand, applying *Wolf* and the same "neutral principles," reached the exact opposite conclusion on an identical set of factual circumstances. Most important for purposes of this case, however, the Commonwealth Court has likewise reached inconsistent results *within the same case* while applying *Wolf*. The court concluded in its 2015 Opinion that it could not adjudicate Patterson's claims without interfering with the Church's autonomy. But then, in its 2017 Opinion, it held that application of *Wolf* could mean that Patterson could enforce arbitration adjudications that purport to replace Bishop Shelton as leader of his Church, even though he was duly elected according to the Church's governing documents. As the Court knows, and as explained above, no civil court can do that. The Court should therefore grant Bishop Shelton's petition to

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based upon a neutral-principles analysis." 716 P.2d at 109 (citing eight cases from different states.) "As well, other courts have applied a neutral principles analysis to more or less similar facts and have not found a trust relationship." *Id.* (citing six cases from different states).

correct this obvious misapplication of *Wolf* and to remedy the uncertainty surrounding the application of its opinion in the lower courts.

## CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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