No. 19-158

IN THE
Supreme Court of the United States

DR. MARCUS TURNER, SR., RUSSELL MOORE, JR., AND BEULAH COMMUNITY IMPROVEMENT CORP.,
Petitioners,

v.

ALVA C. HINES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the District of Columbia Court of Appeals

BRIEF OF BISHOP KENNETH SHELTON AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTRODUCTION AND INTEREST OF AMICUS CURIAE[1]

The principle involved in this case rests in a construction of three of this Court's precedents: *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), *Jones v. Wolf*, 443 U.S. 595 (1979), and *Gonzales v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). In the first case, this Court stated that the religious freedom of a church extends to its governance and is not limited just to matters of theology and doctrine. In the second, this Court indicated that States could resolve disputes over the temporal goods of a Church so long as the resolution involved only neutral and secular provisions of law. There, the Court reinforced the teaching of the third case—that even where a reviewing court had jurisdiction over the subject matter, it must not attempt to resolve disputed issues that ultimately turned on issues of religious doctrine. Here, the structure and governance of the church in the case at bar is intimately connected to its doctrine and teaching. The effect of the decision on review, to divorce governance from religious doctrine, violates the teaching of this Court and, because that error is

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[1] All parties have consented to the filing of this brief. Pursuant to Rule 37.6 of the Rules of this Court, Bishop Shelton states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief *amicus curiae*. No other person other than Bishop Shelton made a monetary contribution to its preparation or submission.

frequently manifested in other courts and cases, it warrants plenary review.

Bishop Kenneth Shelton is the General Overseer of the Church of the Lord Jesus Christ of the Apostolic Faith (the "Church"), the headquarters of which is located in Philadelphia, Pennsylvania. The Church's organization is hierarchical in nature and has more than 50 satellite local churches throughout the continental United States. Bishop Shelton has a personal interest in this Court's review of the religious property dispute before it. Since 1995, Bishop Shelton has been embroiled in a similar religious property dispute with a nonmember of the Church who is the self-proclaimed leader of a minority faction, and who for decades has attempted to wrest control of the Church and its assets. His target in the courts has been the governance and operation of the nonprofit corporation, but his goal has always been to depose Bishop Shelton, the duly elected General Overseer of the Church. According to the Church's governing documents and the sincerely held religious beliefs of its members, the General Overseer is not only the highest spiritual leader and adjudicatory body in the Church, but he also serves as President of the Church Corporation, which controls the Church's assets and property.

Decades of litigation and a series of arbitration adjudications have attempted to alternatively enforce or skirt the applicable constitutional law. Bishop Shelton has a real interest in seeing Petitioners' dispute resolved properly. Bishop Shelton's struggle to defend his Church against a nonmember's attempt to secure governance is emblematic of how courts

desperately need this Court's guidance on the reach and application of its "neutral principles" jurisprudence where church property disputes turn on issues of church—not corporate—governance. Given the doctrinal uncertainty and unpredictability reflected in their inconsistent application in federal and state courts, the Court should clarify the limit and ability of courts to disregard core church autonomy principles in the adjudication of intra-church disputes. It is that interest that Bishop Shelton seeks to vindicate here. Granting the Petitioners' petition for certiorari allows the Court to do so.

ARGUMENT

The Court Should Grant Certiorari To Determine Whether The First Amendment Bars Civil Courts From Interfering In Church Governance, Where That Governance Depends on Religious Beliefs.

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 controversy," it was supposed to defer to the church's decision. *Id.* at 604.

The D.C. Court of Appeals' opinion below, however, displays a willingness to interpret the church's Constitution, a document rife with religious meaning, under the guise of "neutral principles." In the court's judgment, certain of its provisions are objective and therefore "govern[ ] the rights and liabilities of the parties." (App. 15.) The court therefore held the litigation could proceed past the motion to dismiss stage, even though the plaintiffs' causes of action depend upon whether the defendants violated the church's Constitution. (App. at 12–17.)

But 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 misapplication of these rules in the D.C. Court of Appeals' decision below. And there is tension between substance and process, as the questions presented in the Petition at bar make plain. While a substantive dispute that implicates religious issues is certainly off-limits in this analysis, "the very process of inquiry"—that is to say the procedure applied and the relief sought—requires that courts not immerse themselves in claims about governance that necessarily coerce religious rights.

E.g., N.L.R.B v. Catholic Bishop of Chicago, 440 U.S. 490, 502 (1979) (construing the NLRA to avoid entangling the government from policing the internal affairs of parochial schools).

2. The right of self-governance according to religious principle is fundamental to the nature of religious institutions. Religious organizations express themselves civilly and corporately in a variety of ways rooted in the doctrinal self-understanding of the religion. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952). The First Amendment protects "freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* "[W]e have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs." *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171, 199 (2012) (Alito, J., concurring).

Self-governance includes an allocation of various functions of the religious institution into temporal, civil entities (or not) depending on the internal law and doctrine of the faith community. Structure reflects fundamental religious belief translated into practice. How a denomination chooses to organize and govern itself is no mere nicety, but often is the result of centuries of struggle within the faith community.

Although often dramatically oversimplified by courts into neat categories of hierarchical (*e.g.*,

Catholic), connectional (*e.g.*, Methodist), and congregational (*e.g.*, Baptist), the reality challenges the imagination. Some are incorporated, some are not. Some are organized as trusts; others are non-profit corporations; others are corporations sole. A leading commentator notes more than a dozen identifiable religious structures. W. COLE DURHAM & ROBERT SMITH, RELIGIOUS ORGANIZATIONS AND THE LAW, §§ 9:1, 9:2, 9:4 (2017). Such variations reflect differing ecclesiologies, based on differing theological convictions as to how each church should exist and carry out its mission in the world. The choice of organizational form therefore embodies a theological judgment by each religious community, grounded in its own religious convictions, and based on its Scripture, its tradition, and other doctrinal sources.

Through various organizations and separate entities, each Church allocates or withholds power to persons and entities with the expectation that each part of the Church will function in a particular and complementary way in terms of shared mission. In other words, Churches themselves decide who may and who may not exercise authority and responsibility. As Professor William Bassett describes it:

> The relationships between persons and groups within the churches, often constrained to the legal forms of agency, delegated authority, and scope of employment patterns as a method of establishing liability and legal accountability, are more correctly

> understood in terms of covenant, fellowship and mission.

I W. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, § 1:1 (1997). When the State dictates religious governance to a Church, it violates the Constitution.

The D.C. Court of Appeals' fundamental error is its severance of the protections intended for governance by this Court in *Kedroff*. The opinion below holds that issues of governance are not off-limits and, instead, that courts may have a duty to second-guess governance issues if it thinks they can be resolved by the application of "neutral principles." (App. at 12–13.) There may indeed be situations where that is possible, as reflected in historic jurisprudence. *Watson v. Jones*, 80 U.S. 679, 724–25 (1871). But issues of governance are often more subtle, and where the governance reflects the church's theology, labeling a dispute about corporate "governance" is not an excuse for civil court intervention.

And yet, intervene they frequently do, contrary to the teachings of *Kedroff*. For example, the Pennsylvania Commonwealth Court's recent opinions in *Patterson v. Shelton* appear to put the parties back where they were immediately after the arbitrator's *ultra vires* adjudications. Patterson is attempting to wrest control of the Church and its property away from its duly elected General Overseer and Church Corporation President, Bishop Shelton, through enforcement of arbitration adjudications by the Pennsylvania courts (previously held to be *ultra vires*), 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 related Church Corporation holds the Church's property in trust for the benefit of the Church and its members. *See Patterson v. Shelton*, Nos. 1967 CD 2006, 1968 CD 2006, 2008 WL 9401359, at *5–8 (Pa. Commw. Ct. Jan. 31, 2008) (holding that the arbitrator exceeded his authority in rendering the arbitration adjudications); *Patterson v. Shelton*, No. 2147 CD 2014, 2015 WL 9260536, at *7–11 (Pa. Commw. Ct. Dec. 18, 2015) (affirming dismissal for lack of subject matter jurisdiction); *Patterson v. Shelton*, 175 A.3d 442, 449–450 (Pa. Commw. Ct. 2017) (holding that lack of subject matter jurisdiction renders arbitration adjudications previously held as *ultra vires* nevertheless valid); *Patterson v. Shelton*, No. 439 CD 2018, 2019 WL 1591859, at *5–6 (Pa. Commw. Ct. Apr. 15, 2019) (reaffirming prior opinion and declining to address irreconcilable inconsistencies).

Similarly, as illustrated by another Petition currently pending before this Court, all Catholic institutions in Puerto Rico are subject to execution to satisfy a pension shortfall in three schools within the Archdiocese of San Juan. *Archdiocese of San Juan v. Feliciano*, Docket No. 18-921 (*filed* January 14, 2019). One of the issues in that case is the reach of a civil entity formed a century ago to conduct the temporal affairs of the island's then only ecclesiastical jurisdiction (dating back to 1511!). Civil agencies are the means by which an ecclesial agency does business with the secular world. *E.g., Wheelock v. First Presbyterian Church*, 119 Cal. 477, 483 (1897)

("Notwithstanding incorporation the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church proper."). In *Feliciano*, the Puerto Rico courts did not respect the decision of Church authorities that created five new Catholic dioceses in 1960, each acquiring a portion of the temporal goods. Thus, the relief ordered by the courts in Puerto Rico to execute on Catholic property anywhere on the island to settle a liability in only one diocese contravenes the legitimate rights of the other dioceses to possess and govern their own property.

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.

The D.C. Court of Appeals' ruling underscores uncertainty in the lower courts over the proper application and limits of this 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.

Most important for purposes of Petitioners' case, however, the D.C. Court of Appeals has reached inconsistent results while applying *Wolf*. The court below held that courts were free to rule on whether the church leadership violated the church's Constitution through alleged mismanagement of the church's funds and certain property transactions. The Court should therefore grant Petitioners' petition to correct this misapplication of *Wolf* related to uncertainty in the inferior courts.

CONCLUSION

Petitioners' Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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