No. _____

In the
Supreme Court of the United States

ALL SAINTS' EPISCOPAL CHURCH (FORT WORTH),

Petitioner,

v.

THE EPISCOPAL DIOCESE OF FORT WORTH, et al.,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court historically required civil courts adjudicating church property disputes to defer to the highest church authorities. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872). In *Jones v. Wolf*, 443 U.S. 595 (1979), a bare majority of the Court sanctioned another approach: the so-called "neutral principles of law" approach, which permits courts to consider, *inter alia*, property deeds, state statutes, and church governing documents. At the same time, *Jones* warned against resolving ecclesiastical questions or altering rules retroactively while providing a roadmap for avoiding entanglement going forward: Churches could adopt express-trust provisions governing church property, which civil courts would honor.

Petitioner is a parish in Texas affiliated with The Episcopal Church (TEC). In the decision below, the Texas Supreme Court awarded a dissident faction more than $100 million in church property, including petitioner's sanctuary and rectory—even though a supermajority of petitioners' parishioners voted to remain aligned with TEC. In so doing, the court refused to enforce the express-trust provision that would ensure petitioner's retention of its sanctuary and rectory. That decision deepens a conflict, violates *Jones*, and, if correct, would justify overruling *Jones*.

The question presented is:

Whether the Texas Supreme Court's decision awarding petitioner's sanctuary and rectory to a dissident faction in contravention of the will of petitioner's parishioners and an express-trust provision is consistent with the Free Exercise and Establishment Clauses.

PARTIES TO THE PROCEEDING

Petitioner is All Saints' Episcopal Church (Fort Worth), which was a plaintiff-respondent-conditional-cross-petitioner below.

The following respondents were also plaintiffs-respondents-conditional-cross-petitioners below: The Episcopal Church; The Most Rev. Katharine Jefferts Schori; The Rt. Rev. Rayford B. High, Jr.; The Rt. Rev. C. Wallis Ohl; Robert Hicks; Floyd McKneely; Shannon Shipp; David Skelton; Whit Smith; The Rt. Rev. Edwin F. Gulick, Jr.; Robert M. Bass; The Rev. James Hazel; Cherie Shipp; The Rev. John Stanley; Dr. Trace Worrell; Margaret Mieuli; Walt Cabe; Anne T. Bass; The Rev. Frederick Barber; The Rev. Christopher Jambor; The Rev. David Madison; Kathleen Wells; The Rev. Christopher Jambor and Stephanie Burk, individually and as representatives of All Saints' Episcopal Church (Fort Worth); Cynthia Eichenberger as representative of All Saints Episcopal Church (Weatherford); Harold Parkey as representative of Christ the King Episcopal Church (Fort Worth); Bill McKay and Ian Moore as representatives of Episcopal Church of the Good Shepherd (Granbury); Ann Coleman as representative of Episcopal Church of the Good Shepherd (Wichita Falls); Constant Robert Marks, IV, and William Davis as representatives of St. Alban's Episcopal Church (Arlington); Vernon Gotcher as representative of St. Stephen's Episcopal Church (Hurst); Sandra Shockley as representative of St. Mary's Episcopal Church (Hamilton); Sarah Walker as representative of Episcopal Church of the Holy Apostles (Fort Worth); Linda Johnson as representative of St. Anne's

Episcopal Church (Fort Worth); Larry Hathaway individually and as representative of St. Luke-in-the-Meadow Episcopal Church (Fort Worth); David Skelton as representative of St. Mary's Episcopal Church (Hillsboro); All Saints' Episcopal Church (Wichita Falls); All Saints' Episcopal Church (Weatherford); Christ the King Episcopal Church (Fort Worth); Episcopal Church of the Good Shepherd (Granbury); St. Alban's Episcopal Church (Arlington); St. Simon of Cyrene Episcopal Church (Fort Worth); St. Stephen's Episcopal Church (Hurst); St. Mary's Episcopal Church (Hamilton); St. Anne's Episcopal Church (Fort Worth); St. Luke-in-the-Meadow Episcopal Church (Fort Worth); St. Mary's Episcopal Church (Hillsboro); Episcopal Church of the Ascension & St. Mark (Bridgeport); Episcopal Church of the Good Shepherd (Brownwood); Holy Comforter Episcopal Church (Cleburne); St. Elisabeth's Episcopal Church (Fort Worth); Holy Spirit Episcopal Church (Graham); Holy Trinity Episcopal Church (Eastland); Our Lady of the Lake Episcopal Church (Laguna Park); Trinity Episcopal Church (Dublin); Trinity Episcopal Church (Henrietta); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Anthony of Padua Episcopal Church (Alvarado); St. Alban's Episcopal Church (Hubbard); St. Andrew's Episcopal Church (Fort Worth); St. Andrew's Episcopal Church (Breckenridge); St. Andrew's Episcopal Church (Grand Prairie); St. Barnabas the Apostle Episcopal Church (Keller); St. Gregory's Episcopal Church (Mansfield); St. John's Episcopal Church (Fort Worth); St. John's Episcopal Church (Brownwood); St. John the Divine Episcopal Church (Burkburnett); St. Joseph's Episcopal Church

(Grand Prairie); St. Laurence's Episcopal Church (Southlake); St. Luke's Episcopal Church (Mineral Wells); St. Mark's Episcopal Church (Arlington); St. Matthew's Episcopal Church (Comanche); St. Michael's Episcopal Church (Richland Hills); St. Paul's Episcopal Church (Gainesville); St. Patrick's Episcopal Church (Bowie); St. Peter-by-the-Lake Episcopal Church (Graford); St. Peter and St. Paul Episcopal Church (Arlington); St. Phillip the Apostle Episcopal Church (Arlington); St. Thomas the Apostle Episcopal Church (Jacksboro); St. Timothy's Episcopal Church (Fort Worth); St. Vincent's Episcopal Church (Bedford); St. Stephen's Episcopal Church (Wichita Falls); Episcopal Church of the Holy Apostles (Fort Worth); and Episcopal Church of the Good Shepherd (Wichita Falls).

The following respondents were defendants-petitioners-conditional-cross-respondents below: The Episcopal Diocese of Fort Worth; The Corporation of the Episcopal Diocese of Fort Worth; Franklin Salazar; Jo Ann Patton; Walter Virden, III; Rod Barber; Chad Bates; The Rt. Rev. Jack Leo Iker; Judy Mayo; Julia Smead, The Rev. Christopher Cantrell; The Rev. Timothy Perkins; The Rev. Ryan Reed; The Rev. Thomas Hightower; St. Anthony of Padua Church (Alvarado); St. Alban's Church (Arlington); St. Mark's Church (Arlington); Church of St. Peter & St. Paul (Arlington); Church of St. Philip the Apostle (Arlington); St. Vincent's Cathedral (Bedford); St. Patrick's Church (Bowie); St. Andrew's Church (Breckenridge); Good Shepherd Church (Brownwood); St. John's Church (Brownwood); Church of St. John the Divine (Burkburnett); Holy Comforter Church (Cleburne); St. Matthew's Church (Comanche);

Trinity Church (Dublin); Holy Trinity Church (Eastland); Christ the King Church (Fort Worth); Holy Apostles Church (Fort Worth); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Andrew's Church (Fort Worth); St. Anne's Church (Fort Worth); Church of St. Barnabas the Apostle (Fort Worth); St. John's Church (Fort Worth); St. Michael's Church (Richland Hills); Church of St. Simon of Cyrene (Fort Worth); St. Timothy's Church (Fort Worth); St. Paul's Church (Gainesville); Good Shepherd Church (Granbury); Church of the Holy Spirit (Graham); St. Andrew's Church (Grand Prairie); St. Joseph's Church (Grand Prairie); St. Laurence's Church (Southlake); St. Mary's Church (Hamilton);Trinity Church (Henrietta).; St. Mary's Church (Hillsboro); St. Alban's Church (Hubbard); St. Stephen's Church (Hurst); Church of St. Thomas the Apostle (Jacksboro); Church of Our Lady of the Lake (Laguna Park); St. Gregory's Church (Mansfield); St. Luke's Church (Mineral Wells); Church of St. Peter by the Lake (Graford); All Saint's Church (Weatherford); All Saint's Church (Wichita Falls); Church of the Good Shepherd (Wichita Falls); Church of St. Francis of Assisi (Willow Park); and Church of the Ascension & St. Mark (Bridgeport).

CORPORATE DISCLOSURE STATEMENT

All Saints' Episcopal Church (Fort Worth) is not a corporation. It has no parent corporation, and no corporation or other entity owns any stock in it.

STATEMENT OF RELATED PROCEEDINGS

District Court of Texas (141st Judicial District Court, Tarrant County):

Episcopal Church v. Salazar, No. 141-252083-11 (July 27, 2015)

Episcopal Church v. Salazar, No. 141-252083-11 (Feb. 08, 2011)

Texas Court of Appeals for the Second District at Fort Worth:

Episcopal Church v. Salazar, No. 02-15-00220-CV (Apr. 5, 2018)

Supreme Court of Texas:

Episcopal Diocese of Fort Worth v. Episcopal Church, No. 18-0438 (May, 22, 2020)

Episcopal Diocese of Fort Worth v. Episcopal Church, No. 11-0265 (Aug. 30, 2013), reh'g denied, Mar. 21, 2014

Supreme Court of the United States:

Episcopal Church v. Episcopal Diocese of Fort Worth, No. 13-1520 (Nov. 3, 2014)

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PETITION FOR WRIT OF CERTIORARI

The decision below wrests ownership of petitioner's sanctuary and rectory away from a supermajority of parishioners fully aligned with the national church and awards it to a dissident faction in direct contradiction of an express-trust provision adopted in the wake of *Jones v. Wolf*, 443 U.S. 595 (1979). There is nothing subtle about the resulting free-exercise violation. Petitioner and its parishioners have been denied both the right to use their sanctuary and the right to make enforceable agreements with their co-religionists about basic questions of property ownership and dispute resolution. The decision below cannot be reconciled with any proper construction of the First Amendment or *Jones*, and if one or the other must yield, then this Court would need to overrule *Jones*.

Long ago, this Court concluded that courts must resolve church-property disputes by deferring to the highest church authorities. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872). For a century, *Watson*'s "deference" approach stood as the clear path for honoring free-exercise rights while avoiding the entanglement of civil courts in ecclesiastical disputes. In 1979, however, a bare majority of the Court in *Jones* perceived an alternative path for resolving such disputes while honoring the Religion Clauses: the so-called "neutral principles of law" approach. Courts that choose that path examine, *inter alia*, property deeds, state statutes, and church governing documents to resolve such disputes. In an attempt to ensure that such an approach would be compatible with the First Amendment, this Court warned against

adjudicating ecclesiastical questions and cautioned that retroactive changes could upset free-exercise rights. The Court also provided a roadmap for honoring free-exercise rights while avoiding entanglement: If members of a hierarchical church amend their governing documents to include an express provision clarifying that church property is held in trust for a particular entity, then civil courts can (indeed, must) enforce that provision and avoid the thicket such disputes pose. In response, The Episcopal Church (TEC) amended its foundational documents to include just such a provision, known as the Dennis Canon.

The decision below deemed the Dennis Canon unenforceable under Texas law and transferred $100 million in church property—including petitioner's sanctuary and rectory—to a dissident faction. The decision implicates a deep split in the lower courts about whether such an express agreement controls as a matter of federal law or can be disregarded if it does not satisfy the idiosyncrasies of state trust law. The decision is also plainly wrong and incompatible with any proper understanding of *Jones*. And if *Jones* really does permit the result reached here, then it should be overruled, and the deference approach of *Watson* should be reaffirmed.

The stakes could not be higher for both the civil courts and petitioner. Few issues are more important to the courts than avoiding the thicket of ecclesiastical disputes. And no issue is more central to petitioner and its parishioners than the continued use of their sanctuary and rectory. This Court should grant review and either reaffirm the need to honor express

trusts like the Dennis Canon or restore the deference approach of *Watson*.

OPINIONS BELOW

The Texas Supreme Court's opinions are reported at 602 S.W.3d 417 and 422 S.W.3d 646 and reproduced at App.1-36 and App.232-63. The court of appeals' opinion is reported at 547 S.W.3d 353 and reproduced at App.37-227. The district court's opinions are unreported but available at 2015 WL 13722015 and 2011 WL 10989917 and reproduced at App.228-31 and App.264-66.

JURISDICTION

The Texas Supreme Court issued its decision on May 22, 2020. On March 19, 2020, this Court extended the deadline to file any petition for writ of certiorari due on or after that date to 150 days. This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

In pertinent part, the First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

STATEMENT OF THE CASE

A. Constitutional Background

1. Under English common law, "assets contributed to a church were impressed with an implied trust in favor of the fundamental doctrines and usages of the church at the time of contribution." 1 W. Cole Durham & Robert Smith, *Religious Organizations and the Law* §10:11 (2017) (Durham & Smith). Accordingly, when confronted with a dispute

over which of two warring factions within a church was the rightful owner of church property, an English court would award the property to the faction that, in the court's view, "adher[ed] to the original system." *Attorney-General v. Pearson* [1817] 36 Eng. Rep. 135, 157. The English approach thus "put the courts into a position of passing judgment on the meaning and significance of church doctrine." Durham & Smith §10:11.

That approach to resolving church-property disputes did not prevail on this side of the Atlantic. This Court first developed its approach to resolving such disputes in *Watson*, a decision predating the First Amendment's application to the states. In *Watson*, the Court confronted a controversy that arose in the wake of the Civil War between antislavery and proslavery factions of a Louisville congregation of the Presbyterian Church. The highest "governing bod[y]" of that hierarchical religious association had recognized the antislavery faction as legitimate. *Watson*, 80 U.S. (13 Wall.) at 694-95. This Court accepted that determination as decisive. Invoking "a broad and sound view of the relations of church and state under our system of laws," the Court concluded that, "whenever the questions of … 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." *Id.* at 727.

For the next century, that deference approach endured and protected religious liberty while limiting the courts' involvement in factional disputes over church property. *See* Durham & Smith §5:18. This

Court constitutionalized *Watson*'s deference approach in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952), and reinforced it in *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696 (1976).

2. In 1979, the Court charted a different path in *Jones*. Like many cases before it, *Jones* "involve[d] a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization." 443 U.S. at 597. In a 5-4 decision, the Court concluded that, although the deference approach remains permissible, "civil courts" need not always "defer to the resolution of an authoritative tribunal of the hierarchical church." *Id.* at 597, 602. Instead, the Court held that states may elect to resolve church-property disputes by applying "neutral principles of law" to decide which of the factions is entitled to continued use of the property. *Id.* at 602. Under this neutral-principles approach, the Court concluded, a court could "settl[e] a local church property dispute on the basis of 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 the ownership and control of church property." *Id.* at 603.

The Court acknowledged the "difficulty" that could arise from allowing a "civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church." *Id.* at 604. It also recognized that "there may be cases where the deed, the corporate

charter, or the constitution of the general church incorporates religious concepts" into such provisions. *Id.* The Court also provided a roadmap for members of a hierarchical church to determine their own fate and keep courts from being dragged into ecclesiastical disputes: "At any time before [a] dispute erupts," a "hierarchical church" "can ensure … that the faction loyal to [it] will retain the church property." *Id.* at 606. Specifically, "the constitution of the general church can be made to recite an express trust in favor of the denominational church," and "the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.* The Court described this option as "minimal[ly]" "burden[some]," and it stressed that judicial enforcement of such express-trust provisions would protect "free-exercise rights of the members of a religious association." *Id.* The Court also noted that "retroactive application of a neutral-principles approach [may] infringe[] free-exercise rights." *Id.* at 606 n.4.

In a dissent joined by Chief Justice Burger and Justices Stewart and White, Justice Powell lamented that this "new structure of rules … will make the decision of these cases by civil courts more difficult." *Id.* at 610 (Powell, J., dissenting). In the dissenters' view, "this new approach" not only "depart[ed] from long-established precedent," but "inevitably w[ould] increase the involvement of civil courts in church controversies." *Id.* at 611.

B. Factual Background

1. This case involves a church-property dispute within TEC, a hierarchical Christian denomination.

App.17. TEC formed in the 1780s in the wake of the American Revolution. *See History of the American Church*, The Episcopal Church, https://bit.ly/30OYck9 (last visited Oct. 19, 2020). While its administrative headquarters remain on the East Coast, in New York, TEC has spread to every state and to many other countries over the past two-and-a-half centuries. *See Browse by Province*, The Episcopal Church, https://bit.ly/2DKxPmF (last visited Oct. 19, 2020).

As a matter of church polity, TEC is divided into three tiers, with the General Convention at the top, regional dioceses in the middle, and local parishes, missions, and congregations at the base. App.3-4. The General Convention is a legislative body that develops TEC's constitution and canons, the latter of which are "written rules that provide a code of laws for the governance of the church." App.3 & n.5. Regional dioceses are governed by their own conventions and have authority to promulgate their own diocesan constitutions and canons. App.3 & n.5. As subunits of TEC, however, regional dioceses must accede to TEC's constitution and canons. App.3. A local parish, mission, or congregation must accede both to TEC's constitution and canons and to those of the regional diocese. App.4.

In 1979, shortly after *Jones*, TEC followed this Court's roadmap for ensuring that, should any "dispute erupt[]" over who has the right to use the property of a parish, mission, or congregation affiliated with TEC, "the faction loyal to [TEC] will retain the church property." 443 U.S. at 606. In particular, TEC's General Convention adopted Canon I.7(4), known as the Dennis Canon after its drafter.

App.6. In relevant part, the Dennis Canon provides: "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located." App.6. TEC also adopted a canon making the Dennis Canon self-executing. *See* Canon I.7(5) ("The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust."). As courts have recognized, the Dennis Canon "did nothing but confirm the [preexisting] relationships" within TEC and TEC's ultimate control over all property of dioceses and parishes affiliated with TEC at the time of the canon's promulgation. *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 105 n.15 (Colo. 1986) (en banc). The Dennis Canon remains in force today.

2. All Saints' Episcopal Church in Fort Worth, Texas, was founded in 1946. "[B]eing desirous of obtaining the services of [TEC]," petitioner became a mission in 1947 and a parish the following year. 25-CR-8621; 38-CR-13361.[1] Petitioner has "worship[ped] as an Episcopal Parish and participate[d] in the life of" TEC ever since. 39-CR-13636. Petitioner's parishioners have conducted worship services at its current location since 1947, and petitioner acquired a rectory building for its clergy in 1951. 38-CR-13342; App.86.

[1] "CR" refers to the Clerk's Record below.

Petitioner originally fell within the jurisdiction of the Episcopal Diocese of Dallas. 38-CR-13510. But in 1982, TEC agreed to divide the Dallas diocese in two, and petitioner fell within the jurisdiction of the new Episcopal Diocese of Fort Worth (Diocese). App.4. Before being admitted into union with TEC, the new Diocese adopted its own constitution. App.4. Among other things, that constitution included a trust provision (Diocesan Trust) that gave legal title to church property within the Diocese to a corporation (Diocesan Corporation). App.4-5. The Diocesan Trust provides in relevant part that the Diocesan Corporation "shall hold real property acquired for the use of a particular Parish or Mission in trust for the use and benefit of such Parish or Mission." App.4 n.6.

After adopting its own constitution, the Diocese, including petitioner and the other constituent parishes, "was admitted into union with TEC." App.6. As a condition of their admission, the Diocese and its parishes "fully subscribe[d] to and accede[d] to the Constitution and Canons of [TEC]"—including the Dennis Canon declaring all parish property "held in trust for [TEC] and the Diocese thereof in which such Parish … is located." App.6. Five years later, however, the Diocese purported to unilaterally repudiate the Dennis Canon and declare all property held for a parish the property of the parish alone. App.7-8.

3. In 2006, after TEC elected its first female Presiding Bishop, a dissident faction in the Diocese initiated efforts to secede. App.8, 62. That year, the Diocesan Corporation purported to "amend[] its articles and bylaws to remove all references to TEC."

App.8. In 2007 and 2008, the dissident faction also held conventions at which it purported to withdraw the Diocese from TEC. Although the dissident faction continued to hold itself out as the "Episcopal Diocese of Fort Worth," it sought to align with the Anglican Province of the Southern Cone, based in South America. App.235.

Petitioner disagreed vehemently with these efforts. In 2008, All Saints' vestry voted to reaffirm the parish's commitment to TEC, and more than 80% of its nearly 2,000 parishioners explicitly supported that decision.[2] *See* 39-CR-13636. TEC likewise took prompt action. It removed the individuals leading the dissident faction from their positions of authority within TEC and recognized the parties loyal to TEC, including petitioner, as its legitimate representatives in the Diocese. *See* App.9-10. Undeterred, the dissident faction asserted ownership of dozens of properties in the Diocese collectively valued at $100 million, including All Saints' sanctuary and rectory buildings. *See* 30-CR-10532. In actual practice, however, the vast majority of All Saints' parishioners who have never broken with TEC continue to occupy the sanctuary and rectory and have continued to use them for worship throughout the litigation.

C. Procedural Background

1. Petitioner, TEC, and other TEC-affiliated parties commenced this lawsuit in Texas state court in 2009, seeking to confirm their ownership of the disputed church property. App.77. In 2011, the trial

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[2] Only approximately 100 of All Saints' former congregants joined the dissident faction. 38-CR-13515.

court granted them summary judgment. The court explained that, under the Texas Supreme Court's seminal church-property decision—*Brown v. Clark*, 116 S.W. 360 (Tex. 1909)—Texas courts apply the deference approach. App.265. Applying that approach here, the court concluded that the dissident faction could not grant itself control over TEC property by unilaterally "amending corporate documents." App.266. The court ordered the leaders of the dissident faction to "surrender all Diocesan property" and "desist from holding themselves out as leaders of the Diocese." App.266.

2. In 2013, the Texas Supreme Court reversed in a decision that it issued alongside another decision addressing a similar dispute in another TEC diocese: *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594 (Tex. 2013). In *Masterson*, the court focused on "the legal methodology to be applied" in church-property disputes in Texas. *Id.* at 596. *Masterson* recognized that Texas' appellate courts, along with the U.S. Court of Appeals for the Fifth Circuit, had long "read" its century-old decision in "*Brown* as applying a deference approach, and generally have applied deference principles to hierarchical church property dispute cases." *Id.* at 605 & n.5. But the court held that henceforth "Texas courts must use only the neutral principles construct" "to determine property interests when religious organizations are involved." *Id.* at 607.

Masterson went on to refuse to treat the Dennis Canon as sufficient to ensure that church property would remain with "the faction loyal to" TEC. *Jones*, 443 U.S. at 606. Although the court assumed that the

trust was initially valid, it concluded that, under Texas law, the defecting faction was free to "revok[e] any trusts actually or allegedly placed on" the Diocese's property because "the Canon's terms [do not] make the trust expressly irrevocable as Texas law requires." 422 S.W.3d at 612-13. In reaching that conclusion, the court rejected the argument that *Jones* "establish[ed] substantive property and trust law that state courts must apply to church property disputes." *Id.* at 612.

The Texas Supreme Court deemed *Masterson* controlling here: "[B]ased on our decision in *Masterson,*" it explained, "the trial court erred by granting summary judgment to TEC on the basis of deference principles." App.240. The court remanded the case to the trial court, offering "guidance" on how to "address certain arguments." App.242. Among other things, the court "note[d]" that *Masterson* declared the Dennis Canon "not good enough under Texas law" because it "'does not contain language making the trust *expressly* irrevocable.'" App.245-46. And in response to the objection that applying the neutral-principles approach here would be unconstitutionally retroactive, the court referenced a footnote in *Masterson* claiming that, contrary to the reading of numerous other courts, *Brown* "substantively reflected" the neutral-principles approach that this Court did not validate for another 70 years. App.245-46; *see Masterson*, 422 S.W.3d at 608 n.7.

3. All of the TEC-affiliated parties, including petitioner, sought this Court's review. Emphasizing the case's interlocutory posture, the dissident faction

opposed certiorari. *See, e.g.*, Br. in Opp. 11, 21, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. filed Sept. 26, 2014). This Court denied certiorari in 2014. *See Episcopal Church v. Episcopal Diocese of Fort Worth*, 574 U.S. 973 (2014) (mem.).

4. On remand, the trial court granted summary judgment to the dissident faction. Without providing accompanying reasoning, the court stated that the Diocesan Corporation holds legal title to the disputed property, and that the dissident congregations "in union with" the dissident faction "hold beneficial title to all the properties." App.229. The court also ordered the TEC-affiliated parties to cease identifying themselves as the "Episcopal Diocese of Fort Worth." App.230-31.

5. The court of appeals reversed in part and affirmed in part. App.39. The court concluded that, under *Masterson*, Texas law does not recognize the Dennis Canon or the Diocesan Trust, and thus focused on the property deed language. App.178-79, 206 n.104, 208-09. After reviewing the deeds for two exemplar properties—*viz.*, All Saints' sanctuary and rectory buildings—the court rendered judgment in favor of petitioner and the other TEC-affiliated parties. App.210. The court then instructed the trial court to examine the remaining property deeds. App.210.

6. The Texas Supreme Court reversed again. Consistent with its first decision, the court concluded that the Dennis Canon does not satisfy "Texas trust law." App.30-34. But the court concluded that the Diocesan Trust *is* valid and that, under that trust, the

Diocesan Corporation "holds legal title to the disputed property for the benefit of the Episcopal Diocese of Fort Worth and congregations in union with that diocese's convention," and not for the benefit of parishes like petitioner that never broke with TEC. App.2, 14-15, 30-34. Having dispensed with the Dennis Canon and any notion of deference to TEC, the court viewed the "central" question as "which faction of the splintered Episcopal diocese is the 'Episcopal Diocese of Fort Worth'?" App.2; *see* App.10 ("The heart of the dispute is the identity of the Fort Worth Diocese."). The court refused to recognize that as an "ecclesiastical question." App.3, 17-18. Instead, the court answered that question itself, holding that the dissident faction "constitutes the continuation of the Fort Worth Diocese." App.26.

In reaching its conclusion, the court reasoned that, because the Diocese's "charters" permitted a majority of the Diocese to make certain decisions, and because the dissident faction included a majority of the Diocese (but not a majority of All Saints' parishioners), the court was bound to recognize the dissident faction as the rightful one. App.25-26. The court acknowledged the TEC-affiliated parties' argument that, "as a matter of church law, subordinate units have no authority to disassociate"—*i.e.*, that the "majority" left "as individuals and not as an intact entity constituting the Fort Worth Diocese." App.27. But the court rejected that argument, reasoning that the "majority of the Diocesan Convention voted to amend its governing documents to change all provisions referring to TEC and requiring compliance with its canons and constitution," and that "[n]o provision in any of the

organizational documents, including those of the national church, precluded them from doing so." App.27. The court thus awarded all the disputed property—including All Saints' sanctuary and rectory buildings—to the dissident faction. App.30.[3]

REASONS FOR GRANTING THE PETITION

For more than a century, the deference approach embodied by *Watson* protected free-exercise rights while keeping courts from being dragged into the thicket of refereeing intra-denominational property disputes. A bare majority of this Court departed from that traditional approach in *Jones*, but provided a roadmap for churches to avoid civil-court adjudication and underscored that civil courts still must defer to church authorities when it comes to ecclesiastical questions. TEC and its membership followed that roadmap and adopted an express-trust provision in their governing documents specifying that those wishing to break with TEC would have to leave their claims to TEC property behind. The decision below vitiated that express trust—to which the Diocese and its congregations unanimously agreed—and will deprive petitioner and the vast majority of its parishioners who remain faithful to TEC of their sanctuary. That decision deepens a split on the proper

[3] Petitioner and the vast majority of its parishioners who remain aligned with TEC have continued to use the sanctuary and rectory for worship throughout the long course of this litigation. Following the Texas Supreme Court's decision, the dissident faction agreed not to seek enforcement of the court's judgment against petitioner pending the filing and disposition of this petition. Accordingly, the continued use of the sanctuary and rectory in accord with the will of the overwhelming majority of parishioners is contingent on the outcome in this Court.

interpretation of *Jones*, is profoundly flawed, and fully merits this Court's review.

Jones made clear that, to protect the free-exercise rights of adherents who organize as a hierarchical church and to avoid the entanglement of civil courts in religious disputes, a hierarchical church need only adopt an express-trust provision in its governing documents. If such a provision is adopted before a property dispute arises, courts must give effect to that provision under the First Amendment. Consistent with that pronouncement, at least six state high courts have treated such express-trust provisions, including TEC's Dennis Canon, as dispositive under *Jones* and the First Amendment. By contrast, at least seven other state high courts have used state trust law to cast aside those same provisions, again including TEC's Dennis Canon. In this case, the Texas Supreme Court placed itself squarely into the latter group, refusing to give effect to the Dennis Canon—the exact same trust provision that multiple state high courts have enforced.

The decision below not only implicates a deep conflict, but is profoundly wrong. The court below declined to enforce the Dennis Canon because it did not comply with Texas-law requirements for making a trust irrevocable. But *Jones* established a rule of *federal* law protecting religious exercise and avoiding entanglement when a national church adopts an express-trust provision like the Dennis Canon. It is not clear that it would even be possible for a national church like TEC to craft an express-trust provision that simultaneously satisfied the trust law of all 50 states. But whether it is possible, it certainly is not

necessary. *Jones* announced a rule of federal constitutional law, not mere planning advice subject to the vagaries of state trust law.

The problems with the Texas Supreme Court's decision do not end there. The decision not only ignored this Court's express-trust roadmap, but disregarded this Court's admonition to avoid resolving ecclesiastical disputes. Having cast aside the Dennis Canon, the court resolved this dispute by asking whether the TEC-affiliated faction or the dissident faction constitutes the true Diocese. That is precisely the kind of question this Court indicated that civil courts must avoid. Indeed, if the decision below were consistent with *Jones*, it would provide powerful evidence that this Court erred in *Jones* and that only the deference approach of *Watson* can protect free-exercise rights while keeping civil courts from resolving intra-denominational property fights and other essentially religious questions.

The importance of this case to petitioner and the court system cannot be overstated. If the decision is left standing, the vast majority of All Saints' parishioners will lose the only sanctuary they have ever known—and not because they opted to break with TEC. Despite unanimous agreement at the Diocese's founding that parish property would stay with TEC, and even though the vast majority of All Saints' parishioners voted to remain with TEC, they will be dispossessed of their sanctuary and rectory through state action. Burdens on free exercise do not come more substantial than that. But the stakes for the civil courts are just as high. Particularly when adherents have set forth clear rules in advance, the

civil courts allow themselves to get dragged into intra-denominational property disputes at their peril. The decision below well illustrates the dangers of entering that thicket and the importance of this Court's intervention.

I. The Texas Supreme Court's Decision Deepens A Conflict Over Whether Courts Must Enforce Express-Trust Provisions In Church Governing Documents.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. Matters of "church polity and church administration" lie at the core of both Religion Clauses, and disputes over who is the rightful owner of church property can threaten free exercise while putting courts in a role at odds with the Establishment Clause. *Milivojevich*, 426 U.S. at 710. Accordingly, this Court has admonished that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). Until *Jones*, this Court protected religious autonomy and safeguarded the proper role for civil courts by allowing the highest authorities within a church to "decide" such issues "for themselves." *Kedroff*, 344 U.S. at 116.

While a bare majority of this Court endorsed a partial departure from that rule by endorsing a neutral-principles alternative in *Jones*, it underscored the considerable First Amendment interests at stake. In response to the four dissenting Justices' warning

that this neutral-principles approach would "frustrate … free-exercise rights," the majority insisted that "[n]othing could be further from the truth" and that, "[a]t any time before [a] dispute erupts," the church "can ensure … that the faction loyal to [it] will retain the church property." 443 U.S. at 606. The Court then provided a blueprint for achieving that outcome, explaining that "the constitution of the general church can be made to recite an express trust in favor of the denominational church." *Id.* The Court assured that "[t]he burden involved in taking such [a] step[] will be minimal," and it stressed that "the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.*

In the wake of *Jones*, many state high courts have adopted the neutral-principles approach. Those courts have embraced radically different views about both what that approach demands of churches and what it tolerates from civil courts. Applying these conflicting tests, courts have reached diametrically opposed conclusions about the validity of the very same trust provisions, including the Dennis Canon at issue here. This split is acknowledged, it is entrenched, and it necessitates this Court's resolution.

A. Six State High Courts Treat Express Trust Provisions as Dispositive.

On one side of the split, six state high courts have understood *Jones* to compel courts to give effect to church efforts to follow *Jones*' guidance by adopting an express-trust provision, without regard to whether that trust conforms to every nicety of state trust or property law. Following that approach, several state

high courts have given effect to the Dennis Canon itself.

In the first of those decisions, the New York Court of Appeals addressed a church-property dispute that erupted after a regional diocese within TEC declared a local parish "extinct" "[d]ue to serious theological" differences and resolved that all property in the parish's possession would transfer to the diocese. *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 921 (N.Y. 2008). The parish argued that the Dennis Canon should not control because it had not validly consented to the canon as a matter of state law or incorporated it into various parish deeds and governing documents. *Id.* at 921-22. The court rejected those arguments, finding the Dennis Canon "dispositive" because it was an "attempt by [TEC] to do exactly what [*Jones*] suggested—to 'ensure … that the faction loyal to the hierarchical church [would] retain the church property.'" *Id.* at 924 (quoting *Jones*, 443 U.S. at 606).

The California Supreme Court followed suit in *Episcopal Church Cases*, 198 P.3d 66 (Cal. 2009), which involved a local parish that attempted to "disaffiliate[]" from TEC. *Id.* at 70. "Although the deeds to the property ha[d] long been in the name of the local church," the court concluded that the Dennis Canon "make[s] clear that church property is held in trust for the general church and may be controlled by the local church only so long as that local church remains a part of the general church." *Id.* In response to the parish's argument that the canon did not satisfy the mutual-assent requirements of state trust law, the court read *Jones* as permitting TEC, as a matter of

federal law, to effectuate its intent to keep church property with those loyal to TEC "by whatever method the church structure contemplated." *Id.* at 80. As the court explained, "[r]equiring a particular method to change a church's constitution—such as requiring every parish in the country to ratify the change—would infringe on the free exercise rights of religious associations to govern themselves as they see fit." *Id.*

The Connecticut Supreme Court embraced the same reading of *Jones* in *Episcopal Church in the Diocese of Connecticut v. Gauss*, 28 A.3d 302 (Conn. 2011). *Gauss* likewise involved a local parish that sought to disaffiliate from TEC, and the parish likewise argued that the Dennis Canon did not satisfy various aspects of state trust and property law. *Id.* at 325. The court rejected those arguments, reasoning that *Jones* "not only gave general churches explicit permission to create an express trust in favor of the local church but stated that civil courts would be *bound* by such a provision, as long as the provision was enacted *before* the dispute occurred." *Id.*

At least three other state high courts have applied the same reasoning in cases involving other religious denominations. *See Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 170 (Tenn. 2017) (concluding that a "civil court must enforce a trust in favor of the hierarchical church, even if the trust language appears only in the constitution or governing documents of the hierarchical religious organization," not in deeds or governing documents of local church); *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446, 452-54, 458 (Ga. 2011) (concluding that courts

must defer to trust in favor of national church even if it does not comply with state law)[4]; *Cumberland Presbytery of Synod of the Mid-West of Cumberland Presbyterian Church v. Branstetter*, 824 S.W.2d 417, 421-22 (Ky. 1992) (finding trust provision "[d]ecisive" where church "followed to a T" *Jones*' "suggestion … as to a method of ensuring 'that the faction loyal to the hierarchical church will retain the church property'"). As the Georgia Supreme Court explained in reaching that conclusion, if "hierarchical denominations must fully comply with" every jot and tittle of state law "to retain control of local church property when there is a schism and a majority of the local church congregation disaffiliates, then … the burden on the parent churches, the local churches that formed the hierarchical denominations and submitted to their authority, and the free exercise of religion by their members would not be minimal but immense." *Timberridge*, 719 S.E.2d at 453.

B. The Court Below and Seven Other State High Courts Do Not.

These decisions stand in stark contrast to the decision below and decisions from at least seven other state high courts concluding that such express-trust provisions need not be enforced if they do not fully comply with state law. Applying that rule, these courts have refused to enforce some of the very same

[4] The Georgia Supreme Court subsequently applied that same reasoning in a case enforcing TEC's Dennis Canon. *See Rector, Wardens, Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga., Inc.*, 718 S.E.2d 237, 244-45 (Ga. 2011).

express-trust provisions that other state courts have enforced.

The decision below, in which the Texas Supreme Court refused to enforce the Dennis Canon because it did not comply with a Texas statute that "requires express terms making the trust irrevocable," exemplifies this approach. App.32 (emphasis and alterations omitted). According to the court below, the Dennis Canon is "not good enough under Texas law," App.32, because, when TEC followed this Court's suggestion to amend its national canons "to recite an express trust in favor of the denominational church," *Jones*, 443 U.S. at 606, it did not include the seemingly obvious statement that a defecting faction could not defeat the *raison d'être* of that trust by unilaterally revoking the local body's assent to TEC's canons.

At least one other state high court has similarly held that the enforceability of the Dennis Canon depends on the vagaries of state law. In *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005), the Pennsylvania Supreme Court held that the Dennis Canon is enforceable only if state-law requirements are satisfied (although, unlike the Texas Supreme Court, it concluded that they were). *See id.* at 807-08.

Other state high courts adjudicating disputes involving other religious denominations have similarly viewed the enforceability of a *Jones*-compliant express trust to turn on its compliance with state-law requirements. In one of the earliest of those cases, the Arkansas Supreme Court addressed a dispute that erupted "following the separation of a local Presbyterian congregation from the hierarchical Cumberland Presbyterian Church." *Ark. Presbytery of*

Cumberland Presbyterian Church v. Hudson, 40 S.W.3d 301, 303 (Ark. 2001). Despite acknowledging that the general church's constitution recited an express trust in its favor, *see id.* at 304, 309, the court rejected reliance on that provision as "misplaced" under "neutral principles" of Arkansas trust law, *id.* at 309, leading four dissenters to object that the court "was *bound* to give effect to" that provision under *Jones*, *id.* at 311 (Imber, J., dissenting).

Since then, several other state high courts have held that an express trust in a general church's governing documents is a necessary, but not a sufficient, condition for respecting the pre-dispute agreement of the church and its membership and obviating the need for judicial refereeing of intra-denominational property disputes. *See, e.g.*, *From the Heart Church Ministries, Inc. v. Afr. Methodist Episcopal Zion Church*, 803 A.2d 548 (Md. 2002); *St. Paul Church, Inc. v. Bd. of Trs. of Alaska Missionary Conf. of the United Methodist Church, Inc.*, 145 P.3d 541 (Alaska 2006); *Berthiaume v. McCormack*, 891 A.2d 539 (N.H. 2006); *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)*, 291 P.3d 711 (Or. 2012); *Presbytery of Ohio Valley, Inc. v. OPC, Inc.*, 973 N.E.2d 1099 (Ind. 2012). As the Indiana Supreme Court summed it up, these courts do not understand *Jones* as creating a federal rule "*requiring* the imposition of a trust whenever the denominational church organization enshrines such language in its constitution," but rather understand *Jones* as creating a rule giving preference to "*state property and trust law*." *Presbytery of Ohio Valley*, 973 N.E.2d at 1106 n.7.

* * *

As these decisions reflect, the lower courts are intractably divided over whether *Jones* and the First Amendment render express-trust provisions in church governing documents enforceable as a matter of federal law, or instead leave it to states to decide which provisions comply with state trust law or are otherwise "good enough" to enforce. Not surprisingly, courts often disagree about the effect of the *same* provisions from the *same* documents, as state trust law is far from uniform. Indeed, it would be difficult, if not impossible, for a national church to comply with *Jones* in a manner that simultaneously satisfied the law of all 50 states. Courts have acknowledged this conflict repeatedly. *See, e.g.*, *L.M. Haley Ministries*, 531 S.W.3d at 168 ("'[M]assive inconsistency' exists among states adopting the neutral-principles approach, and courts have reached 'different results given the same facts[.]'"); *Rogue River*, 291 P.3d at 721 ("Courts have disagreed … over the legal implications of an express trust provision in the denominational church's constitution."). So, too, have commentators. *See, e.g.*, Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 307 (2016) ("[T]he law governing these disputes is in disarray[.]"). Only this Court can resolve this conflict.

II. The Texas Supreme Court's Decision Is Profoundly Wrong.

This Court's intervention is all the more appropriate because the decision below is plainly wrong. The decision burdens All Saints' free-exercise rights in the most direct and substantial ways, and

plunges the civil courts deep into the thicket of deciding questions as obviously ecclesiastical as which of two competing factions constitutes the "true" Diocese of Fort Worth. The decision fundamentally misapplied this Court's decision in *Jones*. Indeed, if this were a correct application of *Jones*, then *Jones* would need to be overruled.

1. The one thing on which both the majority and the dissent in *Jones* could agree is that civil courts must avoid interfering with "the free exercise rights of those who have formed [a religious] association and submitted themselves to its authority." 443 U.S. at 605-06; *see also id.* at 618 (Powell, J., dissenting). The majority believed that the neutral-principles approach was compatible with that common goal because it leaves religious associations and their adherents free to guard against secular interference by taking the "minimal[ly]" "burden[some]" step of ensuring that their governing documents "recite an express trust in favor of the denominational church." *Id.* at 606. That is exactly what TEC and petitioner did: Petitioner chose to submit itself to the authority of a church whose canons expressly assured that the church, not the civil courts, would resolve any disputes about who is entitled to use church property. That agreement essentially guaranteed petitioner and its parishioners that they would not have to choose between fealty to TEC and continued use of their sanctuary and rectory. Because All Saints' parishioners rejected a break with TEC, their free-exercise rights to worship in their sanctuary should be secure. Yet the decision below nonetheless wrests that sacred property away from petitioner and awards it to a dissident faction,

contrary to how the parties had arranged their affairs before the dispute erupted.

To the extent the Texas Supreme Court thought *Jones* compels (or that the Free Exercise Clause tolerates) that result, it was profoundly mistaken. *Jones* nowhere suggests that state trust law can trump the very provisions that this Court specifically promised churches could adopt to preserve their adherents' free-exercise rights. App.245-46. That is hardly surprising. After all, *Jones* was not interpreting state trust law when it announced how a "hierarchical church" "can ensure … that the faction loyal to [it] will retain the church property" in the event of a schism. 443 U.S. at 606. It was announcing a rule of *federal constitutional law*, articulating the "minimal[ly]" "burden[some]" "steps" a church could take to ensure that "the civil courts will be bound to give effect" *under the First Amendment* to its adherents' intended resolution of such disputes. *Id.* Moreover, *Jones* was providing a roadmap for hierarchical, largely national, churches. It would hardly be feasible for such national churches to formulate express trusts that simultaneously satisfy the "idiosyncratic state statutes and common-law principles," *Gauss*, 28 A.3d at 316, of all 50 states. And even if formulating such a 50-state-compliant trust were possible, the burden of doing so "would not be minimal but immense." *Timberridge*, 719 S.E.2d at 453.

The potential Free Exercise Clause problems with the Texas Supreme Court's alternative approach are staggering, as this case well illustrates. The Dennis Canon had been in place for decades before this

dispute arose, and as a matter of First Amendment law, that canon appeared to fully protect petitioner and its parishioners as long as they remained affiliated with TEC. But by using *state* law to override a governing TEC canon on which the parties had relied for decades, a civil court has wrested control over petitioner's sanctuary and rectory and transferred it to a dissident faction with little support in the parish. Rarely has state power been used to more directly interfere with the free-exercise rights enshrined in the U.S. Constitution. It is inconceivable that *Jones* was meant to countenance such a palpable "frustrat[ion]" of First Amendment rights. 443 U.S. at 606.

2. The court below seemed to think it respected free-exercise rights by refraining from deciding which faction is more loyal to the true teachings of TEC's faith. But that reflects a far too narrow conception of what the Constitution protects (and prohibits). As the *Jones* dissenters explained, the Religion Clauses do not just require courts to "refrain[] from direct review and revision of decisions of the church on matters of religious doctrine and practice." *Id.* at 618 (Powell, J., dissenting). "Equally important," they require courts to "avoid[] interfering indirectly with the religious governance of those who have formed the association and submitted themselves to its authority." *Id.* Moreover, the *Jones* majority specifically admonished against deciding ecclesiastical disputes. *Id.* at 602.

The Texas Supreme Court plainly ignored *Jones*' teaching in casting aside the Dennis Canon, which should have been the beginning and the end of this case. But it erred further by endeavoring to resolve

the question on which it *thought* this case turned—namely, "which faction constitutes the continuation of the Fort Worth Diocese." App.14-15. The answer to that question based on the ecclesiastical rules of TEC is straightforward. When the Diocese was admitted into union with TEC, it was admitted on the condition that it submit to TEC's authority. App.6. And as a doctrinal matter, TEC affirmatively rejects the power of a diocese to unilaterally withdraw either itself or its constituent parishes from TEC. App.27. Attempting to answer that question based on anything other than those ecclesiastical rules is worse than a fool's errand; it is an invitation to deny free-exercise rights and entangle civil courts in religious matters. It is the modern-day equivalent of asking civil authorities to decide which of two competing Popes is the true heir to Saint Peter. Church doctrine supplies an answer; neutral principles of state law cannot. *Jones* recognized that such questions continue to require deference. The Texas Supreme Court's willingness to answer this question for itself conflicts with *Jones* and any sound reading of the Religion Clauses.

3. Making matters worse, the court subjected TEC and its members to these extreme free-exercise burdens *retroactively*. As the Texas Supreme Court candidly acknowledged, courts *for a century* had interpreted its leading church-property precedent (*Brown v. Clark*) as requiring a deference approach. *Masterson*, 422 S.W.3d at 605; *id.* at 605 n.5 (collecting cases). And little wonder: *Brown* repeatedly referenced this Court's decision in *Watson*, *see Brown*, 116 S.W. at 363, 364, 365, and *Brown* pre-dates this Court's embrace of the neutral-principles approach by some seven decades.

But even accepting the Texas Supreme Court's dubious claim that *Brown* "substantively reflected" a neutral-principles approach that did not yet exist, App.246, nothing in *Brown* or any other decision put religious adherents on notice of the seemingly endless hoops through which Texas courts would require them to jump to preserve their right to "form[] [a religious] association and submit[] themselves to its authority." *Jones*, 443 U.S. at 605-06. Instead, the only notice came from this Court, which assured TEC's adherents that, if they amended TEC's constitution to "recite an express trust in [TEC's] favor," then "the civil courts will be bound to give effect to" that clear effort to "ensure … that the faction loyal to [TEC] will retain the church property" should a dispute arise. *Id.* at 606. And that is precisely what they did. To hold that effort "not good enough" 40 years after the fact is exactly the kind of "retroactive application of a neutral-principles approach" that *Jones* cautioned would "infringe[] free-exercise rights." *Id.* at 606 n.4; *see also, e.g.*, Nathan Clay Belzer, *Deference in the Judicial Resolution of Intrachurch Disputes: The Lesser of Two Constitutional Evils*, 11 St. Thomas L. Rev. 109, 135 (1998).

4. The decision below seems to contradict *Jones* at every turn. The *Jones* Court was cognizant that departure from the deference approach of *Watson* and its progeny posed risks to religious believers and civil courts. To avoid those risks, *Jones* provided an express-trust roadmap and warned against civil adjudication of ecclesiastical questions and retroactivity. The decision below renders the roadmap illusory and disregards both admonitions. If, however,

the decision below is compatible with *Jones*, then the need for this Court's intervention is greater still.

Jones was an acknowledged departure from more than a century of deference, and the bare majority that it commanded expressed confidence that "the promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application," which at any rate "should be … eliminated" over time. 443 U.S. at 604. To borrow a phrase from *Jones*, 40 years of experience have proven that "[n]othing could be further from the truth." *Id.* at 606. Lower courts remain in profound disagreement about what the neutral-principles approach requires of religious associations and tolerates from civil courts. Moreover, while church doctrines and rules like the Dennis Canon provide clear answers, questions of state law can be close and unpredictable, as the contrary conclusions of the Texas Court of Appeals and the Texas Supreme Court in reviewing the deeds involved here illustrate. That uncertainty causes intra-denominational disputes like this to proliferate, rather than dissipate over time, as the wealth of cases on both sides of the split attests. Finally, it is impossible to ignore that *Jones* is increasingly out of step with this Court's jurisprudence. In recent Terms, this Court—relying on *Watson* and its progeny and conspicuously omitting any mention of *Jones*—has reaffirmed the "autonomy" that religious institutions enjoy under the First Amendment "with respect to internal management decisions that are essential to the institution's central mission," including the "power" to ensure that "wayward" leaders do not "lead the congregation away from the faith." *Our Lady of*

Guadalupe Sch. v. Morrissey-Berru, 140 S.Ct. 2049, 2060-61 (2020); *see Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185-89 (2012). Any doctrine that allows civil courts to disregard a church's determinations on matters of church polity and administration—and that permits a wayward faction to wrest control of church property from a supermajority of parishioners who wish to continue to use it to worship the faith with which the parish affiliated itself—is irreconcilable with those decisions and the First Amendment rights they protect.

III. The Stakes For Religious Adherents And Civil Courts Are Substantial And Fully Justify This Court's Plenary Review.

The open and acknowledged division among the lower courts on the contours of *Jones* and its neutral-principles approach is reason enough to grant review. Indeed, two members of this Court recently noted that "the degree to which the First Amendment permits civil authorities to question a religious body's own understanding of its structure and the relationship between associated entities" is a "question[] that may well merit our review." *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S.Ct. 696, 702 (2020) (Alito, J., concurring). This case is an ideal vehicle to resolve this split, as the Dennis Canon has figured prominently in cases on both sides of the split, with all the courts treating *Jones* as announcing a rule of federal law honoring the Dennis Canon. *See Harnish*, 899 N.E.2d at 921-24; *Episcopal Church Cases*, 198 P.3d at 80; *Gauss*, 28 A.3d at 325; *Rector, Wardens, Vestrymen of Christ Church*, 718

S.E.2d at 244-45. If this case had arisen in any of those states, then petitioner's continued right to its sanctuary and rectory would be unquestionable.

But even beyond the split in authority, the importance of this case for petitioner and for the civil courts cannot be overstated. The impact of the decision below on the free-exercise rights of petitioner and its parishioners could hardly be more direct and substantial. For the better part of a century, All Saints' parishioners have gathered in the same sanctuary building to worship in the tradition of TEC, and for nearly as long, its religious leaders have used the same rectory building. If this Court were to deny review, then they will quite literally be dispossessed of the only sanctuary they have ever known, as a direct result of state action and through no fault of their own. All Saints' leaders and the supermajority of parishioners who wish to remain affiliated with TEC will have to vacate the sanctuary and rectory to make way for a handful of former parishioners who aligned with a dissident faction that wants nothing to do with TEC. Petitioner will have to relocate the remains of numerous former congregants currently interred in the sanctuary. And petitioner will have to undertake these tasks by virtue of a state-court order relying on state law—even though All Saints' leaders and parishioners did precisely what federal law requires to avoid that nightmare.[5]

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[5] To be sure, the majority of parishioners in other parishes in the Diocese chose to secede from TEC. But if this Court were to grant certiorari and reverse, those majorities would lose access to their traditional sanctuary because of their decision to break with TEC, not based on a state-court decision applying state law

The stakes for the civil courts are nearly as high. The prospect of civil courts adjudicating intra-denominational property disputes—or, worse yet, ecclesiastical questions—is not a happy one in a Republic that values religious liberty and respects religious autonomy. Whatever might be the case in countries with official religions or where civil and ecclesiastical jurisdiction overlap, the adjudication of such disputes in the civil courts of this Nation are distinctly problematic. For more than a century, this Court's solution was to defer to the religious authorities. That approach had salutary benefits for both religious adherents and the civil courts. It permitted religious organizations to structure their internal affairs in accordance with their doctrines. And there was no unfairness in denying a dissident faction a civil remedy against a church with which it was previously aligned. *Jones* departed from that long tradition, but remains compatible with the proper role of civil courts as interpreted by the half-dozen states that faithfully enforce it as announcing binding principles of federal law. As interpreted by the decision below and seven other state high courts, however, *Jones* has led civil courts deep into the thicket of intra-denominational disputes and religious questions that civil law cannot resolve. What is at stake here is thus not just the free-exercise rights of adherents, but the proper role of the courts in the most contentious and constitutionally problematic disputes.

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to oust parishioners who never broke with TEC. The former is an unavoidable consequence of a schism; the latter is state action incompatible with the Religion Clauses.

In sum, the need for this Court's intervention is paramount. This case is an ideal vehicle to bring clarity to this immensely important area of constitutional law. The alternative is for civil courts to resolve disputes they lack the tools to adjudicate and to deprive petitioner and its parishioners of the very sanctuary where they worship.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

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