

No.

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IN THE  
*Supreme Court of the United States*

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GUERRY GREEN, on behalf of All Saints Parish,  
Waccamaw, and in his capacity as a Member of the  
Vestry of the same, ET AL.,

*Petitioners,*

v.

W. RUSSELL CAMPBELL, ET AL.,

*Respondents.*

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**On Petition For A Writ Of Certiorari  
To The Supreme Court Of South Carolina**

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**PETITION FOR A WRIT OF CERTIORARI**

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PALMER C. HAMILTON  
JONES, WALKER, WAECHTER,  
POITEVENT, CARRÈRE &  
DENÈGRE LLP  
254 State Street  
Mobile, AL 36603  
(251) 439-7506

MATTHEW D. MCGILL  
*Counsel of Record*  
AMIR C. TAYRANI  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 955-8500  
mmcgill@gibsondunn.com

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*Counsel for Petitioners*

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## **QUESTION PRESENTED**

Whether the Free Exercise Clause of the First Amendment requires courts resolving a property dispute within a hierarchical church to give legal effect to a pre-existing trust provision in the church's canons.

## PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the following were parties to the proceedings below.

In the first of two actions consolidated in the proceeding below, *All Saints Parish, Waccamaw v. Protestant Episcopal Church*, Martha M. Lachicotte, Ann Usher Mercer, Vandell Arrington, Rives Kelly, and Evelyn Labruce were plaintiffs; All Saints Parish, Waccamaw and D. Clinch Heyward were plaintiffs-respondents/appellants; The Protestant Episcopal Church in the Diocese of South Carolina and The Episcopal Church, a/k/a The Protestant Episcopal Church in the United States of America were defendants-appellants/respondents; and Mark Sanford and John and Jane Doe, as descendants of George Pawley and William Poole, were defendants-respondents.

In the second of two actions consolidated in the proceeding below, *Green v. Campbell*, Carl Short, George Townsend, James Chapman, and Edward Mills were plaintiffs-appellants/respondents on behalf of All Saints Parish, Waccamaw, in their capacities as Members of the Vestry of All Saints Parish, Waccamaw. The terms in office of those vestry members have expired, and the current members of the Vestry of All Saints Parish, Waccamaw, are being substituted in their place. *See* S. Ct. R. 35.3. In addition to petitioner Guerry Green, the current vestry members recognized by the Diocese of South Carolina are Rick P. Bruce, Brenda K. Chapman, Larry A. Elliott, Matt Ellis, Anne McIntrye Goldberg, Mac Magann, Michael Knight, Ronald L. Murrell, Keith Roman, and Lindy Myers. Each of the current vestry members is a petitioner in this Court. The other parties in *Green v. Campbell* were D. Clinch Heyward,

Donald Alford, Butler F. Dargan, Diane Deblock, Robert L. Jones, A.H. (Doc) Lachicotte, David Lane, Lou Paquette, Hugh Patrick, Daniel W. Stacy, David E. Grabeman, All Saints Church, and All Saints Church, Waccamaw, Inc., who were defendants-respondents/appellants; The Protestant Episcopal Church in the Diocese of South Carolina and the Right Reverend Edward L. Salmon, Jr., who were plaintiffs-appellants/respondents; and Henry McMaster, Mark Hammond, and John and Jane Doe, as descendants of George Pawley, who were defendants-respondents.

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## PETITION FOR A WRIT OF CERTIORARI

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Petitioners Guerry Green and the other members of the recognized vestry of All Saints Parish, Waccamaw, respectfully submit this petition for a writ of certiorari to review the judgment of the Supreme Court of South Carolina.

### OPINIONS BELOW

The Supreme Court of South Carolina's opinion is reported at 685 S.E.2d 163. Pet. App. 1a. The opinion of the Court of Appeals of South Carolina in *All Saints Parish, Waccamaw v. Protestant Episcopal Church* is reported at 595 S.E.2d 253. *Id.* at 29a. The opinion of the trial court in *All Saints Parish, Waccamaw v. Protestant Episcopal Church* is unpublished. *Id.* at 115a. The opinion of the trial court in *Green v. Campbell* is unpublished. *Id.* at 92a. The trial court's reconsideration of that opinion is unpublished. *Id.* at 63a.

### JURISDICTION

The Supreme Court of South Carolina filed its opinion on September 18, 2009. On December 8, 2009, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 15, 2010. No. 09A552. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

**CONSTITUTIONAL PROVISION INVOLVED**

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

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

**STATEMENT**

This case squarely presents a frequently recurring constitutional question that has divided the state courts and that directly implicates the ownership of hundreds of millions of dollars of church property across the United States.

In the decision below, the Supreme Court of South Carolina refused to give any “legal effect” to a canon of The Episcopal Church (“TEC”) that provides that the property of individual parishes is held in trust for the general church and thus reverts back to TEC in the event that a parish seeks to break with the general church. Pet. App. 25a. In so doing, the Supreme Court of South Carolina adhered to the reasoning of the Supreme Court of Arkansas in a similar case, but departed from decisions in which the highest courts of California, New York, Pennsylvania, and Kentucky have held that the First Amendment requires courts to give effect to trust provisions in a general church’s canons. *Compare Ark. Presbytery of Cumberland v. Hudson*, 40 S.W.3d 301, 310 (Ark. 2001), with *In re Episcopal Church Cases*, 198 P.3d 66, 82 (Cal. 2009), and *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 925 (N.Y. 2008).

This split in authority arose despite this Court’s seemingly unequivocal holding in *Jones v. Wolf*, 443 U.S. 595 (1979), that, “[t]hrough appropriate rever-  
sionary clauses and trust provisions, religious socie-

ties can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy.” *Id.* at 603. Indeed, it was in direct response to this Court’s holding in *Jones* that TEC amended its canons “to recite an express trust in favor of the [general] church” in order to “ensure . . . that the faction loyal to the hierarchical church will retain the church property” in the event of a doctrinal dispute. *Id.* at 606.

This Court’s review is warranted to resolve this direct and irreconcilable conflict among the state courts, to restore the safeguards that this Court established in *Jones* for the free exercise rights of petitioners and other members of hierarchical churches, and to prevent the illegitimate transfer of potentially hundreds of millions of dollars of church property.

1. In 1745, the Pawley family transferred 60 acres of land to trustees for the benefit of “the Inhabitants On Waccamaw Neck,” South Carolina, in order to establish a local parish for the Church of England. Pet. App. 6a. After the disestablishment of the Church of England in South Carolina, the parishes of that State formed the Diocese of South Carolina, and it in turn joined other parishes and dioceses in forming TEC in 1787.

TEC is a hierarchical church with approximately 7,000 congregations across the country. Each diocese and parish is subject to the authority of TEC’s nationwide governing body, the General Convention, which “has enacted a constitution and a set of church laws, known as canons, by which all affiliated dioceses and local churches are bound.” *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620

A.2d 1280, 1286 (Conn. 1993); *see also* *Watson v. Jones*, 80 U.S. 679, 729 (1872).

All Saints Parish expressly pledged adherence to TEC's constitution and canons in its corporate charter, which described All Saints Parish as a "component" of TEC's Diocese of South Carolina. Pet. App. 11a n.5; *see also* R. 1387 (Nos. 2000-CP-22-720 & 2005-CP-22-068) ("The purpose of the said proposed Corporation is to conduct Religious survices [sic], and prosecute religious works under the forms and according to the canons and rules of the protestant Episcopal Church, and as a component part of the Diocese of said Church [sic] in South Carolina."). The Parish regularly sent delegates to represent it at Diocesan Conventions, where—together with delegates from other South Carolina congregations—they debated and established the Diocese's rules, including rules relating to church property. R. 1608, 1612, 1615 (Nos. 2000-CP-22-720 & 2005-CP-22-068); *see also* *Trinity-St. Michael's Parish, Inc.*, 620 A.2d at 1286 ("each diocese has its own supplementary constitution and set of canons by which each diocese and its local parishes are bound").

2. In 1979, TEC amended its canons in response to this Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979), and the Diocese of South Carolina followed suit a few years later.

In *Jones*, this Court held that, when resolving church property disputes, courts need not defer to the decision of a hierarchical church's governing body—the approach endorsed in *Watson v. Jones*, 80 U.S. 679 (1872)—but, if they choose, can apply a "neutral principles" approach. That mode of decision-making requires courts to settle church property disputes "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.” *Jones*, 443 U.S. at 603.

Responding to the dissenting Justices’ concern that a “neutral principles” approach would interfere “with the religious governance of those who have formed the association and submitted themselves to its authority” (*Jones*, 443 U.S. at 618 (Powell, J., dissenting)), the Court explained that the general church could still control the outcome of property disputes under that approach. *Id.* at 606. The Court emphasized:

At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.*

*Id.* (emphasis added).

In order to institute the property protections identified in *Jones*, the delegates at TEC’s 1979 General Convention—which was held only two months after *Jones* was decided—voted to adopt an explicit trust provision proposed by the Rev. Canon Walter D. Dennis. Pet. App. 9a; *see also Trs. of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 250 A.D.2d 282, 284-85 (N.Y. App. Div. 1999). Known thereafter as the “Dennis Canon,” Canon I.7.4 provides that “[a]ll 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.” R. 1694 (Nos. 2000-CP-22-720 & 2005-CP-22-068). The canon further explains that “[t]he existence of this trust . . . shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.” *Id.*

In 1987, the Diocese of South Carolina amended its own constitution to incorporate the Dennis Canon at a convention in which five members of the All Saints Parish participated. Pet. App. 37a; R. 1608, 1612, 1615, 1619-20 (Nos. 2000-CP-22-720 & 2005-CP-22-068).

3. In 1997, the rector of All Saints Parish, the Rev. Charles Murphy, convened the First Promise Movement, a gathering of 30 rectors who declared TEC “fundamentally impaired” because it no longer upheld the “truth of the gospel.” Cynthia P. Brust, *A Look Back, Anglican Mission in the Americas*, <http://www.theamia.org/identity/our-story/more-anglican-mission-history/>. The Mission criticized theological positions adopted at TEC’s 1997 General Convention and vowed that it would not fund any organization with teachings contrary to the Movement’s ideology.

In 2000, the Movement culminated in the formation of the Anglican Mission in the Americas, a missionary movement authorized by the Anglican Church of Rwanda to establish churches and to “receive those that could not in good conscience remain within the Episcopal Church.” Brust, *supra* (quoting

the Rev. Murphy). In the same year, the Archbishop of Rwanda ordained the Rev. Murphy as a missionary bishop in the Church of Rwanda. *Id.* The Anglican Mission in the Americas now claims 130 congregations across the United States. *Id.*

Several months after the Rev. Murphy was ordained in the Church of Rwanda, the Diocese of South Carolina recorded a notice in Georgetown County, South Carolina, stating that, pursuant to the Dennis Canon, All Saints Parish held its property in trust for TEC and the Diocese of South Carolina. Pet. App. 9a-10a. All Saints Parish responded in October 2000 by filing a complaint in South Carolina state court seeking a declaration that the Dennis Canon has no legal effect and that the parish owns the church property. *Id.* at 10a. On summary judgment, the trial court ruled against TEC and the Diocese, but, in 2004, the intermediate state appellate court remanded the case for further fact-finding. *Id.* at 10a-11a.

While this litigation was proceeding, a majority of All Saints Parish's parishioners voted in January 2004 to break with TEC and the South Carolina Diocese, to remove references to TEC's canons from its corporate charter, and to join the Anglican Church of Rwanda. Pet. App. 12a-13a. Both the majority and minority factions of the parish claimed the parish's property as their own. *Id.* at 13a.

Petitioners—who are recognized by the Diocese of South Carolina as the members of the vestry of All Saints Parish—and the Diocese filed suit in South Carolina state court seeking a declaration that TEC owned the parish's disputed property and that the members still loyal to the general church were the parish's true officers. Pet. App. 13a. The trial court

consolidated the case with the still-pending 2000 case and ruled that the dissident parishioners who had voted to break with TEC had no interest in the parish's property. *Id.* at 13a-14a.

On appeal, TEC continued to maintain that the Dennis Canon “precludes a dissident majority of a local congregation from retaining local parish property for their own use after a vote to disaffiliate from the Church.” Br. of TEC at 14, *All Saints Parish, Waccamaw v. Protestant Episcopal Church* (S.C. filed Mar. 17, 2008) (Nos. 2000-CP-22-720 & 2005-CP-22-068). TEC argued that, under the First Amendment standard articulated in *Jones*, “appropriate provisions in a hierarchical church’s governing rules will, as the Supreme Court contemplated, ‘ensure . . . that [a] faction loyal to the hierarchical church will retain the church property’ in the event of a dispute.” *Id.* (quoting *Jones*, 443 U.S. at 606).

The Supreme Court of South Carolina disagreed, reversing the trial court and holding that the Dennis Canon has no “legal effect” on the ownership of All Saints Parish’s property. Pet. App. 25a, 28a. According to the state supreme court, “[i]t is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another or transfer legal title to one person for the benefit of another.” *Id.* at 25a. The court concluded that neither the Dennis Canon—nor the notice recorded in Georgetown County on the basis of the Canon—could “have created a trust over the property” because TEC did not “hold title” to the parish property at the time it amended its canons to provide that the property is held in trust for TEC and the South Carolina Diocese. *Id.*

## REASONS FOR GRANTING THE PETITION

This Court should grant review to resolve the deep division among the state courts regarding the legal force of the Dennis Canon and similar trust provisions, to clarify the scope of its holding in *Jones v. Wolf*, 443 U.S. 595 (1979), and to restore the First Amendment right of hierarchical churches and their members to protect valuable church property from dissident members through appropriate trust provisions.

The Supreme Court of South Carolina’s holding that the Dennis Canon has no “legal effect” is consistent with a decision in which the Supreme Court of Arkansas refused to give legal force to an analogous trust provision, but directly conflicts with decisions in which the highest courts of four other States have held that the First Amendment requires courts to enforce the Dennis Canon and similar provisions. Compare *Ark. Presbytery of Cumberland v. Hudson*, 40 S.W.3d 301, 310 (Ark. 2001), with *In re Episcopal Church Cases*, 198 P.3d 66, 82 (Cal. 2009), and *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 925 (N.Y. 2008).

As a result of this conflict, parishioners who are loyal to the general church can be assured in California, New York, Pennsylvania, and Kentucky that the Dennis Canon and similar measures will prevent dissident parishioners from seizing church property, but have no such assurance in South Carolina or Arkansas—where such trust provisions are a legal nullity—or in those States whose courts have not yet adopted a position on this disputed question. Only this Court can ensure that the First Amendment rights of the millions of parishioners who are members of TEC and other hierarchical churches do not

vary from jurisdiction to jurisdiction and that national churches such as TEC are governed by uniform First Amendment standards.

The Supreme Court of South Carolina's decision also conflicts with this Court's holding in *Jones* that, "[t]hrough appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy." 443 U.S. at 603. In reliance on *Jones*, TEC promulgated the Dennis Canon to "ensure . . . that the faction loyal to the hierarchical church will retain the church property" in the event of a doctrinal dispute. *Id.* at 606. Notwithstanding this Court's seemingly unambiguous holding that "the civil courts [are] bound to give effect to the result" of such trust provisions (*id.*), the Supreme Court of South Carolina declined to give the Dennis Canon any legal force.

The profound financial implications of that decision reinforce the need for this Court's review. TEC has approximately 7,000 congregations nationwide that together hold billions of dollars in property. Ownership of hundreds of millions of dollars of that property is currently being disputed by TEC and parishioners loyal to the general church, on the one hand, and dissident religious organizations and their adherents, on the other.

Moreover, the implications of this issue extend well beyond TEC and its parishioners because, like TEC, other hierarchical religious organizations have relied on this Court's decision in *Jones* to promulgate trust provisions in their church canons and constitutions. The South Carolina Supreme Court's decision

therefore calls into question the status of billions of dollars of property that churches have attempted to safeguard from dissident parishioners through the Dennis Canon and similar trust provisions.

**I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER STATE SUPREME COURTS.**

This Court's review is warranted to resolve an irreconcilable conflict as to whether the First Amendment requires courts to defer to a trust provision in a hierarchical church's canons when deciding church property disputes.

A. The highest courts of four States have relied on the Dennis Canon and similar trust provisions to award disputed church property to TEC and other hierarchical churches after members of a local parish separated from the general church.

The Supreme Court of California, for example, held that when a parish disaffiliated from TEC, "the local church did not have the right to take the church property with it," even though the parish held record title to the disputed property. *In re Episcopal Church Cases*, 198 P.3d 66, 71 (Cal.), *cert. denied*, 130 S. Ct. 179 (2009). The court emphasized that the parish had agreed to become part of the general church "and to be bound by that greater church's governing instruments." *Id.* at 82. "Those instruments make clear," the court continued, "that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church." *Id.* The court explained that this result was constitutionally compelled because "[r]espect for the First Amendment free exercise rights of persons to enter into a religious association of their choice, as

delineated in *Jones v. Wolf*, . . . requires civil courts to give effect to the provisions and agreements of that religious association.” *Id.*

In so holding, the California Supreme Court explicitly rejected the dissident parishioners’ argument that the Dennis Canon lacked legal effect because it was not expressly ratified by an agreement between the local parish and the general church. The court emphasized that “[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.” *In re Episcopal Church Cases*, 198 P.3d at 80 (emphasis omitted). Under the California Supreme Court’s interpretation of *Jones* and the First Amendment, revisions to a general church’s canons can “be done by whatever method the church structure contemplate[s].” *Id.*

Similarly, in *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920 (N.Y. 2008), the New York Court of Appeals held that “the Dennis Canons clearly establish an express trust in favor of the . . . Diocese and the national Church” that barred dissident parishioners from retaining church property after they broke with TEC. *Id.* at 925 (citing *Jones*, 443 U.S. at 606). The court reached this conclusion even though there was no provision of state law that explicitly authorized the unilateral imposition of such trusts, nothing in the disputed property deeds reflected the trust, and the parish had never explicitly consented to the terms of the trust in a written agreement. *Id.* at 924-25. According to the New York Court of Appeals, the parish “agreed to abide by this express trust either upon incorporation in 1927 or upon recognition as a parish in spiritual union

with the . . . Diocese in 1947.” *Id.* at 925. The court found it “unlikely that the parties intended that the local parish could reserve a veto over every future change in the canons” and deemed “it significant, moreover, that [the parish] never objected to the applicability or attempted to remove itself from the reach of the Dennis Canons in the more than 20 years since the National Church adopted the express trust provision.” *Id.*

The Supreme Court of Pennsylvania reached the same conclusion in *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005), where it held that a local parish was “bound by the express trust language in the Dennis Canon,” even though the trust was not reflected in the property deeds themselves. *Id.* at 810; see also *Cumberland Presbytery v. Branstetter*, 824 S.W.2d 417, 422 (Ky. 1992) (holding that an express trust provision in a hierarchical church’s constitution was legally enforceable because the general church “followed to a T the suggestion of the U.S. Supreme Court in *Wolf* as to a method of ensuring ‘that the faction loyal to the hierarchical church will retain the church property’”).<sup>1</sup>

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<sup>1</sup> State intermediate appellate courts in Massachusetts and North Carolina have also held that the Dennis Canon binds local parishes and precludes dissident parishioners from taking ownership of church property. See *Episcopal Diocese of Mass. v. DeVine*, 797 N.E.2d 916, 923 (Mass. App. Ct. 2003) (an Episcopal parish “holds its property in trust for the Diocese and [TEC] . . . principally and most clearly by virtue of [TEC’s] adoption, in 1979, of [the Dennis Canon], in combination with the statement in the bylaws of [the parish] that it accedes to the Canons of [TEC]”); *Daniel v. Wray*, 580 S.E.2d 711, 719 (N.C. Ct. App. 2003) (holding that TEC and the Diocese owned disputed church property because the Dennis Canon “is enforceable”).

The results reached by the highest courts of California, New York, Pennsylvania, and Kentucky are consistent with the holdings of other state courts in church property disputes that arose before the enactment of the Dennis Canon. The Supreme Court of Connecticut, for example, held that the Dennis Canon “codified in explicit terms a trust relationship that has been implicit in the relationship between local parishes and dioceses since the founding of [TEC] in 1789.” *Trinity-St. Michael’s Parish, Inc.*, 620 A.2d at 1292. Similarly, the Supreme Court of Colorado concluded in a pre-Dennis Canon dispute that, even though “legal title to the disputed real property is held by [the local parish],” the breakaway parish’s relationship to TEC and the church canons “establish that a trust has been imposed upon the real and personal property of [the local parish] for the use of the general church.” *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 104-08 (Colo. 1986); see also *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980) (awarding disputed property to TEC because the Dennis Canon “reflects established customs, practices and usages of The Protestant Episcopal Church”); *Tea v. Protestant Episcopal Church in the Diocese of Nev.*, 610 P.2d 182, 184 (Nev. 1980) (same result based on “internal regulations” of TEC).

B. In direct conflict with these decisions, the Supreme Courts of South Carolina and Arkansas have refused to give legal force to a trust provision in a hierarchical church’s canons.

In the decision below, the Supreme Court of South Carolina declined to give any “legal effect” to the Dennis Canon. Pet. App. 25a. The court reasoned that “a person . . . must hold title to property in order to declare that it is held in trust for the

benefit of another.” *Id.* Because TEC did not possess legal title to All Saints Parish’s property at the time the Dennis Canon was promulgated, the court refused to enforce the trust provision and awarded the disputed church property to the dissident parishioners of All Saints Parish. *Id.*

The Arkansas Supreme Court applied similar reasoning in *Arkansas Presbytery of Cumberland v. Hudson*, 40 S.W.3d 301 (Ark. 2001), where it refused to enforce a trust provision in a hierarchical church’s constitution when resolving a property dispute between the church and a breakaway faction. *Id.* at 310. After this Court’s decision in *Jones*, the general church had amended its constitution to state that “all property held by” its local churches “is held in trust” for the general church. *Id.* at 309. The Arkansas Supreme Court nevertheless held the trust provision unenforceable because it was promulgated after the local church obtained title to the disputed property. *Id.* at 310. According to the court, the local church was entitled to rely on the general church’s constitution “as it was at th[e] time” the property was first obtained, and the general church therefore lacked the authority to use its constitution to impose a trust on property already held by the local church. *Id.* *But see id.* at 310-11 (Imber, J., dissenting) (in *Jones*, “the United States Supreme Court sanctioned the use of such an express trust provision in a hierarchical or connectional church’s constitution to resolve church property disputes, if the trust provision becomes effective before the dispute arises”).

The reasoning of the Supreme Courts of South Carolina and Arkansas cannot be reconciled with the decisions of the highest courts of California, New York, Pennsylvania, or Kentucky. In conflict with

the refusal of the South Carolina and Arkansas courts to enforce church trust provisions, each of those courts held that the Dennis Canon and similar trust provisions are enforceable—and therefore preclude dissident parishioners from taking ownership of parish property—even where the local parish held legal title to the property at the time the trust provision was promulgated. See *In re Episcopal Church Cases*, 198 P.3d at 71; *Episcopal Diocese of Rochester*, 899 N.E.2d at 925; *In re Church of St. James the Less*, 888 A.2d at 810; *Cumberland Presbytery*, 824 S.W.2d at 422.

These divergent results create disuniformity and uncertainty regarding the First Amendment right of hierarchical church members to use trust provisions such as the Dennis Canon to protect church property from dissident parishioners. Although members of a hierarchical church can safeguard their church property in California, New York, Pennsylvania, and Kentucky by amending their church's canons or constitution to include an explicit trust provision in favor of the hierarchical church, no such protections are available in South Carolina and Arkansas, and the enforceability of such measures remains open to question in those States whose courts have not squarely addressed the issue. This division in authority is especially intolerable for national churches such as TEC that have parishes and dioceses across the country that own property subject to trust provisions that vary in enforceability from State to State. This Court's review is necessary to establish a single, nationally uniform First Amendment standard governing the enforceability of such trust provisions.

## II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENT.

This Court's review is also necessary to resolve the conflict between the decision below and this Court's holding in *Jones v. Wolf*, and to clarify the scope of this Court's seemingly unambiguous holding in that case that hierarchical churches can use "trust provisions . . . [to] specify what is to happen to church property in the event of . . . a schism or doctrinal controversy." 443 U.S. at 603.

A. In *Jones*, this Court held that courts may resolve church property disputes based on a "neutral principles of law" approach that involves consideration "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." 443 U.S. at 603; *see also Md. & Va. Eldership of Churches of God v. Church of God*, 396 U.S. 367, 367 (1970) (per curiam) (upholding a state court's resolution of a church property dispute based "upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the [general church] pertinent to the ownership and control of church property").

*Jones* made clear that, if they choose, courts need not defer to the decision of religious authorities in a hierarchical church to resolve church property disputes—the rule that had been endorsed in *Watson v. Jones*, 80 U.S. 679 (1872)—and four dissenting Justices feared that the Court's new "neutral principles"

approach would “invite intrusion into church polity forbidden by the First Amendment.” *Jones*, 443 U.S. at 610 (Powell, J., dissenting). The Court responded with the assurance that, even where a court decides to apply the neutral principles approach, hierarchical authorities can protect church property from dissident church members by promulgating a trust provision in their constitutions or canons “[a]t any time before the dispute erupts.” *Id.* at 606. By so doing, the Court emphasized, hierarchical churches can ensure “that the faction loyal to the hierarchical church will retain the church property.” *Id.*

The Court elaborated at length upon this safeguard for hierarchical churches’ First Amendment right to govern their affairs, explaining that, “[t]hrough appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of . . . a schism or doctrinal controversy.” *Jones*, 443 U.S. at 603. The Court set forth several procedures that hierarchical churches can follow to institute these property protections, explaining that “[t]hey can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church” or, “[a]lternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.” *Id.* at 606 (emphasis added). The Court’s use of the word “[a]lternatively” made explicitly clear that a legally effective trust provision could be added to the general church’s constitution *without* “modify[ing] the deeds or the corporate charter to include a . . . trust in favor of the general church.” *Id.* The Court emphasized that the “burden involved in taking such steps will be minimal” and that “the civil courts will be bound to give effect to the result.” *Id.*

B. The Supreme Court of South Carolina’s decision below cannot be reconciled with this Court’s decision in *Jones*. The South Carolina court’s holding that the Dennis Canon has no “legal effect” rests on the proposition that a hierarchical church “must hold title to property in order to declare that it is held in trust.” Pet. App. 25a. *Jones*, however, imposes no such requirement.

Indeed, TEC followed this Court’s instructions precisely when it promulgated the Dennis Canon. Two months after this Court’s decision in *Jones*, delegates to TEC’s General Convention voted to amend its canons to provide that “[a]ll 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.” R. 1694 (Nos. 2000-CP-22-720 & 2005-CP-22-068). TEC thereby “specif[ie]d what is to happen to church property in the event of . . . a schism or doctrinal controversy.” *Jones*, 443 U.S. at 603. As this Court authorized in *Jones*, TEC “ensure[d] . . . that the faction loyal to the hierarchical church will retain the church property” by making the “constitution of the general church . . . recite an express trust in favor of the denominational church.” *Id.* at 606. And, it did so twenty-one years “before the dispute erupt[ed]” between TEC and the dissident faction of All Saints Parish. *Id.*

Contrary to the reasoning of the Supreme Court of South Carolina, *Jones* did not require that a general church “hold title to property in order to declare that it is held in trust.” Pet. App. 25a. Instead, this Court clearly stated that a trust provision added to a general church’s constitution is an effective “[a]lternative[ ]” to modifying property deeds to make

the general church the titleholder. *Jones*, 443 U.S. at 606. In fact, if a general church “h[e]ld title to [the] property,” it would have no need to create a trust provision at all because its interests in the property would already be protected by its possession of legal title. *Id.*; see also *id.* at 600 (citing with approval *Carnes v. Smith*, 222 S.E.2d 322 (Ga. 1976), which awarded disputed property to the general church based on a trust provision included in the general church’s constitution, even though “the court found no basis for a trust in favor of the general church in the deeds [or] the corporate charter”).

The Supreme Court of South Carolina’s decision effectively compels general churches to hold all property in their own names (or in the name of the Bishop or Archbishop, as is the practice in the Roman Catholic Church) in order to protect their property from dissident church members. Such coercion of religious institutions’ internal governing procedures violates “the [First] Amendment[’s] require[ment] that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.” *Jones*, 443 U.S. at 602 (citations omitted). By second-guessing a hierarchical church’s “resolution” of its own “issues of religious doctrine or polity,” the Supreme Court of South Carolina deprived TEC and its loyal parishioners of their First Amendment right to determine the ownership and use of the valuable “real and personal property” protected by the Dennis Canon—which includes not only the physical church itself but also the corporate name “All Saints Parish, Waccamaw, Inc.” See *Whitmire v. Adams*, 257 S.E.2d 160, 165 (S.C. 1979) (holding that the name and corporate charter of a church is property); see also *Purcell v. Summers*, 145 F.2d 979, 991 (4th Cir.

1944) (holding that in South Carolina, “dissident members . . . have no right to use the name of the organization from which they have withdrawn”).<sup>2</sup>

This Court’s review is necessary to reconcile that holding with *Jones* and with the fundamental First

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<sup>2</sup> The South Carolina Supreme Court’s refusal to “defer[ ] to the Diocese’s . . . determination that [petitioners] were the true officers of All Saints Parish, Waccamaw, Inc.,” also contravenes the First Amendment and this Court’s precedent. Pet. App. 25a. In *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696 (1976), this Court deferred to a similar decision by a hierarchical church to remove a bishop from control of a diocese. *Id.* at 705, 720. After the Supreme Court of Illinois reinstated the bishop because it found the procedure removing him inconsistent with its interpretation of the general church’s constitution, this Court reversed because the state supreme court had “unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.” *Id.* at 720. The Court explained that “the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government,” and that “the Constitution requires that civil courts accept their decisions as binding upon them.” *Id.* at 724-25. Similarly, in *Mills v. Baldwin*, 377 So. 2d 971 (Fla. 1979), a case that had been remanded by this Court for further consideration in light of *Jones*, the Florida Supreme Court deferred to the decision of hierarchical church authorities that a loyal minority of congregants, rather than a withdrawing majority, represented a local Presbyterian church. *Id.* at 971; see also *Mills v. Baldwin*, 362 So. 2d 2, 7 (Fla. 1978), *vacated*, 443 U.S. 914 (1979). In conflict with this Court’s decision in *Milivojevic* and the Florida Supreme Court’s decision in *Mills*, the South Carolina Supreme Court’s holding would permit any faction of dissatisfied parishioners to overturn the ecclesiastical decisions and established rules of a hierarchical church and to nullify the church’s First Amendment right to internal self-governance.

Amendment freedoms that animated this Court's decision in that case.

### **III. THE DECISION BELOW RAISES AN ISSUE OF EXCEPTIONAL IMPORTANCE TO RELIGIOUS ORGANIZATIONS ACROSS THE NATION.**

The question whether the First Amendment requires courts to give legal force to the Dennis Canon and similar trust provisions has far-reaching implications for TEC, its nearly 7,000 congregations, and its millions of members, as well as for all other hierarchical religious organizations across the country.

TEC is currently embroiled in disputes with dissident church members regarding "hundreds of millions of dollars of church property." David Van Biema, *The Episcopal Property War*, TIME, Apr. 4, 2008, <http://www.time.com/time/nation/article/0,8599,1728134,00.html>; see also Jim Remsen, *Episcopalians Fear Asset Fights*, PHILA. INQUIRER, Nov. 2, 2003, at C4. The legal effect of the Dennis Canon will determine the outcome of many of those disputes, and may one day implicate the legal status of the billions of dollars of other property held by TEC and its congregations. To give just two examples, the present case will determine the ownership of real property valued at \$10 million, and the disputed real property of two breakaway TEC parishes in Virginia is valued between \$27 million and \$37 million. See Justin M. Gardner, Note, *Ecclesiastical Divorce in Hierarchical Denominations and the Resulting Custody Battle over Church Property*, 6 AVE MARIA L. REV. 235, 237 (2007); Kathleen K. Rutledge, *So, Who Owns the Sanctuary?*, CHRISTIANITY TODAY (Sept. 2004). These staggering financial stakes prompted one commentator to label the current disputes regarding the ownership of TEC property "the biggest

church real estate sale in history.” Remsen, *supra* (quoting the director of the Canon Law Institute).

Moreover, the implications of the state courts’ disagreement about the enforceability of church trust provisions extend well beyond the hundreds of millions of dollars presently at stake for TEC. In reliance on this Court’s guidance in *Jones*, many other hierarchical churches have established trust provisions similar to the Dennis Canon to protect their property from dissident church members. *See, e.g., Cumberland Presbytery*, 824 S.W.2d 417 (describing the Cumberland Presbyterian Church’s trust provision and awarding the general church disputed property); *African Methodist Episcopal Church v. St. Johns African Methodist Episcopal Church*, 2009 Ohio 1394 (Ct. App. Mar. 24, 2009) (describing the African Methodist Episcopal Church’s trust provision and awarding the general church disputed property). Resolution of the Dennis Canon’s legal force directly affects the ability of these—and all other—hierarchical churches to use trust provisions to safeguard their property against breakaway factions. The value of that property may reach into the *hundreds of billions* of dollars. *See Hearing Before the H. Subcomm. on the Constitution*, 105th Cong. 134-35 (1998) (statement of Marc Stern, Director of Legal Department, American Jewish Congress) (stating that the reported value of religious property in just two States is \$22.1 billion); *It’s Time to Examine Costs of Tax-Free Property*, INDIANAPOLIS STAR, Aug. 23, 2007, at 12 (estimating the value of church property nationwide at \$150 billion).

In light of the profound financial implications of this frequently recurring and sharply disputed issue—as well as its equally significant implications for the First Amendment rights of hierarchical

churches and their millions of members—there is a compelling basis for this Court to grant review.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

PALMER C. HAMILTON  
JONES, WALKER, WAECHTER,  
POITEVENT, CARRÈRE &  
DENÈGRE LLP  
254 State Street  
Mobile, AL 36603  
(251) 439-7506

MATTHEW D. MCGILL  
*Counsel of Record*  
AMIR C. TAYRANI  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 955-8500  
mmcgill@gibsondunn.com

*Counsel for Petitioners*

February 12, 2010