

No. 08-1579

In the
Supreme Court of the United States

THE RECTOR, WARDENS AND VESTRYMEN OF
SAINT JAMES PARISH IN NEWPORT BEACH,
CALIFORNIA, ET AL.

Petitioners,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE
DIOCESE OF LOS ANGELES, ET AL.

Respondents.

**On Petition for a Writ of Certiorari
to the California Supreme Court**

**BRIEF OF THE
PRESBYTERIAN LAY COMMITTEE
AS *AMICUS CURIAE* IN SUPPORT OF THE
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

- I. Whether the California Supreme Court violated the First Amendment's Establishment and Free Exercise clauses by interpreting a state statute to confer a special power on certain religious denominations to create trusts for their own benefit in the real property of affiliated local church corporations, solely by declaring that they have unilaterally enacted a post-hoc internal rule, when no other person or entity has such power under state law?

- II. Whether this Court's refereeing in *Jones v. Wolf*, 443 U.S. 595 (1979), to denominational canons and constitutions as potential sources of neutral principles of property law can be read, consistently with the First Amendment, as trumping other secular laws governing property rights?

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INTEREST OF *AMICUS CURIAE*¹

The Presbyterian Lay Committee respectfully submits the accompanying brief as *amicus curiae* in support of petition for writ of certiorari. The petition was filed on June 24, 2009, and placed on the docket on June 25, 2009. Accordingly, this application is timely under Rule 37 of this Court's Rules.

Established in 1965, the Presbyterian Lay Committee ("Lay Committee" or "PLC") is a non-profit corporation whose mission includes informing Presbyterians about issues facing the denomination and equipping local congregations—and their members—in their interaction with the regional and national entities within the Presbyterian Church (United States of America) ("PC(USA)"). The Lay Committee regularly reports on judicial decisions concerning church property issues and publishes a legal guide regarding disaffiliation and related property-ownership issues: "A Guide to Church Property Law: Theological, Constitutional and Practical Considerations." The Presbyterian Lay Committee is composed of Presbyterian Church members who are concerned with how the property that is purchased with our money is used. As an

¹ The parties have consented to the filing of this brief in letters on file in the Clerk's office. Pursuant to S. Ct. R. 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity, other than the Presbyterian Lay Committee and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Not less than ten days prior to the due date, the Presbyterian Lay Committee provided counsel of record for all parties with notice of its intent to file this brief.

entity that helps equip lay leaders to maintain the integrity of the Presbyterian denomination, the Lay Committee has a strong interest in this matter.

In the wake of this Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979), the General Assembly of the PC(USA) unilaterally attempted to assert a trust in its favor over local congregational property, even though legal title to local Presbyterian church property is virtually always held by the local church—and in the name of the local church—alone. Those local churches never assented to the would-be trust. Few, if any, formal property transfers followed in the wake of the General Assembly's unilateral actions. The Lay Committee holds that this unilateral assertion of a trust is inconsistent with the denomination's historical structure of governance. That well-established structure respects the autonomous property ownership and management of and by the local congregations. Unilateral attempts to superimpose a trust on local church property improperly impairs the rights and interests of local congregants, and touches on the abilities of local church fiduciaries to manage and protect church assets according to the considered judgment of local church members.

The United States Constitution forbids preferential treatment of assertions of power by ecclesiastical entities in civil courts resolving purely civil disputes over such matters as title to local church property. Accordingly, title to property held by a local religious corporation should be evaluated in the same manner as property held by any other legal entity. An assertion of a trust by a self-described trust beneficiary cannot properly be

enforced under trust law principles applicable to every other person in civil society. That preferentially idiosyncratic rule should not be enforced merely because the self-described beneficiary occupies, for some purposes, a higher tier in a religious community. Correct enunciation of these principles by this Court will help preserve the basic legal expectations of Presbyterian—and other—congregations throughout the United States. Accordingly PLC respectfully submits its views on the constitutional analysis properly applicable to church property disputes and the ramifications of the competing analyses offered to the bedrock religious freedoms of millions of American Christians.

REASONS FOR GRANTING THE PETITION

The issues raised by this closely-watched case are of utmost importance to the relationship between religious freedom and the judicial function. The religious demographics of the United States have changed dramatically over the last generation. The upshot is this: the principle of hierarchical deference handed down in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and criticized—but allowed—in *Jones v. Wolf*, 443 U.S. 595 (1979), is no longer constitutionally viable. Some courts explicitly adopt a hierarchical-deference approach, stating that they will defer to the decisions of church hierarchies in all church disputes; other courts, such as the California Supreme Court in the present case, adopt a neutral-principles approach in name only, enforcing documents unilaterally adopted by church hierarchies declaring themselves the beneficiaries of congregational property trusts. The decision of the

California Supreme Court at issue here, claiming to apply neutral principles but in fact applying hierarchical deference, has exacerbated the deepening federal constitutional issues. Confusion abounds, and litigation has exploded. The time is ripe for this Court to reexamine the constitutionally-sensitive principles that govern church property disputes.

I. The Litigation-Triggering Changes In The Nation's Religious Composition Since *Watson v. Jones* And *Jones v. Wolf* Call For Reexamination Of The Hierarchical-Deference Rule.

Religion is deeply rooted in our nation's history and tradition; it is also profoundly significant to—and inseparable from—the beliefs and practices of many citizens across the entire country. Studies show that approximately eighty percent of Americans consider themselves religious.² That formidable percentage translates into the practical reality that religion directly touches the lives of approximately 245 million Americans.³

2 Barry A. Kosmin & Ariela Keysar, American Religious Identification Survey 3 (Mar. 2009), *available at* http://www.Americanreligionsurvey-aris.org/reports/ARIS_Report_2008.pdf; *see also* Pew Forum on Religion & Public Life, U.S. Religious Landscape Survey 5 (Feb. 2008), *available at* <http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf>.

3 U.S. Census Bureau, <http://www.census.gov> (the population estimate is calculated from the July 6, 2009, population count of 306,850,212 people).

Not only are the American people overwhelmingly religious in their worldview, they are an astonishingly divided community of believers in the transcendent. According to a study by the Pew Forum on Religion & Public Life, the United States is among the most religiously diverse countries in the world. The nation boasts approximately twelve major religious groups, as well as literally hundreds of independent sects and small denominations. Pew Forum, *supra* note 2, at 10. With numerous communities of faith have come deep internal divisions and intra-church strife. These disagreements have led to schisms, realignments, and the formation of new religious communities.⁴

This has been particularly true in the Protestant communities of faith, where the locus of control is not always fixed. Unlike the Roman Catholic Church, or the Church of Jesus Christ of Latter-Day Saints, where property is typically held by a superior body, many mainline Protestant communities allow their congregations to hold title to their property. Jeff Hassler, Comment, *A Multitude of Sins? Constitutional Standards for Legal Resolution of Church Property Disputes in a Time of Escalating Intrad denominational Strife*, 35 Pepp. L. Rev. 399, 405-06, 436 (2008). Internecine disagreements within various Protestant communities of faith have often led to property disputes that find their way into

⁴ Cathy Lynn Grossman, *Most Religious Groups in USA Have Lost Ground, Survey Finds*, USA TODAY, Mar. 9, 2009, available at http://www.usatoday.com/news/religion/2009-03-09-american-religion-ARIS_N.htm (“Nearly 2.8 million people now identify with dozens of new religious movements....”).

secular courts. These disputes have occurred with rapidly increasing frequency in recent years.⁵

Aside from increased litigation due to internal church divisions, immigration has significantly altered the nation's religious composition.⁶ Indeed, the country's religious composition is obviously different—and much more diverse—than in 1871 when *Watson* was decided. The issues presented are entirely ripe—and increasingly pressing—for the Court's resolution.

II. Due To Substantial Changes In The Nation's Religious Makeup, Hierarchical Deference Has Become Practically Unworkable And Constitutionally Problematic.

A. Hierarchical Deference Entangles The Courts In Religious Doctrinal Disputes.

When this Court first articulated the principle of hierarchical deference in *Watson*, most church structures fitted neatly into two categories: hierarchical or congregational. That bipolar classification no longer captures the reality of America's vibrantly diverse religious groups. For

⁵ A Westlaw search for all state and federal cases discussing "church property" reveals the following figures (appeals are counted separately); from 1950 to 1959, there were approximately 332 cases; from 1960-1969, 343 cases; from 1970-1979, 387 cases; from 1980-1989, 486 cases; from 1990-1999, 569 cases; from 2000-2009, 806 cases. (This search was done Jul. 24, 2009, in the "Allcases" database; hence, the numbers for 2009 are not fully comprehensive).

⁶ Kosmin & Keysar, *supra* note 2, at "Highlights."

