

No. 13-449

IN THE
Supreme Court of the United States

THE FALLS CHURCH,
Petitioner,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED
STATES OF AMERICA, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Court should review the Virginia Supreme Court's decision applying established Virginia state law equitable principles to impose a constructive trust on the disputed church property at issue in this case.

2. Whether the Court should review a question concerning the scope of the Contracts Clause that was not passed on below, is not subject to a conflict among the state or federal courts, and is not implicated on the facts of this case.

PARTIES TO THE PROCEEDING

Petitioner is The Falls Church, the defendant below.

Respondents are The Protestant Episcopal Church in the United States of America and The Protestant Episcopal Church in the Diocese of Virginia, plaintiffs below.

William W. Goodrich and Steven Skancke were defendants below in their capacity as trustees for The Falls Church.

RULE 29.6 STATEMENT

The Protestant Episcopal Church in the United States of America is an unincorporated New York voluntary association with no parent corporation or stock.

The Protestant Episcopal Church in the Diocese of Virginia is an unincorporated Virginia voluntary association with no parent corporation or stock.

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STATEMENT OF THE CASE

The decision below resolves a dispute over church property in accordance with ordinary state law principles of property law that (i) were well established before the dispute arose and (ii) were applied by the Virginia Supreme Court to the particular factual situation here just as they would be applied to a dispute involving secular entities. The decisional conflict cited in the petition has nothing whatsoever to do with the factbound, state law decision below. Certiorari should be denied.

A. Legal And Factual Background

1. The Protestant Episcopal Church in the United States of America (“The Episcopal Church” or the “Church”), one of the respondents here, is an international, hierarchical church—i.e., a church “where the religious congregation or ecclesiastical body ... is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete.” *Watson v. Jones*, 80 U.S. 679, 722-23 (1871); see Pet. App. 2a, 268a, 270a. The Church consists of 111 geographical dioceses, over 7000 congregations, and over 2 million members. Pet. App. 270a. A triennial “General Convention” is the Church’s highest governing body; it adopts the Church’s Constitution and canons, to which the dioceses must give an “unqualified accession.” *Id.* Each diocese is governed by a Bishop and an Annual Council which adopts a Constitution and canons for the diocese that must, in turn, conform to the Church’s Constitution and canons. Pet. App. 270a-271a. The Protestant Episcopal Church in the

Diocese of Virginia (the “Diocese”), another respondent here, is one of the dioceses within the Church. Pet. App. 271a.

Each congregation within a diocese is bound by the Constitutions and canons of the Church and of that congregation’s diocese. Pet. App. 270a-271a. The Falls Church (“TFC”) became a congregation of the Church and the Diocese in 1836. Pet. App. 2a. At that time, TFC assented to be bound by the Constitutions and canons of the Church and the Diocese. Pet. 20a. In particular, TFC agreed to “be benefited and bound ... by every rule and canon which shall be framed, by any Convention acting under this constitution, for the government of this church in ecclesiastical concerns.” *Id.* (omission in original; quotation omitted). And the Manual of TFC’s local governing body stated: “The Falls Church is subject to the constitution and canons of the national church ([the Church]) and of the Diocese.” *Id.* (emphasis omitted).

2. a. The underlying dispute in this case involves the right to possess and control church property. Traditionally, disputes over property in hierarchical churches had been resolved by deferring to the church hierarchy’s property decision. *See Watson*, 80 U.S. at 727. In *Jones v. Wolf*, 443 U.S. 595 (1979), the Court approved the so-called “neutral principles of law” approach as it had evolved in Georgia. *Id.* at 602-03 (quotation omitted). That method requires courts “to determine whether there [is] any basis for a trust [in local church property] in favor of the general church,” based on “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 601, 603.

Under the “neutral principles” approach, the Court emphasized, the parties can act “any time before the dispute erupts” to “ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property.” *Id.* at 606. For example, they “can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church.” *Id.* “Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.” *Id.* Either way, “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.*

b. In 1979, in response to *Jones*, the Church duly adopted what is known as the Dennis Canon. The Dennis Canon states 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.” Pet. App. 15a n.7. As the court below and numerous other courts have recognized, the Dennis Canon did not, in fact, create any new legal relationships, but “merely codified in explicit terms a trust relationship that ha[d] been implicit in the relationship between local parishes and dioceses since the founding of [the Church] in 1789.” Pet. App. 18a (quotation omitted).

B. This Lawsuit

Beginning in 2003, some dissent developed within the Church around theological and other issues. In 2006, several factions claiming to represent congregations, including TFC, purported to disaffiliate those congregations from the Church and the Diocese. Pet. App. 2a. Other Episcopalians in those congregations did not leave the Church and continued to worship as their same, historic congregations. Pet. App. 224a-225a, 227a. The dispute in this case is over whether the faction calling itself TFC that claims to have removed that congregation from the Church and the Diocese has the right to possess and control certain church property, or whether that right is properly vested in the Church and the Diocese.

1.a. After purportedly disaffiliating from the Church and the Diocese, TFC and ten other congregations in the Diocese filed petitions pursuant to Va. Code § 57-9(A), seeking entry of an order permitting them to continue to occupy and control real property historically used by the congregation. Pet. App. 267a, 273a. The Church and the Diocese intervened in those actions to oppose the granting of these petitions. They also filed actions against the congregations seeking a declaration that the Church and the Diocese possessed a proprietary and contractual interest in the disputed church properties. Pet. App. 274a. The congregations in turn counterclaimed, seeking a declaration that they possessed such interests. Pet. App. 275a.

The trial court granted the congregations' § 57-9(A) petitions, and it dismissed the declaratory

judgment actions as moot. Pet. App. 276a-277a. The Virginia Supreme Court, however, reversed and remanded, explaining that the trial court must resolve the pending declaratory judgment actions “under principles of real property and contract law.” Pet. App. 291a.

b. On remand, the trial court held that the Church and the Diocese possessed proprietary and contractual interests in the disputed property. Citing the “neutral principles” analysis as it had been articulated in previous Virginia Supreme Court cases, the trial court first considered whether the Virginia Code permits “denominational” trusts—i.e., trusts for the benefit of religious denominations, as distinguished from trusts for the benefit of individual, local congregations—such as that expressed in the Dennis Canon. All parties agreed that until 1993, Virginia did not allow such trusts. The Church and the Diocese argued, however, that the Virginia General Assembly reversed that policy when it enacted Va. Code § 57-7.1 in 1993. Pet. App. 123a. The trial court rejected that argument, holding that § 57.7-1 is “declaratory of existing law” (Pet. App. 125a), meaning that in the trial court’s view, Virginia still precludes denominational trusts like that articulated by the Dennis Canon.

The trial court nevertheless ruled for the Church and the Diocese, determining that they had a “contractual and proprietary interest” in the local church property even apart from the Dennis Canon. Pet. App. 65a. In reaching that conclusion, the trial court applied the Virginia “neutral principles” approach, examining the congregations’ deeds (including TFC’s eleven historical deeds, between 1746 and 2005), the

Constitutions and canons of the Church and the Diocese, and the course of dealings between the congregations and the Church and the Diocese. Pet. App. 143a-211a. The trial court concluded based on its analysis of the record that “it is clear—indeed ... it is overwhelmingly evident—that [the Church] and the Diocese have contractual and proprietary interests in the real and personal property of each of these ... churches.” Pet. App. 219a.

2. Only TFC appealed. The Virginia Supreme Court affirmed the trial court in part, albeit on different grounds, and reversed and remanded in part. Every aspect of the court’s decision turned entirely on matters of state law.

The court first explained that Virginia courts decide church property disputes according to “neutral principles of law, developed for use in all property disputes,” so long as the case can be resolved “without reference to issues of faith and doctrine.” Pet. App. 8a (quotation omitted).

The court then held that the trial court erred in construing § 57-7.1—a state statute—as continuing to prohibit denominational trusts like the Dennis Canon, holding that “the General Assembly has expressly allowed such trusts with the passage of” that statute. Pet. App. 14a. The court’s holding that § 57-7.1 allowed enforcement of such trusts thus meant the court could consider whether the Dennis Canon created an enforceable trust under state law. Pet. App. 11a, 15a.

The court did not, however, hold that the Dennis Canon could be enforced by its terms as an express trust under state law. Rather, under the Virginia

trust law rule recognized in *McGehee v. Edwards*, 268 Va. 15 (2004), “the language of an inter vivos trust should be construed according to the law in effect at the time the trust is executed.” Pet. App. 15a (quoting 268 Va. at 20). And because Virginia law prohibited denominational trusts when the Dennis Canon was adopted, it was “ineffective in Virginia.” Pet. 15a-16a.

The court further held, however, that the *McGehee* rule “was clearly limited to express trusts.” Pet. 16a. The court accordingly went on to consider the separate question whether a judicially implied “constructive trust” should be imposed on the property as a matter of state law. A constructive “trust” under Virginia law is not a trust in the traditional sense of a substantive legal instrument derived from the parties’ intent, but rather an equitable *remedy* imposed by a court, “independently of the intention of the parties, to prevent fraud or injustice,” and may result “from the violation of some positive fiduciary obligation.” *Id.* (quotations omitted).

Further, a constructive trust under Virginia law does “not arise unless explicitly created by a court,” but when a court does create a constructive trust, the “court’s action ... will relate back to the time when the property began to be wrongfully held.” Pet. App. 17a (quotation omitted). Because Va. Code § 57-7.1 had allowed denominational trusts since 1993, “it was the applicable law at all times the property in the present case is alleged to have been wrongfully held,” i.e., beginning in 2006. *Id.*

To determine whether a constructive trust was warranted here, the court considered the same

sources it would consider in a dispute between non-religious disaffiliating entities, i.e., the controlling “governance” articles and the “course of dealing” between the parties. Pet. App. 17a-18a. Considering the specific facts here, the court held that a “trust relationship ... has been implicit in the relationship between local parishes and dioceses since the founding of [the Church] in 1789.” Pet. App. 18a (quotation omitted). The parties’ course of dealing throughout history and up until 2005 confirmed this fiduciary relationship. Pet. App. 21a-22a. The Dennis Canon thus did not create the fiduciary relationship but “merely codified [it] in explicit terms.” Pet. App. 18a.¹

In sum, while the court agreed that “neither [the Church] nor the Diocese can claim a proprietary interest in the property by way of an express denominational trust,” the parties’ institutional governance documents—including the Dennis Canon—and their longstanding course of dealing showed that the parties in fact “agreed and expected that the property at issue would be held in trust by The Falls Church as trustee for the benefit of [the Church] and the Diocese.” Pet. App. 22a. That mutual expectation gave rise to a “fiduciary relationship” under state law. *Id.* And because TFC violated its fiduciary obligation when it attempted to maintain control over the property after purporting to withdraw from the Church

¹ The court also rejected TFC’s contention that there was no mutual assent to the Dennis Canon. The court found that TFC had long ago expressly agreed to be bound by all the Church and Diocese canons, and the Dennis Canon was properly adopted through the Church’s ordinary legislative procedure. Pet. App. 20a.

and the Diocese, state law principles of “equity dictate[] that a constructive trust be imposed on the property for the benefit of [the Church] and the Diocese.” *Id.*

The court thus affirmed the trial court’s judgment as to the Church’s and Diocese’s possession of a proprietary and contractual interest in the disputed property, but remanded for the trial court to reconsider certain issues relating to the award of damages. Pet. App. 29a-30a.²

3. The Virginia Supreme Court denied TFC’s petition for rehearing on June 13, 2013. This petition followed.

REASONS FOR DENYING THE PETITION

I. THE QUESTION WHETHER THE VIRGINIA SUPREME COURT PROPERLY APPLIED STATE LAW PROPERTY AND TRUST PRINCIPLES TO RESOLVE THIS CHURCH PROPERTY DISPUTE DOES NOT WARRANT THE COURT’S REVIEW.

The principal question presented in the petition alleges a conflict among state courts concerning the proper application of the “neutral principles of law” approach to church property disputes described in

² Justice McClanahan concurred and would have held that the Church and Diocese “acquired their interest in the disputed property, not merely by a constructive trust, but rather as an express trust pursuant to the Dennis Canon.” Pet. App. 31a. In particular, Justice McClanahan would have held that Virginia’s former prohibition on denominational trusts was unconstitutional as applied to hierarchical churches under *Jones* and that the Dennis Canon thus must be given effect despite that former prohibition. Pet. App. 34a-35a.

Jones. This case does not implicate any such conflict. Nor, contrary to TFC's assertion, does it present any question concerning the retroactive application of a newly created rule of state law. This case instead turns entirely on the Virginia Supreme Court's application of already-existing Virginia property and trust law to the particular facts of this case. There is no basis for certiorari.

A. This Case Turns Entirely On A State Court's Factbound Application Of State Law And Implicates No Decisional Conflict.

The petition relies on a conflict among state courts of last resort concerning whether courts must, consistent with the First Amendment, give effect to express trust provisions in hierarchical church constitutions, regardless whether state property rules would otherwise preclude recognition of such provisions. This case has nothing to do with that conflict. The Virginia Supreme Court did exactly what TFC says state courts should do under *Jones*: it refused to recognize an express trust created by the Dennis Canon, precisely because general principles of Virginia property and trust law precluded that result. And while the court did impose a constructive trust on the disputed property, it did so for the selfsame reason: ordinary principles of Virginia property law required it, just as they would have done in a purely secular dispute with similar facts. TFC's objection to that conclusion has nothing whatever to do with whether the Virginia Supreme Court properly interpreted *Jones* or the First Amendment. TFC's objection instead is merely to the court's application of ordinary Virginia law to the particular course of

dealing and governance documents involved in this case.

1. The petition asserts that a conflict exists among the state courts of last resort concerning the proper application of the “neutral principles of law” analysis ratified in *Jones*, stemming from a purported “internal contradiction” in that opinion. Pet. 27. On the one hand, the petition argues, *Jones* stated that the neutral-principles approach “relies exclusively on objective, well-established concepts of trust and property law.” *Id.* (quoting 443 U.S. at 606). On the other hand, the petition contends, *Jones* explained that “the constitution of the general church can be made to recite an express trust in favor of the denominational church,” and “civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.” 443 U.S. at 606; see Pet. 27.

The petition argues that the foregoing statements in *Jones* are in conflict and that two opposing views of how properly to apply the “neutral principles” approach have manifested themselves in the state courts. TFC describes the position it disfavors as holding that the “neutral-principles analysis requires enforcing denominational ‘trust’ provisions regardless of contrary secular evidence of intent or compliance with governing law.” Pet. 24. As one example, TFC cites *Episcopal Church in Diocese of Connecticut v. Gauss*, 302 Conn. 408 (2011), *cert. denied*, 132 S. Ct. 2773 (2012), which interpreted *Jones* as holding “that civil courts would be bound by [a denominational trust] provision, as long as the provision was enacted before the dispute occurred.” *Id.* at 446.

TFC describes the view it favors as holding that “courts must consider secular indicia of ownership under ordinary civil law.” Pet. 19. As an example, the petition cites *All Saints Parish Waccamaw v. Protestant Episcopal Church*, 385 S.C. 428 (2009), which held that the Dennis Canon did not create an express trust because neither the Church nor the local diocese held title to the relevant property when the Dennis Canon was enacted, and it is an “axiomatic principle of [South Carolina] 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.” *Id.* at 449.

2. Whatever conflict may exist in the passages cited by TFC is not implicated here. Contrary to TFC’s submission, the Virginia Supreme Court emphatically did *not* hold that the “neutral-principles analysis requires enforcing denominational ‘trust’ provisions regardless of contrary secular evidence of intent or compliance with governing law.” Pet. 24. Rather, the court considered “secular indicia of ownership under ordinary civil law” (Pet. 19), just as TFC says it should have done, and on that basis the court *refused to enforce* the express trust created by the Dennis Canon. Pet. App. 15a-16a.³

The court then imposed a constructive trust, but it did so purely as a matter of ordinary state law equity principles, applied just as they would be applied to a property dispute between secular entities, focus-

³ The petition’s false characterization of the decision below comes closer to describing the *concurrence*, which would have enforced the express trust created by the Dennis Canon, despite state law prohibiting its enforcement. *See supra* note 2.

ing on the objective evidence of the “nature of the relationship between the parties.” Pet. App. 17a; *see supra* at 7-8. The court thus did not give effect to the Dennis Canon in the face of contrary state law property rules. Rather, the court applied ordinary state law property rules to impose a constructive trust in accordance with secular evidence demonstrating that such a trust was warranted under civil law.

3. TFC’s actual objection to the decision below is nothing more than a complaint about how the Virginia Supreme Court applied ordinary principles of Virginia law—and, in particular, equitable constructive trust principles—to the facts of this case.

For example, TFC complains that the Virginia Supreme Court “did not even *consider* the deeds, let alone the grantors’ intent,” in concluding that a constructive trust should be imposed. Pet. 30.⁴ TFC’s premise is wrong—the court specifically found as a matter of fact that “when one considers the constitution and canons, specifically the adoption of the Dennis Canon, and the course of dealing between the parties,” TFC, the Church, and the Diocese together “intended, agreed and expected that the property at issue would be held in trust by [TFC] as trustee for the benefit of [the Church] and the Diocese.” Pet. App. 22a.

Even more important, TFC misunderstands the court’s analysis. The court was determining whether

⁴ The trial court, of course, did consider the deeds, and it held that they supported the view that the Church and the Diocese possess proprietary and contractual interests in the disputed property. *See supra* at 5-6.

to impose a *constructive* trust, which depends not on the parties' intent to create an independent trust, but on the "nature of the relationship between the parties." Pet. App. 17a. In Virginia as elsewhere, a constructive "trust" is not really a trust at all, but is a *remedy* "imposed by construction of law to prevent fraud or unjust enrichment." *Galloway Corp. v. Wise*, 244 Va. 344, 346 (1992). "A constructive trust is a fiction imposed as an equitable device for achieving justice. It lacks the attributes of a true trust, and is not based on any intention of the parties." *Healy v. Comm'r of Internal Revenue*, 345 U.S. 278, 282-83 (1953); see *Leonard v. Counts*, 221 Va. 582, 588-89 (1980) (constructive trusts are based on remedial principles and created by law, "independently of parties' intention, to prevent fraud or injustice"); *Sundin v. Klein*, 221 Va. 232, 240 (1980) (constructive trust remedy employed to prevent a failure of justice).⁵ Applying those principles, the court below held that the record evidence established that TFC possessed and breached a fiduciary duty by failing to hold and control the property for the Church's benefit. Pet. App. 22a. Accordingly, the court concluded, "equity dictates that a constructive trust be imposed

⁵ See also *Russell v. Southard*, 53 U.S. (12 How.) 139, 155 (1851) (a constructive trust is "raised by implication, for the purpose of a remedy, to prevent injustice"); Restatement of Restitution § 160 cmt. a (1937) (a constructive trust "is in fact something quite different from an express trust. An express trust and a constructive trust are not divisions of the same fundamental concept. They are not species of the same genus. They are distinct concepts ..."); Roscoe Pound, *The Progress of the Law 1918-1919: Equity*, 33 Harv. L. Rev. 420, 420-21 (1920) ("An express trust is a substantive institution. Constructive trust, on the other hand, is purely a remedial institution.").

on the property for the benefit of [the Church] and the Diocese.” *Id.*

That determination does not implicate any federal question, let alone any decisional conflict. TFC does not and cannot contend that the First Amendment or *Jones* precludes a state court from applying ordinary state law equity and property rules in a church property dispute to impose a constructive trust on property as a remedy for one party’s breach of a fiduciary duty to another. None of the other cases cited by TFC suggests such a rule—indeed, none of them even involves the fiction of a constructive trust imposed solely as an equitable judicial remedy to avoid injustice. They instead address the question whether to give direct legal effect to the Dennis Canon itself, an approach that differs from the Virginia Supreme Court’s reliance on the fiduciary relationship arising from the overall relations between the parties, both long before and well after the adoption of the Dennis Canon.

Nothing about the analysis below departs from ordinary principles of Virginia equity and property law. TFC may not like how the Virginia Supreme Court applied Virginia-specific principles of equity to the case-specific facts of this record, but that decision does not conflict with the decision of any other court, and it does not merit review by this Court.

B. This Case Does Not Implicate Any Question Of Retroactivity, Including Any Question Left Open In *Jones*.

TFC offers as a separate basis for review its view that the petition presents a question that “*Jones* expressly left unanswered”—*viz.*, “Under what circum-

stances does ‘retroactive application of a neutral-principles approach infringe[] free-exercise rights?’” Pet. 16 (quoting 443 U.S. at 606 n.4). TFC believes that question is presented here because the Virginia Supreme Court (petitioner says) read § 57-7.1 to retroactively impose a denominational trust on the disputed church property. Pet. 32-33. TFC is doubly wrong: this case does not present the question left open in *Jones*, and the Virginia Supreme Court did not apply § 57.7-1 retroactively in this case.

1. The question *Jones* left open was stated in footnote 4: “Given that the Georgia Supreme Court clearly enunciated its intent to follow the neutral-principles analysis in *Presbyterian Church II* and *Carnes* [i.e., two previous Georgia Supreme Court cases], this case does not involve a claim that retroactive application of a neutral-principles approach infringes free-exercise rights.” 443 U.S. at 606 n.4. That question does not, as TFC suggests, concern the retroactive application of a state statute to a church property dispute. Rather, the question the Court noted in *Jones* was whether a state court could, consistent with the First Amendment, retroactively apply the “neutral principles” approach when it had in the past applied a different approach to resolving church property disputes. TFC cannot plausibly argue that this question is presented here: the Virginia Supreme Court was applying the “neutral principles” approach five years before *Jones*. Pet. App. 10a (citing *Norfolk Presbytery v. Bollinger*, 214 Va. 500 (1974)).

2. The retroactivity issue actually pressed in the petition (though not actually presented in the case) is whether the purported retroactive application of

§ 57.7-1 to the disputed church property here is consistent with the First Amendment. That question was not left open or even discussed in *Jones*. And the petition cites no cases holding that the retroactive application of a state statute to a church property dispute violates the First Amendment.

More important, TFC is wrong even about the premise—the Virginia Supreme Court did not apply § 57.7-1 retroactively. To the contrary, the court held that under *McGehee*, the Dennis Canon had to be “construed according to the law in effect at the time the trust [was] executed,” and thus § 57.7-1 could not retroactively validate the trust. Pet. App. 15a (quotation omitted).

As to the constructive trust that the court did impose, the court simply applied the existing, settled state law rule that a constructive trust “relate[s] back to the time when the property began to be wrongfully held,” which was in 2006, long after § 57.7-1 was enacted. Pet. App. 17a (quotation omitted). To be sure, in determining whether a fiduciary relationship existed as a matter of state law, the court considered evidence concerning that relationship back to its foundation in 1836, as well as evidence post-dating enactment of § 57.7-1. Pet. App. 18a-22a. But Virginia law before § 57.7-1 only prohibited giving legal effect to denominational trusts themselves. Pet. App. 12a-13a. The law did not prohibit courts from considering denominational trust provisions as part of the body of evidence demonstrating the nature of the parties’ relationship, particularly when—as the court found here—that provision “merely codified in explicit terms a trust relationship that has been implicit in the rela-

tionship between local parishes and dioceses since the founding of [the Church] in 1789.” Pet. App. 18a (quotation omitted). Because the court’s consideration of pre-1993 evidence to determine the nature of the parties’ relationship was not a retroactive application of state law, no retroactivity question is presented here.

II. THE CONTRACTS CLAUSE QUESTION WAS NOT CONSIDERED BELOW AND IS OTHERWISE UNWORTHY OF REVIEW.

Even TFC does not contend that the second question presented in the petition—“whether the Contracts Clause permits applying state statutes retroactively to impose a denominational trust on church property” (Pet. 34)—is independently certworthy. Rather, TFC says the Court should grant review because the second “question is related to the first.” Pet. 34. The second question accordingly should be denied along with the first.

The second question in any event has its own independent problems. Most obviously, the Contracts Clause question was not pressed or passed on below, so there is nothing to review. Nor does TFC cite any cases applying the Contracts Clause in similar circumstances. In fact, TFC does not point to a single other case in which the question it presents has arisen. And in any event, the premise of the question is faulty—as just explained, the Virginia Supreme Court did not retroactively impose § 57.7-1 and thereby apply the law to impair any contractual obligation. Review of the second question presented should be denied.

CONCLUSION

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

Respectfully submitted,

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