No. 13-1520

IN THE
Supreme Court of the United States

THE EPISCOPAL CHURCH, *ET AL.*,
Petitioners,
v.
THE EPISCOPAL DIOCESE OF FORT WORTH, *ET AL.*,
Respondents.

THE DIOCESE OF NORTHWEST TEXAS, *ET AL.*,
Petitioners,
v.
ROBERT MASTERSON, *ET AL.*,
Respondents.

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

BRIEF OF THE TEXAS CONFERENCE OF THE UNITED METHODIST CHURCH, THE CENTRAL TEXAS CONFERENCE OF THE UNITED METHODIST CHURCH, THE NORTH TEXAS CONFERENCE OF THE UNITED METHODIST CHURCH, THE NORTHWEST TEXAS CONFERENCE OF THE UNITED METHODIST CHURCH, AND THE RIO TEXAS CONFERENCE OF THE UNITED METHODIST CHURCH AS *AMICI CURIAE* IN SUPPORT OF THE PETITIONERS

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QUESTIONS PRESENTED

1. Whether the First Amendment or *Jones v. Wolf*, 443 U.S. 595 (1979), requires courts to enforce express trusts recited in general-church governing documents (as some jurisdictions hold), or whether such a trust is enforceable only when it would otherwise comply with state law (as others hold).

2. Whether retroactive application of the "neutral principles" approach infringes free-exercise rights.

3. Whether the neutral principles approach approved in *Jones* remains a constitutionally viable means of resolving church property disputes, when a hierarchical church's governing documents expressly provide that the property of its local churches is held in trust for the hierarchical church.

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INTERESTS OF *AMICI CURIAE*[1]

The *amici* submitting this brief are "annual conferences" in The United Methodist Church. More specifically, they are the five Texas-based annual conferences that together encompass, oversee and support approximately 1,760 United Methodist congregations that work to execute the mission and ministry of The United Methodist Church in the State of Texas.

Besides having a significant presence in Texas, similarities between the polities of the Episcopal Church and the United Methodist Church provide additional reasons for the Texas-based annual conferences (the "Texas Conferences") to present this brief as *amici curiae*. Most notably, as is the case in the Episcopal Church, all local United Methodist churches (indeed, all church institutions at every level) are required by church law to hold their property in trust for the use and benefit of the denomination as a whole.

Given this perspective, and for the additional reasons developed below, the Texas Conferences have a vital interest in the issues presented in this case and urge the Court to grant the petition for a writ of certiorari ("Petition").

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[1] The parties have consented to the filing of the brief. Blanket letters of consent by Respondents' counsel are on file with the Clerk. The Petitioners' consent was confirmed in an email dated July 17, 2014, a copy of which is filed with the Clerk of the Court. In accordance with Rule 37.6, *amici* state that no counsel for any party has authored any part of the brief, and no person or entity, other than the *amici*, has contributed monetarily to the preparation or submission of this brief.

INTRODUCTION

A. Basic Principles of Methodist Polity

The rules of church governance for The United Methodist Church—its polity—are delineated in *The Book of Discipline of The United Methodist Church* ("*Discipline*"). Constituting church law, the *Discipline's* provisions are enacted by the denomination's General Conference, a legislative body that convenes every four years and is comprised of clergy and lay delegates from each annual conference.

An annual conference in Methodist polity is similar to an Episcopal diocese in that an annual conference encompasses all United Methodist congregations located within a given region. Each annual conference is presided over by a bishop, who is empowered to appoint each congregation's pastor.[2] In addition, annual conferences are subdivided into districts, administered by a "cabinet" of "district superintendents." District superintendents work on a day-to-day basis with local churches and the pastors in their assigned districts.

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[2] Methodist congregations do not hire or fire their own pastors. Church law provides, "Clergy shall be appointed by the bishop, who is empowered to make and fix all appointments in the Episcopal area of which the annual conference is a part." THE BOOK OF DISCIPLINE OF THE UNITED METHODIST CHURCH, ¶ 425.1 (2012).

B. The Texas Conferences

Annual conference boundaries sometimes match (or approximate) state boundaries. In Texas, however, there are far too many United Methodists to function effectively in ministry as a single conference, overseen by a single bishop. Approximately 760,000 Texans – representing more than 10% of the denomination's membership *nationwide* – are enrolled as members in almost 1,800 United Methodist congregations, located all across the state and led by nearly 2,700 active clergy. As a result, five annual conferences have been established to oversee the mission and ministry of The United Methodist Church in Texas:

1. *The Texas Conference of The United Methodist Church* (headquartered in Houston) includes more than 600 local churches, spread across nine districts and served by more than 800 active clergy.
2. *The Central Texas Conference* (Fort Worth) is subdivided into six districts and encompasses almost 300 congregations, served by 362 active clergy.
3. *The North Texas Conference* (Plano) includes roughly 300 congregations, with 461 active clergy providing ministry across four districts.
4. *The Northwest Texas Conference* (Lubbock), with four districts, has 200 congregations and 172 active clergy.
5. *The Rio Texas Conference* (San Antonio) has nine districts and includes about 400 local churches and 804 clergy.

It is these annual conferences that are sponsoring this brief as *amici curiae*.

C. United Methodist Property

The Texas Conferences' interest in this case is amplified by the United Methodist denomination's longstanding fidelity to trust principles of the type this Court first vindicated in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872). Indeed, nearly a century *earlier*, John Wesley himself directed that "trust clauses" be included in the deeds to the first Methodist "preaching houses" established in England.[3] By doing so, Wesley was seeking to reinforce the Methodist rule that bishops, not local church trustees, must control the assignment of Methodist pastors, thereby ensuring the continued vitality of Wesley's dedication to "itinerant preaching," a cornerstone of Methodist polity. Wesley understood that if local churches wielded "power not only of placing, but even of displacing the preachers at their pleasure," then, as Wesley concluded, "Itinerant preaching is no more." *Topolewski* at 144-145 (*quoting* John Wesley, *The Case of Birstall House* 506-08 (1783)). Simply put, if local church trustees had unfettered control over the local church property, they effectively controlled the pulpit as well, giving them power to exclude the bishop's appointed preachers. As Wesley explained, once "the trustees in any place have found and fixed a preacher they like, the rotation of preachers is at an end – at least till they are tired of their favourite [sic] preacher, and so turn him out." *Id*.

The foundation laid by John Wesley was soon embedded and reinforced in the *Discipline*. The very earliest iterations of the *Discipline* required the use of

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[3] J. L. Topolewski, *Mr. Wesley's Trust Clause: Methodism in the Vernacular*, in METHODIST HISTORY, vol. XXXVII, no. 3, pp. 144-45 (Yrigoyen, Jr., Charles, ed. 1999) ("*Topolewski*").

a "model deed," which expressly reserved church property

> for the use of members of the Methodist Episcopal Church in the United States of America, according to the Rules and Discipline which from time to time may be agreed upon and adopted . . . at their General Conferences in the United States of America.[4]

To guard against instances in which congregations neglect to incorporate appropriate trust language in its deeds, the General Conference revised church law so that the *Discipline* itself independently declared that all church properties "are held, *in trust*, for the benefit of the entire denomination." *Discipline*, ¶ 2501.1. In addition, the *Discipline* clarifies that "the absence of a trust clause" in a church's deed "shall in no way" absolve a congregation of its "responsibility to hold all of its property in trust for The United Methodist Church," provided only that any one of the following conditions is satisfied: (a) the property in question was conveyed to a local church of The United Methodist Church (or any predecessor denomination), (b) the local church has used "the name, customs, and polity" of The United Methodist Church (or any predecessor), so as to become "known to the community as a part of such denomination," ***or*** (c) the

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[4] THE DOCTRINES AND DISCIPLINE OF THE METHODIST EPISCOPAL CHURCH IN AMERICA (1796) (quoted in Thomas Edward Frank, POLITY, PRACTICE, AND THE MISSION OF THE UNITED METHODIST CHURCH 265 (Nashville: Abingdon Press, 1997)).

local church has accepted the pastors appointed by a United Methodist bishop. *Id*., ¶ 2503.6.[5]

SUMMARY OF ARGUMENT

Until recently, the Texas Conferences have had little reason to doubt the legal efficacy of the longstanding principles of Methodist polity or of their enforceability in Texas courts. After all, inasmuch as Texas was a "Deference State," *Watson* was controlling, which simplified matters considerably. In *Watson*, the Court was emphatic that the "right to organize voluntary religious associations . . . for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned," and just as emphatic that "[a]ll who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." *Watson* at 728-729.

Resting on this foundation—in place now for 142 years, during which time the lion's share of the Texas Conference's nearly 1,800 local churches have surely been established and many more parcels of church property acquired—the Texas Conferences naturally have had every reasonable expectation that, by applying *Watson* to resolve church property disputes, the outcome in Texas civil courts will be straightforward. If rights to United Methodist church property are asserted by persons who "have separated

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[5] These "fallback" provisions—aimed at covering the inevitable instances when local church deeds fall short of the *Discipline's* requirements—were already in place and received the Court's notice when the *Jones* majority described the Georgia Supreme Court's decision in *Carnes v. Smith* as an instance in which Georgia "further refined" the neutral-principles analysis. *Jones* at 600-601 (discussing *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976)).

themselves wholly from the [United Methodist] organization to which they belonged when [the] controversy commenced"—if they "deny its authority, denounce its action, and refuse to abide by its judgments"—then it follows under *Watson*, as surely as night follows day, that they "have no right to the [church's] property, or to the use of it." *Id*. at 734.

Confidence that United Methodist property rights are secure in Texas was only enhanced by knowing that this Court has repeatedly affirmed that the principles enforced in *Watson* as a matter of federal common law are firmly rooted in the First Amendment as well, and are applicable to the states through the Fourteenth Amendment. *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94, 116 (1952); *Presbyterian Church v. Hull Church,* 393 U.S. 440, 447-448 (1969); *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710-711 (1976).

Now, however, Texas has abruptly reversed course, abandoning *Watson* for neutral principles. Making matters worse, in its newly minted iteration of the neutral principles approach, the Texas Supreme Court has not only declined to enforce plainly stated trust provisions of the type *Jones* held "civil courts will [remain] bound" to enforce, 443 U.S. at 606, but its concept of "neutrality" translates into subordinating the denomination's rules of ecclesiastical governance to the local church's unilaterally adopted articles of incorporation and bylaws.

Indeed, the decisions presented for the Court's review in this case may stand as the best evidence yet that the concerns expressed in Justice Powell's dissent in *Jones* are coming to fruition. For example, here are decisions in which the court acknowledges on the one hand that the Free Exercise Clause prohibits "civil

courts from inquiring into matters concerning . . . 'ecclesiastical government,'" Pet. App. 14a, but has no problem entering the fray if church parties purport to use corporate bylaws to negate the very same ecclesiastical government. "After all," the court explained, the "*corporation* has a secular existence derived from applicable Texas law," *Id*. 29a. In this fashion, just as Justice Powell predicted, the court has treated "the 'neutral principles of law' approach as a restrictive rule of evidence," *Jones* at 611 (Powell, J., dissenting), which deprives the court of relevant evidence to the detriment of the party whose rules of church government are recorded in a different format.

Justice Powell expressed such pragmatic concerns about the neutral principles approach in his dissent in *Jones*. In the balance of this brief, the Texas Conferences will take a similar focus, convinced that, as a practical matter, a rubric that was intended to preserve First Amendment protections has become little more than an obstacle course for connectional churches, nullifying the commonplace principles that *Watson* deemed incontestable and decisive; impeding operation of the church's own rules of self-governance; and otherwise drawing trial judges well outside the "severely circumscribed" role "civil courts may play in resolving church property disputes." *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

ARGUMENT

It is not the Texas Conferences' purpose in submitting this brief to echo the arguments already advanced by the Petitioners, or that they expect will be advanced by other *amici curiae*. Although they share the Petitioners' views on the questions presented, and will undoubtedly be aligned with the views expressed by

other *amici*, the Texas Conferences' chief aim is to present the Court with a distinct perspective, emphasizing the practical impediments posed by the prospect that church property battles will grow in number and prove more difficult to resolve.

The perspective offered by the Texas Conferences is the perspective of church officials whose task in ministry is neither to lead a single congregation, nor to safeguard the property interests of the denomination as a whole. Instead, it is the perspective of church officers whose particular ministry is precisely to operate *within the jurisdiction in question* and with the singular objective of encouraging and sustaining *cooperative* ministry among a diverse array of congregations and clergy within a unified, connected church. This form of church governance, reflecting the indivisible nature of the entire church, is a theological commitment from which the Methodist denominational trust provision cannot be separated.

Speaking from this perspective, the Texas Conferences submit that (just as Justice Powell feared) the Texas Supreme Court's iteration of the "neutral principles" approach will likely "precipitate church property disputes," *Jones* at 613, n.3 (Powell, J., dissenting), while simultaneously making civil adjudication "more difficult" and "more likely to invite intrusion into church polity forbidden by the First Amendment." *Id*. at 610.

The practical burdens associated with the Texas Supreme Court's new approach to resolving church property disputes are best introduced by highlighting a factor that was discussed in both decisions the Petitioners are asking the Court to review. In one case, a local parish (Good Shepherd, comparable to a United Methodist local church) wished to withdraw

from the Episcopal Church, and the other case involved the attempted defection of an entire diocese (Forth Worth, comparable to a United Methodist annual conference). In denying summary judgment to the Episcopal Church, the Texas Supreme Court relied prominently on a fact that both the parish and the diocese had (1) incorporated, and (2) adopted bylaws that, on their face, permitted amendments by a majority vote of the corporation's members or directors. From the Texas Supreme Court's perspective, the incorporation of the local church made "neutral" principles of Texas corporations law primary, which in turn gave primacy to the local church's corporate bylaws, which on their face left the impression that the local church was free to change its rules of governance unilaterally, even to the point of repudiating the parties' foundational allegiance to the Episcopal Church and its canons. In other words, the dissident parties purported to use civil acts to do what their ecclesiastical commitments expressly forbid.

Naturally, the Episcopal Church protested, explaining that to be established as an Episcopal parish and diocese in the first place, both Good Shepard Church and the Fort Worth Diocese had agreed to be governed by The Episcopal Church and its canon law. At every turn, the Texas Supreme Court disagreed, concluding most emphatically as follows:

> [T]he vote at the [parish corporation's] called meeting was in favor of amending the bylaws to delete or change provisions referring to and adopting the canons and constitutions of TEC and the Diocese, and revoking any trusts in the corporate property in favor of them. Absent specific, lawful provisions in a corporation's articles of incorporation or

> bylaws otherwise, *whether and how a corporation's directors or those entitled to control its affairs can change its articles of incorporation and bylaws are secular, not ecclesiastical, matters*.[6]

Respectfully, the Texas Supreme Court's analysis on this point violates this Court's "unquestioned" principle that "all the individual members, congregations, and officers" who freely choose to "unite themselves" with any religious association "do so with an implied consent to [its] government, and are bound to submit to it." *Watson* 80 U.S. at 728-729. But even more importantly from the standpoint of the Texas Conferences, the Texas Supreme Court's deviation from this bedrock principle – now firmly embedded in the Court's First Amendment jurisprudence (*Milivojevich* 426 U.S. at 710-711) – threatens widespread disruption to the ministry of The United Methodist Church in Texas, even as it invites Texas district courts to engage in "searching and therefore impermissible" discovery and trial proceedings in order to resolve disputes that, by their very nature, are disputes about *church governance*, *id*. at 723.

The burden on free exercise rights is best revealed by focusing on the concrete example presented by the instant cases. In both instances, the Texas Supreme Court scrutinized the dissident entity's articles of incorporation and bylaws, and noticed that they could be amended by a majority vote of the church corporation's own members or directors; on the face of those "secular" documents at least, no "higher authority's" consent was required. For the Texas Supreme Court, this apparently provided evidence that the full scope

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[6] Pet. App. 32a. (emphasis added)

of the congregation's consent to the parent church's polity was open to question, requiring further trial proceedings to settle the issue.

Speaking from their day-to-day experience of direct engagement with nearly 1,800 congregations, the Texas Conference are well-positioned to observe that any attempt to justify full-blown civil judicial proceedings based on inferences one imagines might be drawn from a church corporation's organizational documents defies the real-world dynamics that attend the formation and organization of even a single church, let alone forging and documenting the relationships between the hundreds or thousands of churches that have chosen to be united in ministry under the same banner. Some United Methodist churches incorporate and some do not. Among those that do – which is the preference – some take great care in the process and some do not. It should go without saying, however, that the principal reason local churches incorporate is simply to capture the benefits of limited liability that attend the corporate form, not to make any statement (one way or another) about the congregation's relative allegiance to The United Methodist Church and its *Discipline*.

In addition, if the provisions of local church incorporation documents are treated as a presumptively meaningful measure of a church's "intent," then just as Justice Powell predicted, the Texas Conferences will be obliged to engage lawyers to fan-out all over Texas to scrutinize their local churches' corporate organizational papers, assess the risk that a Texas trial judge might read this or that provision as undermining The United Methodist Church's property rights, and, if so, ask the local church to make appropriate revisions. *See Jones* at 613, n. 2 (Powell, J., dissenting). Putting aside the financial burden this

poses, the entire exercise stands to discourage incorporation going forward and, for those that have already incorporated, to "precipitate church property disputes" by elevating "issues that otherwise might never arise." *Id*.

None of this is necessary and all of it can be avoided by insisting on resolute dedication to the longstanding and perfectly fair principle that "all the individual members, congregations, and officers" who "unite themselves" to a church "do so with an implied consent to [its] government, and are bound to submit to it." *Watson* at 728-729.

CONCLUSION

For the foregoing reasons, the *amici* support the Petition for a Writ of Certiorari and urge that it be granted by the Court.

Respectfully submitted,

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