

NO. 11-0265

IN THE SUPREME COURT OF TEXAS

THE EPISCOPAL DIOCESE OF FORT WORTH, et al.,
Appellants

v.

THE EPISCOPAL CHURCH, et al.,
Appellees

On Direct Appeal From the
141st District Court of Tarrant County, Texas
Cause No. 141-252083-11

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INTRODUCTION

The Plaintiffs' briefs¹ narrow the parties' disagreement to two fundamental issues stemming from *Jones v. Wolf*, the definitive U.S. Supreme Court case on church property disputes:

- ***Should Texas apply Neutral Principles or Deference in church property suits?*** The parties agree that *Wolf* allows states to adopt either approach, but disagree about which is wiser and what the outcome would be under each.
- ***Do the instruments of ownership here incorporate religious concepts?*** The parties agree that *Wolf* requires civil courts to defer to church judicatories if the instruments of property ownership "incorporate religious concepts,"² but disagree whether that is true here and who would be the proper judicatory if it were.

Regarding the first question, this Court should adopt Neutral Principles, as virtually every other state has done. *See Tab A.* The Texas Legislature has passed laws governing nonprofit corporations, unincorporated associations, and trusts, and many Texas churches have followed and relied on those laws. The trial court's order setting them aside on constitutional grounds should be corrected.

¹ For convenience, the brief of the Episcopal Church is referred to herein as the "TEC brief," the brief of the Local Episcopal Parties' and Congregations is referred to as the "Local TEC brief," and the two together are referred to as "Plaintiffs' briefs."

² *See Jones v. Wolf*, 443 U.S. 595, 604 (1979) ("[T]here may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.").

Regarding the second question, this Court should not convert traditional property questions into religious ones. The Plaintiffs' briefs work hard to make all questions doctrinal, even when that requires a bit of exaggeration. For example, the Local TEC brief says the Diocese "attempts to justify its actions by claiming that [TEC] departed from church tenets," and "the First Amendment forbids civil courts from playing such a role."³ Yet the Defendants⁴ never mentioned the nature of TEC's doctrinal innovations in their brief, so they could not possibly be before this Court. Given such literary license, the Court should view the Plaintiffs' "doctrinal" claims with skepticism.

The Plaintiffs' main argument is that the Diocese cannot "use secular laws of general applicability, raised for the first time decades after consenting to church law."⁵ But Neutral Principles *requires* courts to use state laws of general applicability in property cases. And the Diocese had no duty to remind TEC of state law, as everyone is *deemed* to know it.⁶

³ Local TEC Br. 35.

⁴ Just as in the opening brief and in the trial court, Appellants are referred to herein as "Defendants."

⁵ See, e.g., Local TEC Br. xx.

⁶ See, e.g., *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 527 (Tex. 1990) ("We hold that as a matter of law, under these facts, that the cab company had no duty to warn its cab drivers

What the Plaintiffs are really saying is that this dispute should be decided based upon tacit assumptions and unwritten understandings. But under Neutral Principles, property disputes must be decided according to the rules and laws as they stand.

This case is different from all previous Episcopalian property appeals, which have addressed disputes only between a parish and a diocese — with TEC claiming no interest. *See Tab B*. The representation that the “Episcopal Church Won”⁷ all those cases is simply false, unless one defines “Episcopal Church” as a diocese or a bishop. That of course is not how TEC hopes the casual reader will define it.

Just as in *Wolf*, the question here is not whether one church can “withdraw” from another but who owns the church property. The Diocese does not care who TEC recognizes as the “true” leaders or the “true” diocese for religious purposes. But for property purposes, the Diocese asks the Court to follow the same state laws that apply to everyone else, and were invoked by the Diocese at its inception.

not to carry guns.”); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 130 S. Ct. 1605, 1611 (2010) (“[I]gnorance of the law will not excuse any person, either civilly or criminally.”).

⁷ *See* Local TEC Br. App. Chart 1.

I. TEXAS SHOULD ADOPT THE NEUTRAL PRINCIPLES APPROACH

A. States Have Uniformly Adopted Neutral Principles Rather Than Deference

The Plaintiffs' briefs do not deny that **every** state supreme court and **most** Texas appellate courts for the last 20 years have adopted Neutral Principles for church property cases.⁸ As the high courts of our sister states have declared, the Neutral Principles approach:

- has "compelling logic," *St. Paul Church, Inc. v. Bd. of Trs.*, 145 P.3d 541, 553 (Alaska 2006);
- "'can be applied without 'establishing' churches,'" *From the Heart Church Ministries, Inc. v. African Meth. Epis. Zion Church*, 803 A.2d 548, 565 (Md. 2002); and
- "appears to be preferable to compulsory deference since in every case, regardless of the facts, compulsory deference would result in the triumph of the hierarchical organization," *Bjorkman v. Protestant Epis. Church*, 759 S.W.2d 583, 586 (Ky. 1988).

Plaintiffs discount the Defendant's 50-state chart of church property cases on the ground that some of those cases did not involve a hierarchical church.⁹ They discount all the Neutral Principles cases in Texas for the same reason.¹⁰ But under Neutral Principles **it does not matter** whether a

⁸ See Defs.' Br. 11-13.

⁹ See Local TEC Br. 29 & n.78.

¹⁰ See TEC Br. 23; Local TEC Br. 11.

church is hierarchical, congregational, or something in between; Neutral Principles “obviates entirely the need” to answer that question.¹¹ As shown by an updated chart attached hereto as Tab A in the Appendix, courts in red states, blue states, and purple states have expressly adopted Neutral Principles for *all* cases. When a state supreme court announces that its courts will apply Neutral Principles to church property disputes, that cannot be dodged by saying, “Oh, that was a different denomination.”¹²

Plaintiffs urge this Court to stand alone in the deserted Deference camp because Neutral Principles is a failed experiment.¹³ They cite not a single court case suggesting such a failure; they rely only on Professor Laycock’s article criticizing a “congregational bias” in some property cases¹⁴ — an issue not implicated here because both parties claim to be hierarchical heads.

¹¹ See *Jones v. Wolf*, 443 U.S. 595, 605 (1979) (“The neutral-principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.”).

¹² See *Elledge v. Friberg-Cooper Water Supply Corp.*, 240 S.W.3d 869, 870 (Tex. 2007) (“We reject the court of appeals’ ‘obiter dictum’ label. Our statements ... though not essential to the outcomes in *HECI* and *Wagner & Brown*, should have been followed.”).

¹³ See Local TEC Br. 5-6, 29-31.

¹⁴ See Douglas Laycock, *Church Autonomy Revisited*, 7 GEO. J. LAW & PUB. POL’Y 253, 257 (2009) (“[S]tate courts applying neutral principles of law have often applied ‘neutral’ principles with a strong *congregational* bias, allowing local churches to secede (and take the property with them) from churches that were clearly hierarchical or presbyterial. These *congregationalizing* decisions have been applied to Russian Orthodox, Episcopalian, and Presbyterian churches.” (emphasis added, citations omitted)).

Plaintiffs misleadingly argue that *Hosanna-Tabor*¹⁵ indicates that Deference has received the Supreme Court's "continued approval ... for resolving church property disputes."¹⁶ But *Hosanna-Tabor* was no church property dispute. It involved whether a Lutheran church could fire a minister, not whether she could take her property with her.

The Plaintiffs contend that the Deference rule is "simple" and "predictable."¹⁷ But the Supreme Court said in *Wolf* that it was **not** simple and **too** predictable.¹⁸ Black's Law Dictionary says the Deference approach (which it calls the "polity approach") requires courts to "examine[] the structure of the church to determine whether the church is independent or hierarchical."¹⁹ Examining church structure often requires examining religious doctrine, polity, and practice. That is the problem.

Courts cannot simply take the word of those appearing before them

¹⁵ See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp't Opportunity Comm'n*, 132 S. Ct. 694 (2012).

¹⁶ TEC Br. 44.

¹⁷ See TEC Br. 5; Local TEC Br. 8.

¹⁸ *Wolf*, 443 U.S. at 605 ("The neutral-principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes."); *id.* at 606 ("Under the neutral-principles approach, the outcome of a church property dispute is not foreordained.").

¹⁹ BLACK'S LAW DICTIONARY 1277 (9th ed. 2009).

about the nature of a church's polity.²⁰ Churchmen of course would never lie, but they might not actually be speaking for the church. For example, early in this case Plaintiffs claimed to represent the Fort Worth Diocese — until the real representatives of the Diocese proved otherwise.²¹ In this case, the Plaintiffs' lawyers were not hired by TEC's General Convention, but by its administrative officers. The latter will naturally say that their wishes are those of the church, but would the "church" actually say the same?

It is true that Neutral Principles produces different outcomes in different states and different churches. But as the Supreme Court noted in *Wolf*, that is its genius: "[T]he neutral-principles analysis shares the peculiar genius of private-law systems in general — flexibility in ordering private rights and obligations to reflect the intentions of the parties."²² As the Connecticut Supreme Court noted in 2011, differing outcomes are expected under Neutral Principles because "courts are allowed to rely on secular, as well as religious documents, including idiosyncratic state statutes and common-law principles."²³

²⁰ See, e.g., *Brown v. Clark*, 116 S.W. 360, 363 (Tex. 1909) (looking to church constitution to see who had authority to decide propriety of re-unification).

²¹ See *In re Salazar*, 315 S.W.3d 279 (Tex. App.—Fort Worth 2010, orig. proceeding).

²² *Wolf*, 443 U.S. at 603.

²³ *Episcopal Church v. Gauss*, 28 A.3d 302, 316 (Conn. 2011).

Plaintiffs make the odd claim that Neutral Principles would be unconstitutional here because it would treat religious and secular associations differently.²⁴ But the whole point of *Wolf* was to declare Neutral Principles constitutional and to treat religious and secular organizations the same. What the Plaintiffs really want is for a religious **corporation** to be treated like a religious **association**. But those entities have always been treated differently; indeed, many churches incorporate specifically to avoid the rules that apply to associations — like personal liability and the difficulty of ascertaining who has authority to sign for a loan.²⁵

Neutral Principles does not promise to free judges from hard work. But it does promise (as the Supreme Court said in *Wolf*) “to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.”²⁶ That is a freedom worth pursuing.

²⁴ See TEC Br. 46-47; Local TEC Br. 14-15, 42-43.

²⁵ Moreover, the two cases on which Plaintiffs rely were decided according to association rules that expressly prevented a local chapter from conveying its property under the circumstances presented. See *Minor v. St. John's Union Grand Lodge*, 130 S.W. 893, 896-97 (Tex. Civ. App.—Galveston 1910, writ ref'd) (holding that association rules prohibited local lodge from dissolving or retaining property without consent of national lodge); *Progressive Union of Tex. v. Indep. Union of Colored Laborers of Tex.*, 264 S.W.2d 765, 768 (Tex. Civ. App.—Galveston 1954, writ ref'd n.r.e.) (holding that officers who withdrew from local association could no longer convey its property). There is neither such a rule nor such a conveyance in this case.

²⁶ *Wolf*, 443 U.S. at 603.

B. There Is No Third “Identity” Approach

The Supreme Court in *Wolf* identified two approaches to church property suits: Neutral Principles and Deference.²⁷ Yet TEC repeatedly relies on something called the “Identity approach.”²⁸ That is because it stands to lose under the other two approaches.

The Deference approach requires an **official church court decision**. The Supreme Court in *Wolf* said that Deference requires courts to “defer to the resolution of an authoritative tribunal.”²⁹ This Court in *Brown v. Clark* said that Deference means courts are “bound by the orders and judgments of the courts of the church.”³⁰ There is no official church court decision in this record.

TEC has no “judiciary” (the term used in *Brown v. Clark*) for deciding property disputes. TEC’s General Convention has issued no decree awarding this church property to either side. The only “decision” for TEC to take this property was made by the handful (literally) of people

²⁷ *Id.* at 597 (“The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of ‘neutral principles of law,’ or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church.”).

²⁸ See TEC Br. 17-30; see also Local TEC Mot. Summ. J., 27CR5835-36, 27CR5852-58.

²⁹ *Wolf*, 443 U.S. at 597.

³⁰ *Brown v. Clark*, 116 S.W. 360, 365 (Tex. 1909).

who hired Plaintiffs’ counsel. None of them can claim to be an “official church court.”

Accordingly, TEC has tried to re-define the Deference approach as an “Identity approach” requiring that church property go “to those persons remaining loyal to the hierarchical denomination.”³¹ Conveniently, this does not require any official church court decision. Instead, “courts need only address the threshold question of whether a church is hierarchical,”³² and then the hierarchical church decides for itself who is loyal.³³

The U.S. Supreme Court calls this the “English approach” — and has expressly rejected it.³⁴ The English approach uses “a theory of implied trust, whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, provided the general church had not ‘substantially abandoned’ the tenets of faith and practice as they existed at the time of affiliation.”³⁵ That approach

³¹ TEC Br. 21; Local TEC Br. 10 (“the loyal group recognized by the mother church”).

³² Local TEC Br. 15.

³³ See TEC Br. 13 (“Thus, where a hierarchical church has determined which of two local factions represents the ‘true’ local church, that determination is binding on civil courts.”); Local TEC Br. 6 (“Under Deference, the loyal Episcopalians prevail because they are the parties recognized by The Episcopal Church as the leadership of the Episcopal Diocese, with a continuing right to its identity and property.”).

³⁴ *Jones v. Wolf*, 443 U.S. 595, 599 & n.1 (1979) (citing *Presbyterian Church v. Hull Church*, 393 U.S. 440, 443 & n. 2 (1969)).

³⁵ *Id.*

may be appropriate for a state-established church, but the First Amendment bars it here.³⁶ TEC and its allies have simply taken the first half of the English approach (the implied trust) and made it absolute: local church property is held in trust for the established church, period.

This “Identity approach” conflicts not just with the First Amendment but the Texas Constitution’s Bill of Rights, which bars any “preferences ... to any religious society or mode of worship.”³⁷ There is no question TEC’s “Identity approach” imposes a rule that guarantees property control for hierarchical churches but a different rule for everybody else. Plaintiffs claim their Identity approach “merely implements the church structures people choose.”³⁸ Yet unless the church rules state that all property belongs to whomever the general church deems “loyal,” this rule is imposed by law rather than choice. Here, the vast majority of parishioners who bought and maintained these properties want to keep them; the only people who have chosen to try to take them away are a small local minority and church administrators in New York.

³⁶ See *Hull Church*, 393 U.S. at 449.

³⁷ TEX. CONST. art. I, § 6 (“[N]o preference shall ever be given by law to any religious society or mode of worship.”).

³⁸ TEC Br. 46.

C. Title to Church Property is not an Ecclesiastical Question

Civil courts cannot decide a property dispute if it requires the court “to pass on questions of religious doctrine.”³⁹ But the primary advantage of the Neutral Principles approach is “that it is completely secular in operation.”⁴⁰ Neutral Principles “relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges.”⁴¹

Wolf defines “doctrinal matters” as “the ritual and liturgy of worship or the tenets of faith.”⁴² Under that definition, “doctrinal matters” do not include building codes, speed limits, corporate elections, or the statute of frauds. Thus, deciding a church property dispute based on the language of the deeds, the church charters, and state statutes generally entails “no inquiry into religious doctrine.”⁴³

The Plaintiffs’ briefs strain to find some doctrinal issue to oust the civil courts. They point to requirements that the Trustees be “in good

³⁹ *Wolf*, 443 U.S. at 609.

⁴⁰ *Id.* at 603.

⁴¹ *Id.*

⁴² *Id.* at 602.

⁴³ *Id.* at 603.

standing” and “well and faithfully perform” their duties.⁴⁴ In the first place, declaring these to be “doctrinal” issues would not mean TEC decides them, as the Diocese alone has authority to select Trustees.⁴⁵

More importantly, it is flatly false that the Trustees “must be loyal Episcopalians.”⁴⁶ That term appears nowhere in any church document. The Diocese’s Canons require that Trustees be “Lay persons in good standing of a parish or mission *in the Diocese* or members of the Clergy canonically resident *in the Diocese*.”⁴⁷ So it is standing in the Diocese that counts, not in TEC. Indeed, a Trustee cannot be a member in good standing of **TEC** because TEC is a federation of dioceses, not individuals.⁴⁸ A rector of a local parish decides the standing of lay members in the first instance,⁴⁹ and the Bishop decides who is canonically resident in the Diocese.⁵⁰ The ultimate

⁴⁴ See Local TEC Br. 34.

⁴⁵ See 28CR6194 (Art. II, § 3); 28CR6002 (Diocese Canon 11.3).

⁴⁶ TEC Br. 7-9, 15, 37.

⁴⁷ See 28CR6002 (Diocese canons) (emphasis added); *see also* 28CR6194 (corporate by-laws).

⁴⁸ See WHITE & DYKMAN, ANNOTATED CONSTITUTION AND CANONS FOR THE GOVERNMENT OF THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA, 29 (Church Publishing Inc. 1981) (“To provide the Presiding Bishop with anything like an archbishop’s traditional jurisdiction was impossible. Metropolitan jurisdiction over a province of the Church and the dioceses therein, arming the metropolitan or archbishop with visitatorial and juridical powers, could not be artificially grafted upon a national Church, the polity of which still reflected its origin in a federation of equal and independent Churches in the several states.”).

⁴⁹ See 24CR5264 & 28CR6022.

⁵⁰ See 28CR6000.

judicatory on these questions is the majority at the Diocese's convention, as they alone have final authority to decide whether a nominee is qualified to serve as a Trustee. The Plaintiffs cannot cite any church rule allowing the Presiding Bishop or TEC to intervene in that selection.

This is not a case like *Hosanna-Tabor* where the issue was whether a church's minister could be fired. Nor is it a case like *Westbrook v. Penley* where the issue was whether church-discipline rules could be avoided.⁵¹ Property disputes are different from doctrinal disputes in ways that any lawyer or judge understands. The deeds and property rules here contain no doctrinal standards. Allowing the Plaintiffs to stretch them into doctrinal questions would frustrate one of the main obligations the Supreme Court sought to encourage in *Wolf*, namely "the obligation of States, religious organizations, and individuals to structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."⁵²

As explained in the Diocese's opening brief, all the property here is held by a Texas corporation, and five of the six Trustees are not ministers.⁵³

⁵¹ See 231 S.W.3d 389 (Tex. 2007).

⁵² *Wolf*, 443 U.S. at 604 (quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)).

⁵³ See Defs.' Br. 25-26.

That makes this case different from *Kedroff* and *Milivojevich*, two pre-*Jones* cases in which the church's spiritual leader was entitled to the church property.⁵⁴ In this case, property is not inextricably intertwined with church leadership, any more than it was in *Wolf*. As this Court affirmed in *Jones v. Maples*, Texas courts will not decide which officers should lead a voluntary association, but must decide which officers hold its property.⁵⁵

The Plaintiffs' briefs are completely silent about the many problems for Texas churches if the identity of corporate officers is an "ecclesiastical" question. If it is, then persons with no former standing or connection to a religious corporation can retroactively "declare" all corporate offices vacant, and no one can question that decision. Banks that have loaned money in good faith will be confronted with claims that their loans were unauthorized, or that they must look for repayment to new officers they don't know and have been rejected by most parishioners. If that is Texas law, no bank will loan churches anything.⁵⁶

⁵⁴ See *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952).

⁵⁵ 184 S.W.2d 844, 848 (Tex. App.—Eastland 1944, writ ref'd).

⁵⁶ Respondents' sole authority for this action is that of the "Presiding Bishop, acting under the Church's highest authority, the General Convention." Local TEC Br. 4. But as TEC concedes, the only authority from the General Convention to the Executive Council is "to carry out the program and policies adopted by the General Convention." See TEC Br. 1-2; see also 24CR5157.

Plaintiffs do not assert that the Church's religious doctrines or beliefs prevented the Diocese from creating a Texas nonprofit corporation, placing all church property in its hands, and authorizing a majority of the Diocese's delegates to name its Trustees. TEC approved this structure when it admitted the Diocese in 1982. Having invoked Texas law to this degree, neither party can insist that religious doctrine or practice prevents this Court from applying those corporate laws to decide who the officers are. If this case is deemed to involve doctrinal issues, then so will all others.

II. UNDER NEUTRAL PRINCIPLES, THE DIOCESE PREVAILS

To make Neutral Principles appear complex, the Response briefs describe it as a "four-factor test" involving at least three different steps.⁵⁷ But none of the 36 Neutral Principles states describe it as a four-factor test (except for a few lower courts in California⁵⁸). The *Wolf* court did mention four things (deeds, local church rules, state statutes, and general church rules) in a sentence describing what the Maryland courts reviewed in an

What is missing from the record is any "program or policy" by which the General Convention authorized the Presiding Bishop to remove the officers of this Texas corporation.

⁵⁷ See TEC Br. 12, 23-25, 31, 49; Local TEC Br. 5, 16.

⁵⁸ See, e.g., *Huber v. Jackson*, 96 Cal. Rptr. 3d 346, 352 (Cal. App. 2009).

earlier case.⁵⁹ But these are not “factors” to be balanced; they are simply the kinds of evidence and rules “familiar to lawyers and judges” in any property case.⁶⁰ Each is addressed below in the order listed in *Wolf*, which placed the general church’s rules last rather than first.

A. The Deeds

The 1984 probate court judgment decrees that title to all property received from the Diocese of Dallas “shall be vested by this declaratory judgment in Corporation of the Episcopal [D]iocese of Fort Worth.”⁶¹ The probate court judgment supersedes all deeds before that date.⁶² It is a mystery why the Plaintiffs insist on including 959 pages of superseded deeds in the appellate record, especially as none were part of the summary judgment record or among the documents severed out for this appeal.

The Plaintiffs appear to claim that if the word “Episcopal” appears anywhere in a deed, then the property belongs to them.⁶³ But sharing part of a name with a third party does not imply sharing property with that third

⁵⁹ *Wolf*, 443 U.S. at 603.

⁶⁰ *Id.*

⁶¹ *See* 26CR5677.

⁶² *See* 26CR5677-79.

⁶³ *See, e.g.*, TEC Br. 41 (“Every deed in the record in this case conveys property to an ‘Episcopal’ bishop or entity.”).

party. The word “episcopal” is derived from a Greek word used several times in the New Testament⁶⁴ — 1700 years before TEC began. Many other churches have used the name “Episcopal” from time to time, including the United Methodists and the African Methodist Episcopal denominations.⁶⁵ Property deeds must be construed based on their precise terms, not on similarities to somebody else’s name.

In any event, it was uncontested in the cross-motions for summary judgment that the Corporation holds title to all property.⁶⁶ Plaintiffs cannot raise this complaint for the first time on appeal.⁶⁷

B. The Local Charters

The Diocese’s Constitution states that “title to all real estate ... shall be vested in Corporation of the Episcopal Diocese of Fort Worth.”⁶⁸ The

⁶⁴ See Acts 20:28; *Philippians* 1:1; 1 *Timothy* 3:1-2; *Titus* 1:7; 1 *Peter* 2:25.

⁶⁵ See, e.g., *African Methodist Episcopal Church v. Indep. African Methodist Episcopal Church*, 281 S.W.2d 758 (Tex. Civ. App.—Amarillo 1955, writ ref’d n.r.e.); *First Methodist Episcopal Church of Dallas v. Thompson*, 22 S.W.2d 346 (Tex. Civ. App.—Texarkana 1929).

⁶⁶ See 21CR4337 (TEC’s motion stating that “The Diocesan Corporation holds title to substantial real and personal property of the Diocese”); 27CR5889 (Local TEC’s motion stating the same); see also 28CR5955 (1982 Constitution) & 28CR5981 (2006 Constitution) (“The title to all real estate acquired for the use of the Church in this Diocese ... shall be held subject to control of the Church in the Episcopal Diocese of Fort Worth acting by and through a corporation known as ‘Corporation of the Episcopal Diocese of Fort Worth.’”).

⁶⁷ See Tex. R. Civ. P. 166a(c); *D.R. Horton-Texas, Ltd. v. Markel Int’l. Ins. Co., Ltd.*, 300 S.W.3d 740, 743 (Tex. 2009).

⁶⁸ See Tab C to the Defendants’ opening brief; 28CR5981.

Diocese's Canons delegate appointment of the Corporation's Trustees to a majority vote at the Diocese's convention.⁶⁹ The Diocese's Constitution says only the local Bishop or Standing Committee can call a convention.⁷⁰ And Canon 18.4 unequivocally states that any trust in favor of TEC is "expressly denied."⁷¹ So the local church charters could not be any clearer: TEC and its minority group have no claim to property in the Diocese.

One Response brief claims Canon 18.4 is invalid because it is not a "written revocation" or a "comparable writing" signed by every delegate to the Diocese's convention.⁷² But Canon 18.4 is obviously not oral,⁷³ and the Property Code requires that a revocation be in "writing" but not that it be in a "comparable" form.⁷⁴ The individual delegates never owned any of this property, so their individual signatures could neither create a trust nor revoke it. Only the Diocese's act could do either, and it adopted Canon 18.4 more than 20 years ago.

The argument that revocation exceeds the Diocese's "reserved

⁶⁹ See 28CR6002.

⁷⁰ See 28CR5972.

⁷¹ See 28CR6122 (Canon 18.4).

⁷² See Local TEC Br. 45-46.

⁷³ See Defs.' Br. 40 (citing 28CR6122, 28CR6160).

⁷⁴ See TEX. PROP. CODE § 112.005(c) ("If the trust was created by a written instrument, a revocation, modification, or amendment of the trust must be in writing.").

powers” is merely a recap of Plaintiffs’ assertion that an unwritten rule bars dioceses from amending their charters however they wish. The Diocese’s Constitution says that “Canons not inconsistent with this Constitution, or the Constitution and Canons of the General Convention, may be adopted,” but it goes on to say that such canons can also be “altered, **amended**, or **repealed** at any Annual Convention by a majority vote of the Convention....”⁷⁵ Since there is no rule requiring that TEC approve amendments by existing dioceses (the Response briefs certainly cite none), TEC never “reserved” any veto power over such changes.

The outcome of church property disputes in other cases may differ, because both state laws and diocesan rules sometimes differ. As TEC concedes in a footnote,⁷⁶ title to property is sometimes held by parishes, sometimes by dioceses, and in this case by a nonprofit Corporation. Anyone reading through the out-of-state cases listed in Tab B will encounter a host of different diocesan rules. This is precisely what one would expect of a church governed from the diocese level.

⁷⁵ See 28CR5986.

⁷⁶ See TEC Br. 38 n.14.

C. The State Statutes

As detailed in the Defendants' opening brief, the trial court's order violated several Texas statutes:

- the Texas Non-Profit Corporation Act's requirements that Trustees be elected according to the Corporation's articles and by-laws;⁷⁷
- the Texas Uniform Unincorporated Nonprofit Association Act's requirements that the Diocese's *ex officio* representative on the Board be determined according to its own rules;⁷⁸ and
- the Texas Trust Code's requirements that: (1) a beneficiary cannot impose a trust on property it doesn't own, (2) a realty trust must comply with the statute of frauds, and (3) a trust can be revoked unless it is expressly irrevocable.⁷⁹

The Plaintiffs' general response is that no one can "use state statutes ... to avoid a hierarchical Church's rules."⁸⁰ But if that were true, state courts would have to enforce the rules of Sharia law.

In the United States, churches are not exempt from state or federal laws unless the First Amendment requires it.⁸¹ The Amendment does not exempt churches from laws against battery, kidnapping, or bigamy. It does

⁷⁷ See Defs.' Br. 21-27.

⁷⁸ See Defs.' Br. 27-34.

⁷⁹ See Defs.' Br. 34-42.

⁸⁰ TEC Br. 39.

⁸¹ See *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S. Ct. 694, 709 (2012).

not exempt them from IRS rules on charitable giving and tax exemption. And it does not exempt them from the statute of frauds, the law of wills and trusts, and other applicable state laws — indeed that is the precise holding of *Wolf* and the heart of Neutral Principles.

The Plaintiffs declare that “46 separate Texas statutory provisions” are simply too much for this Court to review.⁸² This kind of exaggeration is the Plaintiffs’ forte. Half of this count consists of parallel citations to the Business Organizations Code that were included solely for the Court’s convenience.⁸³ Yet the most stunning part of this argument is its gist: that the judgment below should be affirmed because it violates too many statutes rather than too few.

Plaintiffs insist the “most relevant” Texas statute is one stating that a nonprofit corporation “may acquire, own, [and] hold” property for a general church,⁸⁴ and another stating that a nonprofit’s directors “may be ... elected and controlled” by a national association.⁸⁵ In both briefs, Plaintiffs

⁸² See TEC Br. 41; Local TEC Br. 7, 42.

⁸³ See Defs.’ Br. 7.

⁸⁴ See Local TEC Br. 47; see also *id.* at 25-26; TEC Br. 39-41 (both citing TEX. BUS. ORGS. CODE § 2.102, even though the predecessor statute would be applicable here, TEX. REV. CIV. STAT. art. 1396-2.02(A)(16). See Defs.’ Br. 7).

⁸⁵ See Local TEC Br. 25-26; TEC Br. 41 (both citing TEX. REV. STAT. art. 1396-2.14(B) (current version at TEX. BUS. ORGS. CODE § 22.207(a)).

use italics or bold type to emphasize almost every word of these statutes except the first one: “may.”⁸⁶ Any first-year law student would recognize that these statutes are permissive, not mandatory. The Diocese agrees that a nonprofit corporation “may” hold property in trust for a national church, but the Diocese’s charters expressly deny that the Corporation does so. That the Plaintiffs’ “most pertinent” statute does not even apply says a lot about the strength of their statutory claim.

Several of the Plaintiffs’ state law arguments apparently presume that no one will actually read the citations allegedly supporting them. Their charitable-trust law argument (that gifts are held in trust for the charity’s purpose)⁸⁷ quotes from a case in which a charity’s trustees tried to transfer trust property to themselves.⁸⁸ Their irrevocable-trust argument (that irrevocability can be implied in the Dennis Canon)⁸⁹ quotes from a case in which a quitclaim deed conveyed property to a trust “forever.”⁹⁰ Their

⁸⁶ See Local TEC Br. 25; TEC Br. 40.

⁸⁷ See Local TEC Br. 43.

⁸⁸ See *Blocker v. State*, 718 S.W.2d 409, 415 (Tex. App.—Houston [1st Dist.] 1986, writ ref’d n.r.e.) (stating that the defendants “attempted to distribute the corporate assets indirectly through the Hammond estate to three of the four directors, for their personal gain.”).

⁸⁹ See Local TEC Br. 45.

⁹⁰ See *Austin Lake Est. Rec. Club, Inc. v. Gilliam*, 493 S.W.2d 343, 347 (Tex. Civ. App.—Austin 1973, writ ref’d n.r.e.).

estoppel argument (that Defendants invoked Deference in a previous suit)⁹¹ quotes from a case in which the Diocese and Bishop Iker repeatedly stated that “**The Diocese** is an hierarchical church” and that ecclesiastical authority resided at the **diocese** level,⁹² which is precisely the same assertion here. Finally, the Court must disregard any arguments about a “resulting trust” as this ground was not mentioned in any summary judgment motion.⁹³

TEC is not being subjected to any retroactive application of state law. Every rule of Texas law relied on by Defendants was passed long before TEC adopted the Dennis Canon. The very reason TEC took that flawed step was to avoid as many state laws as it could. Had TEC at that time consulted with any one of the lawyers it has hired to prosecute this suit, it would have been told that its purported trust was ineffective under Texas law. Ignorance of Texas law is no defense.⁹⁴

For 80 years, the Texas Legislature has said trusts are revocable unless they expressly state otherwise. Why? It is a policy judgment that people will usually agree to trusts with precisely that understanding. There is

⁹¹ See Local TEC Br. 11, 16.

⁹² See 25CR5515-16, 25CR5521, 25CR5534, 25CR5538, 25CR5541-42.

⁹³ See TEX. R. CIV. P. 166a(c); *D.R. Horton-Texas, Ltd. v. Markel Int’l. Ins. Co., Ltd.*, 300 S.W.3d 740, 743 (Tex. 2009).

⁹⁴ *Osterberg v. Peca*, 12 S.W.3d 31, 38 (Tex. 2000).

nothing unconstitutional about this long-standing law. The Plaintiffs may disagree with it, but their complaint must be addressed to the Legislature.

D. The TEC Charters

As pointed out in the opening brief, TEC had no rule asserting an interest in local church property until adoption of the Dennis Canon in 1979, and that rule is unenforceable under neutral principles of Texas law.

A few courts elsewhere have interpreted *Wolf* to impose a constitutional rule requiring states to enforce the Dennis Canon.⁹⁵ In doing so, they have taken out of context the sentence from *Wolf* underlined below:

Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. 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. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, ***provided it is embodied in some legally cognizable form.***⁹⁶

Had the Supreme Court intended the “express trust” sentence to impose a

⁹⁵ See, e.g., *Episcopal Church v. Gauss*, 28 A.3d 302, 325 (Conn. 2011) (“Jones thus not only gave general churches explicit permission to create an express trust in favor of the local church but stated that civil courts would be *bound* by such a provision, as long as the provision was enacted *before* the dispute occurred.”).

⁹⁶ *Jones v. Wolf*, 443 U.S. 595, 606 (1979).

constitutional rule on all 50 states, it would not have added the “provided” clause requiring that such trusts take a “legally cognizable form.” In some states, the Dennis Canon is legally cognizable; California and New York, for example, have enacted special statutes making the Dennis Canon enforceable under state law.⁹⁷ But Texas has not.

In the absence of rules granting TEC control of local property, Plaintiffs attempt to invoke negative inferences in places where TEC’s rules are silent. For example, TEC says its rules:

- have “never contained any provision reserving the rights of dioceses as against the General Convention such as that found in the Tenth Amendment to the U.S. Constitution”⁹⁸ — but they have never contained a Supremacy Clause either; and
- have never “provided for the unilateral withdrawal of a diocese from the Church”⁹⁹ — but they have never prohibited it either.

Had TEC’s charters historically granted it control of local church property, there would have been no need to pass the Dennis Canon. As that lone rule is unenforceable under Texas law, nothing is left in TEC’s charters to support its property claims.

⁹⁷ See CAL. CORP. CODE § 9142 (“Assets of a religious corporation are or shall be deemed to be impressed with a trust if the governing instruments of a general church of which the corporation is a member, so expressly provide.”); N.Y. RELIG. CORP. art. 3, § 42-a (stating that properties of Episcopal churches are “subject always to the trust in which all real and personal property is held for the Protestant Episcopal Church and the Diocese thereof.”).

⁹⁸ See TEC Br. 2.

⁹⁹ *Id.*

E. The Minimal Burden

The Plaintiffs add an additional “factor” to their Neutral Principles analysis: that state laws are unenforceable if they impose anything but a “minimal burden.”¹⁰⁰ But the *Wolf* court’s reference to a “minimal burden” was a statement of fact about how easy it is to comply with state property laws, not a constitutional limit on those state laws.¹⁰¹

Even if minimal burden were a constitutional requirement, no one can possibly argue that the burden of adding the word “irrevocable” to the Dennis Canon would have been anything but minimal. Similarly, drafting and recording proper title deeds is not that hard — the Fort Worth Diocese has already done it. This burden is minimal **if the parties agree**; the only reason it would be difficult for TEC is that many dioceses would not agree.

The Plaintiffs’ briefs say that once the parties have “stated their intentions,” a disgruntled party cannot upset that by “picking and choosing secular doctrines” later.¹⁰² But if the parties agree to a trust that says nothing about revocability, then Texas law **deems** their stated intention to be

¹⁰⁰ See Local TEC Br. 24; TEC Br. 42-43.

¹⁰¹ See *Wolf*, 443 U.S. at 606 (“Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. 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.... The burden involved in taking such steps will be minimal.”).

¹⁰² Local TEC Br. 22.

that the trust can be revoked. By insisting that the Dennis Canon is irrevocable, it is the Plaintiffs who are picking and choosing secular doctrines (i.e., the law of states with different rules) in order to avoid what Texas law says the parties intended.

Plaintiffs complain that *Wolf* does not require “scouring of the technicalities of drafting private trusts in all fifty states.”¹⁰³ There is another term for the “technicalities” of state statutes: the law. If the Supreme Court intended to exempt churches from state law, it would not have approved the Neutral Principles approach that specifically enforces them.¹⁰⁴

III. EVEN UNDER DEFERENCE, THE DIOCESE PREVAILS

Alternatively, in the unlikely event this Court adopts the Deference approach, such deference should be to the Diocese’s bishop, not to TEC’s national office.¹⁰⁵

The Plaintiffs’ briefs consistently use half-quotations and dropped

¹⁰³ See *id.* at 24.

¹⁰⁴ See, e.g., *Wolf*, 443 U.S. at 603 (describing the Neutral Principles approach as deciding property suits 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.”) (emphasis added).

¹⁰⁵ See, e.g., *Masterson v. Diocese of Nw. Tex.*, 335 S.W.3d 880, 890 (Tex. App. — Austin 2011, pet. granted) (“Because the trial court did not err in deferring to decisions **of the Bishop or the Diocese** in light of the hierarchical nature of the Episcopal Church, we overrule the Former Parish Leaders’ second issue.”) (emphasis added).

phrases to create the appearance of a national hierarchy — even though TEC’s very name shows the priority of local bishops. For example:

Plaintiffs’ Briefs Say	Reality
Diocese’s choice for bishop must be approved “by the larger Church” ¹⁰⁶	approval is required by majority of bishops and dioceses, not TEC or Presiding Bishop ¹⁰⁷
property at issue was “acquired by The Episcopal Church across 24 Texas counties over 144 years” ¹⁰⁸	property was acquired locally; “ The Episcopal Church ” never paid for, or held title to, any of it ¹⁰⁹
Diocese holds property “subject to control of the Church” ¹¹⁰	“... subject to control of the Church in the Episcopal Diocese of Fort Worth acting ... through the Corporation ” ¹¹¹
local endowment fund is managed by “nine members of the Church” ¹¹²	fund is managed by “nine members of the Church in this Diocese ” ¹¹³

Aside from such exaggerations, the Plaintiffs state two grounds for claiming priority as the appropriate hierarchy. First, they find it important

¹⁰⁶ See TEC Br. 2, 8, 26-27; Local TEC Br. 2.

¹⁰⁷ See 22CR4608 (TEC Constitution Art. II, § 2) (“No one shall be ordained and consecrated Bishop until the attainment of thirty years of age; nor without the consent of a majority of the Standing Committees of all the Dioceses, and the consent of a majority of the Bishops of this Church exercising jurisdiction.”).

¹⁰⁸ Local TEC Br. 4.

¹⁰⁹ See 28CR5964-65 (¶¶16, 21); 29CR6281 (¶4); 31CR6785-6803.

¹¹⁰ See TEC Br. 3.

¹¹¹ See 23CR5025 (“The title to all real estate acquired for the use of the Church in this Diocese, including the real property of all parishes and missions, as well as Diocesan Institutions, shall be held subject to control of the Church in the Episcopal Diocese of Fort Worth acting by and through a corporation known as ‘Corporation of the Episcopal Diocese of Fort Worth.’”).

¹¹² See TEC Br. 8.

¹¹³ See 28CR5983.

that TEC has a “three-tier structure.”¹¹⁴ But Baptist churches also have a three-tier structure;¹¹⁵ that does not make them “hierarchical” or indicate that the national convention controls all church property. TEC’s structure is a hybrid: the General Convention has authority to require audits,¹¹⁶ or insurance,¹¹⁷ or amend the Book of Common Prayer,¹¹⁸ but it has no authority to appoint the Diocese’s Bishop or the Corporation’s Trustees — which is the only issue here.

Second, they say “every court in the nation ... has concluded [that] The Episcopal Church is a hierarchical church.”¹¹⁹ But as shown in Tab B, in virtually all of those cases it was a bishop or diocese that prevailed; TEC has traditionally never been a party. So the Plaintiffs are plain wrong when they say “the Church and other local Episcopalians” have prevailed in these cases;¹²⁰ local parishioners have usually lost, and “the Church” (if that means TEC) has not claimed an interest. It is well-settled that in property

¹¹⁴ See Local TEC Br. 15; TEC Br. 1.

¹¹⁵ See, e.g., *Central Coast Baptist Ass’n v. First Baptist Church of Las Lomas*, 65 Cal. Rptr. 3d 100, 122-23 (Cal. Ct. App. 2007); see also Southern Baptist Convention website, <http://www.sbc.net/aboutus/clstateconv.asp> (last visited March 21, 2012).

¹¹⁶ See 24CR5166.

¹¹⁷ See *id.*

¹¹⁸ See 24CR5135.

¹¹⁹ TEC Br. 25, 30; Local TEC Br. 16, 31.

¹²⁰ See TEC Br. 13.

cases every party claiming an interest must be joined.¹²¹

CONCLUSION

Not all of TEC's allies "have worshipped in exile for four Christmases now."¹²² To the contrary, most of them have worshipped in comfortable churches on downtown properties while their lawyers demanded turnover of 50 other churches in which they cannot claim a single ally.¹²³

The name "Deference" sounds like a good thing for non-activist judges to do. But non-activist judges actually defer to the Legislature and the statutes it enacts. The Plaintiffs ask this Court to disregard those statutes based on artificial judicial templates about church structures. It may be more trouble to enforce the details of statutes rather than govern by judicial decree, but the former is the proper role for the courts.

There is no such thing as "Episcopal property";¹²⁴ property belongs to its record owner. TEC claims its "Identity" approach requires a different rule in order to ensure "a safe and reasonable margin for religious

¹²¹ TEC cannot hide behind the excuse that it chose not to participate because "loyal" bishops would protect its interests, *see* Local TEC Br. 32 n.85, because in none of these cases did the dioceses or bishops purport to sue as agents for TEC.

¹²² *See* Local TEC Br. 5.

¹²³ *See* 19CR3903-04 (listing representative plaintiffs for 12 churches and 49 others without any). *See also* 21CR4224 (¶ 106) & (Exhibit A) (listing 80 church-owned properties sought).

¹²⁴ *See* Local TEC Br. xvii. ("This suit seeks to recover that property – some of which has been Episcopal property since 1838 – for the use of Episcopalians in the Diocese.").

freedom.”¹²⁵ But this country’s Founders believed a safe and reasonable margin for religious freedom was provided by **prohibiting** established churches that enjoy special rules and preferences. Under Neutral Principles of Texas law, the Defendants are entitled to summary judgment against the Plaintiffs’ claims.

¹²⁵ See Local TEC Br. 36.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appellants' Brief was served upon counsel for all parties, as indicated on the attached service list, by electronic transmission, on this the 23rd day of March, 2012.

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TAB A

State	Neutral Principles?	Case Citation	Controlling Language
Alabama	Yes	<i>African Meth. Epis. Zion Church v. Zion Hill Meth. Church, Inc.</i> , 534 So.2d 224, 225 (Ala. 1988)	“Alabama courts must use ‘neutral principles of law’ in adjudicating church property cases”
Alaska	Yes	<i>St. Paul Church, Inc. v. Bd. of Trs.</i> , 145 P.3d 541, 553 (Alaska 2006)	“Considering our precedents, the superior court’s analysis, the weight of authority favoring the neutral-principles approach, and the compelling logic of the opinion of the majority of the United States Supreme Court in <i>Jones</i> , we adopt the neutral-principles approach when resolving property disputes”
Arizona	Yes	<i>Rashedi v. General Bd.</i> , 54 P.3d 349, 353 (Ariz. Ct. App. 2002)	“[W]hen a church-related dispute can be resolved by applying neutral principles of law without inquiry into religious doctrine and without resolving a religious controversy, the civil courts may adjudicate the dispute.”
Arkansas	Yes	<i>Ark. Presbytery v. Hudson</i> , 40 S.W.3d 301, 306 (Ark. 2001)	“We now expressly adopt the neutral-principles approach outlined by the United States Supreme Court in <i>Jones</i> . . . as the appropriate means of resolving church property disputes.”
California	Yes	<i>In re Episcopal Church Cases</i> , 198 P.3d 66, 79 (Cal. 2009)	“[T]o the extent the court can resolve a property dispute without reference to church doctrine, it should apply neutral principles of law. ”
Colorado	Yes	<i>Bishop and Diocese of Colorado v. Mote</i> , 716 P.2d 85, 96 (Colo. 1986)	“We conclude that the neutral principles approach is preferable , and we adopt that analytical method as the law to be applied by Colorado courts”
Connecticut	Yes	<i>Episcopal Church in Diocese v. Gauss</i> , 28 A.3d 302, 316 (Conn. 2011)	“[W]e conclude that the neutral principles of law approach is preferable because it provides the parties with a more level playing field, and the outcome in any given case is not preordained in favor of the general church, as happens in practice under the hierarchical approach.”
Delaware	Yes	<i>East Lake Meth. Epis. Church, Inc. v. Trs.</i> , 731 A.2d 798, 810 (Del. 1999)	“We agree with the analysis conducted by the Court of Chancery under its neutral principles of law approach. ”
District of Columbia	Yes	<i>Meshel v. Ohev Sholom Talmud Torah</i> , 869 A.2d 343, 354 (D.C. 2005)	“[C]ivil courts may resolve disputes involving religious organizations as long as the courts employ ‘neutral principles of law’”
Florida	Yes	<i>Word of Life Ministry, Inc. v. Miller</i> , 778 So.2d 360, 362 (Fla. Dist. Ct. App. 2001)	“Since the present case implicates neutral legal principles only , precedent supports judicial resolution of the parties’ dispute over corporate assets, the corporation’s religious purposes notwithstanding.”

TAB A

State	Neutral Principles?	Case Citation	Controlling Language
Georgia	Yes	<i>Rector, Wardens, Vestrymen v. Bishop</i> , 718 S.E.2d 237, 241 (Ga. 2011)	“To avoid First Amendment concerns, Georgia courts apply ‘neutral principles of law’”
Hawaii		<i>no cases</i>	
Idaho		<i>no cases</i>	
Illinois	Yes	<i>Marsaw v. Richards</i> , 857 N.E.2d 794, 800-01 (Ill. App. Ct. 2006)	“Following the analysis used in <i>Jones</i> , Illinois courts have adopted the ‘neutral principles of law’ approach”
Indiana	Yes	<i>Presbytery of Ohio Valley, Inc. v. OPC, Inc.</i> , 940 N.E.2d 1188, 1194 (Ind. Ct. App. 2010)	“We ... decline the Appellants’ invitation to apply the polity approach. Instead, we will proceed, as did the trial court, with the neutral principles of law approach.”
Iowa	Yes	<i>Freedom Church v. Central Dist. Conf.</i> , 734 N.W.2d 487 (Table), at *4 (Iowa Ct. App. 2007)	“We find the neutral principles approach is better-suited to the resolution of this church property dispute. We accordingly apply neutral principles of contract law to answer the central question presented by this dispute”
Kansas	Yes	<i>Gospel Tabernacle Body v. Peace Publishers & Co.</i> , 506 P.2d 1135, 1137 (Kan. 1973)	“The law recognizes the distinction between the church as a religious group devoted to worship ... and the church as a business corporation owning real estate and making contracts.... [I]n the latter the activities of the church are subject to the same laws as those in secular affairs. .”
Kentucky	?	<i>Bjorkman v. Protestant Epis. Church</i> , 759 S.W.2d 583, 585-86 (Ky. 1988); <i>but cf. Cumberland Presbytery v. Branstetter</i> , 824 S.W.2d 417, 419-22 (Ky. 1992)	“While the neutral-principles doctrine may not be the panacea foreseen by the majority in <i>Jones v. Wolf</i> , in cases such as this, the application of neutral-principles appears to be preferable to compulsory deference since in every case, regardless of the facts, compulsory deference would result in the triumph of the hierarchical organization.”
Louisiana	Yes	<i>Fluker Community Church v. Hitchens</i> , 419 So.2d 445, 447 (La. 1982)	“[W]e think the safeguards against laws establishing religion and prohibiting the free exercise thereof ... necessitate our adoption of the ‘neutral principles’ approach.”
Maine	Yes	<i>Attorney General v. First United Bapt. Church</i> , 601 A.2d 96, 99 (Me. 1992)	“We have held that a suit for an accounting of church funds is a property dispute capable of resolution by application of neutral principles of law.”
Maryland	Yes	<i>From the Heart Church Ministries, Inc. v. African Meth. Epis. Zion Church</i> , 803 A.2d 548, 565 (Md. 2002)	“This issue must be resolved . . . by applying ‘neutral principles of law, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded.”

TAB A

State	Neutral Principles?	Case Citation	Controlling Language
Massachusetts	Yes	<i>Maffei v. Roman Catholic Archbishop</i> , 867 N.E.2d 300, 310 (Mass. 2007)	"We have jurisdiction over church property disputes if and to the extent, and only to the extent, that they are capable of resolution under 'neutral principles of law'"
Michigan	Deference, w/ exceptions	<i>Lamont Community Church v. Lamont Christian Reformed Church</i> , 777 N.W.2d 15, 28 (Mich. Ct. App. 2009)	"Michigan law provides that courts should generally use the hierarchical method. . . . However, the neutral principles of law method may be appropriate in situations such as those where 'it appears from the church constitution, canons or rules, or from some other source, that an express trust exists in favor of one or the other of the contending parties'"
Minnesota	Yes	<i>Piletich v. Deretich</i> , 328 N.W.2d 696, 701 (Minn. 1982)	"Finding present Minnesota law to be harmonious with the neutral principles of law approach, we now formally adopt this approach to resolution of church property and membership disputes."
Mississippi	Yes	<i>Schmidt v. Catholic Diocese</i> , 18 So.3d 814, 824 (Miss. 2009)	"Mississippi has adopted the 'neutral principles of law' approach for resolving church property disputes."
Missouri	Yes	<i>Presbytery v. Jaeggi</i> , 682 S.W.2d 465, 467 (Mo. 1984); <i>Church of God in Christ, Inc. v. Graham</i> , 54 F.3d 522, 526 (8th Cir. 1995).	"This Court now adopts the 'neutral principles of law' approach as the exclusive method for resolution of church property disputes."
Montana	Yes	<i>Hofer v. Montana Dept. of Pub. Health</i> , 124 P.3d 1098, 1103 (Mont. 2005)	"We have held that a court may resolve church property disputes by applying neutral, secular principles of property, trust, and corporate law when the instruments upon which those principles operate are at hand."
Nebraska	Yes	<i>Medlock v. Medlock</i> , 642 N.W.2d 113, 128-29 (Neb. 2002)	"So long as a court is not involved in resolving underlying controversies over religious doctrine, 'there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.'"
Nevada		<i>no cases</i>	
New Hampshire	Yes	<i>Berthiaume v. McCormack</i> , 891 A.2d 539, 547 (N.H. 2006)	"Although we adopted a neutral principles test . . . we did not define what kinds of documents we would consider in applying it."
New Jersey	Deference but changing	<i>Scotts African Union Meth. Prot. Church v. Conf. of African Union First Colored Meth. Prot. Church</i> , 98 F.3d 78, 94 (3d Cir. 1996)	"The New Jersey cases we have examined show a decided progression of New Jersey court decisions toward adoption of a neutral-principles approach in resolving intrachurch property disputes"

TAB A

State	Neutral Principles?	Case Citation	Controlling Language
New Mexico		<i>no cases</i>	
New York	Yes	<i>Blaudziunas v. Egan</i> , 2011 WL 6153103, at *2 (N.Y. 2011)	“[R]eligious bodies are to be left free to decide church matters for themselves, uninhibited by State interference,’ save for matters that can be resolved through the application of “neutral principles of law.”
North Carolina	Yes	<i>Harris v. Matthews</i> , 643 S.E.2d 566, 570 (N.C. 2007)	“[C]ourt review should be limited to questions that can be ‘resolved on the basis of [neutral] principles of law’”
North Dakota		<i>no cases</i>	
Ohio	Yes	<i>Hudson Presbyterian Church v. Eastminster Presbytery</i> , 2009 WL 249791, at *2 (Ohio Ct. App. 2009)	“A court may exercise its jurisdiction over a church dispute if it is able to resolve the dispute by employing neutral principles of law.”
Oklahoma		<i>no cases</i>	
Oregon		<i>no cases</i>	
Pennsylvania	Yes	<i>In re Church of St. James the Less</i> , 888 A.2d 795, 805-06 (Pa. 2005)	“Following the Supreme Court’s decision in <i>Jones</i> , numerous states, including this Commonwealth, adopted the neutral principles of law analysis for resolving church property disputes.”
Rhode Island		<i>no cases</i>	
South Carolina	Yes	<i>All Saints Parish Waccamaw v. Protestant Epis. Church</i> , 685 S.E.2d 163, 171 (S.C. 2009)	“We hereby explicitly reaffirm that, when resolving church dispute cases, South Carolina courts are to apply the neutral principles of law approach as approved by the Supreme Court of the United States in <i>Jones v. Wolf</i> .”
South Dakota	Yes	<i>Foss v. Dykstra</i> , 342 N.W.2d 220, 222 (S.D. 1983)	“Our decision adopted the general rule that when a hierarchical church is involved in a property dispute that the neutral principles of law approach applies....”
Tennessee	Yes	<i>Avondale Church Of Christ v. Merrill Lynch</i> , 2008 WL 4853085, at *9 (Tenn. Ct. App. 2008)	“[W]hen our courts have taken jurisdiction over an action arising from an ecclesiastical dispute, they have been careful to decide only the issues dealing with the civil or property right involved using neutral principles of law.”

TAB A

State	Neutral Principles?	Case Citation	Controlling Language
Utah	Yes	<i>Jefferies v. Stubbins</i> , 970 P.2d 1234, 1250-51 (Utah 1998)	"We conclude that courts must treat property disputes between religious factions 'in the same manner they treat disputes among other voluntary associations.'"
Vermont		<i>no cases</i>	
Virginia	Yes	<i>Reid v. Gholson</i> , 327 S.E.2d 107, 112 (Va. 1985)	"[T]here are neutral principles of law , developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded."
Washington	Yes	<i>Kidisti Sekkassue Orthodox Tewehado Eritrean Church v. Medin</i> , 118 Wash. App. 1022, 2003 WL 22000635, at *9 (Wash. Ct. App. 2003)	"Washington law allows courts to regulate secular matters in church disputes by civil or criminal law, provided that neutral principles of law are applied. "
West Virginia	No	<i>Original Glorious Church of God v. Myers</i> , 367 S.E.2d 30, 34 (W.Va. 1988)	"[U]nder the judicial deference approach, which is the analysis currently used by this Court, there was ample evidence to support the trial court's findings."
Wisconsin	Yes	<i>Wisconsin Conf. Bd. of Trs. v. Culver</i> , 627 N.W.2d 469, 475-76 (Wis. 2001)	"We address church property disputes under the neutral principles of law approach outlined by the Supreme Court in <i>Jones v. Wolf</i> ."
Wyoming		<i>no cases</i>	

TAB B

Case	Year	Diocese or Bishop a Party?	TEC a Party?
<i>Diocese of Sw. Va. of Protestant Epis. Church v. Buhrman</i> , 1977 WL 191134 (Va.Cir.Ct. 1977)	1977	Yes	No
<i>Tea v. Protestant Epis. Church in the Diocese of Nev.</i> , 610 P.2d 182 (Nev.)	1980	Yes	No
<i>Protestant Epis. Church in the Diocese of N.J. v. Graves</i> , 417 A.2d 19 (N.J.)	1980	Yes	No
<i>Protestant Epis. Church v. Barker</i> , 171 Cal.Rptr. 541 (Cal. Ct. App.)	1981	Yes	Yes
<i>Bennison v. Sharp</i> , 329 N.W.2d 466 (Mich. Ct. App.)	1982	Yes	No
<i>Bishop and Diocese of Colorado v. Mote</i> , 716 P.2d 85 (Colo.)	1986	Yes	No
<i>Bjorkman v. Protestant Episcopal Church in U.S. of America of Diocese of Lexington</i> , 759 S.W.2d 583 (Ky.)	1988	Yes	No
<i>Rector, et al. of Trinity-St. Michael's Parish, Inc. v. Epis. Church in the Diocese of Conn.</i> , 620 A.2d 1280 (Conn.)	1993	Yes	No
<i>Bd. of Managers of Diocesan Missionary v. Church of Holy Comforter</i> , 628 N.Y.S.2d 471 (N.Y. Sup. Ct.)	1993	Yes	No
<i>Parish of the Advent v. Protestant Epis. Diocese of Mass.</i> , 688 N.E.2d 923 (Mass.)	1997	Yes	No
<i>Trustees of Diocese of Albany v. Trinity Epis. Church of Gloversville</i> , 684 N.Y.S.2d 76 (N.Y. App. Div.)	1999	Yes	No
<i>Dixon v. Edwards</i> , 290 F.3d 699 (4th Cir.)	2002	Yes	No
<i>Epis. Diocese of Mass. v. DeVine</i> , 797 N.E.2d 916 (Mass. App. Ct.)	2003	Yes	No
<i>Daniel v. Wray</i> , 580 S.E.2d 711 (N.C. Ct. App.)	2003	Yes	No
<i>In re Church of St. James the Less</i> , 888 A.2d 795 (Pa.)	2005	Yes	No
<i>New v. Kroeger</i> , 84 Cal. Rptr. 3d 464 (Cal. Ct. App.)	2008	Yes	No
<i>Epis. Diocese of Rochester v. Harnish</i> , 899 N.E.2d 920 (N.Y.)	2008	Yes	No
<i>In re Epis. Church Cases</i> , 198 P.3d 66 (Cal.)	2009	Yes	Intervenor
<i>All Saints Parish Waccamaw v. Protestant Epis. Church in Diocese of S.C.</i> , 685 S.E.2d 163 (S.C.)	2009	Yes	Yes
<i>Schofield v. Superior Court</i> , 118 Cal.Rptr.3d 160 (Cal. Ct. App.)	2010	Yes	Yes
<i>Rector, et al. of Christ Church in Savannah v. Bishop of Epis. Diocese of Ga., Inc.</i> , 718 S.E.2d 237 (Ga.)	2011	Yes	Intervenor
<i>Episcopal Church in Diocese of Conn. v. Gauss</i> , 28 A.3d 288 (Conn.)	2011	Yes	Yes