

**Record No. 120919**

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**In the Supreme Court of Virginia**

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**The Falls Church (also known as The Church at the Falls –  
The Falls Church),**

**Defendant-Appellant,**

**v.**

**The Protestant Episcopal Church in the United States of America  
and**

**The Protestant Episcopal Church in the Diocese of Virginia,**

**Plaintiffs-Appellees.**

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***BRIEF OF AMICI CURIAE IN SUPPORT OF  
APPELLEES' PETITION FOR REHEARING***

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## I. Introduction

The Episcopal Diocese of Southern Virginia, the Episcopal Diocese of Southwestern Virginia, the General Council on Finance and Administration of The United Methodist Church, the Rt. Rev. Yung Chin Cho, Bishop of the Virginia Annual Conference of The United Methodist Church, Steven D. Brown, Chancellor of the Virginia Annual Conference of The United Methodist Church, and the Abingdon Presbytery of the Presbyterian Church (U.S.A.), respectfully submit this brief, as *amici curiae*,<sup>1</sup> in support of the Petition for Rehearing filed today by the appellees, The Episcopal Church (Denomination) and the Protestant Episcopal Church in the Diocese of Virginia (Diocese). The *amici* urge the Court to grant the petition for rehearing and accept the Appellees' assignment of cross-error, thereby taking productive advantage of the opportunity to revisit the notion that trusts in favor of "hierarchical" denominations "are invalid under Virginia law." *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 507, 201 S.E.2d 752, 758 (1974).

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<sup>1</sup> Counsel for all parties have consented to the filing of this brief by the *amici*. Most of the *amici* (or their predecessors, in the case of the Bishop and Chancellor of the Virginia Annual Conference of The United Methodist Church) also submitted briefs as *amici curiae* in the earlier appeal in this lawsuit, resolved in *The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church*, 694 S.E.2d 555 (Va. 2010). A statement of the *amici's* interest in this appeal appears as an addendum to this brief.

## II. ARGUMENT

The *amici* understand that the Court could vindicate the Denomination's interest in Falls Church's property without reaching the issue raised by the assignment of cross-error. Indeed, the *amici* fully expect the Court will affirm the Appellees' rights even if its review is confined to the issues framed by the Appellant alone. Based on the analytical framework approved in *Norfolk Presbytery and Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181 (1980), there is no disputing the Circuit Court's conclusion that the Denomination and the Diocese acquired "contractual and proprietary interests" in the Falls Church congregation's property and that, in such circumstances, the congregation could not unilaterally expunge the Denomination's interest by the simple expedient of "withdrawing" from the Denomination.

Respectfully, however, if that is all the Court does – affirm Judge Belows' application of the "proprietary interest" rubric approved in *Norfolk Presbytery and Green* – it will have bypassed an opportunity to dispense with a discriminatory and unconstitutional misconception of Virginia law that serves only to distort the law, and thereby promotes divisive and draining disputes that could be resolved far more efficiently by embracing (not repudiating) commonplace trust principles that are the hallmark of the "neutral principles approach" approved by the U.S. Supreme Court.

Indeed, in 1979 – five years after *Norfolk Presbytery* was decided – the U.S. Supreme Court held that the “neutral principles” approach required state courts to give effect to express trust provisions contained in a parent church’s constitution:

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.

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

Furthermore, bedrock principles of religious autonomy serve as the foundation for the command that “civil courts are bound to give effect” to trust provisions contained the constitution of a hierarchical denomination to which a local church has freely aligned. *Id.* Thus, in 1872, the U.S. Supreme Court famously wrote:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, . . . and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.

*Watson v. Jones*, 13 Wall. (80 U.S.) 679, 729 (1872)729. Later, in *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 116 (1952), the principle articulated in *Watson* was converted into a constitutional mandate; henceforth, the free exercise clause was to be understood as protecting the power of religious associations “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 116 (1952).

In short, the Supreme Court’s rulings in *Watson*, *Kedroff* and *Jones* clearly hold that the First Amendment requires civil courts to enforce trust provisions included in a religious association’s governing documents. This is mandatory, not optional. *Jones*, 443 U.S. at 606 (“courts will be bound to give effect to the result indicated by the parties”). Nor is there any room to pretend that secular courts may enforce the trusts of congregational churches while invalidating trusts in favor of hierarchical churches. Putting aside a host of other cases to similar effect, such discrimination against hierarchical denominations such as the *amici* is entirely incompatible with the Supreme Court’s emphatic admonition in *Jones v. Wolf* that religious associations “can ensure, if they so desire, *that the faction loyal to the hierarchical church will retain the church property*” simply by causing “the consti-

tution of the general church . . . to recite an express trust in favor of the denominational church.” *Jones*, 443 U.S. at 606 (emphasis added).

This lawsuit has been arduous and prolonged, diverting untold resources from the parties’ many important ministries. It would go a long way toward reducing the frequency of such disputes, and simplifying adjudication of those that nevertheless make their way to court, if this Court were to take advantage of this opportunity to re-examine and invalidate the insupportable prohibition against trusts in favor of denominational churches. Once released from that anachronism, Virginia court will be freed to apply “objective and well-established concepts of trust and property law,” *Jones*, 443 U.S. at 603, and actual or potential litigants will understand from the outset that the dispositive judicial inquiry will often be quite straightforward: Was the congregation aligned with a denomination whose constitution, before the dispute erupted, was “made to recite an express trust in favor of the denominational church?” *Id.* at 606. Using that well-understood and eminently fair framework, resolution of these otherwise highly charged, divisive and protracted disputes will typically focus squarely on discerning and “giv[ing] effect to the result indicated by the parties,” *id.*, as expressed in the explicit trust provisions of the religious association’s governing documents.



### III. CONCLUSION

For the foregoing reasons, the *amici* urge the Court to grant the petition for rehearing and the Appellees' assignment of cross-error.

Respectfully submitted,



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## CERTIFICATE

I hereby certify that on November 9, 2012:

An electronic version of the foregoing *Brief of Amici Curiae* in Support of Appellees' Petition for Rehearing, in Adobe Acrobat Portable Document Format (PDF) format, has been sent by electronic mail to [scvbriefs@courts.state.va.us](mailto:scvbriefs@courts.state.va.us); and

Copies of the foregoing Petition for Rehearing, in Adobe Acrobat PDF format, have been sent by electronic mail to the following:

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## ADDENDUM

### DETAILED STATEMENT OF INTEREST OF THE *AMICI*

The *Amici* are well-suited to emphasize the points outlined in this brief. They are all associated with “hierarchical” or “connectional” denominations, many of which have included in their controlling documents express trust provisions that are substantially the same as the trust provisions that are the focus of the Petition for Rehearing filed by Episcopal Church and the Protestant Episcopal Church in the Diocese of Virginia, and which the U.S. Supreme Court has held civil courts are bound to enforce to protect a hierarchical church’s interest in local church property.

#### **Episcopal Diocese of Southern Virginia and *Episcopal Diocese of Southwestern Virginia***

From the standpoint of church polity and legal principle, the Episcopal Diocese of Southern Virginia and the Episcopal Diocese of Southwestern Virginia have essentially the same interest in this litigation as those being advanced by the Appellee Protestant Episcopal Church in the Diocese of Virginia. Thus, rulings made in this case – at least insofar as they refine the rules of decision for resolving such disputes in Virginia – will certainly have an impact on how such suits are resolved when they arise in dioceses covered by these *amici*.

## ***Amici* Associated with The United Methodist Church**

Trust provisions of the type that the Circuit Court declined to enforce as trusts been used by Methodist churches since Methodism's founding by John Wesley. More than 250 years ago, Wesley caused trust clauses to be inserted in the deeds of all local church properties as a means of reinforcing the *doctrinally rooted* practice of having bishops, not congregations, control the appointment of pastors. John Leo 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). For Wesley, maintaining the bishops' appointment prerogative helped reinforce the crucial Methodist principles of "connectionalism" and "itineracy." *Id.* Yet, if the local church trustees had unfettered control of the church property, that control could extend to the pulpit as well, giving the local church the ability to exclude the bishop's pastoral appointments.

More specifically, the *amici* include the following Methodist entities:

- 1) **General Council on Finance and Administration of The United Methodist Church ("GCFA")**. The General Council on Finance and Administration of the United Methodist Church ("GCFA") is a national agency of The United Methodist Church. The United Methodist Church is one of the largest religious denominations in the United States with more than eight

million members, 43,000 clergy, and 35,000 local churches. It also has more than a million members outside the United States and performs mission work in over 165 countries. Under United Methodist Church polity, GCFA is the national agency charged with protecting the legal interests of the denomination. In that role, GCFA is called upon to assist in protecting the denomination's property interests in civil courts. In particular, GCFA seeks to enforce the provisions of United Methodist ecclesial law requiring that all local church property be held in trust for the denomination. Thus, GCFA has a strong interest in this case, where the right of a denomination to enforce such property interests is at issue.

2) **The Rt. Rev. Yung Chin Cho and Steven D. Brown, Bishop and Chancellor, respectively, of the Virginia Annual Conference Of The United Methodist Church.** Bishop Cho is the Presiding Bishop of the “Annual Conference” of The United Methodist Church that oversees all local United Methodist congregations in Virginia. As the episcopal leader of the Virginia Conference, Bishop Cho ministers to congregations whose members and clergy may be struggling with whether to remain part of the Conference or the denomination, and to ensure that, whatever their ultimate decision, the trust and related property provisions in the United Methodist *Book of Discipline* are respected and upheld. Mr. Brown, an attorney

in Richmond, is the Conference's Chancellor, and is charged by the Book of Discipline to serve as legal counsel to the Bishop and to protect the legal and property interests of the Conference.

### **Abingdon Presbytery of the Presbyterian Church (U.S.A.)**

In reliance upon the Supreme Court's holding in *Jones*, the Presbyterian Church (U.S.A.) and its related judicatories long ago amended their governing documents to include express trust provisions to "ensure that . . . the faction loyal to the hierarchical church will retain the church property" in the event of a "division." *Jones*, 443 U.S. at 606. Having been assured by the U.S. Supreme Court that "civil courts will be bound to give effect" to such provisions, *id.*, the Presbyterian Church is vitally interested in having this the Court's re-examination of precedent that holds that express trusts in favor of denominations like the Presbyterian Church are invalid under Virginia law.

The Abingdon Presbytery in particular is one of 173 presbyteries, each of which falls within the jurisdiction of one of 16 synods. The Abingdon Presbytery is in the synod of the Mid-Atlantic. The Presbytery encompasses 54 congregations, 48 ministers and 12 Commissioned Lay Pastors, all working in ministry in thirteen counties in southwestern Virginia. Abingdon Presbytery is faithful in defending the denomination's property owner-

ship rules, understanding it to be central to Presbyterian Church Order that local churches hold their property in trust for the larger denomination as a whole.