

The Burger Court Opinion Writing Database

Jones v. Wolf

443 U.S. 595 (1979)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University in St. Louis

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 2, 1979

Re: 78-91 - Jones v. Wolf

Dear Lewis:

I agree that we are at a "roadblock" in this case, but I am not yet convinced the situation is hopeless. It seems to me that there is a lot of common ground between your views, which Potter and Byron have joined, and Bill Brennan's, which Thurgood has joined. I have held back but I could join you with minor adjustments.

All of us who voted to reverse at Conference agree that, in this case, the Georgia Supreme Court erred by construing the provisions of the church constitution in a manner inconsistent with the decision of the presbytery. Deference was required because state law mandated reference to the provisions of a church constitution for the governing rule of decision. Serbian establishes that the only inquiry into the meaning of a church constitution permitted by the Religion Clauses is for the limited purpose of determining whether the church is hierarchical. If it is, deference to the interpretation of the church constitution made by the church court is required. Only that body is competent to construe and apply the provisions of its own constitution. Just as we defer to the interpretation of a state constitution made by a state court, civil courts must defer to the interpretation of a church constitution made by the governing body in a hierarchically structured church. Any inquiry into the meaning of a church constitution, other than for the limited purpose approved in Serbian, necessarily involves an inquiry into religious doctrine. A civil court cannot properly interpret and apply provisions of a church constitution in isolation from other provisions embodying the theology of the church. Isn't that the thrust of Bill Brennan's concurrence? Can't you build an opinion for the Court around this area of agreement?

The problem arises when you go further and suggest that the First Amendment requires deference to the decision of the church court even when "neutral" principles of state law otherwise might exist that permit resolution of the property dispute without requiring any reference at all to the provisions of a church constitution. In that hypothetical situation, which is not present in this case, Bill and Thurgood would say there is no constitutional objection to the application of such "neutral" principles because no inquiry is necessary into religious doctrine or the meaning of the church constitution, which itself is a religious document.

I am not sure how I would come out in such a case, although I will admit to some skepticism as to the likelihood of a State's being able to develop a truly "neutral" body of law governing such disputes. Why address that problem? We can resolve this case simply by the Serbian rule precluding a civil court from construing the provisions of a hierarchically structured church's constitution in a manner inconsistent with the decision reached by the governing authority of that church.

If you were willing to narrow your opinion along these lines, I think we can get a Court opinion. As a last resort, if you and Bill Brennan cannot resist addressing the subject of a "neutral" principles approach ~~in this case~~, you could draft a per curiam for the Court and write separately as well. I would not encourage either of you to do so if, as I believe, all of us in the majority could see our way clear to joining a single opinion.

I am very reluctant to reassign this case when you have so much time invested. If my suggestion is unacceptable, I would be willing to undertake to write an opinion for the Court myself. I think we can come up with a Court opinion without anyone's having to compromise deeply held views if we emphasize areas of agreement rather than disagreement. I'd like to see you and Bill make an effort to get together on this. How about it?

As you can see, I am skeptical about applying "neutral principles" to the Religion Clauses. Like the Speech or Debate Clause, neutral principles do not mix well with "almost" absolutes?

Regards,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

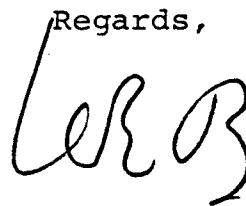
June 15, 1979

Re: 78-91 - Jones v. Wolf

Dear Lewis:

I join your 6/14 circulation.

Regards,

A handwritten signature in dark ink, appearing to be 'LFB' or 'LFB', written in a cursive style.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 19, 1979

RE: No. 78-91 Jones v. Wolf

Dear Lewis:

I join your opinion, but will also circulate
a brief concurrence.

Sincerely,

Bren

Mr. Justice Powell

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 23, 1979

Re: No. 78-91, Jones v. Wolf

Dear Lewis,

We're all so elated at the good news. I feel particularly badly therefore that I should have reached the reluctant conclusion that my joinder in your opinion was premature. It seems to me that the principle that civil courts are required by the First Amendment to refrain from deciding issues of religious doctrine or polity is adequate to resolve this case. Your opinion, however, appears to deduce from the First Amendment additional principles of law with which I cannot agree.

Sincerely,

Bren

Copies to Conference

SUPREME COURT OF THE UNITED STATES

No. 78-91

R.W. Jones, Sr., et. al.
Petitioners
v.

On Writ of Certiorari to the
Supreme Court of Georgia

Circulated: 23 MAR 1979

Charles T. Wolf et. al.

Recirculated: _____

March _____, 1979

MR. JUSTICE BRENNAN, concurring.

The fundamental axiom of constitutional law in this area is that the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine."

Presbyterian Church in the United States v. Mary Elizabeth

Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449

(1969). Civil courts may avoid violation of this commandment and resolve disputes over religious property by resort to "neutral principles of law, developed for use in all property disputes." Id. Such neutral principles include "deeds, reverter clauses, and general state corporation laws." Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 370 (1970) (Brennan, J., concurring). But the Court correctly observes today, that, as here, "in cases where the formal title documents place title in a local church affiliated with a larger religious association,

Mr. Justice Stewart
Mr. Justice White
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Brennan
Mr. Justice Burger
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 26 MA

Re-circulated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[April —, 1979]

MR. JUSTICE BRENNAN, concurring.

The fundamental axiom of constitutional law in this area is that the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969). Civil courts may avoid violation of this commandment and resolve disputes over religious property by resort to "neutral principles of law, developed for use in all property disputes." *Ibid.* Such neutral principles include "deeds, reverter clauses, and general state corporation laws." *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U. S. 367, 370 (1970) (BRENNAN, J., concurring). But the Court correctly observes today, that, as here, "in cases where the formal title documents place title in a local church affiliated with a larger religious association, the documents cannot themselves resolve a dispute over the use of the church property; they only frame the decisive issue." *Maj. op.*, at 10. (Emphasis supplied.)

The "decisive issue" in this case is which faction of the intrachurch dispute represents the "Vineville Presbyterian Church" that is named in the three controverted deeds.¹

¹ The three deeds at issue in this case are variously in the name of the "Vineville Presbyterian Church of the County of Bibb," *app.*, at 249, the

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice

Circulated: _____

Recirculated: 10

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[April —, 1979]

MR. JUSTICE BRENNAN, concurring.

I

The fundamental axiom of constitutional law in this area is that the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969). Civil courts may avoid violation of this commandment and resolve disputes over religious property by resort to "neutral principles of law, developed for use in all property disputes." *Ibid.* Such neutral principles include "deeds, reverter clauses, and general state corporation laws." *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U. S. 367, 370 (1970) (BRENNAN, J., concurring). But the Court correctly observes today, that, as here, "in cases where the formal title documents place title in a local church affiliated with a larger religious association, the documents cannot themselves resolve a dispute over the use of the church property; they only frame the decisive issue." *Ante*, at 10. (Emphasis supplied.)

The "decisive issue" in this case is which faction of the intrachurch dispute represents the "Vineville Presbyterian Church" that is named in the three controverted deeds.¹

¹ The three deeds at issue in this case are variously in the name of the

WJB
Please join me

4/10
I concur
the

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Brennan
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Souter

From: Mr. Justice

Circulated: _____

Recirculated: 2 3 4

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[April —, 1979]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, concurring in the judgment.

The fundamental axiom of constitutional law in this area is that the First Amendment "commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 449 (1969). Civil courts may avoid violation of this commandment and resolve disputes over religious property by resort to "neutral principles of law, developed for use in all property disputes." *Ibid.* Such neutral principles include "deeds, reverter clauses, and general state corporation laws." *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U. S. 367, 370 (1970) (BRENNAN, J., concurring). Five Members of the Court today reaffirm these basic propositions.

I

The plurality is correct, however, in stating that, as in this case, "where the formal title documents place title in a local church affiliated with a larger religious association, the documents cannot themselves resolve a dispute over the use of the church property; they only frame the decisive issue." *Ante*, at 10. The "decisive issue" in this case for example, is which faction of the intrachurch controversy represents the "Vine-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

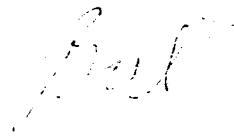
May 2, 1979

RE: No. 78-91 Jones v. Wolf

Dear Lewis:

I've given thought to the Chief's suggestion in his note to you of May 2. I think at this time I'd rather attempt to work out a majority opinion with Harry, since five of us, including Harry and me, agree upon the concept of neutral principles.

Sincerely,



Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

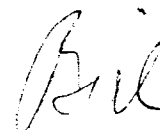
May 29, 1979

RE: No. 78-91 Jones v. Wolf

Dear Thurgood, Bill and John:

I've read Harry's proposed compromise of the problems in Jones v. Wolf. I would have no trouble joining it as an opinion of the Court.

Sincerely,



Mr. Justice Marshall

Mr. Justice Rehnquist

Mr. Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 31, 1979

RE: No. 78-91 Jones v. Wolf

Dear Harry:

I am happy to join your circulation of May 30 if
it becomes a Court opinion.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 16, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Lewis:

I am glad to join your opinion for the
Court.

Sincerely yours,

PS.
✓

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 14, 1979

Re: 78-91 - Jones v. Wolf

Dear Lewis:

Please add my name to your dissenting
opinion.

Sincerely yours,

PS,
✓

Mr. Justice Powell

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 17, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Lewis,

I agree.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

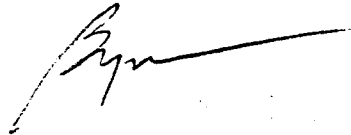
June 15, 1979

Re: 78-91 - Jones v. Wolf

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 16, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.


Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 29, 1979



Re: No, 78-91 - Jones v. Wolf

Dear Harry:

Please join me in your proposed opinion.

Sincerely,

jm.
T.M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 23, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Lewis:

I, too, shall try a dissent in this case in due course.
It will not be around, certainly, until after the March session.

Sincerely,



Mr. Justice Powell

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 10 APR 1973

Recirculated: _____

No. 78-91 - Jones v. Wolf

MR. JUSTICE BLACKMUN, dissenting.

The Court begins its analysis with two established and incontrovertible propositions. It notes, correctly, that the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine or practice. Serbian Orthodox Diocese v. Milivojeovich, 426 U.S. 696, 710 (1976); Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 368 (1970); Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1969). And it observes, again in accordance with the Court's decided cases, that the First Amendment

pp 1, 2, 6, 7, 10, 11, 12

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

2nd DRAFT

Recirculated: 18 APR 1979

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al., Petitioners, v. Charles T. Wolf et al.	}	On Writ of Certiorari to the Supreme Court of Georgia.
---	---	--

[April —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST and MR. JUSTICE STEVENS join, dissenting.

The plurality begins its analysis with two established and incontrovertible propositions. It notes, correctly, that the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine or practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U. S. 696, 710 (1976); *Md. & Va. Churches v. Sharpsburg Church*, 396 U. S. 367, 368 (1970); *Presbyterian Church v. Hull Church*, 393 U. S. 440, 449 (1969). And it observes, again in accordance with the Court's decided cases, that the First Amendment requires civil courts to defer to church courts where matters of religious creed and practice are involved. *Serbian Orthodox Diocese*, 426 U. S., at 724-725; cf. *Watson v. Jones*, 13 Wall. 679, 733-734 (1871).

The conclusion the plurality draws from these premises, however, goes far beyond anything previously required under the First and Fourteenth Amendments. The indicated conclusion, I had thought, was that "a State may adopt *any* of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Md. & Va. Churches*, 396 U. S., at 368 (BRENNAN, J., concurring) (emphasis in original). Indeed, MR. JUSTICE BRENNAN, in that opinion, outlined three specific approaches

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STYLISTIC CHANGES

4 p. 12

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 20 APR 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al., Petitioners, v. Charles T. Wolf et al.	} On Writ of Certiorari to the Su- preme Court of Georgia.
---	---

[April —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST and MR. JUSTICE STEVENS join, dissenting.

The plurality begins its analysis with two established and incontrovertible propositions. It notes, correctly, that the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine or practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U. S. 696, 710 (1976); *Md. & Va. Churches v. Sharpsburg Church*, 396 U. S. 367, 368 (1970); *Presbyterian Church v. Hull Church*, 393 U. S. 440, 449 (1969). And it observes, again in accordance with the Court's decided cases, that the First Amendment requires civil courts to defer to church courts where matters of religious creed and practice are involved. *Serbian Orthodox Diocese*, 426 U. S., at 724-725; cf. *Watson v. Jones*, 13 Wall. 679, 733-734 (1871).

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FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

April 26, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Lewis:

In the first line of the paragraph beginning on page 6 of my dissenting opinion, the word "had" should be "has." I am asking the Printer to correct this.

I call this to your attention because the line is quoted at the beginning of footnote 10 on page 10 of your opinion.

Sincerely,

HAB

Mr. Justice Powell

May 28, 1979

Re: 78-91 - Jones v. Wolf

Dear Bill and John:

With the Court so badly split in the first go-around in this case, Bill Brennan suggested that I attempt a new opinion that will accommodate his (and Thurgood's) views and those set forth in my opinion which the two of you were kind enough to join. The five of us, at least, seemed to agree on the propriety of a neutral principles approach.

I have made this attempt in an opinion I am circulating today in xerox form. It emphasizes neutral principles and sends the case back for redetermination under Georgia law. While my initial preference was to affirm the judgment of the Supreme Court of Georgia on the theory that they had been faithful to the neutral principles approach, this new tack represents a compromise so far as this particular case is concerned, but preserves the approach in theory. Bill Brennan recedes from his position that the Georgia court had not applied neutral principles. Thus, in a sense, we temporarily lose the battle on the facts of this case. I suspect that the war of principles is won and that even the Vineland battle itself may prove to be won on remand.

I shall be very interested in your reactions. This may be the only route to five votes in this sensitive case.

Sincerely,

HAB

Mr. Justice Rehnquist ✓
Mr. Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1979

Re: 78-91 - Jones v. Wolf

Dear Bill and Thurgood:

I shall circulate today a proposed opinion which represents my attempt to compromise our respective approaches to this particular case and to establish the constitutionality of the neutral principles concept. I shall welcome any suggestion either of you has. I, of course, do not know what the reaction of Bill Rehnquist and John will be, but I hope that they will at least view this sympathically.

I think it highly desirable that we bend every effort to come up with a Court opinion in this difficult and still-developing area. I appreciate your consideration in all this.

Sincerely,



Mr. Justice Brennan
Mr. Justice Marshall

HAB
Please for me in
your proposed
opinion *JM*

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 29 MAY 1979

Recirculated: _____

No. 78-91 - Jones v. Wolf

MR. JUSTICE BLACKMUN proposing an opinion of the Court.

This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. 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.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 30 MAY 1979

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[June —, 1979]

MR. JUSTICE BLACKMUN proposing an opinion of the Court.

This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. 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.

I

The Vineville Presbyterian Church of Macon, Ga., was organized in 1904, and first incorporated in 1915. Its corporate charter lapsed in 1935, but was revived and renewed in 1939, and continues in effect at the present time.

The property at issue and on which the church is located was acquired in three transactions, and is evidenced by conveyances to the "Trustees of [or "for"] Vineville Presbyterian Church and their successors in office," App. 251, 253, or simply to the "Vineville Presbyterian Church." *Id.*, at 249. The funds used to acquire the property were contributed entirely by local church members. Pursuant to resolutions adopted by the congregation, the church repeatedly has borrowed money on the property. This indebtedness is evidenced by

HA

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1979

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 78-91, Jones v. Wolf

One case is being held for Jones: 78-1015, Baldwin v. Mills. Like Jones, Baldwin involves a dispute over the ownership of church property following a schism in a local church formerly affiliated with the Presbyterian Church in the United States (PCUS). Petitioners, the majority faction of the local church, voted to withdraw from the PCUS. The local presbytery recognized respondents, the "loyal" faction, as the true congregation. Respondents then brought an action in state court to restrain petitioners from interfering with respondents' use of the local church property.

A divided Florida District Court of Appeal, applying the "neutral principles of law" method of resolving church property disputes, ruled that petitioners were entitled to the property. The court traced the history of title acquisition and found no basis for an express or implied trust in favor of the general church.

The Florida Supreme Court reversed. Relying on Watson v. Jones, 13 Wall. 679 (1872), the court held that in a hierarchical church such as the PCUS, the presbytery has the authority to determine which members of the local congregation represent the local church. Thus the presbytery's determination of the identity of the local church named in the deeds was binding.

The posture of the case, then, is the reverse of that in Jones v. Wolf. There, the "loyal" faction sought review in this Court, claiming that the neutral principles of law method was unconstitutional. Here, the majority faction seeks review, asserting that the implied trust theory of Watson v. Jones involves excessive entanglement of civil courts in matters of religious polity, and threatens to "establish" the general church at the expense of dissident factions.

These are potentially important questions that the Court may wish to address on an appropriate occasion. In

STYLISTIC CHANGES
+ pp. 1, 8-12

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 20 JUN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[June —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. 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.

I

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1979

MEMORANDUM TO THE CONFERENCE:

Re: No. 78-91 - Jones v. Wolf

This relates to footnote 5 on page 12 of my recirculation of June 20. In the second line, after the word "remand," I shall add "and this presumption is not overcome,".

HAL.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 27, 1979

MEMORANDUM TO THE CONFERENCE:

Re: No. 78-91 - Jones v. Wolf

I am making two changes in the second draft of my opinion. I am advising you by memorandum rather than awaiting a new print. The changes are:

1. The last four lines of the paragraph ending on page 12 will be made to read:

"identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it. Indeed, the State may adopt any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free exercise rights or entangle the civil courts in matters of religious controversy. 5/"

2. Footnote 5 will be changed to read:

"5/ If the Georgia Supreme Court adopts a rule of presumptive majority representation on remand, then it should also specify how, under Georgia law, that presumption may be overcome. Because these critical issues of state law remain undetermined, we, unlike the dissent, express no view as to the ultimate outcome of the controversy if the Georgia Supreme Court adopts a presumptive rule of majority representation."

W.A.B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 28, 1979

MEMORANDUM TO THE CONFERENCE:

Re: No. 78-91 - Jones v. Wolf

There will be no further circulation on my part in response to Lewis' revisions proposed with his note of today.

HAB.
-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: 16 MAR 1979

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,

Petitioners,

v.

Charles T. Wolf et al.

On Writ of Certiorari to the Supreme Court of Georgia.

[March —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents once again the question of what limitations the First Amendment imposes on the civil courts in the adjudication of disputes among church members over the control of church property.

I

The Vineville Presbyterian Church of Macon, Ga. (the local church), was organized in 1904, and first incorporated in 1915. Its corporate charter lapsed in 1935 but was revived and renewed in 1939, and continues in effect at the present time. The local church has acquired its property by various instruments of conveyance which have transferred the property to the trustees of the local church or to the local church itself.

In the same year that the local church was organized, its congregation petitioned the Augusta-Macon Presbytery (the Presbytery) of the Presbyterian Church in the United States (the PCUS) for establishment as a member church of the PCUS and the Presbytery. Upon the granting of the petition, the local church became a part of the PCUS and of its hierarchical structure of church organization and government. The presbyterian form of church government, consisting of an ascending series of representative assemblies referred to as church courts, is set out in the Book of Church Order of the

Changes 5, 13, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: 3 APR 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al., Petitioners, v. Charles T. Wolf et al.	}	On Writ of Certiorari to the Supreme Court of Georgia.
---	---	--

[March —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

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13/14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

3rd DRAFT Recirculated: 10 APR 1979

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al., Petitioners, v. Charles T. Wolf et al.	}	On Writ of Certiorari to the Supreme Court of Georgia.
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[March —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents once again the question of what limitations the First Amendment imposes on the civil courts in the adjudication of disputes among church members over the control of church property.

I

The Vineville Presbyterian Church of Macon, Ga. (the local church), was organized in 1904, and first incorporated in 1915. Its corporate charter lapsed in 1935 but was revived and renewed in 1939, and continues in effect at the present time. The local church has acquired its property by various instruments of conveyance which have transferred the property to the trustees of the local church or to the local church itself.

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1, 7, 8, 10, 11, 13-15

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: 24 APR 1979

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[March —, 1979]

MR. JUSTICE POWELL announced the judgment of the Court in an opinion in which MR. JUSTICE STEWART and MR. JUSTICE WHITE join.

This case presents once again the question of what limitations the First Amendment imposes on the civil courts in the adjudication of disputes among church members over the control of church property.

I

The Vineville Presbyterian Church of Macon, Ga. (the local church), was organized in 1904, and first incorporated in 1915. Its corporate charter lapsed in 1935 but was revived and renewed in 1939, and continues in effect at the present time. The local church has acquired its property by various instruments of conveyance which have transferred the property to the trustees of the local church or to the local church itself.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 1, 1979

78-91 Jones v. Wolf

Dear Chief:

This is to confirm what I said at the Conference Friday with respect to the above case.

We seem to be in a "hung jury" situation. Only Potter and Byron have joined me. Harry has circulated a dissenting opinion in which Bill Rehnquist and John have joined. Bill Brennan has circulated an opinion concurring in the judgment, in which Thurgood has joined. Although I thought you and I were together at the Conference, you have not yet joined any of the circulations.

As it would be most unfortunate to bring this case down in its present posture, I suggest the possibility of a reassignment. Although Bill Brennan and Harry reach different results, they share some common ground with respect to the proper analysis. I cannot speak for them, but I wonder whether their views could be harmonized to the extent of putting a Court together.

An alternative suggestion (mentioned by me at the Conference) would be to reduce this opinion to a bare bones reversal on the facts, with limited analysis. There are at least five of us at present who would reverse. Such an opinion, which probably should be a PC, would contribute nothing to resolve the confusion in our cases, but at least we would not add to this confusion. I would be willing to consider this resolution of the situation only if those of us who join in a reversal refrain from writing competing concurring opinions that might return us to the present diversity of views.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

May 5, 1979

No. 78-91 Jones v. Wolf

Dear Bill:

Thank you for your note of May 2.

I am glad that you and Harry may reach an accord. I regret that my analysis has not prevailed, but it is important to have a Court opinion. Good luck!

If you succeed, I will convert my opinion into a dissent.

Sincerely,

Mr. Justice Brennan

lfp/ss

cc: The Chief Justice

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1979

78-91 Jones v. Wolf

Dear Harry:

It will not come as a surprise for me to say that I cannot join your proposed opinion for the Court.

In due time, I will circulate a dissent. Although it will contain essentially the same analysis as in my prior circulation, there will be a response to your opinion.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: 14 JUN 1979

Recirculated: _____

No. 78-91, Jones v. Wolf

MR. JUSTICE POWELL, dissenting.

This case presents again a dispute among church members over the control of a local church's property. Although the Court appears to accept established principles that I have thought would resolve this case, it superimposes on these principles a new structure of rules that in my view will make the decision of these cases by civil courts more difficult, and that also is more likely to invite intrusion into church polity that the First Amendment forbids.

I

The Court begins by stating that "[t]his case involves a dispute over the ownership of church property", ante, at 1, suggesting that the concern is with legal or equitable ownership in the real property sense. But the ownership of the property of the Vineville church is not at issue. The deeds place title in the Vineville Presbyterian Church, or in trustees of that church, and none of the parties has questioned the validity of those deeds. The question actually presented is which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use

1
2
8
9

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackman
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: 20 JUN 1979

Recirculated: _____

PRINTED
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[June —, 1979]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join, dissenting.

This case presents again a dispute among church members over the control of a local church's property. Although the Court appears to accept established principles that I have thought would resolve this case, it superimposes on these principles a new structure of rules that in my view will make the decision of these cases by civil courts more difficult, and that also is more likely to invite intrusion into church polity that the First Amendment forbids.

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The Court adopts a new and complex, two-stage analysis,

Stylistic Changes Throughout

1-9, 9-12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al.

On Writ of Certiorari to the Supreme Court of Georgia.

[June —, 1979]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join, dissenting.

This case presents again a dispute among church members over the control of a local church's property. Although the Court appears to accept established principles that I have thought would resolve this case, it superimposes on these principles a new structure of rules that will make the decision of these cases by civil courts more difficult. The new analysis also is more likely to invite intrusion into church polity forbidden by the First Amendment.

I

The Court begins by stating that "[t]his case involves a dispute over the ownership of church property," *ante*, at 1, suggesting that the concern is with legal or equitable ownership in the real property sense. But the ownership of the property of the Vineville church is not at issue. The deeds place title in the Vineville Presbyterian Church, or in trustees of that church, and none of the parties has questioned the validity of those deeds. The question actually presented is which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property, as the Court later acknowledges. *Id.*, at 6.

Since 1871 disputes over control of church property usually

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

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26 JUN 81

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 28, 1979

No. 78-91 Jones v. Wolf

MEMORANDUM TO THE CONFERENCE

The changes in his opinion circulated by Mr. Justice Blackmun yesterday afternoon have made it necessary for me to revise my dissent in this case. The attached text and footnote will be substituted for the passage in the second draft of my dissent that begins with the first full paragraph on p. 6 and concludes at roman numeral II on p. 7.

Sincerely,

Lewis

LFP/lab

No. 78-91, Jones v. Wolf

The Court acknowledges that the church law of the Presbyterian Church in the United States (PCUS), of which the Vineville church is a part, provides for the authoritative resolution of this question by the Presbytery. Ante, at 12-13. Indeed, the Court indicates that Georgia, consistently with the First Amendment, may adopt the Watson v. Jones rule of adherence to the resolution of the dispute according to church law -- a rule that would necessitate reversal of the judgment for the respondents. Id., at 13. But instead of requiring the state courts to take this approach, the Court approves as well an alternative rule of state law: the Georgia courts are said to be free to "adopt[] a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means." Id., at 11. This showing may be made by proving that the church has "provid[ed], in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way". Id., at 12.

On its face, this rebuttable presumption also requires reversal of the state court's judgment in favor of the schismatic faction. The polity of the PCUS commits to the Presbytery the resolution of the dispute within the local church. Having shown this structure of church government for the determination of the identity of the local congregation, the petitioners have rebutted any presumption that this question has

1/ This approach apparently applies to both hierarchical and congregational churches. With respect to hierarchical churches, civil courts must give effect to the decision of "the highest body within the hierarchy that has considered the disputes." Ante, at 6. With respect to congregational churches, they must "simply enforce the authoritative resolution of the controversy within the local church itself."

Ibid.

5-9, 11, 12

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-91

Circulated: _____

Recirculated: 29 JUN

R. W. Jones, Sr., et al.,
Petitioners,
v.
Charles T. Wolf et al. } On Writ of Certiorari to the Supreme Court of Georgia.

[June —, 1979]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join, dissenting.

This case presents again a dispute among church members over the control of a local church's property. Although the Court appears to accept established principles that I have thought would resolve this case, it superimposes on these principles a new structure of rules that will make the decision of these cases by civil courts more difficult. The new analysis also is more likely to invite intrusion into church polity forbidden by the First Amendment.

I

The Court begins by stating that "[t]his case involves a dispute over the ownership of church property," *ante*, at 1, suggesting that the concern is with legal or equitable ownership in the real property sense. But the ownership of the property of the Vineville church is not at issue. The deeds place title in the Vineville Presbyterian Church, or in trustees of that church, and none of the parties has questioned the validity of those deeds. The question actually presented is which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property, as the Court later acknowledges. *Id.*, at 6.

Since 1871 disputes over control of church property usually

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 22, 1979

Re: No. 78-91 Jones v. Wolf

Dear Lewis:

I anticipate circulating a dissent in this case in due course.

Sincerely,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 23, 1979

PERSONAL

Re: No. 78-91 - Jones v. Wolf

Dear Harry:

I had not realized that you were planning to write a dissent in this case until I saw your letter of this morning. In view of that, I will simply await your writing.

Sincerely,



Mr. Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 11, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Harry:

Please join me in your dissent.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

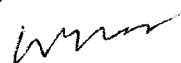
May 29, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Harry:

I have not yet had a chance to read the circulation to which you refer in your letter to me and John of May 28th, but I have been here long enough to know that half a loaf is better than none. I must say that I had to do a little swallowing of my own in joining your dissent, which assumed that Serbian Orthodox had been correctly decided (which you had a perfect right to do, in spite of my forceful and persuasive dissent!) I will give sympathetic consideration to your revision, hoping that it comes out much closer to your dissenting position than to Bill's former concurrence.

Sincerely,



Mr. Justice Blackmun

Copy to Mr. Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

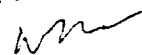
June 5, 1979

Re: No. 78-91 - Jones v. Wolf

Dear Harry:

Believing that half a loaf is better than none, I will
join your proposed opinion for the Court in this case.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 11, 1979

Re: 78-91 - Jones v. Wolf

Dear Harry:

Please join me in your dissent.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 29, 1979

Re: 78-91 - Jones v. Wolf

Dear Harry:

If you convert your proposed opinion into an opinion, I am prepared to join.

Respectfully,



Mr. Justice Blackmun

cc: Mr. Justice Brennan
Mr. Justice Marshall
Mr. Justice Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 30, 1979

Re: 78-91 - Jones v. Wolf

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference