NO. 16-450

In the
Supreme Court of the United States

MING TUNG, et al.,

Petitioners,

v.

CHINA BUDDHIST ASSOCIATION, et al.,

Respondents.

On Petition for Writ of Certiorari to the New York Court of Appeals

REPLY BRIEF FOR PETITIONERS

IRA BRAD MATETSKY
GANFER & SHORE LLP
360 Lexington Ave.
New York, NY 10017

MICHAEL W. MCCONNELL
Counsel of Record
EDMUND G. LACOUR JR.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
mmcconnell@kirkland.com

Counsel for Petitioners

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The Brief in Opposition merely confirms the need for this Court's review. The court below, somehow thinking it was *avoiding* inquiry into ecclesiastical matters, instead interjected an ecclesiastical inquiry into an otherwise secular interpretation of straightforward corporate bylaws. The court allowed one of two presiding monks of the China Buddhist Association ("CBA"), supported by a faction of at most 110 adherents, to unilaterally "excommunicate" 517 members, including the other presiding monk and a resident nun, and move to shutter the Manhattan Temple by vote of the rump faction. This procedure was unauthorized by the CBA bylaws or any other governing document. Respondents defend this extraordinary act on the ground that "[t]he CBA has always followed the Buddhist tradition of vesting a single leader—in this case, Master Chen—with absolute authority." Opp.2. That is not so. But more importantly for this civil case in a civil court, it was unconstitutional for the court to rely on disputed ecclesiastical propositions of that nature. It should instead have followed the terms of the CBA bylaws, as the trial court did.

This is the most recent and most egregious example of one side of a split among the states' highest courts over how to interpret the "neutral principles" approach of *Jones v. Wolf*, 443 U.S. 595 (1979). As documented in the Petition, nine state supreme courts interpret the neutral principles approach as requiring them to decide disputes over church property solely by reference to deeds, trust instruments, and corporate charters, in accordance

with the state law of property, corporations, and trusts. *See* Pet.18-21. Nine state supreme courts look also to sources of church law, such as denominational canons or, as in this case, church practices or tradition, even when they are disputed and even when they are not referenced in any legal instrument.

This split creates great legal uncertainty, at high human cost. This case is a perfect example. If this Court does not grant review, Respondents will move to shutter the second oldest Buddhist temple in New York and 517 Buddhist adherents who have faithfully attended and contributed financially for years and often decades will be deprived of their place of worship. Other religious communities around the country have been faced with similar turmoil on account of the same legal error. The Court should act now to clear up this confusion, which has plagued religious groups and believers for too long.

I. This Court Should Grant Review To Clarify That Courts May Not Decide Questions Of Religious Doctrine.

In *Jones v. Wolf*, 443 U.S. 595, 603 (1979), this Court approved the "neutral principles of law" approach to property disputes within religious organizations. The method requires courts to rely solely on established principles of secular law "familiar to lawyers and judges," an approach that "promise[d] to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice," while protecting the Free Exercise rights of religious groups by granting them

"flexibility in ordering private rights and obligations to reflect the intentions of the parties." *Id.* Unfortunately, as this case illustrates, that promise has been only partially fulfilled.

A. The Court Below Disregarded CBA's Chosen Legal Form in Reliance on Disputed Claims of Ecclesiastical Authority.

Title to the contested property, 245 Canal Street in Manhattan, is deeded to the CBA, a corporation organized under Article 10 of New York's Religious Corporations Law. At its founding, the incorporators chose to establish a congregational form of governance. Members select trustees, who serve for three-year terms and manage CBA operations. Notice must be provided "to every member in good standing" before a membership meeting. App.6. Membership is defined as open to "all who are of the Buddhist faith and have been admitted as disciples." *Id.*[1] There is no provision for expulsion of members. *Id.*

If the CBA's founders had intended to "vest[] a single leader ... with absolute authority," as Respondents assert (Opp.2), they were free to do so. They could have incorporated the CBA as a corporation sole, the structure used by the Roman Catholic Church, in which case title to the property

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[1] Respondents misquote this provision, claiming that members must have been admitted "as a disciple *of Master Chen*." Opp.2 (emphasis added). In Buddhist practice, adherents become disciples of The Buddha, or of Buddhism—not of a particular spiritual leader. *See* Hsing Yun, The Triple Gem: Buddhism in Every Step 7 (Robert Smitheram trans., 2011).

(as well as other authority) would have been vested in the designated "single leader." Instead, the founders chose to vest authority in the members, with periodic election of trustees, and to vest the president, Respondent Mew Fung Chen, with only "such powers as may be reasonably construed as belonging to the chief executive of any organization." App.7.

In 2009, relations deteriorated between Petitioner Ming Tung, who leads the CBA's Manhattan Temple, and Chen, who leads the much smaller Flushing Temple. Chen invoked his supposed "ultimate and ecclesiastical authority over all activities in these three temples" to strip all 517 Manhattan Temple members "of their blessing," which the court below interpreted as excommunication, and to close the Manhattan Temple. *Id.* He then allegedly sent notice of a membership meeting to the remaining 110 members. Neither Petitioners nor any of the other 517 Manhattan members were given notice. Ten days after Chen's purported excommunication of the Manhattan members and closure of the Manhattan Temple, Chen reportedly conducted a meeting where 33 remaining members elected trustees and ratified the preceding actions.

Petitioners challenged these actions in state court. Because Petitioners were members and "the by-laws make no reference to excommunication" nor contain any "mechanism for excommunication," the trial court held they were entitled to notice before membership meetings and had authority to demand a membership meeting at which they could elect

trustees and decide the fate of the Manhattan Temple. App.40. Though Chen "claim[ed] the authority to excommunicate" everyone in the CBA, "such authority is not found in the bylaws." App.39-40.

A split panel of the New York Appellate Division reversed. The majority recognized that "[a]t first blush the petition appears to present a straightforward issue of corporate governance." App.11. Indeed, the majority "[took] no issue with petitioners' claim and the dissent's conclusion that the CBA has not followed corporate formalities which may impact on whether the parliamentary acts undertaken by it are valid." *Id.* The majority nonetheless concluded that this case "cannot be resolved by the application of neutral principles of law." It reasoned that "because only CBA members can attend and vote at meetings, the court cannot provide the relief sought without necessarily determining the validity of the excommunications, which is a purely ecclesiastical matter." App.5.

This was the court's central error. Far from *avoiding* a determination about the validity of the purported excommunications, the court *validated* those excommunications. *See* App.11 ("[P]etitioners are not members of the CBA based upon Master Chen's excommunication of them."). Petitioners agree that a court may not second-guess the *reasons* for excommunication, but it has no choice but to determine whether the person purporting to exercise the power of excommunication is actually vested with it.

The Appellate Division offered two different rationales for crediting the unilateral power of Respondent Chen to excommunicate the majority of the CBA's members. First, the court reasoned that because Chen had authority to accept members and the bylaws make no provision for expelling them, he must also have the power to expel them. App.10-11. This was an obvious non sequitur. The procedures for admission to and expulsion from an organization are often different, because the consequences of expulsion are far more severe than the consequences of non-admission. *Ezekial v. Winkley*, 572 P.2d 32, 36 (Cal. 1977).

Second, the majority reasoned: "There are no governance provisions for becoming a disciple or for reversal of that process, clearly making this an entirely discretionary matter vested in its leader and premised on religious, not secular, principles." App.13. Evidently, the court assumed that discretionary power in the "leader" is the default position that controls in the absence of express provisions. That idea enjoys no support in the bylaws or New York law. Instead, the bylaws provide that those who "are of the Buddhist faith and *have been admitted* as disciples" are members.

Even assuming excommunication is possible in the Buddhist faith, which is disputed,[2] the bylaws

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[2] The Buddhist Catechism states that "the Buddhist knows of no excommunication, no ecclesiastical laws and penances, no rigorous disciplinary system." Subhadra Bhikshu, A Buddhist Catechism 67 (1890); *see also* Record on Appeal at 34, *Ming Tung v. China Buddhist Assoc.*, 124 A.D.3d 13 (N.Y. App. Div. 2014).

indicate that the power is *not* vested in Chen. Chen's position under the bylaws is CBA's "president." The bylaws provide that the president has only "such powers as may be reasonably construed as belonging to the chief executive of any organization." App.7. The president of a Rotary Club does not wield the power of excommunication. *See Weinberg v. Carton*, 90 N.Y.S.2d 398, 400 (N.Y. Sup. Ct. 1949) ("In the absence of an express provision in the constitution or by-laws, the power of expulsion belongs to the association, e.g., to the membership at large.").

Neutral principles require that where a religious corporation's governing documents are silent on a matter, applicable state corporation law should control. *Model, Roland & Co. v. Indus. Acoustics Co.*, 209 N.E.2d 553, 553 (N.Y. 1965). As Justice Tom noted in dissent, Article 10 of New York's Religious Corporations Law, under which the CBA was incorporated, provides that unless an association has specifically limited voting rights to a defined set of members, the presumption is that all persons who regularly attend and contribute financially to the association are entitled to vote (and hence to notice). App.26-27.[3] Moreover, "[i]t has been settled by a long line of decisions that, whether or not the by-laws of an association provide for it, a member is entitled to know the charges against him in an expulsion proceeding, to an opportunity to be heard, and to a fair trial." *Glauber v. Patof*, 47 N.Y.S.2d 762, 763 (N.Y. Sup. Ct. 1944). The court thus erred in

[3] Attendance and contribution records are in the record. Exhibit F to Letter Brief, *Ming Tung v. China Buddhist Ass'n*, 48 N.E.3d 497 (N.Y. 2016) (No. 2015-00214).

deferring to Chen's self-proclaimed "ultimate and ecclesiastical authority"—a disputed religious claim—instead of adhering to the plain terms of the bylaws and state corporation law.

B. Respondents' Defense Rests on a Misreading of Buddhist Teaching.

Perhaps recognizing that the court's reasons for allowing Chen's unilateral acts to trump petitioners' rights under the bylaws are wanting, Respondents fall back on disputed claims about Buddhist tradition and practice. They assert that "[t]he CBA has always followed the Buddhist tradition of vesting a single leader—in this case, Master Chen—with absolute authority." Opp.2. Without support in the record, they claim that "each member of the CBA takes a vow to accept Master Chen as her or his guide and teacher" and "membership in the CBA and acceptance as a disciple is commemorated with a certificate, granted by Master Chen …." *Id.* These notions are highly contested, if not outright false. As explained in The Triple Gem, a broadly-accepted guide to Buddhist practice, when one is admitted to the Buddhist faith,

> the monastic in charge of the refuge ceremony is merely there to certify the pledge you are undertaking, certifying the followers of the Triple Gem, certifying that you are becoming a Buddhist. Taking refuge is not becoming the disciple of a certain teacher. Taking refuge is an expression of a sacred faith.

Hsing Yun, The Triple Gem: Buddhism in Every Step 7 (Robert Smitheram trans., 2011).

Respondents further argue that "[b]ecause the CBA bylaws are 'silent' on the issue of excommunication, Petitioners were left without any secular ground for challenging their dismissal from the temple." Opp.15. That is precisely backwards. Because the bylaws are silent about excommunication, there is no basis in neutral principles for vesting the power of excommunication in Chen. Petitioners rest on the bylaws' definition of membership, which they indisputably satisfy: they are of the Buddhist faith and they "have been admitted" as disciples.

C. Under *Watson v. Jones*, Courts Must Respect Congregational Governance and Not Presuppose Absolute Authority of Spiritual Leaders.

In *Jones v. Wolf*, this Court encouraged the use of the neutral principles approach, but did not preclude the older approach of *Watson v. Jones,* 80 U.S. 679 (1871). Under that approach, courts defer to the judgments of the highest judicatory of a hierarchical church, and to the congregation in a congregational church. Specifically, in disputes within independent, congregational religious organizations, "where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations." *Watson*, 80 U.S. at 725. "If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property." *Id.* The next year, the Court held that

"[i]n a congregational church, the majority, if they adhere to the organization and to the doctrines, represent the church." *Bouldin v. Alexander*, 82 U.S. 131, 140 (1872).

Bouldin clearly controls here. The CBA was established under congregational principles that allow all members in good standing to vote on trustees, officers, and other matters of CBA government. Respondents contend that the bylaws are irrelevant because "[i]t is undisputed that membership is solely conditioned on discipleship … and Master Chen has always made that decision." Opp.19. In fact, membership is conditioned on "hav[ing] *been admitted* as disciples." It is undisputed that Petitioners were so admitted. Given the absence of any procedure for expulsion in the bylaws or in undisputed Buddhist tradition, Petitioners remain members. That was the holding in *Bouldin*. In a congregational church, "[a]n expulsion of the majority by a minority is a void act." *Bouldin*, 82 U.S. at 140. The Court thus should take this case to clarify *Bouldin*'s continuing vitality.

II. This Case Presents An Ideal Vehicle For This Exceptionally Important And Recurring Issue

This Court has denied certiorari twelve times in the last six years in petitions seeking resolution of the yawning split over the meaning of the neutral principles doctrine. This is a particularly clear case, because the Appellate Division candidly acknowledged that "the CBA has not followed corporate formalities which may impact on whether the parliamentary acts undertaken by it are valid."

App.11. The court declined to enforce those "corporate formalities" because it mistakenly believed it was required to accept Chen's claim of "ultimate and ecclesiastical authority over all activities in these three temples"—a claim based not on the bylaws or state law, but on a disputed notion of ecclesiastical authority within the Buddhist tradition. This case therefore crystallizes the question of whether civil courts may use religious sources to trump the provisions of secular legal instruments.

Respondents' arguments against certiorari are without merit. First, they argue that the notorious split among state supreme courts over the meaning of *Jones v. Wolf* lacks "constitutional dimension." Opp.8-12. But one side of the debate maintains that the principles of free exercise and nonestablishment demand that courts stay out of ecclesiastical controversies by hewing strictly to secular deeds, trust instruments, and corporate bylaws. The other side maintains that church bodies have the First Amendment right to enforce through civil courts the internal rules of their religious denominations, reflected in such sources as canons, church constitutions, and evidence of tradition and practice. Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 319-27 (2016). If either view is right, the other view is unconstitutional.

Second, Respondents dismiss this case as a "procedural dispute" rather than a "constitutional conflict." Opp.7. In a sense, that is true: the case is about whether the procedural protections of the bylaws, including notice to all members, will be

honored by the court. But that *is* a constitutional conflict. Petitioners contend that honoring legal formalities is the only way both to effectuate their free exercise right to organize themselves in accordance with their own ecclesiology and to avoid entanglement in matters of religious doctrine, while Respondents argue that Petitioners' position is "an opportunistic attack on the liberty assured to religious organizations under the First Amendment." Opp.7.

The liberty assured to religious organizations under the First Amendment is to organize themselves in accordance with their own ecclesiology. CBA did that when it adopted bylaws. That liberty is at risk when, as here, civil courts take upon themselves the role of adding to the church's chosen bylaws in service of the court's own notions (frequently mistaken) of the organization's religious precepts.

Finally, Respondents seek refuge in the fact that Petitioners did not assert a separate legal claim under Section 195 of New York's Religious Corporations Law. Opp.16. But Section 195 is not a separate *claim*; it is at most the basis for an additional *argument*. State corporation law provides the legal framework for all cases about corporate bylaws. Here, Section 195 shows that the default rule for religious corporations organized under Article 10 is that all persons who regularly attend and contribute have voting rights—in contradiction to the decision below, which read the bylaws' silence about excommunication as an implicit grant of

unilateral power to a single cleric. That argument has not been waived.

This case thus provides a much-needed opportunity for this Court to clarify the constitutional law applicable to church splits, in a context where the choice between the two conflicting approaches is especially clear and the consequences to the people involved especially grievous and worthy of the Court's attention.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

IRA BRAD MATETSKY
GANFER & SHORE LLP
360 Lexington Ave.
New York, NY 10017

MICHAEL W. MCCONNELL
Counsel of Record
EDMUND G. LACOUR JR.
KIRKLAND & ELLIS LLP
655 Fifteenth Street, NW
Washington, DC 20005
(202) 879-5000
mmcconnell@kirkland.com

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