

THE EPISCOPAL CHURCH ET AL.,)	IN THE DISTRICT COURT OF
)	
Plaintiffs,)	
)	
VS.)	TARRANT COUNTY, TEXAS
)	
FRANKLIN SALAZAR ET AL.,)	
)	
Defendants/Counter-Defendants.)	141 ST DISTRICT COURT

FILED
 TARRANT COUNTY
 2011 JAN 11 PM 3:53
 THOMAS A. WILDER
 DISTRICT CLERK

**THE EPISCOPAL CHURCH’S REPLY IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

Nearly every argument that defendants raise in their Response to The Episcopal Church’s Motion for Summary Judgment has already been addressed in the Church’s Motion and its Response to Defendants’ Motion for Partial Summary Judgment, the latter of which the Church hereby incorporates into this Reply in its entirety. The Church will not repeat here the arguments already set out in those papers. Rather, this Reply addresses three new points made in defendants’ Response, none of which provide any basis for denying the Church’s Motion.

1. The Numerous Cases From Around the Country Assessing the Church’s Governmental Structure Have Found it to Be a Three-Tier Hierarchical Church, With the General Church at the Topmost Tier.

In support of their argument that Episcopal dioceses are not subordinate to the Church’s governance, defendants claim that “[c]ases declaring [the Church] hierarchical all have the diocese at the top.” Defs.’ Resp. at 12. This statement is directly contradicted by every case to have examined the Church’s polity, including 17 of the cases defendants cite on page 13 of their Response, which have consistently and expressly held that the Church is hierarchical *at every level*: parish, diocese, and general church. Thus:

- “The Episcopal Church is a hierarchical church with a three-tiered organizational structure. At the highest level is the Episcopal Church itself, governed by a ‘General Convention,’ comprising lay and clerical delegates, which has adopted a

constitution and canons that are binding on all subordinate entities in the church.” *New v. Kroeger*, 84 Cal. Rptr. 3d 464, 469-71 (Ct. App. 2008) (emphasis added);

- “Here, careful consideration of the National Episcopal Church’s structure and history persuades us that the National Episcopal Church is hierarchical. The church organization has three tiers: (1) the National Episcopal Church, (2) geographically-defined dioceses that belong to, are subordinate to, and are under the jurisdiction of the National Episcopal Church, and (3) local parishes that belong to, are subordinate to, and are under the jurisdiction of the National Episcopal Church and the individual diocese in which the parish is located.” *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga.*, 699 S.E.2d 45, 48 (Ga. Ct App. 2010);
- The Episcopal Church “is a hierarchical religious body in structure and governance, composed of essentially three tiers, each being bound by the decisions of the higher tier, with the General Convention of [the Church] exercising ultimate authority.” *Convention of the Protestant Episcopal Church in Diocese of Tenn. v. Rector, Wardens & Vestrymen of St. Andrew’s Parish*, No. 09-2092-11, Order at 11 (Tenn. Ch. Ct. Apr. 29, 2010) (Attach. E to Church’s Mot.);
- “The Episcopal Church has a hierarchical form of government consisting of three democratically elected tiers,” and “each tier of the Episcopal Church’s polity is bound by, and may not take actions that conflict with, the decisions of a higher tier.” *In re Church of St. James the Less*, 2003 Phila. Ct. Com. Pl. LEXIS 91, at *24 (Pa. Ct. Com. Pl. 2003), *aff’d in relevant part*, 888 A.2d 795, 810 (Pa. 2005);
- The Episcopal Church “is hierarchical... [and] is governed by the General Convention,” which “has enacted a constitution and a set of church laws, known as canons, by which all affiliated dioceses and local churches are bound.” *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280, 1285-86 (Conn. 1993);
- The Episcopal Church is “hierarchical” and “[t]he highest governing body of [The Episcopal Church] is the triennial General Convention, which adopts [the Church]’s constitution and canons to which the dioceses must give an ‘unqualified accession.’” *Protestant Episcopal Church in the Diocese of Va. v. Truro Church*, 280 Va. 6, 12, 15 (2010) (reversing and remanding *In re Multi-Circuit Episcopal Church Property Litig.*, 76 Va. Cir. 786 (2008));
- “The National [Episcopal] Church has a hierarchical form of governance. Its governing body, the General Convention, adopted—and periodically amends—a constitution and canons (the National Canons) that manifest its doctrinal law.” *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 921 (N.Y. 2008);

- The Episcopal Church’s “dioceses and parishes are governed by a national constitution and canons.” *Episcopal Diocese of Mass. v. DeVine*, 797 N.E.2d 916, 919 (Mass. App. Ct. 2003);
- “The ... Episcopal Church ... is governed by a general convention and a presiding bishop.” *Episcopal Church Cases*, 87 Cal. Rptr. 3d 275, 281 (Cal. 2009);
- The Episcopal Church “is governed by a general convention and a presiding bishop.” *Protestant Episcopal Church in the Diocese of Los Angeles v. Barker*, 171 Cal. Rptr. 541, 544 (Ct. App. 1981), *distinguished on other grounds by Episcopal Church Cases*, 87 Cal. Rptr. 3d at 295;
- “We conclude that the Protestant Episcopal Church is hierarchical. The constitution and canons of [the Church] detail the authority exercised by [the Church] through a diocese to each local parish.” *Parish of the Advent v. Protestant Episcopal Diocese of Mass.*, 688 N.E.2d 923, 931 (Mass. 1997);
- “[T]he Protestant Episcopal Church [is] hierarchical with regard to property, as well as spiritual matters” *Bennison v. Sharp*, 329 N.W.2d 466, 472 (Mich. Ct. App. 1982);
- “[T]he Episcopal Church structure is hierarchical, ... the corporation ‘The Rector’ ... acceded to the Constitution and Canons of the national Episcopal Church, and ... therefore the local parishes held title to their property ‘subject to the superior authority of the Diocese of Nevada.’” *Tea v. Protestant Episcopal Church in Diocese of Nev.*, 610 P.2d 182, 183 (Nev. 1980);
- Episcopal parish “acced[ed] to the constitutions of the national church and of the diocese, recognizing the authority of the General Convention ..., the policy-making body of the national church, and promising obedience to the canons of the national church and of the diocese.” *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 88 (Colo. 1986);
- The Episcopal Church “is a hierarchically structured organization which by virtue of its constitution and canons exercises pervasive control over its constituent parishes and missions.” *Protestant Episcopal Church in Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980);
- Episcopal parish “accept[ed] the hierarchical church’s principles and policies including that church property was to be held solely for the over-all mission and benefit of the national church and its dioceses.” *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 684 N.Y.S.2d 76, 82 (Sup. Ct. 1999);
- The Episcopal Church “is a hierarchical or connectional church composed of 109 geographical dioceses” *Daniel v. Wray*, 580 S.E.2d 711, 714 (N.C. Ct. App. 2003); and

- Parish “is, and always has been, subject to the ecclesiastical authority and to the Constitutions and Canons of both The Episcopal Church and the Diocese” *Diocese of Sw. Va. of Protestant Episcopal Church v. Buhrman*, No. 1748, 1977 WL 191134, at *1, 4 (Va. Cir. Ct. 1977).

Similarly, defendants’ assertions that “the courts ... have [n]ever regarded [the Church] as having any interest in the proceedings” over Episcopal parish property, Defs.’ Resp. at 12, and that such cases have “held that parish property had to remain with the local bishop and the diocese” and not with the Church, *id.* at 13, are entirely discredited by the case law, including two recent Texas trial court decisions and the decisions of the highest courts of six states. Thus:

- “[T]he real and personal property held by [the parish] is held and may be used only for the ministry and work of the Church and the Diocese.” *St. Francis on the Hill Church v. The Episcopal Church*, No. 2008-4075, Final Summary Judgment (210th Dist. Ct., El Paso County, Tex. Dec. 17, 2010) (Attach. A to Church’s Resp. to Defs.’ Mot.);
- “[A]ll real and personal property of [the parish] is held in trust for the Episcopal Church and the Diocese.” *Diocese of Nw. Tex. v. Masterson*, No. A-07-0237-C, Modified Final Summary Judgment at 2 (51st Dist. Ct., Tom Green County, Tex. Dec. 16, 2009), *appeal docketed*, No. 03-10-00015-CV (Tex. App. Jan. 7, 2010) (Attach. A to Church’s Mot.);
- “[W]hen defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church.” *Episcopal Church Cases*, 87 Cal. Rptr. 3d at 297;
- Parish “holds the property in question in trust for the Episcopal Church and the ... diocese.” *Huber v. Jackson*, 96 Cal. Rptr. 3d 346, 357 (Ct. App. 2009);
- “[A] trust has been imposed upon the real and personal property of [the parish] for the use of the general church.” *Bishop & Diocese of Colo.*, 716 P.2d at 108;
- The Church’s canons “impose” a “broad[] trust in favor of the general church.” *Grace Church & St. Stephen’s v. Bishop & Diocese of Colo.*, No. 07 CV 1971, Order at 19 (Colo. Dist. Ct. Mar. 24, 2009) (Attach. C to Church’s Mot.);
- There is “a legally enforceable trust in favor of the general church in [the subject parish’s] property.” *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish*, 620 A.2d at 1293;

- “[A] trust over the [parish] property exists in favor of the National Episcopal Church and the Diocese.” *Rector, Wardens & Vestrymen of Christ Church in Savannah*, 699 S.E.2d at 55;
- Parish “holds its property in trust for the Diocese and [The Episcopal Church].” *Episcopal Diocese of Mass.*, 797 N.E.2d at 923;
- “[E]stablished customs, practices and usages of The Protestant Episcopal Church” required that “that all parish property is held in trust for the national church and the diocese in which the parish is located.” *Protestant Episcopal Church in Diocese of N.J.*, 417 A.2d at 24;
- “We conclude that [Church Canons I.7(4) & (5)] clearly establish an express trust in favor of the ... Diocese and the National Church.” *Episcopal Diocese of Rochester*, 899 N.E.2d at 925;
- The Episcopal Church’s canons “clearly establish an express trust in favor of the Rochester Diocese and the National Church.” *Diocese of Central N.Y. v. Rector, Church Wardens, & Vestrymen of the Church of the Good Shepherd*, No. 2008-0980, 2009 WL 69353, at *2 (N.Y. Sup. Ct. 2009);
- “[T]here is sufficient evidence of an intent to create an implied trust to hold church property in favor of the Protestant Episcopal Church and its dioceses based upon defendants’ actions in conformity with the tenets and canons of the Protestant Episcopal Church and the national church’s more recent establishment of an express trust.” *Trustees of the Diocese of Albany*, 250 A.D.2d at 288;
- “[A]ll real and personal property held by [the parish] is held in trust for the Episcopal Church and the Episcopal Diocese.” *St. James Church, Elmhurst v. Episcopal Diocese of Long Island*, No. 22564/05, Mem. at 31 (N.Y. Sup. Ct. Mar. 12, 2008) (Attach. D to Church’s Mot.);
- The Episcopal Church “was a real party in interest because it had a legal right to enforce” trust in parish property. *Daniel*, 580 S.E.2d at 716;
- Parish “plainly held its property for the benefit of the National Episcopal Church and the Diocese, i.e., in trust for those entities.” *In re Church of St. James the Less*, 888 A.2d at 809; and
- Parish property “is impressed with a trust in favor of the Diocese and The Episcopal Church.” *Convention of the Protestant Episcopal Church in Diocese of Tenn.*, No. 09-2092-11, Order at 11 (Attach. E to Church’s Mot.).

Defendants’ attempt to ignore the overwhelming body of case law on these two points should be rejected.

2. Texas’s “Identity” Approach to Resolving Church Property Disputes Remains Good Law After *Jones v. Wolf*.

Defendants suggest that in *Jones v. Wolf*, 443 U.S. 595 (1979), the U.S. Supreme Court made the “neutral principles” approach the *sole* method for resolving church property disputes, and as a result that Texas’s “identity” approach can no longer be applied. Defs.’ Resp. at 4. This flies in the face of *Jones* itself, which stated, “a State may adopt *any* one 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.” 443 U.S. at 602 (quoting *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring) (emphasis in original); see also *Schismatic & Purported Casa Linda Presbyterian Church in Am. v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 704 (Tex. App.—Dallas 1986, writ ref’d n.r.e.) (“[A]ppellants interpret the *Jones* decision as requiring a state to adopt the neutral principles of law approach. We disagree.”). Texas’s “identity” approach does not require “consideration of doctrinal matters” in the least; it merely requires the court to identify the faction that is loyal to the hierarchical church. See Church’s Mot. at 35-39.

In any event, Texas courts have continued to apply the “identity” approach even after *Jones*. See *St. Francis on the Hill Church*, No. 2008-4075, Final Summary Judgment; *Diocese of Nw. Tex.*, No. A-07-0237-C, Modified Final Summary Judgment; *Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 552 (Tex. App.—Austin 1991, writ denied); *Templo Ebenezer, Inc. v. Evangelical Assemblies, Inc.*, 752 S.W.2d 197, 198 (Tex. App.—Amarillo 1988, no writ); *Schismatic & Purported Casa Linda Presbyterian Church in Am.*, 710 S.W.2d at 706-07.

Defendants’ argument on this point, as well, should be rejected.

3. This Case is Not a “Battle of the Experts.”

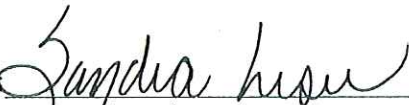
In support of their Response, defendants submitted the affidavit of a purported “expert” on the issue of whether the Church is hierarchical, but then take contradictory positions on what the Court should do with such an affidavit. On the one hand, they argue (without support) that “neutral principles” does not allow the consideration of expert reports. Defs.’ Resp. at 6. On the other, they contend that because the opinions of their “expert” conflict with those of Professor Mullin, whose affidavit was submitted in support of the Church’s motion, then Professor Mullin’s opinions “cannot support a summary judgment.” Defs.’ Resp. at 7.

But defendants miss the point: The Church’s motion does not rely on Professor Mullin’s opinions in support of its arguments. *See generally* Church’s Mot. Rather, the Church makes a straightforward case based on undisputed documentary evidence, which it invites the Court to construe. *See id.* Accordingly, defendants’ suggestion that the Church’s motion should be denied because they have submitted a conflicting expert report should be rejected.

CONCLUSION

For the reasons set out in the Church's Motion for Summary Judgment, its Response to Defendants' Motion for Partial Summary Judgment (as incorporated herein), and this Reply, the Church's motion should be granted.

Respectfully submitted,

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Dated: January 11, 2011

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