

THE EPISCOPAL CHURCH, et al.)	IN THE DISTRICT COURT OF
)	
VS.)	TARRANT COUNTY, TEXAS
)	
FRANKLIN SALAZAR, et al.)	141 ST DISTRICT COURT

**LOCAL EPISCOPAL PARTIES’ REPLY IN SUPPORT OF THEIR
AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT¹**

TO THE HONORABLE COURT:

In their Response, Defendants “the breakaway faction” again misstate critical authority to this Court. Their actions have no legal basis. The Local Episcopal Parties’ Amended Motion for Partial Summary Judgment should be granted, and Defendants’ cross-motion should be denied.

- **Example 1:** Defendants rely on a sentence from the 2002 Dallas Court of Appeals: “Ordinarily, we would construe articles of incorporation of a Texas non-profit corporation according to the body of neutral legal principles that governs Texas corporations generally.”² But they fail to cite what comes next: “*However, we cannot do so in this instance . . . deciding the central issue here would require us to interpret religious law and usage. . . . [R]esolution would require the State, through the judicial system, to determine issues of internal church governance. As explained in Milivojevich, we may not delve into those issues.*”³
- **Example 2:** Defendants cite one sentence fragment from the 2006 Fort Worth Court of Appeals: “Neutral principles of law must be applied to decide such matters . . .”⁴ But they fail to cite what follows: “. . . *so that courts do not violate the constitutional prohibition against government established religion. But if the conflict cannot be resolved solely by the application of neutral principles of law, we must defer to the decision made by the highest authority of the church from which the question or controversy arises Matters involving the interpretation of church bylaws and constitutions, the relationship between an organized church and its minister, and the division of church assets are all*

¹ “The Local Episcopal Parties” are defined at *note 1* in their Amended Motion for Partial Summary Judgment. The Local Episcopal Congregations, represented by Frank Hill, join in this reply, subject to their motion for continuance.

² Defendant Breakaway Faction’s Response to Local Episcopal Parties at 7, citing *Cherry Valley Church of Christ/Clemons v. Foster*, No. 05-00-01798-CV, 2002 WL 10545, at *3 n.1 (Tex. App.—Dallas Jan. 4, 2002, no pet.).

³ *Id.* (emphasis added).

⁴ Defendants’ Response to the Local Episcopal Parties at 7 and n.29, citing *Smith v. N. Tex. Dist. Council of Assemblies of God & House of Grace*, No. 2-05-425-CV, 2006 WL 3438077, at *2 (Tex. App.—Fort Worth Nov. 30, 2006, no pet.).

ecclesiastical concerns. Therefore, appellant’s requests are all matters which are ecclesiastical in nature. While wrongs may exist and be severe, and although a church’s administration may be inadequate to provide a remedy, the preservation of the free exercise of religion is deemed so important a principle that it overshadows the inequities which may result from its liberal application.”⁵

Defendants’ actions are unlawful. They know this, because they have seen this law for a very long time and must resort to partial and misleading citations to defend their actions. They know this, because Defendant Iker and his cohorts are taking positions that are directly opposite to their prior testimony and pleadings to other courts, when they were still members in good standing of The Episcopal Church. Defendants have broken their vows to the Church they swore allegiance to, and they are trying to take property that is not theirs. Summary judgment against them is proper.

A. Short Overview of the Breakaway Faction’s Misstatements

Texas has a precise road-map for the resolution of this case. Because the Local Episcopal Parties have already described this law in detail in their Amended Motion for Partial Summary Judgment and their Response to Defendant’s Cross-Motion for Partial Summary Judgment, here, we will briefly categorize Defendants’ wrongful statements, then restate the proper analysis.

i. Defendants falsely state hierarchy ends at the Diocese.

Defendants’ “last gasp” position is that the regional Episcopal Diocese, and not The Episcopal Church, is the top of the Church hierarchy. As a matter of law, confirmed by courts around the country and evident on the face of undisputed documents, this position fails. These positions are set forth exhaustively in the Local Episcopal Parties’ Amended Motion for Summary Judgment at pp. 14-30, with demonstrative highlights here.

(1) The undisputed documents defining church hierarchy reject this position

- The Episcopal Diocese “recognizes the authority of the General Convention of

⁵ *Smith*, 2006 WL 3438077, at *2-3 (emphasis added).

said Church.”⁶

- The Episcopal Diocese “fully subscribe[s] to and accede[s] to the Constitution and Canons of The Episcopal Church.”⁷
- The Episcopal Diocese’s Bishop does “solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”⁸
- The Episcopal Diocese’s Bishop can be disciplined or removed by the General Church for “abandonment of the communion” of the General Church, violation of the Church’s Constitutions or canons, or violation of the vow of conformity to the Episcopal Church.⁹
- “Any person accepting any office of this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church.”¹⁰
- The Episcopal Church’s own canons expressly characterize the Church as being “hierarchical” in polity and order.¹¹

(2) Defendant Iker’s prior court representations reject this position

- The Episcopal Church “has a national body that leads the overall church through its General Conventions Below that are the various dioceses The dioceses have canons that cannot be inconsistent with national canons.”¹²
- An “Episcopal bishop, unlike perhaps a bishop of the Roman Catholic Church, is governed by the constitution and canons of the Church.”¹³
- “A bishop must adhere to the constitution and canons of the Church or be subject

⁶ A533 (Ex. D-21, Diocesan Art. 1).

⁷ A518-25 (Ex. D-19, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth (1982) at pp. 25-32).

⁸ A627, 722 (Ex. D-36, Church Art. VIII and Canon III.11.8).

⁹ A738-39, 773-74 (Ex. D-36, Church Canons IV.1 and IV.9).

¹⁰ A675-76 (Ex. D-36, Church Canon I.17(8)).

¹¹ A337, 780 (Ex D-36, Church Canon IV.14.1 (“Disciplinary proceedings under this Title are neither civil nor criminal, but ecclesiastical in nature and represent determinations by this Church of who shall serve as Members of the Clergy of this Church and further represent the polity and order of this hierarchical Church.”) (Both the 2006 version of the Constitution and Canons and the amended version of Title IV, currently in effect, contain the identical text).

¹² A1062-63 (Ex. G-5, Iker Amicus Brief at 10-11 (footnotes omitted)).

¹³ A1054 (Ex. G-5, Iker Amicus Brief at 2). Defendant Iker was here expressly referring to The Episcopal Church by “Church.” *See id.* (referring to “the Episcopal Church USA, hereinafter ‘Episcopal Church,’ ‘ECUSA’ or ‘the Church’”).

to discipline.”¹⁴

(3) Courts around the nation reject this position

- Texas: “The Episcopal Church is a hierarchical church as a matter of law.”¹⁵ The Honorable Judge Terry Means (staying the parallel federal proceedings in favor of this Court’s summary judgment proceeding): “Upon its formation, the Diocese entered into membership with the Episcopal Church, a hierarchical religious denomination. . . .”¹⁶
- Georgia: “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.”¹⁷
- California: “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.”¹⁸ “[I]t is beyond dispute that the Episcopal Church is a hierarchical church. . . . The fact that the Supreme Court and the Fourth District were ultimately analyzing the actions of a parish rather than the actions of a diocese, do not invalidate the findings regarding the nature of the Church as a whole. Moreover, and more importantly, a review of the Constitution and Canons of the Church indicates that it is indeed hierarchical.”¹⁹
- Michigan: “[T]he Episcopal Church is hierarchical in nature . . . [T]he national canons supersede diocesan canons, which themselves supersede parish bylaws In Article I of the diocesan constitution, the Diocese declares it is a constituent of PECUSA and ‘accedes to the doctrine, discipline, worship, constitution, canons

¹⁴ A1056 (Ex. G-5, Iker Amicus Brief at 4).

¹⁵ *St. Francis on the Hill Church v. The Episcopal Church*, Cause No. 2008-4075, Final Summary Judgment (Dist. Court—El Paso [210th Jud. Dist.], Dec. 17, 2010) (emphasis added) (attachment B to the Local Episcopal Parties’ Response).

¹⁶ *Episcopal Diocese of Fort Worth v. Iker*, No. 4:10-cv-700-Y, at *1 (N.D. Tex. Jan. 6, 2011) (order staying proceedings).

¹⁷ *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga., Inc.*, 699 S.E.2d 45, 48 (Ga. Ct. App. 2010).

¹⁸ *New v. Kroeger*, 84 Cal. Rptr. 3d 464, 469-71 (Cal. Ct. App. 2008).

¹⁹ *Diocese of San Joaquin v. Schofield*, No. 08 CECG 01425, at*5 (Cal. Super. Ct. July 21, 2009), *vacated on other grounds, Schofield v. Superior Court*, 118 Cal. Rptr. 3d 160 (Cal. Ct. App. 2010).

and authority of that Church' The test of *Watson*, that a religious organization is but a subordinate part of a general church in which there are superior ecclesiastical tribunals with a more or less complete power of control, is plainly met here."²⁰ "[T]he undisputed facts show the Protestant Episcopal Church to be hierarchical with regard to property, as well as spiritual matters."²¹

Defendants' multi-page chart about whether The Episcopal Church was or was not a party to church litigation does not have any relevance or import.²² In most cases, the Church's diocesan officers take their oaths of loyalty and fiduciary responsibility to the Church seriously and represent the Church's interest in litigation. It is only in the rare instance where a diocese's bishop attempts to violate his "solemn" vow to "conform to the Doctrine, Discipline, and Worship of the Episcopal Church"²³ that it is actually necessary for the Church to be involved as a party in such a suit. And it is notable that for all their charting, Defendants fail to mention the holding of the one case where a diocese's bishop did attempt to abandon communion with The Episcopal Church and seize control of an Episcopal Diocese and its property for the benefit of a new church (in fact, the same South American church that Defendant Iker has sworn *new* allegiance to here) – and the holding in that case, unmentioned by Defendants, is that the appellate court soundly reaffirmed The Episcopal Church's hierarchy over its Episcopal Diocese:

The dispute set forth in the request for declaratory relief in the first cause of action, namely, whether Schofield [the breakaway bishop] or Lamb [the newly elected bishop loyal to The Episcopal Church] is the incumbent Episcopal Bishop of the Diocese of San Joaquin, is quintessentially ecclesiastical [T]he validity of such removals and appointments are not subject to further adjudication by the trial court. The continuity of the diocese as an entity within the Episcopal Church is likewise a matter of ecclesiastical law,

²⁰ *Bennison v. Sharp*, 329 N.W.2d 466, 472-73 (Mich. Ct. App. 1982).

²¹ *Id.* at 472.

²² Defendants' Response to Plaintiff The Episcopal Church's Motion for Summary Judgment at 13-14.

²³ A627-28, 722 (Ex. D-36, Church Art. VIII and Canon III.11.8).

finally resolved, for civil law purposes, by the Episcopal Church's recognition of Lamb as the bishop of that continuing entity.²⁴

Nor does Defendants' new "expert" affidavit affect this finding.²⁵ It is a well-settled principle of law that there is not a fact issue simply because two sides offer competing experts. Here, the Episcopal Parties do not need to rely on the Mullin Affidavit for any ground for summary judgment, and the Bonner Affidavit is similarly immaterial. Courts determine whether a church is hierarchical by applying the relevant legal definitions to a basic review of church structure.²⁶ It is more than sufficient that the Episcopal Diocese, upon formation, resolved unanimously to "fully subscribe to and accede to the Constitution and Canons of The Episcopal Church" and "recognize[] the authority of the General Convention of said Church."²⁷ As Defendants themselves assert, "ecclesiastical opinions in [an expert affidavit] regarding the organization and structure of The Episcopal Church require a searching and therefore impermissible inquiry into church polity."²⁸ Rather, courts recognize the basic fact, evident on the face of church constitutions and canons, that "each tier of the Episcopal Church's polity is

²⁴ *Schofield*, 2010 WL 4644707, at *4-5.

²⁵ See Defendants' Supplemental Appendix (Affidavit of Jeremy Bonner, arguing with The Episcopal Church about its own interpretation and understanding of its polity and internal structure).

²⁶ The United States Supreme Court recognizes two types of churches: congregational and hierarchical. A congregational church is "strictly independent of other ecclesiastical associations, and as so far as church government is concerned, owes no fealty or obligation to any higher authority." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 722-23 (1871); accord *Dean v. Alford*, 994 S.W.2d 392, 395 n.1 (Tex. App.—Fort Worth 1999, no pet.) (citing *Watson*, 80 U.S. at 722-23). A hierarchical church, in contrast, is one in which the local church is "a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power more or less complete, in some supreme judicatory over the whole membership of that general organization." *Watson*, 80 U.S. at 722-23; accord *Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

²⁷ The Local Episcopal Parties exhaustively demonstrated that The Episcopal Church is a hierarchical church as a matter of law in their Amended Motion for Partial Summary Judgment, at Section VI.A.1-5 and incorporates those arguments herein.

²⁸ See Defendants' Objections to Plaintiffs' Summary Judgment Motions and Evidence at p. 2, sections 3-4.

bound by, and may not take actions that conflict with, the decisions of a higher tier.”²⁹ There is simply no way a breakaway faction can claim, genuinely, that local dioceses or parishes within The Episcopal Church are “strictly independent of other ecclesiastical associations, and so far as church government is concerned, owe[] no fealty or obligation to any higher authority.”³⁰ The Bonner Affidavit raises no material or genuine issues.

Thus, under a plain review of undisputed documents, Defendants’ last-gasp hierarchy argument fails as a matter of law.

ii. Defendants *still* fail to acknowledge a century of Texas “hierarchical church property law” applied as recently as *last month*.

Ultimately, Defendants lose whether Texas is a “deference” state or a “neutral principles” state, but Defendants are wrong to continue telling this Court that Texas applies the multi-factor “neutral principles” analysis used by some other states to adjudicate hierarchical church property disputes.³¹ In a hierarchical church property dispute, two factions claim to be the local unit of a hierarchical church, with a continuing right to its name and property. The Local Episcopal Parties have cited numerous Texas cases from 1909, 1957, 1977, 1989, 1991, 2009, 2010, and more applying the *Watson* deference approach.³² Defendants still have not cited a single Texas

²⁹ *In re Church of St. James the Less*, No. 953NP, 2003 WL 22053337, at *6-7 (Pa. Ct. Com. Pl. Mar. 10, 2003), *aff’d in relevant part*, 888 A.2d 795 (Pa. 2005); *see also Diocese of San Joaquin*, No. 08 CECG 01425, at*5, *vacated on other grounds, Schofield*, 118 Cal. Rptr. 3d 160; *New v. Kroeger*, 84 Cal. Rptr. 3d at 469-71.

³⁰ Per note 20, *supra*, this is the definition of a congregational or non-hierarchical church. Nor does Defendants’ “continuum” argument (Response to Local Episcopal Parties at 5) hold any merit. As exhaustively briefed in the Local Episcopal Parties’ Amended Motion for Summary Judgment at pp. 14-30, The Episcopal Church is hierarchical under the United States Supreme Court’s binary definitions of hierarchical and congregational (which, contrary to Defendants’ claim, are not unconstitutional because they are the express doctrine of the U.S. Supreme Court) and under the continuum analysis used by two Texas courts (employing a six-factor test that Defendants do not even cite, much less analyze).

³¹ *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (describing “neutral principles” analysis of (1) deeds, (2) local church charters, (3) state statutes governing the holding of church property, and (4) the provisions in the constitution of the general church concerning the ownership and control of church property); *cf.* Defendants’ Motion for Partial Summary Judgment at 5 (“Under the ‘neutral principles’ standard, courts decide property disputes by construing property deeds, written constitutions, articles of incorporation, by-laws, and state statutes”).

³² Local Episcopal Parties’ Response to Defendants’ Motion for Partial Summary Judgment at pp. 10-13.

case applying the multi-factor “neutral principles” analysis to resolve a hierarchical church property case (or any other case).³³ All they do is cite out-of-context dicta that happens to use the generic phrase “neutral principles” (but never references or applies their desired out-of-state multi-factor test) in cases that involve *congregational* (non-hierarchical) churches,³⁴ non-property and non-faction disputes,³⁵ and that ultimately apply deference due to the ecclesiastical nature of the dispute.³⁶

Defendants’ cavalier statement that “maybe 100 years ago” Texas courts applied deference law in hierarchical church property disputes, “but not today”³⁷ is belied by a century of cases (including 2009 and 2010 cases on point), and Defendants utterly fail to present a single hierarchical church property case to the contrary. Just last month, another Texas court held:

The Episcopal Church is a hierarchical church as a matter of law Because the Episcopal Church is such, **the Court follows the long established Texas precedent governing hierarchical church property disputes, which holds that in the event of a dispute among its members, a constituent part of a hierarchical church consists of those individuals remaining loyal to the hierarchical church body.** Under the law articulated by the Texas courts, those are the individuals who remain entitled to the use and control of the church property.³⁸

³³ The only Texas hierarchical church property case that even *mentions* this multi-factor test did so because the breakaway faction raised it, and that court reaffirmed Texas’s controlling deference law (before noting that the breakaway faction would have also lost under its own preferred analysis). *St. Francis on the Hill Church v. The Episcopal Church*, Cause No. 2008-4075, Final Summary Judgment (Dist. Court—El Paso [210th Jud. Dist.], Dec. 17, 2010).

³⁴ *Dean*, 994 S.W.2d at 395 n.1.

³⁵ *Westbrook v. Penley*, 231 S.W.3d 389, 391-92 (Tex. 2007).

³⁶ See, e.g., *Smith*, 2006 WL 3438077, at *2-3; *Cherry Valley*, 2002 WL 10545, at *3-4; *Dean*, 994 S.W.2d at 395-96.

³⁷ Defendants’ Response to Local Episcopal Parties at 11.

³⁸ *St. Francis on the Hill Church v. The Episcopal Church*, Cause No. 2008-4075, Final Summary Judgment (Dist. Court—El Paso [210th Jud. Dist.], Dec. 17, 2010) (emphasis added).

Defendants cannot unilaterally change the law of Texas, just as they cannot unilaterally violate their oaths to The Episcopal Church and take property that belongs to the continuing Episcopal Diocese of Fort Worth identified by The Episcopal Church.

iii. Defendants falsely state that “Neutral-principles states do not defer.”

Even if Texas did apply the multi-factor “neutral principles” analysis, it would do Defendants no good because the issues here are still fundamentally ecclesiastical and would still require deference under the First Amendment. In an attempt to escape this conclusion, Defendants make two grossly wrong claims about neutral-principles states: first, that “Neutral-principles states do not defer” and second, that the “identity question *doesn't* [original emphasis] answer the property question under neutral principles.”³⁹

Both statements are patently false where, as here, ecclesiastical identity issues determine the outcome of the property dispute. The United States Supreme Court rejected Defendants’ very approach while criticizing Illinois’ improper application of “neutral principles”:

Resolution of the religious disputes at issue here affects the control of church property in addition to the structure and administration of the American-Canadian Diocese. This is because the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations. Resolution of the religious dispute over [the Diocesan Bishop’s] defrockment therefore determines control of the property. **Thus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals.**⁴⁰

The Supreme Court confirmed this position in *Jones*, analyzing the limits of Georgia’s neutral principles approach before remanding for further proceedings:

- “[T]he First Amendment severely circumscribes the role that civil courts may play

³⁹ Defendants’ Response to Local Episcopal Parties at 6, 7.

⁴⁰ *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 709 (1976) (emphasis added).

in resolving church property disputes. . . . [T]he Amendment requires that civil courts **defer** to the resolution of issues of religious **doctrine or polity** by the highest court of a hierarchical church organization. *Subject to these limitations, however,*” a state may adopt one of various approaches to church property disputes, including neutral principles.⁴¹

- “[If], under Georgia [neutral principles] law the process of identifying the faction that represents the [local] church involves considerations of religious doctrine and polity,” then “the First Amendment requires that the Georgia courts give **deference** to the presbyterial commission’s determination of that church’s **identity**.”⁴²
- “All this may suggest that the identity of the ‘Vineville Presbyterian Church’ named in the deeds must be determined according to terms of the [hierarchical Presbyterian Church’s] Book of Church Order, which sets out the laws and regulations of churches affiliated with the PCUS. Such a determination, however, would appear to require a civil court to pass on questions of religious doctrine, and to usurp the function of the commission appointed by the Presbytery, which already has determined that petitioners represent the ‘true congregation’ of the Vineville church. Therefore, if Georgia law provides that the identity of the Vineville church is to be determined according to the ‘laws and regulations’ of the PCUS, then the First Amendment requires that the Georgia courts give **deference** to the presbyterial commission’s determination of that church’s **identity**.”⁴³

Both cases directly negate Defendants’ bald, false assertions that “Neutral-principles states do not defer” and the “identity question *doesn’t* [original emphasis] answer the property question under neutral principles.”

Courts in Defendants’ so-called “neutral-principles states” agree that Defendants’ position is baseless:

- *California* (neutral principles state): “[W]e **must defer to the acts of the representatives of the Episcopal Church in determining who were the true members of the church, and, under canon law, who were the lawful directors of the Parish corporation.** These are matters of ‘credentials and discipline’ and ‘polity and administration.’ As such, as a matter of law the trial court erred in determining that ‘there was no valid basis for Bishop Mathes’ removal and replacement of the board of directors of the corporation; the purported election on

⁴¹ *Jones*, 443 U.S. at 602 (emphasis added) (citations omitted). BLACK’S LAW DICTIONARY (9th ed. 2009) defines polity as “The total governmental organization as based on its goals and policies.”

⁴² *Jones*, 443 U.S. at 608-09 (emphasis added).

⁴³ *Id.* at 609 (emphasis added) (footnotes omitted).

Aug. 7, 2006 of a new board was invalid.’ **We must defer to the Episcopal Church’s decision on this ecclesiastical matter, even if it incidentally affected control over church property.**”⁴⁴

- *Massachusetts* (neutral principles state): “The present dispute . . . arose out of a disagreement over the Diocese’s authority to reclassify St. Paul’s as a mission and to replace its leaders. **Though the Diocese sought by its complaint to establish its right to control the church property, the action was precipitated by the displaced leaders’ refusal to recognize the bishop’s authority to remove them and their unwillingness to surrender keys to the property. Because the question of the right to use and possess the St. Paul’s church property is inextricably intertwined with the question of which individuals hold authority to act on behalf of St. Paul’s (a question that essentially depends on the authority of the Diocese and its bishop over the mission or parish), we consider the matter to be inappropriate for determination by application of neutral principles of law.**”⁴⁵

Courts are very clear about what issues constitute ecclesiastical questions, where civil courts must defer to and apply the church’s determinations for civil law purposes. These include: “questions of church discipline and the composition of the church hierarchy” (“at the core of ecclesiastical concern”),⁴⁶ issues of church “polity,”⁴⁷ “[m]atters involving the interpretation of church bylaws and constitutions,”⁴⁸ the “division of church assets,”⁴⁹ “the structure, leadership, or internal policies of a religious institution,”⁵⁰ the church’s relationship with its ministers (its “lifeblood,” “the primary agent by which a church seeks to fulfill its purpose,” of “prime ecclesiastical concern”),⁵¹ the hierarchy’s selection or removal of a diocesan

⁴⁴ *Kroeger*, 84 Cal. Rptr. 3d at 485 (emphasis added).

⁴⁵ *Episcopal Diocese of Mass. v. Devine*, 797 N.E.2d 916, 921-22 (Mass. App. Ct. 2003) (emphasis added) (citations omitted).

⁴⁶ *Milivojevich*, 426 U.S. at 717.

⁴⁷ *Jones*, 443 U.S. at 602. BLACK’S LAW DICTIONARY (9th ed. 2009) defines polity as “The total governmental organization as based on its goals and policies.”

⁴⁸ *Smith*, 2006 WL 3438077, at *3.

⁴⁹ *Id.* at *3.

⁵⁰ *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877, 889-90 (Tex. App.—Dallas 2000, pet. denied) (citing *Milivojevich*, 426 U.S. at 709).

⁵¹ *Dean*, 994 S.W.2d at 395.

bishop (“the bishop of a church is clearly one of the central figures in such a hierarchy and the embodiment of the church within his Diocese”);⁵² “disputes over the government and direction of subordinate bodies,”⁵³ inquiry into whether a church abided by its own bylaws, constitutions, canons, or other resolutions,⁵⁴ matters relating to the hiring, firing, discipline, or administration of clergy,⁵⁵ and disputes “concerning which by-laws applied and what they required” (since “[d]etermining which version of the by-laws in fact controlled thus involved determining the ecclesiastical powers of the higher church authorities that claimed that their version controlled”).⁵⁶

There is no question that here, as in the cases above, the fundamental issues in this case are ecclesiastical. This is, at heart, a dispute between two factions who parted ways over theology – one (the Local Episcopal Parties) agrees with the hierarchical Episcopal Church and the other (Defendants, the breakaway faction) does not.⁵⁷ As in *Milivojevich*, the ecclesiastical question of the Church’s recognition of Bishop Ohl and discipline and removal of Defendant Iker determines who chairs the property-holding corporation, and “[t]hus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our

⁵² *Milivojevich*, 426 U.S. at 709.

⁵³ *Id.* at 724-25; accord *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 113-14; *Watson*, 80 U.S. at 727.

⁵⁴ *Milivojevich*, 426 U.S. at 708.

⁵⁵ *Lacy v. Bassett*, 132 S.W.3d 119, 123 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

⁵⁶ *Greanias v. Isaiah*, No. 01-04-00786-CV, 2006 WL 1550009, at *9 (Tex. App.—Houston [1st Dist.] June 8, 2006, no pet.) (emphasis added) (footnotes and citations omitted). Note that the *Greanias* Court at one point accidentally referred to its lower *Greanias* court as the “*Chen* court” while distinguishing *Greanias* from *Chen* (“Additionally, the pleadings and materials that the *Chen* [*sic Greanias*] court considered indicated that a higher church authority was disputing whether the local by-laws...controlled to the exclusion of the UPRs”). *Id.* It is clear that the court meant to refer to the lower *Greanias* court, because (1) UPRs were at issue in *Greanias*, not *Chen*; (2) a higher church authority was present in *Greanias*, not *Chen*; and (3) the opinion next reads, “In *Chen*, in contrast,...the religious organization was congregational. . . . *Chen* thus did not involve the situation in which a higher authority [disputed the by-laws].” *Id.* This mistake is corrected by the bracketed text in the citation above.

⁵⁷ A896-97 (Ex. F-5, “As We Realign”); A898-899 (Ex. F-6, “Responses to Attempted Inhibition of the Bishop”).

cases is for ecclesiastical and not civil tribunals.”⁵⁸ As in *Episcopal Diocese of Mass.*, the property questions here were “precipitated by the displaced leaders’ refusal to recognize the [hierarchy’s] authority to remove them and their unwillingness to surrender keys to the property.”⁵⁹ As in *Jones*, the “identity of the” Episcopal Diocese “named in the deeds must be determined according to terms of the [hierarchical Church’s internal doctrine], which sets out the laws and regulations of churches affiliated with the [hierarchical church],” as well as the qualifications of its officers.⁶⁰ As in *Cherry Valley*, the relevant Articles of Incorporation requiring that church property “be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth and the Episcopal Church”⁶¹ (like *Cherry Valley*’s phrase “custom and practices of the church” in its articles) removes any dispute that “deciding the central issue here would require us to interpret religious law and usage [and] would require the State, through the judicial system, to determine issues of internal church governance.”⁶²

As in *Greanias*, Defendants ask the Court to rely on their wrongly amended bylaws and articles, but “[d]etermining which version of the by-laws in fact control[s] thus involve[s] determining the ecclesiastical powers of the higher church authorities that claim[] that their version control[s].”⁶³ Defendants’ arguments mirror the arguments rejected in *Greanias*:

this controversy involves a simple . . . application of the TNPCA’s [Texas Non-Profit Corporations Act’s] provisions to the corporate organization [and that the] dispute does not involve the question of who are the church’s ministers, elders, deacons, *et*

⁵⁸ *Milivojevic*, 426 U.S. at 709.

⁵⁹ 797 N.E.2d at 921-22 (citations omitted).

⁶⁰ *Jones*, 443 U.S. at 609 (footnotes omitted). As shown *supra* and in the Local Episcopal Parties’ Response at, *e.g.*, nn.68-69, the factors in *Jones* that led to this conclusion are equally present here.

⁶¹ A36 (Ex. B-1, April 4, 2009 Amended & Restated Articles of Incorporation of Corporation of the Episcopal Diocese of Fort Worth).

⁶² *Cherry Valley Church of Christ/Clemons*, 2002 WL 10545, at *3.

⁶³ *Greanias*, 2006 WL 1550009, at *9 (footnotes and citations omitted).

cetera In sum, appellants argue that the issues in this case may be decided under purely neutral principles of law, without involving consideration of issues of religious discipline, faith, or ecclesiastical rule, custom, or law. **We disagree. The controversy inherently and inextricably involves a presiding hierarch's power to discipline a local parish council; his power to determine whether that council's members have violated their oath to obey the church's hierarchy, discipline, and canons; and an archdiocese's right to insist on what by-laws may be adopted by its subordinate parishes. Those are ecclesiastical matters that the First Amendment forbids courts to adjudicate.**⁶⁴

As in *Milivojevich*, Defendants impermissibly ask the Court to rule that the hierarchical church lacked authority or did not follow its procedures in recognizing the individual Local Episcopal Parties and in replacing Defendants, but “inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question is exactly the inquiry that the First Amendment prohibits,” and to “inquire whether the relevant (hierarchical) church governing body has power under religious law” to remove its subordinate officers “would violate the First Amendment in much the same manner as civil determination of religious doctrine.”⁶⁵

As in all of these cases, because “the question of the right to use and possess the church property is inextricably intertwined with the question of which individuals hold authority to act on behalf of [the local church] (a question that essentially depends on the authority of the [hierarchical church] over the [local church]),” First Amendment deference is required, even in “neutral principles” states under a “neutral principles” analysis.⁶⁶

⁶⁴ *Id.* at *7-8 (emphasis added) (internal citations omitted).

⁶⁵ *Milivojevich*, 426 U.S. at 708-09, 713 (parentheticals in original) (citation omitted) (internal quotation marks omitted), *quoted with approval in Hawkins v. Friendship Missionary Baptist Church*, 69 S.W.3d 756, 758 (Tex. App.—Austin 1991, writ denied).

⁶⁶ *Episcopal Diocese of Mass.*, 797 N.E.2d at 921-22 (citations omitted).

Defendants cannot escape Texas law by requesting the application of the law of another state, then misstating that foreign law.

iv. Defendants falsely state that Texas courts can decide a church's officers incident to property questions.

As a result, it is clear that Defendants' assertion that civil courts can decide a church's officers if those offices are incident to "property questions" is exactly backwards. As case after case has held, courts must abstain from adjudicating ecclesiastical issues and apply the church's findings on those ecclesiastical issues as final and binding in civil law matters, even where those ecclesiastical findings affect property rights. This is true under a *Watson* "deference" standard ("the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them"),⁶⁷ and it is true under a "neutral principles" standard ("And although the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations, the civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation...").⁶⁸ For a detailed statement of the critical First Amendment law defeating Defendants' position, see the Local Episcopal Parties' Response to Defendants' Motion for Partial Summary Judgment at Sections IV, V.A.i-ii, and VI.H.

v. Defendants wrongly state the law of neutral principles and would not prevail under a proper neutral principles analysis.

Even if this were a "neutral principles state," and even if ecclesiastical determinations did not conclusively resolve the pendent property issues here under a neutral principles analysis (neither of which is the case, as shown above), Defendants *still* would not prevail under the multiple factors of a neutral principles analysis. **Because local Episcopal entities hold their**

⁶⁷ *Brown v. Clark*, 116 S.W. 323, 363 (Tex. 1909).

⁶⁸ *Milivojevich*, 426 U.S. at 720.

property expressly, in controlling documents, in trust for, for the use of, and subject only to uses authorized by the parent church, the overwhelming majority of courts applying neutral principles find for the parties aligned with The Episcopal Church.⁶⁹ Indeed, the one Texas case to mention the neutral principles approach in this context – after affirming Texas’s controlling deference law – found that another breakaway faction from The Episcopal Church would also lose under its requested neutral principles approach.⁷⁰

Nothing in Defendants’ response affects this conclusion. Defendants attempt a desperate “close-reading” analysis comparing the use of a single phrase in multiple locations in the Diocesan Constitution to debate its meaning (“the Church in this Diocese”). This reading fails on its face.⁷¹ It is also exactly the sort of fine-toothed dispute over the interpretation of internal church rules that the First Amendment rejects, even under “neutral principles.”⁷² And Defendants’ focus on this one phrase ignores all of the other statements showing the Church’s beneficial interest in its local property (such as the national trust canon stating: “All real and

⁶⁹ See, e.g., *Rector, Wardens & Vestrymen of Christ Church in Savannah*, 2010 WL 2683934, at *1-2, 8; *In re Episcopal Church Cases*, 198 P.3d 66, 70-71 (Cal. 2009); *Kroeger*, 84 Cal. Rptr. 3d at 479-82, 485-86; *Diocese of San Joaquin*, No. 08 CECG 01425, Order on Plaintiffs’ Motion for Summary Adjudication at 4, 7-9, 14-15, *vacated on other grounds*, *Schofield*, 118 Cal. Rptr.3d at 165-67; *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 96, 103 (Colo. 1986); *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in Diocese of Conn.*, 620 A.2d 1280, 1282-85, 1292-93 (Conn. 1993); *Bennison*, 329 N.W.2d at 475 (noting that, even under the neutral principles approach, the breakaway parish had no entitlement to the property at issue); *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980) (same); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 923-25 (N.Y. 2008); *Trs. of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 684 N.Y.S.2d 76, 79-82 (N.Y. App. Div. 1999).

⁷⁰ *St. Francis on the Hill Church v. The Episcopal Church*, Cause No. 2008-4075, Final Summary Judgment (Dist. Court—El Paso [210th Jud. Dist.], Dec. 17, 2010).

⁷¹ The phrase here references The Episcopal Church, where the next sentence provides that “[a]ll *such* property as well as all property *hereafter* acquired for the use of the Church *and* the Diocese, including parishes and missions, shall be vested” in the Corporation. Therefore, the Diocesan Constitution differentiates between the “Church” and the “Diocese.” A534 (Ex. D-21, Diocesan Art 13).

⁷² “The constitutional provisions of the American-Canadian Diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity.” *Milivojevich*, 426 U.S. at 723. “We will not delve into the various church constitutional provisions relevant to this conclusion, for that would repeat the error of the Illinois Supreme Court. It suffices to note that the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs.” *Id.* at 721 (citation omitted).

personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church *and* the Diocese thereof,”⁷³ the corporate articles’ provision that all property “be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth **and the Episcopal Church**,”⁷⁴ and Diocesan Canon 25 (now Canon 30) providing that “[t]he dedicated and consecrated Churches and Chapels of the several Parishes and Missions of the Diocese may be opened only for the services, rites and ceremonies, or other purposes, **either authorized or approved by this Church, and for no other use.**”⁷⁵

Nor does Defendants’ mistaken focus on private Texas trust law help its cause. Courts have recognized several methods of demonstrating the general church’s interest in locally-held property under “neutral principles,” including the express trust language in The Episcopal Church’s Dennis Canon (which was enacted in response to, and at the suggestion of, *Jones v. Wolf*), language in The Episcopal Church’s governing documents codifying the existing implied trust relationship, and state statutes providing for a trust in favor of the general church.⁷⁶ The Episcopal Church did exactly what the *Jones* Court recommended, in direct response to *Jones*,

⁷³ A660 (Ex. D-36, Church Canon I.7.4) (emphasis added).

⁷⁴ A36 (Ex. B-1) (emphasis added).

⁷⁵ A539.1 (Ex. D-21, Diocesan Canon 25 (emphasis added)). Note: in the Church and Diocesan Constitutions and Canons, the term “Church” refers to The Episcopal Church. See A533 (Ex. D-21, Diocesan Constitution, Preamble); See also A682 (Ex. D-36, Church Canon II.6, Of Dedicated and Consecrated Churches, which expressly prohibits consecration of any Church or Chapel unless the building and property are owned and used by a congregation that is “affiliated with this Church and subject to its Constitution and Canons” (Section 1) and provides that “[a]ny dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect to the real and personal property held by any Parish, Mission or Congregation as set forth in Canon I.7.4 [The Dennis Canon].”(Section 4.).

⁷⁶ See, e.g., *Rector, Wardens & Vestrymen of Christ Church in Savannah*, 699 S.E.2d at 49-52; *Episcopal Church Cases*, 198 P. 3d at 81. The California Supreme Court has also held that the Dennis Canon “is consistent with earlier-enacted canons that, although not using the word “trust,” impose substantial limitations the local parish’s use of church property and give the higher church authorities substantial authority over that property.” *Episcopal Church Cases*, 198 P. 3d at 80-81.

expressing its intent to affirm its trust interest in its subordinate entities' local property.⁷⁷ Nowhere did the *Jones* Court suggest that a general church had to craft a sentence in its national documents that complies with the intricacies of trust law in all fifty states. *Jones* requires only that the Church express its intent to retain control of its local property, cognizable by a neutral reading of that stated intent, and this is what the Church did, through both national and local language. Moreover, Defendants' emphasis on private trust law is misplaced because, if any state law were to apply, it would be charitable trust law, which fully supports the Local Episcopal Parties' position here.⁷⁸ And Defendants' private trust law arguments *still* fail on the merits. This is all thoroughly briefed, *inter alia*, at the Local Episcopal Parties' Response to Defendants' Motion at V.B.

Defendants' strident claim that the Texas religious corporations statute was portrayed as mandatory rather than permissive by "assum[ing] no one will ever check their cites"⁷⁹ is perplexing, given that these statutory provisions (in both their current and predecessor forms) were quoted in the Local Episcopal Parties' Amended motion.⁸⁰ Defendants misunderstand the point. It is not that all churches *must* hold their property in trust for another; it is that where, as here, the Church's local and national governing documents express the hierarchical Church's interest in the local subordinate unit's property, the Texas religious corporations statute recognizes and supports this election as a matter of law.

Nor is Defendants' deeds argument availing: *they do not present a single deed in their response*, and their *only* response to The Episcopal Church's Diocese of Dallas's transfer of

⁷⁷ See *Rector, Wardens & Vestrymen of Christ Church in Savannah*, 699 S.E.2d at 52 ("The National Episcopal Church enacted the Dennis Canon in response to the United States Supreme Court decision in *Jones v. Wolf* so as to make clear the National Episcopal Church's implied intention to hold a trust interest in parish property.").

⁷⁸ See Local Episcopal Parties' Response to Defendants' Motion at V.B.ii.

⁷⁹ Defendants' Response to Local Episcopal Parties at 10.

⁸⁰ Local Episcopal Parties' Amended Motion for Partial Summary Judgment at 49.

assets from within the Church (acquired for the Church’s mission over the preceding 144 years) to the new Episcopal Diocese of Fort Worth is the unsupported, blanket assertion that this “settles title in the Defendants, not the Plaintiffs.”⁸¹ But that circular assertion just presupposes without basis the answer to the “identity” question, which Defendants, as shown above, actually lose: because, as in *Jones*, the “identity” of the Episcopal Diocese “named in the deeds must be determined according to terms of the [hierarchical Church’s internal doctrine], which sets out the laws and regulations of churches affiliated with the [hierarchical church],” as well as the qualifications of its officers.⁸² And Defendants moreover ignore the plain provision in that deed that “The Episcopal Diocese of Fort Worth . . . is a duly constituted religious organization, organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America” and that its property-holding corporation is subordinate in the hierarchy to The Episcopal Church’s Episcopal Diocese.⁸³

Defendants try to defend their improper amendments to local rules (made to seize power and property in violation of their oaths) by reference to the *ultra vires* statute. But this statute is irrelevant. Defendants’ actions are without effect because the Church’s authorized leadership has determined that those actions were unauthorized, not consistent with the Church’s constitutions and canons, and null, void, and without effect. This is a purely ecclesiastical determination, as confirmed by the First Court of Appeals’ opinion that Defendants declined to cite (even though it superseded the central authority upon which they rely in their motion for partial summary judgment): “Determining which version of the by-laws in fact controlled thus

⁸¹ Defendants’ Response to Local Episcopal Parties at 9-10.

⁸² *Jones*, 443 U.S. at 609 (emphasis added) (footnotes omitted).

⁸³ A1140 (Ex. G-7, Judgment in *The Episcopal Diocese of Dallas v. Mattox* at p. 2) (emphasis added); see also Local Episcopal Parties’ Amended Motion for Partial Summary Judgment at 48.

involved determining the ecclesiastical powers of the higher church authorities that claimed that their version controlled.”⁸⁴ Defendants’ appeal to the *ultra vires* statute is misplaced.

Here, nothing Defendants have said alters the fact that – consistent with the findings of courts across the nation – the breakaway faction would still lose its attempt to take property with which it was entrusted, in violation of its numerous oaths of loyalty and trust, under the alternate neutral principles analysis.

vi. Defendants wrongly state the law of judicial admissions.⁸⁵

Finally, Defendants attempt to argue that Defendant Iker and his cohorts *can*, in fact, tell two different courts opposite things in order to claim property in each proceeding. But Defendants’ technical arguments about the law of judicial admissions, quasi-estoppel, and judicial estoppel are incorrect.⁸⁶

For example, Defendants wrongly contend that “[j]udicial admissions must be made in the same proceeding, not in an earlier one,”⁸⁷ confusing answers to requests for admissions (“sometimes referred to as judicial admissions”⁸⁸ that “may be used solely in the pending action and not in any other proceeding”⁸⁹) with “[p]leadings in other actions which contain statements inconsistent with the party’s present position[, which] are receivable as admissions [in the

⁸⁴ *Greanias*, 2006 WL 1550009, at *9 (footnote and citations omitted).

⁸⁵ The Local Episcopal Parties respond to Defendants’ argument that the hierarchy stops at the *Diocese*, *supra* at Section A(i), and to Defendants’ unwarranted attack on Mr. Nelson in their Response to Defendants’ Objections, filed today.

⁸⁶ Defendants’ Response at 5.

⁸⁷ *Id.*

⁸⁸ 5 Dorsaneo, TEXAS LITIGATION GUIDE, § 70.05[3][f][iii] (Matthew Bender) (citing *Hawn v. Hawn*, 574 S.W.2d 883, 886 (Tex. Civ. App.—Eastland 1978, writ ref’d n.r.e.) (characterizing response to request for admissions as a “judicial admission”).

⁸⁹ TEX. R. CIV. P. 198.3.

current action].”⁹⁰ Similarly, Defendants try to avoid equitable quasi-estoppel by suggesting the doctrine can only be invoked by a party to the previous proceedings; but in this case, under the Court of Appeals’ holding, both sides are factions within the Episcopal Diocese and therefore were parties to the prior proceedings where Iker spoke on the Diocese’s behalf.⁹¹ And Defendant Iker and his cohorts are estopped by more than contradictory statements in prior proceedings,⁹² because quasi-estoppel also “applies where it would be unconscionable to allow a person to maintain a position inconsistent with one in which he acquiesced, or of which he accepted a benefit.”⁹³ Here, Iker’s acquiescence to Church hierarchy was a condition of his Ordination,⁹⁴ just as each breakaway faction member acquiesced to Church hierarchy under Church Canon I.17.8 when they originally accepted office within the Church.⁹⁵ It would be patently unfair and unconscionable to allow the current breakaway faction, now that they purport to leave the Church, to take the opposite position to seize property. Lastly, Defendant Iker tries to evade the separate doctrine of judicial estoppel concerning his Amicus Brief to the Fourth Circuit Court of Appeals by suggesting he was not under oath; but, “[a]lthough the doctrine is most commonly

⁹⁰ *St. Paul Fire & Marine Ins. Co. v. Murphree*, 357 S.W.2d 744, 747 (Tex. 1962) (“Pleadings in other actions which contain statements inconsistent with the party’s present position are receivable as admissions.”). Courts also have discretion to find that statements made in briefs qualify as judicial admissions. *Jansen v. Fitzpatrick*, 14 S.W.3d 426, 431 (Tex. App.-Houston [14th Dist.] 2000, no pet.) (“If a party judicially admits facts that establish a plaintiff’s standing to bring suit, she is estopped from claiming the plaintiff has no standing. We have discretion to accept statements made in the briefs as true.”) (citation omitted).

⁹¹ In Iker’s own words, “[a] bishop of the Church...is a leader and representative of the people he serves. Although [he or she] may act in an individual capacity, their public acts can only be in their official capacity [A] bishop speaking and acting as a bishop does so for his diocese.” A1056-57 (Ex. G-5, Iker Amicus Brief at 4-5).

⁹² *Steubner Realty 19, Ltd. v. Cravens Road 88, Ltd.*, 817 S.W.2d 160, 164 (Tex. App.—Hous. [14th Dist.] 1991, no writ) (citation omitted).

⁹³ *Id.* (citation omitted).

⁹⁴ A627-28 (Ex. D-36, Church Art. VIII).

⁹⁵ A675-76 (Ex. D-36) (providing that “[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church.”).

applied to the sworn statements of witnesses, it also applies to the statements of attorneys explaining their clients' position in the litigation.”⁹⁶

As to Defendants' contention that there is no contradiction between Defendants' prior statements and their present actions, the Local Episcopal Parties refer to Section VII.D of their Amended Motion for Summary Judgment and, here, cite only the following example:

“Those persons acting in concord with the Defendants have constituted themselves as the Schismatic and Purported Church of the Holy Apostles. Such persons are not members of the true Church of the Holy Apostles because they have joined the Antiochean Orthodox Church and thereby have abandoned communion with The Episcopal Church[The breakaway faction, the] Schismatic and Purported Church of the Holy Apostles is a new creation, having no relation to Holy Apostles and no right to its property.”

– *Defendant Jack Iker, leader of the current breakaway faction, testifying under oath against a prior breakaway faction.*⁹⁷

B. The correct roadmap for resolving this case.

As set forth fully in the Local Episcopal Parties' Amended Motion for Partial Summary Judgment and their Response to Defendants' Motion for Summary Judgment, this case can and should be resolved on well-settled principles.

1. Defendants lose under a century of Texas hierarchical church property law, because it is undisputed that the Local Episcopal Parties are the only faction recognized by The Episcopal Church as the continuing true Episcopal Diocese of Fort Worth, with a continuing right to its name and property.

⁹⁶ *Webb v. City of Dallas*, 211 S.W.3d 808, 820 (Tex. App.—Dallas 2006, pet. denied) (citing, *inter alia*, *Goldman v. White Rose Distrib. Co.*, 936 S.W.2d 393, 398 (Tex. App.—Fort Worth 1996), *vacated pursuant to settlement*, 949 S.W.2d 707 (Tex. 1997) (“White Rose claims that the statements made by its attorney during the first trial cannot be considered in determining judicial estoppel because that doctrine only applies to statements made under oath. However, an attorney is an officer of the court and, as such, is an instrument or agency to advance the ends of justice. An attorney may bind a party to a particular position”) (internal quotations omitted).

⁹⁷ A1015 (Ex. G-2, Iker Aff. at 4).

2. Defendants lose under the alternate multi-factor neutral principles analysis – never applied to a hierarchical church property dispute as controlling law in Texas and not applied by Defendants – because the local and national governing documents, deeds, and state statutes set forth and recognize The Episcopal Church’s clear intent to retain its interest in local church property held by its subordinate entities.

3. This Court should answer the claims as to The Episcopal Church and the individuals leading the competing factions, deciding who are the authorized representatives of the Episcopal Diocese and its Corporation, and then determine the standing and capacity issues regarding those entities (i.e., who can bring suit in the name of the Episcopal Diocese and its Corporation).

CONCLUSION AND PRAYER

For the reasons stated herein and in their Amended Motion for Partial Summary Judgment filed December 21, 2010, the Local Episcopal Parties, identified at *note* 1 of their Amended Motion for Partial Summary Judgment, pray that the Court grant their Amended Motion and enter by summary judgment an order granting all the affirmative relief requested in the Local Episcopal Parties’ Amended Motion, and grant any other relief to which the Local Episcopal Parties are justly entitled. In addition, for the reasons stated herein and the reasons stated in the Local Episcopal Parties’ Response to Defendants’ Motion for Partial Summary Judgment, filed January 7, 2011, the Local Episcopal Parties pray that the Court sustain their Special Exceptions against Defendants’ Motion for Partial Summary Judgment, strike Defendants’ Motion or require Defendants to amend their Motion to replead more specifically, deny Defendants’ Motion, and enter by summary judgment an order dismissing any affirmative relief requested in the Defendants’ Motion for Partial Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Local Episcopal Parties' Reply in Support of its Amended Motion Partial Summary Judgment has been sent this 11th day of January, 2011, by Federal Express or hand-delivery and by email, to:

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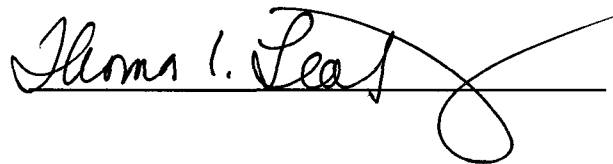
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A handwritten signature in black ink, reading "Thomas L. Seal", written over a horizontal line. The signature is cursive and includes a large loop at the end.