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NO. 11-0265

IN THE SUPREME COURT OF TEXAS

THE EPISCOPAL DIOCESE OF FORT WORTH, *et al*.,
Appellants,

v.

THE EPISCOPAL CHURCH, *et al*.,
Appellees.

On Direct Appeal From the
141st District Court of Tarrant County, Texas
Cause No. 141-252083-11

APPELLEES' RESPONSE TO APPELLANTS' STATEMENT OF JURISDICTION

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STATEMENT OF CASE

This case involves a suit by local Episcopal clergy, parishioners, and congregations of the Episcopal Diocese of Fort Worth (the "Diocese"), together with The Episcopal Church (the "Church") (Plaintiffs/Appellees), against individuals and purported entities that left the Church but continue to hold themselves out as the Diocese and to use and spend its property (Defendants/Appellants).[1] This suit seeks to recover that property for the use of Episcopalians in the Diocese, some of which has been Episcopal property since 1838.

The trial court awarded partial summary judgment to Plaintiffs/Appellees (the Episcopal parties). The trial court denied Defendants'/Appellants' (the breakaway faction's) motion for partial summary judgment. Appellants seek direct appeal of that Order to this Court. Appellees have filed a conditional notice of cross-appeal.

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[1] Appellants attempt to obscure the nature of the parties, and therefore this dispute, by unilaterally changing the style of this case in their appellate papers. In the trial court, the style was "The Episcopal Church, *et al.* v. Salazar, *et al.*" Appellants now substitute "The Episcopal Diocese of Fort Worth" for the name of Appellant Salazar. The propriety of Appellants' use of that name is the subject of this litigation. On appeal, the style should be "Salazar, *et al.* v. The Episcopal Church, *et al.*," as Appellants acknowledge by (correctly) citing the related mandamus proceeding as *In re Salazar*. *See* Statement of Jurisdiction at ix, 1 n.1. Appellants' unilateral change of the case style creates additional confusion and should be rejected.

RECORD REFERENCES

The record will be referred to as follows:

Reporter’s Record:	[volume]RR[page]
Clerk’s Record:	[volume]CR[page]

INTRODUCTION

There is only one question before this Court: Does the trial court's summary judgment order meet the "very limited," "strictly construed" test for direct appeal?

The answer is no. The trial court did not grant or deny any "injunction on the ground of the constitutionality of a statute of this state." That is the sole test. Here, the trial court did not reach or apply any statute, much less rule on its constitutionality.

Appellants told the trial court that they wished to use direct appeal as a "shortcut to get a ruling on the liability of this case directly from the Supreme Court" because they "prefer[red] not to take the time [to appeal to the Fort Worth Court of Appeals]."[2] But Appellants have already conceded that direct appeal of this Order is improper. Appellants complained to the trial court that the current Order would not confer direct appeal jurisdiction. They urged the trial court to change its Order and declare a state statute unconstitutional, specifically to create a basis for direct appeal. The trial court declined, reiterating that it did not reach any statute or declare one unconstitutional. Appellants conceded that the Order as written did not merit a rare direct appeal:

> THE COURT: I don't think [the Order is] saying [the statute raised by Appellants is] unconstitutional. I think it's saying it doesn't apply in this situation, because it's –
>
> MR. BRISTER: Well, they're [*i.e.*, this Court is] not going to – they're not going to take that.
>
> THE COURT: Well, they – and that's – okay. But I still can't just craft something to make it go to the Supreme Court.
>
> . . . .

[2] 3RR7-8; 3RR16-17.

> MR. BRISTER: . . . . if the Court's order is [saying, "]I just don't think – I'm not saying it's unconstitutional, I just think it's inapplicable[,"] **then we're going to have to go to the Second Court. We definitely have no choice**.[3]

The trial court declined to modify its Order, and direct appeal remains improper. As shown below, none of Appellants' arguments in their Statement of Jurisdiction can escape the basic fact that there is no direct appeal jurisdiction in this case, under a plain reading of the statute and under this Court's precedents.

DIRECT APPEAL STANDARD

The direct appeal standard is "very limited"[4] and "strictly construed."[5] Under Texas Government Code § 22.001(c):

> An appeal may be taken directly to the supreme court from an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state.[6]

This Court has defined its jurisdiction over direct appeals as "restricted."[7] Cases falling within this jurisdiction should be "rare."[8] Accordingly, the Court "has strictly applied the constitutional and statutory requirements for a direct appeal"[9] and "strictly construed [its]

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[3] 3RR18-20 (emphasis added).

[4] *Mitchell v. Purolator Security, Inc.*, 515 S.W.2d 101, 101 (Tex. 1974); *see also Gardner v. Railroad Comm'n*, 160 Tex. 467, 333 S.W.2d 585, 585 (1960).

[5] *Texas Workers' Comp. Comm'n v. Garcia*, 817 S.W.2d 60, 61 (Tex. 1991) (citing *Mitchell*, 515 S.W.2d 101; *Gibraltar Sav. Ass'n v. Falkner*, 162 Tex. 633, 351 S.W.2d 534 (1961); *Martinez v. Rodriguez*, 608 S.W.2d 162, 163-64 (Tex. 1980)).

[6] As authorized by TEX. CONST., art. V, Sec. 3-b.

[7] *Mitchell*, 515 S.W.2d at 101.

[8] *Ass'n of Tex. Prof. Educators v. Kirby*, 788 S.W.2d 827, 828 n.1 (Tex. 1990); *see also Perry v. Del Rio*, 67 S.W.3d 85, 100 (Tex. 2001).

[9] *Querner Truck Lines, Inc. v. State*, 652 S.W.2d 367, 368 (Tex. 1983).

direct appeal jurisdiction, requiring that the trial court's ruling on the . . . permanent injunction be 'on the ground' of the statute's constitutionality or unconstitutionality."[10]

Indeed, this Court has exercised direct appeal jurisdiction only three times in the last ten years.[11] Each time, the trial court had expressly held a state statute unconstitutional and enjoined its enforcement or application. Here, the trial court did neither.

THE TRIAL COURT DID NOT RULE ON ANY STATUTE

The trial court held that it lacked subject matter jurisdiction to determine ecclesiastical questions within the case, and was instead required to defer to and to apply the church's resolution of those issues in the case before it. It did not reach, much less apply or declare unconstitutional, any statute.

A. The trial court granted two injunctions.

The trial court granted two injunctions in the underlying case, a hierarchical church property dispute. Two factions, divided over ecclesiastical issues, each claim to represent the Episcopal Diocese of Fort Worth, with a continuing right to its identity and property. The trial court granted partial summary judgment in favor of Appellees and granted two permanent injunctions. The first injunction concerns church property:

> The Court hereby ORDERS the Defendants to surrender all Diocesan property, as well as control of the Diocesan Corporation, to the Diocesan plaintiffs 30 days after Judgment becomes final.

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[10] *Garcia*, 817 S.W.2d at 61.

[11] *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 771 (Tex. 2005); *State v. Hodges*, 92 S.W.3d 489, 493 (Tex. 2002); *Del Rio*, 67 S.W.3d at 89.

The second injunction concerns church leadership:

> The Court hereby ORDERS the Defendants to desist from holding themselves out as leaders of the Diocese when this Order becomes final and appealable.[12]

B. The trial court grounded its injunctions on *Brown v. Clark*.

The trial court grounded both injunctions on *Brown v. Clark* and its progeny.[13] In *Brown*, title to local church property was held by a local church that was subordinate to a larger hierarchical church.[14] Two factions, divided over ecclesiastical issues, each claimed to represent that local church, with a continuing right to its identity and property.[15] The *Brown* Court ruled that it lacked jurisdiction to resolve the ecclesiastical question of which faction was the true local church and announced what has been called the "deference" or "identity" rule: the party recognized by the hierarchical church was the continuing local church, with a right to its identity and property.[16]

Here, both injunctions – the identity injunction and the property injunction – are grounded on an application of *Brown.* On the identity issue, the trial court cited *Brown* and held: "[T]he Court follows 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."[17] On the property issue, the trial court again cited *Brown*, holding: "Under

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[12] 32CR7126-27

[13] *Id.* (citing *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909)).

[14] *Brown*, 116 S.W. at 364-65.

[15] *Id.* at 362.

[16] *Id.* at 364-65 (citing *Watson v. Jones*, 80 U.S. (13 Wal.) 679 (1872)).

[17] 32CR7126-27.

the law articulated by Texas courts, those are the individuals who remain entitled to the use and control of the church property."[18]

C. *Brown* is a jurisdictional limit, not a ruling on any statute.

Appellants correctly note that *Brown* has been recognized as a constitutional holding based on the church autonomy doctrine. But *Brown* operates as a jurisdictional limit on judicial power, not a finding on the constitutionality of legislative acts. Courts applying *Brown* do not pass on the constitutionality of the various statutes that might have applied *if* those courts had jurisdiction to decide the dispute.

Under *Brown*, a court lacks jurisdiction to resolve ecclesiastical issues that arise within a case, and must apply the church's determinations of those issues as binding in the case before the court. In turn:

> whenever the questions of discipline or of faith or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.[19]

As this Court, in *Westbrook v. Penley,* and Justice Guzman (while sitting on the Court of Appeals) have held, this "deference rule" operates to impose a limit on the judicial power by restricting the court's subject matter jurisdiction.[20] This doctrine stems from the First Amendment's prohibition against government action that "encroach[es] on

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[18] 32CR7127.

[19] *Brown*, 116 S.W. 363 (quoting *Watson*, 80 U.S. (13 Wal.) at 727).

[20] *Westbrook v. Penley*, 231 S.W.3d 389, 394 n.3 (Tex. 2007); *Lacy v. Bassett*, 132 S.W.3d 119, 124 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (Guzman, J.) ("In *Hawkins*, this Court examined whether the trial court had subject matter jurisdiction over a dispute involving a church; however, we framed the issue as one involving 'an ecclesiastical matter relating to the firing of a minister.') (quoting *Hawkins v. Friendship Missionary Baptist Church*, 69 S.W.3d 756, 758 (Tex. App.—Houston [14th Dist.] 2002, no pet.)).

[a] church's ability to manage its internal affairs."[21] The prohibition extends to government actions taken by the "judicial as well as the legislative branch,"[22] creating "a structural restraint on the constitutional power of civil courts to regulate matters of religion in general."[23]

This "structural restraint" requires civil courts to observe the "deference rule" whenever the resolution of a dispute turns on ecclesiastical questions such as internal church discipline,[24] composition of the church hierarchy,[25] the structure, leadership, or internal policies of religious institutions,[26] the hierarchy's choice of ministers,[27] disputes over the government and direction of subordinate bodies,[28] inquiry into church doctrine or resolutions,[29] and matters relating to the hiring, firing, discipline, or administration of clergy.[30]

As this Court noted in *Westbrook*, "[m]ost courts agree that the general prohibition on the adjudication of religious questions, once triggered, precludes further adjudication of the issue in question. . . . [T]he majority of courts broadly conceptualize the

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[21] *Westbrook*, 231 S.W.3d at 395.

[22] *Id.*

[23] *Id.* at 398 (citing *Brown*, 116 S.W. at 363).

[24] *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 717 (1976).

[25] *Id*.

[26] *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).

[27] *Dean v. Alford*, 994 S.W.2d 392, 395 (Tex. App.—Fort Worth 1999, no pet.).

[28] *Milivojevich*, 426 U.S. at 724-25; *accord Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in N. Am.*, 344 U.S. 94, 113-14 (1952); *Watson*, 80 U.S. at 727.

[29] *Milivojevich*, 426 U.S. at 708.

[30] *Lacy*, 132 S.W.3d at 123 (Guzman, J.).

prohibition as a subject matter bar to jurisdiction."[31] The Austin Court of Appeals recently reaffirmed the jurisdictional operation of this holding in another Episcopal case, again citing *Brown*:

> Thus, the essence of the dispute before us can be seen as an inherently ecclesiastical question: which parishioners—the loyal Episcopalian minority or the breakaway Anglican majority—represent Good Shepherd, in whose name the disputed property is held? **It is not within the jurisdiction of this Court to decide such an issue, which is inextricably linked with matters of church discipline, membership, and faith.** Instead, we are bound by the decisions of the highest church judicatories within the Episcopal Church hierarchy to which the matter has been carried.[32]

Even in this precise context, where parties have attempted to apply the Non-Profit Corporations Act to church cases involving ecclesiastical issues, courts are clear that the legal operation of deference on ecclesiastical questions is jurisdictional. In *Greanias v. Isaiah*, the First Court of Appeals held that the First Amendment forbade it from adjudicating a parish's claims against a hierarchical church under the Non-Profit Act, either through a jurisdictional bar or a bar against deciding the merits.[33] In *Cherry Valley Church of Christ v. Foster*, the Dallas Court of Appeals deferred to determinations of a church in a church property case where one faction brought claims under the Act because the case's "resolution would require the State, through the judicial system, to determine

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[31] *Westbrook*, 231 S.W.3d at 394 n.3 (emphasis added) (citations omitted); s*ee also id.* at 398 (citing *Minton v. Leavell*, 297 S.W.615, 621-22 (Tex. Civ. App.—Galveston 1927, writ ref'd)).

[32] *Masterson v. Diocese of Nw. Tex.*, No. 03-10-00015-CV, 2011 WL 1005382, at *10 (Tex. App.—Austin Mar. 16, 2011, pet. filed) (citing *Brown*, 116 S.W. at 363) (emphasis added).

[33] No. 01-04-00786-CV, 2006 WL 1550009, at *10, *10 n.11 (Tex. App.—Houston [1st Dist.] June 8, 2006, no pet.).

issues of internal church governance."[34] In *Lacy*, the appellate court, in an opinion by Justice Guzman, affirmed that the question was one of "subject matter jurisdiction," finding that the court *did* have jurisdiction to consider the Act because that dispute did *not* involve ecclesiastical questions such as church discipline, a "Church's relationship with its clergy, nor any consequent power struggle," or interpretation of church by-laws or other governing documents.[35]

D. The trial court did not reach, rule on, or ground its injunctions on the constitutionality of any statute.

Because the court followed *Brown*, it respected limits to its jurisdiction over ecclesiastical matters within the case, and it applied the church's determination of those ecclesiastical questions to the case before it. The court did not pass on the constitutionality of any statute that might have applied *if* the court had jurisdiction to decide the dispute. The court's injunctions were grounded on the jurisdictional holding of *Brown*, not on the constitutionality of any statute. Just as the trial court made clear, there is no statutory issue.[36] Just as Appellants conceded, direct appeal is not appropriate.

APPELLANTS SHOW NO BASIS FOR DIRECT APPEAL

Having failed to persuade the trial court to modify its Order to create a basis for direct appeal, Appellants now try to shoe-horn that Order into the direct appeal standard by making a three-step argument: (1) the trial court declined jurisdiction on an ecclesiastical question because of its constitutional obligations; (2) had the trial court

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[34] No. 05-00-10798-CV, 2002 WL 10545, at *2 (Tex. App.—Dallas Jan. 4, 2002, no pet.); *see also Hawkins*, 69 S.W.3d at 758-60.

[35] 132 S.W.3d at 123-24, 126.

[36] 3RR18.

accepted jurisdiction, Appellants would have made arguments involving state statutes; therefore (3) the trial court effectively declared those statutes unconstitutional. This approach fails for multiple reasons.

A. Appellants' theory fails under the Court's precedents on direct appeals.

This Court has granted only three direct appeals in the last ten years. In each, the trial court had issued an injunction that was squarely, plainly, and expressly "on the ground of the constitutionality of a statute of this state."[37] In *Neeley*, the trial court declared the State's school finance statutes unconstitutional and enjoined the Legislature from "giving any force and effect to the sections of the Education Code relating to the financing of public school education."[38] In *Hodges*, the trial court declared a State election statute unconstitutional and permanently enjoined a political party from applying that statute.[39] And in *Del Rio*, the trial court declared the State's congressional districting statutes presumptively unconstitutional and enjoined state officials from applying them.[40]

Cases refusing direct appeal jurisdiction confirm this Court's exacting application of the direct appeal standard. In *Mitchell*, the trial court had issued an injunction expressly prohibiting the enforcement of a state statute, finding in its Order that there was a "serious question" as to whether the statute applied and, if so, whether it was constitutional.[41] Even then, this Court held that it lacked direct appeal jurisdiction

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[37] TEX. GOV'T CODE § 22.001(c).

[38] 176 S.W.3d at 771.

[39] 92 S.W.3d at 493.

[40] 67 S.W.3d at 89.

[41] 515 S.W.2d at 103.

because the trial court did not base its injunction *on the ground* of the constitutionality of the statute:

> It is not enough that a question of the constitutionality of a statute may have been raised in order for our direct appeal jurisdiction to attach in injunction cases; in addition the trial court must have made a holding on the question based *on the grounds* of the constitutionality or unconstitutionality of the statute.[42]

The case for direct appeal is far weaker here. As in *Mitchell*, the trial court made *no* holding about the constitutionality of a state statute. But unlike in *Mitchell*, Appellees never raised the constitutionality of a state statute as grounds for an injunction. Unlike in *Mitchell*, this Order was based on a jurisdictional holding, not a statutory issue. Unlike in *Mitchell*, if the trial court concluded anything at all about state statutes in this case, it is that they did not apply – not that their application was unconstitutional.

Here, the only part of the trial court's Order that even arguably references a statute is the third declaration:

> Applying those same cases and their recognition that a local faction of a hierarchical church may not avoid the local church's obligations to the larger church by amending corporate documents or otherwise invoking nonprofit corporations law, the Court further declares that the changes made by Defendants to the articles and bylaws of the Diocesan Corporation are ultra vires and void.[43]

But this declaration is separate from, and unnecessary for, the holdings supporting the two injunctions, which are grounded on the basic identity and property prongs of *Brown* – which concern the jurisdiction of courts, not the constitutionality of any legislation.

[42] *Id.* (italics in original).

[43] 32CR7127.

And this declaration says nothing about the constitutionality of any statute. It says, at most, that Appellants cannot avoid the ecclesiastical issues of this case by invoking secular law. This is a true statement: given the jurisdictional bar, the court could not reach or apply Appellants' statutory claims to an ecclesiastical dispute. On this declaration, there is no injunction, no question of a statute's constitutionality, and no injunction on the ground of a statute's constitutionality.

This Court has squarely held that direct appeal is not available where the trial court's Order was grounded on a limit to the judicial power, rather than on the ground of the constitutionality of a statute. In *Holmes v. Steger*, this Court held:

> This cause was dismissed by the trial court upon the holding that appellants were without the necessary justiciable interest to maintain this suit. It follows that any appeal from the trial court's order should have gone to the Court of Civil Appeals . . . and that this Court is without jurisdiction of the appeal.[44]

Holmes involved a dismissal for lack of standing, while this case involves an ecclesiastical question, but the legal operation of both orders is the same: the trial court faced a constitutional limitation on jurisdiction.[45] In neither case did the trial court reach or rule on any statutory claims. Therefore, the trial court's Order was not and could not be a ruling on the ground of the constitutionality of a statute.

B. Appellants attempt to change the language of a strictly construed test.

Because Appellants cannot meet a straightforward application of the Court's direct appeal standard, they attempt to obscure that conclusion by breaking a simple (and

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[44] 161 Tex. 242, 339 S.W.2d 663, 663-64 (Tex. 1960).

[45] *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444-45 (Tex. 1993) (holding that standing requirement stems from a constitutional limit on this Court's jurisdiction under the separation of powers doctrine).

strictly construed) test into multiple parts, carefully shifting the wording of each as they go. They thereby transform the stringent actual test (Did the trial court grant or deny an "injunction on the ground of the constitutionality of a statute?") into a standard of unprecedented permissiveness: "A constitutional ruling is subject to direct appeal only if a state statute is implicated."[46]

By breaking the single standard into several steps (and focusing myopically on each), Appellants seek to avoid the big picture: the trial court simply did not base any injunction on the ground of the constitutionality of a statute.[47] Appellants want it to be enough that (1) the trial court made a constitutional ruling, even if that ruling did not involve a statute, and (2) Appellants raised a statutory claim (that the court did not reach). But Appellants' maneuver flies in the face of this Court's strict construction mandate that the "permanent injunction be 'on the ground' of the statute's constitutionality or unconstitutionality."[48] Appellants cannot change the wording of this standard to avoid its key condition.

C. Appellants would greatly expand the Court's mandatory jurisdiction.

By Appellants' logic, the application of any constitutional bar to jurisdiction has the effect of declaring unconstitutional any statute that might have been raised if the court had jurisdiction to reach the issue. This novel, expansive reading of the law would confer

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[46] Appellants' Statement of Jurisdiction at 7.

[47] *See, e.g.*, *id.* at 4 (discussing the "constitutionality" prong separately and noting that, since this case raises constitutional issues, "the effect of the trial court's Order's was obviously 'on the ground of constitutionality'"); *id.* at 7 (declaring separately, after noting constitutional questions, that "[a] constitutional ruling is subject to direct appeal only if a state statute is implicated").

[48] *Garcia*, 817 S.W.2d at 61.

direct appeal jurisdiction in any case that involves such a bar (*e.g.*, standing, mootness, ripeness, political questions, ecclesiastical questions) and also arguably involves a statute. If a party meets the test for direct appeal of a permanent injunction, jurisdiction is mandatory, and this Court must take the case.[49] Appellants' theory would open this Court to widely expanded mandatory jurisdiction. This is bad policy: it would tax this Court's limited resources while depriving it of the views of intermediate courts in all cases that qualify for this expanded "exception." It would also violate this Court's admonition that qualifying cases should be "rare."

D. Appellants' theory violates principles of avoidance and prudentialism.

Appellants' theory does great damage to judicial principles of avoidance and prudentialism, which seek to avoid – rather than stretch to find – constitutional problems with legislative acts. Texas courts are "obligated to avoid constitutional problems if possible."[50] Here, Appellants urge the opposite, proposing a theory by which courts incidentally and indirectly declare statutes unconstitutional, simply by lacking jurisdiction to reach a dispute in which one party might have raised those statutes.

Appellants' theory also runs counter to the purpose of the limits on judicial power. The jurisdictional limits placed on civil courts provide an important method for avoiding the need to rule on the constitutionality of statutes.[51] Here, Appellants ask the Court to

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[49] *Cf.* TEX. R. APP. P. 57.2 (providing only limited circumstances under which the Court may decline to exercise direct appeal jurisdiction over interlocutory, but not final, orders); *see also Dow Chem. Co. v. Alfaro*, 786 S.W.2d 674, 708-09 (Tex. 1990) (Phillips, C.J., dissenting).

[50] *Brooks v. Northglen Ass'n*, 141 S.W.3d 158, 169 (Tex. 2004) (citing *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 625 (Tex. 1996)).

[51] *See, e.g.*, *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 345-46 (1936) (Brandeis, J., concurring).

stretch to find that an order *indirectly* rendered unconstitutional a statute that the trial court never applied or ruled on. Appellants' theory is inconsistent with numerous canons of statutory interpretation that embody the avoidance principle.[52]

E. The trial court's Order does not conflict with any statute.

Appellants claim that the trial court effectively declared two statutory schemes unconstitutional. But in reality, even if the court had reached those statutes (which it did not), they do not conflict with the trial court's Order. The Texas Non-Profit Corporation Act contains a specific carve-out for religious property-holding corporations, recognizing that they may be controlled by a larger religious convention.[53] Nor is there any conflict between the Texas Trust Code and *Brown*. Appellants argue that the trial court's application of *Brown* is contrary to the Texas Trust Code because Appellants "revoked" any trust interest. But *Brown* does not turn on the existence of a trust. In fact, the *Brown* Court specifically noted that there was no trust in that case.[54] In *Brown*, the loyal faction received the local church's property because it constituted the local church, not because of any trust interest.[55] *Brown* does not reach, much less contradict, the Trust Code.

F. Appellants' other arguments are irrelevant.

Because Appellants cannot meet the sole test for direct appeal, they try to focus the Court's attention on other issues. For example, Appellants delve into the facts and

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[52] *See, e.g.*, *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 500-01 (1979) (Burger, C.J.) ("affirmative intention" doctrine); *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739, 756 (11th Cir. 2004) (Tjoflat, J., dissenting from denial of rehearing en banc) (citations omitted) ("Barking Dog Canon").

[53] TEX. REV. CIV. STAT. ANN. art. 1396, § 2.02(A)(16); § 2.14(B); *see also* 26CR5673a (Appellees' summary judgment briefing on same).

[54] 116 S.W. at 364.

[55] *Id.*

arguments of the underlying case (with a string of misstatements far beyond the scope of this response and irrelevant to the question at hand). And Appellants spend four pages discussing the importance of this case, although they concede that "importance" is absolutely irrelevant to direct appeal jurisdiction over final orders.

This case is certainly important to the parties, as all cases are. That is precisely why the parties are entitled to due process and a full appeal. Direct appeal is not a neutral "short-cut" or "time-saving" device, as Appellants have suggested. It requires a finding that the trial court declared a state statute unconstitutional – something that did not happen here. Since state statutes are presumed constitutional, granting a direct appeal would force Appellees to overcome a presumption in the case that should not even come into play.[56] Appellants should not be permitted to shift the parties' rights or burdens in the guise of a "time-saving" maneuver.

CONCLUSION

Appellants have not demonstrated that they are entitled to leapfrog the Court of Appeals. Direct appeals to this Court are proper only when the trial court grants an injunction "on the ground of the constitutionality of a statute of this state." This standard is strictly construed and rarely met. The trial court's Order does not even raise, much less rule on or base an injunction on any statute's constitutionality. Appellants' effort to redefine the test departs from the standard's plain language and violates this Court's precedents. It opens this Court to widely-expanded mandatory jurisdiction. Appellants' request for direct appeal should be denied, and their appeal dismissed.

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[56] *Brooks*, 141 S.W.3d at 169 ("A statute is presumptively constitutional.").

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CERTIFICATE OF SERVICE

I certify that on the 16th day of June, 2011, the foregoing Appellees' Response to Appellants' Statement of Jurisdiction was filed electronically and as such, this document was served on all counsel who are deemed to have consented to electronic service. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by facsimile through CFX, to:

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