

Case No. 02-15-00220-CV

COURT OF APPEALS
FOR THE SECOND DISTRICT OF TEXAS
FORT WORTH, TEXAS

THE EPISCOPAL CHURCH ET AL.,
Plaintiff-Appellants
v.
FRANKLIN SALAZAR ET AL., Defendant-Appellees

**BRIEF OF APPELLANT THE EPISCOPAL CHURCH AND
THE MOST REV. KATHARINE JEFFERTS SCHORI**

On Appeal from the 141st Judicial District Court of
Tarrant County, Texas
Cause No. 141-252083-11
Judge John Chupp, Presiding

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IDENTITY OF PARTIES AND COUNSEL

Appellants, or “Plaintiffs”

Appellants are The Episcopal Church and individuals and entities that are affiliated with, and recognized as affiliates by, The Episcopal Church.

1. *The Episcopal Church, a/k/a the Protestant Episcopal Church in the United States of America, and The Most Rev. Katharine Jefferts Schori*

The Episcopal Church is a religious denomination comprised of regional and local subordinate units throughout the United States and the world. It is an unincorporated association with its headquarters in New York, New York.

The Most Rev. Katharine Jefferts Schori was at the time this case was filed the Presiding Bishop of The Episcopal Church, its highest ecclesiastical officer.

The Episcopal Church and Bishop Jefferts Schori are represented by Sandra Liser (State Bar No. 17072250), Naman Howell Smith & Lee, PLLC, Fort Worth Club Building, 306 West 7th Street, Suite 405, Fort Worth, Texas 76102-4911; Mary E. Kostel, The Episcopal Church, c/o Goodwin|Procter LLP, 901 New York Ave., N.W., Washington, D.C. 20001; and David Booth Beers, Goodwin|Procter LLP, 901 New York Ave., N.W., Washington, D.C. 20001.

2. *The Local Episcopal Parties*

The Local Episcopal Parties are individual Episcopalians who are recognized by The Episcopal Church as the authorized leaders of the Episcopal

Diocese of Fort Worth.¹ They are represented by William D. Sims, Jr. (State Bar No. 18429500), Thomas S. Leatherbury (State Bar No. 12095275), and Daniel L. Tobey (State Bar No. 24048842), VINSON & ELKINS LLP, 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201-2975; Jonathan D.F. Nelson (State Bar No. 14900700), Jonathan D.F. Nelson, P.C., 1400 W. Abrams Street, Arlington, Texas 76013-1705; and Kathleen Wells (State Bar No. 02317300), P.O. Box 101714, Fort Worth, Texas 76185-0174.

3. *The Local Episcopal Congregations*

The Local Episcopal Congregations are the continuing Episcopal congregations and their authorized leaders recognized by The Episcopal Church and the Diocese.² They are represented by Frank Hill (State Bar No. 09632000),

¹ The Local Episcopal Parties are The Rt. Rev. Rayford B. High, Jr.; The Rt. Rev. C. Wallis Ohl; Robert Hicks; Floyd McKneely; Shannon Shipp; David Skelton; Whit Smith; The Rt. Rev. Edwin F. Gulick, Jr.; Robert M. Bass; The Rev. James Hazel; Cherie Shipp; The Rev. John Stanley; Dr. Trace Worrell; Margaret Mieuli; Walt Cabe; Anne T. Bass; The Rev. Frederick Barber; The Rev. Christopher Jambor; The Rev. David Madison; Kathleen Wells, and their successors in office.

² The Local Episcopal Congregations are The Rev. Christopher Jambor and Stephanie Burk, individually and as representatives of All Saints' Episcopal Church (Fort Worth); Cynthia Eichenberger as representative of All Saints' Episcopal Church (Weatherford); Harold Parkey as representative of Christ the King Episcopal Church (Fort Worth); Bill McKay and Ian Moore as representatives of Episcopal Church of the Good Shepherd (Granbury); Ann Coleman as a representative of Episcopal Church of the Good Shepherd (Wichita Falls); Constant Robert Marks, IV and William Davis as representatives of St. Alban's Episcopal Church (Arlington); Vernon Gotcher as representative of St. Stephen's Episcopal Church (Hurst); Sandra Shockley as a representative of St. Mary's Episcopal Church (Hamilton); Sarah Walker as a representative of Episcopal Church of the Holy Apostles (Fort Worth); Linda Johnson as a representative of St. Anne's Episcopal Church (Fort Worth); Larry Hathaway individually and as representative of St. Luke-in-the-Meadow Episcopal Church (Fort Worth); David Skelton as a representative of St. Mary's Episcopal Church (Hillsboro); All Saints' Episcopal Church (Fort Worth); All Saints' Episcopal Church (Wichita Falls); All Saints' Episcopal Church (Weatherford), Christ the King

Frank Gilstrap (State Bar No. 07964000), Hill Gilstrap, P.C., 1400 W. Abram Street, Arlington, Texas 76013-1705.

Appellees, or “Defendants”

Appellees are former Episcopalians who left The Episcopal Church in 2008 but continue to hold themselves out as the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth, local Episcopal congregations, and their clergy and leadership.

Episcopal Church (Fort Worth); Episcopal Church of the Good Shepherd (Granbury); St. Alban’s Episcopal Church (Arlington), St. Simon of Cyrene Episcopal Church (Fort Worth); St. Stephen’s Episcopal Church (Hurst); St. Mary’s Episcopal Church (Hamilton); St. Anne’s Episcopal Church (Fort Worth); St. Luke-in-the-Meadow Episcopal Church (Fort Worth); St. Mary’s Episcopal Church (Hillsboro); Episcopal Church of the Ascension & St. Mark (Bridgeport); Episcopal Church of the Good Shepherd (Brownwood); Holy Comforter Episcopal Church (Cleburne); St. Elisabeth’s Episcopal Church (Fort Worth); Holy Spirit Episcopal Church (Graham); Holy Trinity Episcopal Church (Eastland); Our Lady of the Lake Episcopal Church (Laguna Park); Trinity Episcopal Church (Dublin); Trinity Episcopal Church (Henrietta); Iglesia San Juan Apostol (Fort Worth); Iglesia San Miguel (Fort Worth); St. Anthony of Padua Episcopal Church (Alvarado); St. Alban’s Episcopal Church (Hubbard); St. Andrew’s Episcopal Church (Fort Worth); St. Andrew’s Episcopal Church (Breckenridge); St. Andrew’s Episcopal Church (Grand Prairie); St. Barnabas the Apostle Episcopal Church (Keller); St. Gregory’s Episcopal Church (Mansfield); St. John’s Episcopal Church (Fort Worth); St. John’s Episcopal Church (Brownwood); St. John the Divine Episcopal Church (Burkburnett); St. Joseph’s Episcopal Church (Grand Prairie); St. Laurence’s Episcopal Church (Southlake); St. Luke’s Episcopal Church (Mineral Wells); St. Mark’s Episcopal Church (Arlington); St. Matthew’s Episcopal Church (Comanche); St. Michael’s Episcopal Church (Richland Hills); St. Paul’s Episcopal Church (Gainesville); St. Patrick’s Episcopal Church (Bowie); St. Peter-by-the-Lake Episcopal Church (Graford); St. Peter and St. Paul Episcopal Church (Arlington); St. Phillip the Apostle Episcopal Church (Arlington); St. Thomas the Apostle Episcopal Church (Jacksboro); St. Timothy’s Episcopal Church (Fort Worth); St. Vincent’s Episcopal Church (Bedford); St. Stephen’s Episcopal Church (Wichita Falls); Episcopal Church of the Holy Apostles (Fort Worth); and Episcopal Church of the Good Shepherd (Wichita Falls), and their individuals successors in office.

1. *The Individual Defendants wrongfully holding themselves out and appearing as “The Episcopal Diocese of Fort Worth” and “The Corporation of the Episcopal Diocese of Fort Worth”*

The Individual Defendants are former officers of the Episcopal Diocese of Fort Worth who left The Episcopal Church but hold themselves out as the Episcopal Diocese.³ They are represented by Scott A. Brister (State Bar No. 00000024), Andrews Kurth L.L.P., 111 Congress Avenue, Suite 1700, Austin, Texas 78701; and J. Shelby Sharpe (State Bar No. 18123000), Sharpe Tillman & Melton, 6100 Western Place, Suite 1000, Fort Worth, Texas 76107.

2. *The Defendants wrongfully holding themselves out and appearing as the Intervening Congregations*

The Intervening Congregations are the dissidents who left The Episcopal Church but hold themselves out as the Episcopal Congregations.⁴ They are

³ They are Franklin Salazar, Jo Ann Patton, Walter Virden, III, Rod Barber, Chad Bates, The Rt. Rev. Jack Leo Iker, Judy Mayo, Julia Smead, The Rev. Christopher Cantrell, The Rev. Timothy Perkins, The Rev. Ryan Reed, The Rev. Thomas Hightower, and their successors.

⁴ They are ST. ANTHONY OF PADUA CHURCH (Alvarado), ST. ALBAN’S CHURCH (Arlington), ST. MARK’S CHURCH (Arlington), CHURCH OF ST. PETER AND ST. PAUL (Arlington) CHURCH OF ST. PHILIP THE APOSTLE (Arlington), ST. VINCENT’S CATHEDRAL (Bedford), ST. PATRICK’S CHURCH (Bowie), ST. ANDREW’S CHURCH (Breckenridge), GOOD SHEPHERD CHURCH (Brownwood), ST. JOHN’S CHURCH (Brownwood), CHURCH OF ST. JOHN THE DIVINE (Burkburnett), HOLY COMFORTER CHURCH (Cleburne), ST. MATTHEW’S CHURCH (Comanche), TRINITY CHURCH (Dublin), HOLY TRINITY CHURCH (Eastland), CHRIST THE KING CHURCH (Fort Worth), HOLY APOSTLES CHURCH (Fort Worth), IGLESIA SAN JUAN APOSTOL (Fort Worth), IGLESIA SAN MIGUEL (Fort Worth), ST. ANDREW’S CHURCH (Fort Worth), ST. ANNE’S CHURCH (Fort Worth), CHURCH OF ST. BARNABAS THE APOSTLE (Fort Worth), ST. JOHN’S CHURCH (Fort Worth), ST. MICHAEL’S CHURCH (Richland Hills), CHURCH OF ST. SIMON OF CYRENE (Fort Worth), ST. TIMOTHY’S CHURCH (Fort Worth), ST. PAUL’S CHURCH (Gainesville), GOOD SHEPHERD CHURCH (Granbury), CHURCH OF THE HOLY SPIRIT (Graham), ST. ANDREW’S CHURCH (Grand Prairie), ST. JOSEPH’S

represented by R. David Weaver (State Bar No. 21010875), The Weaver Law Firm, 1521 N. Cooper Street, Suite 710, Arlington, Texas 76011.

CHURCH (Grand Prairie), ST. LAURENCE'S CHURCH (Southlake), ST. MARY'S CHURCH (Hamilton), TRINITY CHURCH (Henrietta), ST. MARY'S CHURCH (Hillsboro), ST. ALBAN'S CHURCH (Hubbard), ST. STEPHEN'S CHURCH (Hurst), CHURCH OF ST. THOMAS THE APOSTLE (Jacksboro), CHURCH OF OUR LADY OF THE LAKE (Laguna Park), ST. GREGORY'S CHURCH (Mansfield), ST. LUKE'S CHURCH (Mineral Wells), CHURCH OF ST. PETER BY THE LAKE (Graford), ALL SAINT'S CHURCH (Weatherford), ALL SAINT'S CHURCH (Wichita Falls), CHURCH OF THE GOOD SHEPHERD (Wichita Falls), CHURCH OF ST. FRANCIS OF ASSISI (Willow Park), and CHURCH OF THE ASCENSION & ST. MARK (Bridgeport).

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STATEMENT OF THE CASE

This case involves a dispute between, on one hand, The Episcopal Church (the “Church”), loyal, local Episcopalians whom the Church recognizes as the leaders of its regional, ecclesiastical arm, or “Diocese,” in and surrounding Fort Worth, Texas, and the people and entities that the Diocese in turn recognizes as its local worshipping congregations, and, on the other, a group of dissenting, former Episcopalians who claim to be the leaders of the Diocese and to have removed the Diocese and its worshipping congregations, as well as the property held in trust for the Diocese and its congregations, from the Church and into another denomination.

The Church and its loyal followers in Fort Worth filed suit, seeking declaratory and injunctive relief barring the dissenters from holding themselves out as leaders of the Diocese and exercising control over its assets. CR 1:26-47. The dissidents countersued. CR 6:2001-08, 2009-17. The trial court granted summary judgment in favor of the Church and its followers, applying one approach (known as the “deference” method) for resolving church property disputes. CR 9:3214-15.

On direct appeal, the Supreme Court of Texas reversed and remanded the case to the trial court, directing the court to apply a different approach (the “neutral principles” method) instead. *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (Tex. 2013).

On remand, the trial court granted summary judgment in favor of the dissident group, providing no opinion or other basis for its determination. CR 36:13028; CR 39:13953.

STATEMENT REGARDING ORAL ARGUMENT

The Episcopal Church respectfully requests oral argument. In the light of the complexity and importance of the issues raised in this appeal, the Church believes that oral argument would materially assist the Court.

ISSUE PRESENTED

1. Where all parties agree that the property at issue in this case is held in trust for the Diocese of Fort Worth and its worshipping congregations, whether the trial court erred as a matter of law in its application of the neutral principles approach by failing to defer to and apply The Episcopal Church's ecclesiastical determination of who constitutes the Diocese of Fort Worth.

NOTE: The Episcopal Church (the "Church") adopts and incorporates in their entirety the Issues Presented, and the arguments supporting those Issues, set out in the brief submitted by its co-Appellants, the Local Episcopal Parties and Congregations. The Church writes separately on the Issue Presented set out above because the trial court's failure to defer to and apply the Church's resolution of ecclesiastical questions threatens the very core of the Church's polity.

STATEMENT OF FACTS

I. THE GOVERNANCE OF THE EPISCOPAL CHURCH

A. Hierarchical Nature of the Church

Formed in the 1780s, The Episcopal Church, also known as the Protestant Episcopal Church in the United States of America (the “Church”), consists of a three-tier, hierarchical structure, with (1) the “General Convention” at the top of the structure, (2) regional, geographically-defined “dioceses” (such as the Diocese of Fort Worth here) at the middle tier, and (3) local worshipping congregations, usually “parishes” or “missions” (such as those included here), at the lowest tier. CR 2:600-619 (Journals of the 1785-1789 Meetings of the General Convention.); CR 3:914-16 (Const. art. I); CR 3:918-19 (Const. art. V); CR 3:962-63 (Canons I.13, I.14).⁵

The General Convention is a legislative body composed of bishops, other clergy, and lay persons from each of the Church’s 100+ dioceses. CR 3:914-15 (Const. art. I, Secs. 1, 2, 4). It has adopted and from time to time amends a Constitution, a body of rules or “canons,” and the Church’s *Book of Common Prayer*, which are binding on all parts of the Church. CR 3:914 (Const. Preamble); CR 3:922-23 (Const. art XII); CR 3:1089-90 (Canon V.1). The General Convention elects a “Presiding Bishop” who leads an elected “Executive Council”

⁵ “CR” refers to the Clerk’s Record in this case.

in managing the fiscal and programmatic affairs of the Church between meetings of the General Convention. CR 3:914 (Const. art. I.3); CR 3:941-42 (Canon I.2.4); CR 3:943-48 (Canon I.4).

Regional “dioceses” are “formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe.” CR 3:918 (Const. art. V.1). Once formed, each diocese is governed by a “Diocesan Convention” composed of representatives from each of its congregations. The Diocesan Convention adopts and amends a Constitution and canons for that diocese, which may not conflict with those of the Church. *Id.*; CR 3:958 (Canons I.10.1, I.10.4). The Diocesan Convention also elects a “Diocesan Bishop” to lead the Diocese, whose ordination as a bishop, under the Church’s rules, must be approved by the larger Church. CR 3:916-17 (Const. art. II).

Local “parishes” and other congregations are “establish[ed]” by “the action of the ... Convention[.]” of the Diocese in which they are geographically located. CR 3:962 (Canons I.13.1, I.13.2(a)). Each parish is governed by a “rector,” a person ordained according to the Church’s rules and standards, and a “vestry,” a group of unordained, or “lay,” people elected by the parish congregation. CR 3:997-99 (Canon III.9.5(a) (rector)); CR 3:963 (Canon I.14.2 (vestry)).

Since its founding, the Church has, through its Constitution and canons, made all dioceses subject to the actions taken by the General Convention and has

required all new dioceses to accede to the Church's governance. *See* CR 2:617 (1789 Const. art. 2); CR 3:9184 (Const. art. V.1); CR 3:958 (Canon I.10.4). Dioceses, in turn, have, through their Constitutions and canons, required parishes to accede to and comply with the governance of the Church and the Diocese. *See, e.g.,* CR 2:789 (Fort Worth Diocesan Canon 22.2) (requiring new parishes to “promise to abide by and conform to the Constitution and Canons of the General Convention and of the Diocese of Fort Worth.”).

The Church also historically has had rules binding individual Church leaders to its governance. Since 1789, the Church's Constitution has required all persons ordained in the Church to subscribe to a “Declaration of Conformity”:

“I do believe the holy scriptures of the Old and New Testament to be the word of God, and to contain all things necessary to salvation: *And I do solemnly engage to conform to the doctrines and worship of the Protestant Episcopal Church in these United States.*” CR 2:618 (1789 Const. art. 7); CR 3:920 (Const. art. VIII) (emphasis added).⁶

In addition, the Church's canons require all persons holding any office in the Church, including lay people, to “well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church.” CR 3:968-69 (Canon I.17.8).

⁶ The “Declaration of Conformity” was amended after 1789 to add the word “Discipline,” requiring each ordinand to “solemnly engage to conform to the Doctrine, Discipline, and Worship” of the Church. *Compare* CR 2:618 (1789 Const. art. 7) *with* CR 3:920 (Const. art. VIII).

B. The Church's Governance of Dioceses and Parishes, Including Over Church Property

The Church's Constitution, canons, and *Book of Common Prayer* impose comprehensive, substantive regulations on the dioceses and parishes of the Church. Those documents set requirements for the selection, ordination, jurisdiction, and resignation of bishops, CR 3:916-17 (Const. art. II); CR 3:1011-19 (Canon III.11); CR 3:1019-26 (Canon III.12); standardize the selection, training, ordination, deployment, supervision, and discipline of all clergy, CR 3:976-1011 (Canons III.2-III.10); CR 3:1028-30 (Canons III.15-III.16); CR 3:1031-1082 (Canons IV.1-IV.16); and regulate the formation and operation of parishes, CR 3:962-63 (Canon I.13); among other things. The disciplinary canons provide for ecclesiastical courts for removing bishops and other clergy, and make those ordained persons subject to removal for, among other things, violating the Church's Constitution or canons or the Declaration of Conformity. CR 3:1031-1088 (Canons IV.1-IV.16, Appendix).

The Church's canons also extensively regulate the temporal affairs of the dioceses and parishes of the Church. The canons require dioceses to submit annual reports and other documents to Church headquarters and prescribe business methods for dioceses and parishes, including requiring annual audits and adequate insurance of all buildings and their contents. CR 3:951-53 (Canon I.7).

In addition, the Church's canons expressly ensure that church property be used by persons and entities affiliated with the Church, and no other denomination.

Canon II.6 requires that a Bishop be satisfied that a building is “secured for ownership and use by [an entity] affiliated with this Church and subject to its Constitution and Canons” before “consecrate[ing]” the building as a “Church or Chapel,” and forbids the “encumb[rance] or alienat[ion]” of any consecrated building without the consent of the Bishop and “Standing Committee” of the Diocese. CR 3:975. Canon I.7(3) extends the same requirement of diocesan consent to encumbrances and alienations of unconsecrated property. CR 3:952. Canon I.7(4) – adopted in 1979 in response to *Jones v. Wolf*, 443 U.S. 595 (1979) – provides:

“All real and 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 in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.” CR 3:953.

II. HISTORY OF THE EPISCOPAL DIOCESE OF FORT WORTH AND THE CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH

A. Formation of the Diocese

The Episcopal Diocese of Fort Worth was formed in 1983 by the Church’s General Convention as the result of a division of the Church’s Diocese of Dallas into two dioceses. The Diocese of Dallas sought and received approval for the

division from the General Convention, as it was required to by the Church's rules, contingent upon receipt of certification that "all of the appropriate and pertinent provisions of the Constitution and Canons of the General Convention ... have been fully complied with." CR 2:679-81 (Excerpts from 1982 Journal of the General Convention). As stated, this included the requirement that new dioceses accede to the Church's governance.

The newly-formed Diocese of Fort Worth (the "Diocese") made multiple pledges of conformity to the Church's governance. The first Diocesan Convention, held after the consent of the General Convention, adopted a resolution stating:

"WHEREAS, the Primary Convention of the Diocese of Fort Worth... pursuant to approval of the 67th General Convention of The Episcopal Church, does hereby fully subscribe to and accede to the Constitution and Canons of The Episcopal Church." CR 2:767 (Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth).

The Convention also adopted a Constitution for the Diocese which provided:

"The Church in this Diocese accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and recognizes the authority of the General Convention of said Church." CR 2:783 (1982 Diocesan Const. art. 1).

The new Constitution further provided that "[c]anons not inconsistent with this Constitution, or the Constitution and Canons of the General Convention, may be adopted." CR 2:786 (1982 Diocesan Const. art 18). And, newly-adopted

Diocesan canons required every new parish to “promise to abide by and conform to the Constitution and Canons of the General Convention.” CR 2:789 (1982 Diocesan Canon 22). In 1982, when these pledges were made, the Constitution and Canons of the Church contained all of the same provisions described above in Part I, including its rules governing church property. *See generally* CR 2:683-750 (1979 Const. and Canons).

B. Formation of the Diocesan Corporation

Shortly after its formation, the Diocese of Fort Worth created a separate corporation, subordinate to the Diocese’s governance, to hold property for the Diocese and its parishes and missions. Before filing papers with the Secretary of State to create the corporation, the Diocese, in its first Constitution, had set out the role intended for the new Diocesan Corporation and the Corporation’s relationship to the Diocese:

“The title to all real estate acquired for the use of the Church in this Diocese, including the real property of all parishes and missions, as well as Diocesan Institutions, shall be held subject to control of the Church in the Episcopal Diocese of Fort Worth acting by and through a corporation known as ‘Corporation of the Episcopal Diocese of Fort Worth.’ All 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 Corporation of the Episcopal Diocese of Fort Worth.

“The Corporation ... shall hold real property acquired for the use of a particular parish or mission in trust for the use and benefit of such parish or mission. ... Such property may not be conveyed, leased, or encumbered by the Corporation ... without the consent

of the Rector, Wardens and Vestry of such parish or mission. Upon dissolution of such parish or mission, property held in trust for it shall revert to said Corporation for the use and benefit of the Diocese, as such.

“All other property belonging to the Diocese, as such, shall be held in the name of the corporation known as ‘Corporation of the Episcopal Diocese of Fort Worth,’ and no conveyance or encumbrance of any kind shall be valid unless executed by such corporation and as may otherwise be provided by the Canons of the Diocese.” CR 2:784 (1982 Diocesan Const. art. 13).

The Diocese’s first Canons elaborated on the role of the forthcoming Diocesan Corporation, providing the following limitations:

- Canon 11 required the Diocesan Corporation to be governed by a six-member “Board of Trustees,” comprised of the Bishop of the Diocese “who shall serve as Chairman of the Board” and five other members, elected by the Diocesan Convention, who must be “either Lay persons in good standing of a parish or mission in the Diocese, or members of the Clergy canonically resident in the Diocese. CR 2:787 (1982 Diocesan Canon 11.2).
- Canon 11 required the Board of Trustees to conduct the affairs of the Diocesan Corporation “in accordance with its charter and by-laws and in accordance with the Constitution and Canons of the Diocese from time to time adopted.” CR 2:787 (1982 Diocesan Canon 11.2).
- Canon 12 provided that the Diocesan Corporation could “convey[] or encumber[]” property only “in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth.” CR 2:788 (1982 Diocesan Canon 12.1).
- Canon 12 also required the Diocesan Corporation to secure “the advice and consent of the [Diocesan] Standing Committee” before selling, leasing, or “otherwise dispos[ing]” of property. CR 2:788 (1982 Diocesan Canon 12.3).

- Echoing the Constitution, Canon 12 also provided that “[r]eal property acquired by the Corporation for the use of a particular parish or mission shall be held by the Corporation in trust for the use and benefit of such parish or mission.” CR 2:788 (1982 Diocesan Canon 12.4).

The original articles of incorporation for the “Corporation of the Episcopal Diocese of Fort Worth,” filed with the Secretary of State in February 1983, described the corporation’s purpose as

“[t]o receive and maintain a fund or funds or real or personal property, or both, from any source including all real property acquired for the use of the Episcopal Diocese of Fort Worth as well as the real property of all parishes, missions and diocesan institutions.” CR 5:1578 (Article Four (1)).

The articles further required that

“[t]he property so held ... shall be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth as they now exist or as they may hereafter be amended.” CR 5:1578 (Article Four (2)).

Moreover, the new Corporation adopted bylaws that provided:

“The affairs of this nonprofit corporation shall be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of America and the Constitution and Canons of the Episcopal Diocese of Fort Worth, as they may be amended or supplemented from time to time by the General Convention of the Church or by the Convention of the Diocese. In the event of any conflict between these Bylaws and any part or all of said Constitution or canons, the latter shall control.” CR 17:6065 (Bylaws art. I).

Shortly thereafter, the Diocese of Dallas and its diocesan corporation, the Diocese of Fort Worth and its newly-created Diocesan Corporation, and the

bishops of the two dioceses jointly petitioned the district court in Dallas County for a declaratory judgment dividing up the assets then belonging to the Diocese of Dallas between the Diocese of Dallas and its diocesan corporation, on one hand, and the new Diocese of Fort Worth and its Diocesan Corporation, on the other. CR 5:1441-1505 (Petition). The Petition described the Diocese of Fort Worth as “a duly constituted religious organization, organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America,” and the Diocesan Corporation as “a Texas nonprofit corporation, duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth.” CR 5:1441-42 (Petition at 1-2).

The Petition set out the following facts:

“On June 19, 1982, at a duly called Special Convention of the Diocese of Dallas ... the division of the Diocese of Dallas into two separate dioceses as permitted by Article V of the Constitution of the Episcopal Church was duly approved. ...” CR 5:1444 (Petition at 4).

“On the 1st day of October, 1982, ... at a duly called annual convention of the Diocese of Dallas ... a resolution was duly approved dividing the assets and liabilities, including both real and personal property, between the Diocese of Dallas and the new Diocese of Fort Worth” CR 5:1445 (Petition at 5).

“On November 13, 1982, a primary convention of the newly formed diocese was held in Fort Worth, Texas ... [at which] the Diocese of Fort Worth was duly organized and established pursuant to the Constitution and Canons of the Episcopal Church. At such convention the Diocese of Fort Worth also adopted a Constitution and Canons for its own governance. Article 13 of

such Constitution provides that title to all real property acquired for the use of the Church in the Diocese shall be vested in a corporation to be known as Corporation of the Episcopal Diocese of Fort Worth.” CR 5:1445 (Petition at 5).

In the light of those facts, the Petition sought “[a] declaration that with respect to the Diocese of Fort Worth that Corporation of the Episcopal Diocese of Fort Worth shall henceforth own and control, pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth,” a list of assets agreed upon by the petitioners. CR 5:1453 (Petition at 13). On August 22, 1984, the District Court of Dallas County issued a Judgment adopting as findings the factual allegations set out above and granting the petition. CR 5:1507-1574.

As the record demonstrates, and as Defendants repeatedly represented to the trial court, the Diocesan Corporation holds all property as a trustee, in trust for the Diocese and its parishes and missions. *See, e.g.*, CR 35:12582 (Defendants’ Corrected Response to Plaintiffs’ Motion for Partial Summary Judgment at 1) (“The Corporation holds property in an express trust for the use and benefit of the parishes, missions, and diocesan organizations that have been using them for 32 years.”); CR 10:3475 (Second Amended Third-Party Petition of Intervener the Corporation of the Episcopal Diocese of Fort Worth at 5) (“The Diocesan Corporation continues to hold the property received from this Dallas court along with all other property acquired since 1984 for the use of the congregations of the Fort Worth Diocese.”); CR 31:11094 (corporate representative agreeing that “all

property held by the Corporation ... is held in trust for the parishes and missions of the diocese.”); CR 31:11102 (agreeing that Corporation holds diocesan building “for the use of the diocese,” holds Camp Crucis “for the benefit of the diocese and the parishes,” and holds “the rest of the property ... for the benefit of the parishes, missions and congregations”).⁷

III. THE CURRENT DISPUTE

In 2007 and 2008, the Church’s highest bodies reaffirmed that the denomination’s polity does not allow dioceses to unilaterally withdraw from the Church. In 2007, the Church’s Executive Council “remind[ed] the dioceses ... th[at] ... the Constitution ... requires each Diocese to have a Constitution which shall include ‘an unqualified accession to the Constitution and Canons of this Church’” and that “any amendment to a diocesan Constitution that purports in any way to limit or lessen an unqualified accession to the Constitution and Canons of The Episcopal Church is null and void.” CR 2:656. In January 2008 and again in September 2008, the Church’s highest disciplinary tribunal determined that the bishops of two other dioceses had violated the Church’s governance by purporting to lead their dioceses, and those dioceses’ parishes and missions, out of the Church

⁷ This case also includes property titled in the name of or otherwise held by parishes or missions. The Episcopal Church does not address those properties in this brief, but, as previously noted, adopts in their entirety all arguments made by the Local Episcopal Parties and Congregations, including but not limited to arguments regarding property titled in the name of or otherwise held by parishes or missions.

and into other denominations. CR 5:1615-24, 1626 (Deposition of Bishop Schofield); CR 2:654, CR 5:1630-39 (Deposition of Bishop Duncan). Both bishops were “deposed,” *i.e.*, removed entirely from the clergy of the Church. CR 2:654 (Duncan); CR 5:1626 (Schofield).

Notwithstanding these clear pronouncements, in November 2008, a majority of the voting members of the Convention of the Diocese of Fort Worth voted purportedly to withdraw the Diocese and its parishes and missions from the Church and realign them with another denomination based in South America. CR 4:1206-08, 1213-25 (Aff. of K. Wells and exhibits). Shortly thereafter, the Diocesan Bishop, Appellee Iker – who had become Bishop of the Diocese in 1992 upon the consent of the larger Church and his subscribing to the Church’s Declaration of Conformity (as required by Church rules), CR 2:798 (Declaration of Conformity) – declared that he no longer had any connection with the Church. CR 4:1227 (Statement of Bishop Iker).

Under the Church’s polity, neither the vote of the Diocesan Convention nor the declaration of Bishop Iker had the effect of removing the Diocese, an ecclesiastical entity, from the Church, or the parishes and missions, also ecclesiastical entities, from the Diocese. Rather, those actions rendered certain leadership positions in the Diocese vacant: Pursuant to Church Canons, Bishop Iker was “removed” by the Presiding Bishop from the ordained clergy of the

Church, CR 3:898, and the lay persons serving on “canonical” bodies – including the “Standing Committee” and the Board of Trustees of the Diocesan Corporation – were deemed to have vacated those positions as a result of no longer being “communicant[s] in good standing” of the Church. CR 1:498 (Canon V.4.2(a)).

Accordingly, local Episcopalians, together with the Church’s Presiding Bishop, took immediate steps to repopulate the leadership of the Diocese. At a special meeting in February 2009, the Diocesan Convention, constituted of loyal Episcopalians in the Diocese, elected a “Provisional Bishop” to exercise all the duties and offices of the Diocesan Bishop, and together the Convention and the Provisional Bishop filled various other diocesan positions. CR 4:1274-77, 1282-88 (Excerpt from Diocesan Journal). Further, the Diocesan Convention declared the earlier measures purporting to remove the Diocese from the Church and realign it with another denomination *ultra vires* and void. CR 4: 1277-82 (Excerpt from Diocesan Journal).

Since that time, the Diocesan Convention has elected other Provisional Bishops and diocesan leaders to succeed those elected in February 2009, CR 4:1300-07 (excerpt from Diocesan Journal), and various governing bodies of the Church have officially recognized these Bishops and other leaders, including the individual Appellants here, as the persons with authority to govern the continuing Diocese. CR 1:221 (letter from Presiding Bishop); CR 1:222-23 (letter from

President of the House of Deputies); CR 3:900-01, CR 5:1641 (participation by Bishops Gulick and Ohl and Standing Committee in process to consent to election of bishops of other dioceses). In particular, the Church's General Convention recognized the Provisional Bishop and representatives elected by the reorganized Diocese as those persons authorized to represent the Diocese at the General Convention's triennial meeting in July 2009, and recognized the reorganized Diocese as the Church's "continuing diocese[]" of Fort Worth. CR 4:1187-97 (excerpts from the 2009 Journal of the General Convention).

Similarly, the reorganized Diocesan Convention has determined which persons and entities have the authority to hold themselves out as the continuing parishes and missions. CR 1:225-26 (deposing clergy who left the Church); CR 4:1291-93 (addressing status of parishes).

Despite the Church's determination of which persons constitute the rightful leadership of the Diocese, Defendant Iker and the other individual Defendants have since November 2008 held themselves out as leaders of the Diocese, CR 4:1210, 1237-48 (Aff. of K. Wells and exhibits), and purport to have authoritatively determined who represents the parishes and missions of the Diocese. *E.g.*, CR 6:1695 (First Amended Original Plea in Intervention) (describing parishes and missions as "under the episcopal oversight of [Bishop] Iker."). Further, since November 2008, Defendants have exercised control over substantially all of the

assets held by the Diocesan Corporation for the benefit of the Diocese and congregations, which they wrongfully claim authority to identify and control.

IV. PRIOR PROCEEDINGS

In 2011, the trial court granted summary judgment in favor of the Church and the Local Episcopal Parties, applying the legal approach known as the “deference” method for resolving church property disputes. CR 9:3214-15. On direct appeal, the Supreme Court of Texas reversed, holding that that “Texas courts should utilize [the neutral principles] methodology in determining which faction of a religious organization is entitled to the property when the organization splits,” and remanded the case for decision under the neutral principles methodology. *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 651 (Tex. 2014), *cert. denied*, 135 S. Ct. 435 (2013). The Court reached the same conclusion in a companion case involving the property of an Episcopal parish in another diocese, *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594 (Tex. 2013), *cert. denied*, 135 S. Ct. 435 (2014), issued on the same day.

On remand, the trial court granted summary judgment in favor of the Defendants, providing, however, no opinion, findings, or conclusions. CR 36:13028; CR 39:13953.

SUMMARY OF ARGUMENT

The undisputed facts in this case and the First Amendment principles articulated by the Texas Supreme Court require summary judgment in favor of the Church and its loyal local followers. It is undisputed that the Diocesan Corporation holds the property at issue here on behalf of and in trust for the Diocese and its parishes and missions. The First Amendment, in turn, requires this Court to defer to the Church's determination of who constitutes the Diocese, and, similarly, to the Diocese's determination of who constitutes its parishes and missions. These two factors conclusively determine the outcome in this case.

ARGUMENT

I. TEXAS COURTS MUST APPLY THE NEUTRAL PRINCIPLES APPROACH TO CHURCH PROPERTY DISPUTES.

As the Texas Supreme Court announced in the companion cases of *Masterson* and *Episcopal Diocese of Fort Worth*, “Texas courts should use the neutral principles methodology to determine property interests when religious organizations are involved.” *Masterson*, 422 S.W.3d at 607; *see also Episcopal Diocese of Fort Worth*, 422 S.W.3d at 651 (nearly identical language). “Further,” the Court stated, “Texas courts should use only the neutral principles methodology in order to avoid confusion in deciding this type of controversy.” *Id.* Accordingly, church property disputes in Texas are not to be resolved by “simply defer[ring] to the ecclesiastical authorities with regard to the property dispute.” *Masterson*, 422

S.W.3d at 605, but instead by applying the neutral principles methodology. *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650 (describing rejected “deference” approach as “defer[ring] to and enfor[ing] the decision of the religious authority if the dispute has been decided within that authority structure” and requiring application of neutral principles approach).

II. THE NEUTRAL PRINCIPLES APPROACH NEVERTHELESS REQUIRES DEFERENCE TO CHURCH AUTHORITIES ON ECCLESIASTICAL QUESTIONS.

At the same time that it clarified that neutral principles is the required approach in Texas, the Texas Supreme Court acknowledged that the First Amendment nevertheless requires courts to defer to church authorities on “ecclesiastical” questions when applying that approach. Thus, quoting U.S. Supreme Court precedent, the Texas Supreme Court held that “[t]he Free Exercise Clause of the First Amendment to the United States Constitution ... ‘severely circumscribes the role that civil courts may play in resolving church property disputes,’ *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969), by prohibiting civil courts from inquiring into matters concerning “‘theological controversy, church discipline, ecclesiastical government, or the conformity of the members of a church to the standard of morals required of them.’” *Milivojevich*, 426 U.S. at 713-14, 96 S. Ct. 2372 (quoting *Watson v.*

Jones, 80 U.S. 679, 733, 13 Wall. 679, 20 L. Ed. 666 (1872)).” *Masterson*, 422 S.W.3d at 601.

In order to respect these First Amendment boundaries, the Texas Supreme Court stated that “courts applying the neutral principles methodology defer to religious entities’ decisions on ecclesiastical and church polity issues such as who may be members of the entities and whether to remove a bishop or pastor, while they decide non-ecclesiastical issues such as property ownership and whether trusts exist based on the same neutral principles of secular law that apply to other entities.” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650 (citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-09 (1976)). Thus, although “a State may adopt *any* one of various approaches for settling church property disputes . . .,” *Masterson*, 422 S.W.3d at 601 (quoting *Jones v. Wolf*, 443 U.S. at 602), “‘deference’ is not a choice where ecclesiastical questions are at issue; as to such questions, deference is compulsory because courts lack jurisdiction to decide ecclesiastical questions.” *Id.* at 602 (citing *Jones*, 443 U.S. at 602-03, 605, and *Presbyterian Church v. Blue Hull Memorial Church*, 393 U.S. 440, 449 (1969)).

III. “ECCLESIASTICAL QUESTIONS” THAT REQUIRE DEFERENCE INCLUDE QUESTIONS OF WHO IS QUALIFIED TO BE A CHURCH LEADER AND WHETHER A DENOMINATION’S POLITY PERMITS SUBORDINATE UNITS TO UNILATERALLY WITHDRAW.

Two questions at the core of this dispute are “Which individuals or faction are entitled to lead the Diocese and its parishes and missions on whose behalf the

Diocesan Corporation holds property?” and “Did the Diocesan Convention, by a majority vote of its membership, have the authority to remove the Diocese and its parishes and missions from The Episcopal Church?” Under U.S. Supreme Court and Texas Supreme Court precedent, these are “ecclesiastical” questions that may be determined only by church authorities.

- A. Questions regarding who is entitled to lead a religious body are “ecclesiastical” questions.

As the Texas Supreme Court acknowledged in *Masterson*, the U.S. Supreme Court has identified issues of ““theological controversy, church discipline, ecclesiastical government, or the conformity of the members of a church to the standard of morals required of them”” as questions that only church authorities can answer. *Masterson*, 422 S.W.3d at 601 (quoting *Milivojevich*, 426 U.S. at 713-14 (quoting *Watson v. Jones*, 80 U.S. 679, 733 (1872))). Similarly, “church polity issues such as who may be members of the entities and whether to remove a bishop or pastor” are “ecclesiastical” and require deference. *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650 (citing *Milivojevich*, 426 U.S. at 708-09). Along the same lines, “determination of who is or can be a member in good standing of TEC or a diocese is an ecclesiastical question.” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 652.

Under these precedents, decisions about which individuals are the “true” leaders of a church organization are ecclesiastical ones and not for the courts. Not

surprisingly, a recent decision of the U.S. Supreme Court confirms that questions about which *group* of individuals constitutes the “true” leadership of a church are also ecclesiastical. In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012), the Court rejected a Lutheran minister’s claim that her firing from a religious school violated the Americans with Disability Act, on the ground that a religious organization’s selection of its leaders may not be disturbed by secular law: The “Free Exercise Clause ... protects a religious group’s right to shape its own faith and mission through its appointments,” while “the Establishment Clause ... prohibits government involvement in such ecclesiastical decisions” as “which individuals will minister to the faithful.” 132 S. Ct. at 706. In reaching its decision, the Court relied for support on *Watson v. Jones*, 80 U.S. 679 (1872), which involved not a dispute over the selection of a single minister, but one over which of two factions in a local church had the right to use and control church property. *Hosanna-Tabor*, 132 S. Ct. at 704 (citing *Watson*). The *Hosanna-Tabor* Court’s reliance on *Watson* confirms that a religious organization’s determination of which of two disputing factions is entitled to exercise church leadership is equally protected.

- B. Questions regarding the impact on a denomination’s polity of a vote to change that polity are “ecclesiastical” questions.

As demonstrated above, issues of “church discipline [and] ecclesiastical government” have been identified as “ecclesiastical” questions only church

authorities can answer. *Milivojevich*, 426 U.S. at 713-14 (quoting *Watson*, 80 U.S. at 733); see *Masterson*, 422 S.W.3d at 601. “[C]hurch disputes over church polity and church administration” are equally ecclesiastical. *Milivojevich*, 426 U.S. at 710. As the Texas Supreme Court said in *Masterson*, “what happens to the relationship between a local congregation that is part of a hierarchical organization and the higher organization when members of the local congregation vote to disassociate is an ecclesiastical matter over which civil courts generally do not have jurisdiction.” *Masterson*, 422 S.W.3d at 607. There is no discernible reason why this would not be equally true where the ecclesiastical relationship at issue is between a regional diocese (rather than a “local congregation”) and the “higher organization.”

IV. DEFERENCE ON ECCLESIASTICAL QUESTIONS IS REQUIRED EVEN WHEN IT HAS THE EFFECT OF DETERMINING PROPERTY DISPUTES.

As the U.S. Supreme Court has explained, “[t]here are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 120-21 (1952).

Accordingly, as the Texas Supreme Court acknowledged in *Masterson*, “deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question.” *Masterson*, 422 S.W.3d at 606 (citing *Milivojevich*, 426 U.S. at 709-10, and *Brown v. Clark*, 116 S.W. 360, 364-65 (Tex. 1909)). Two cases illustrate these legal principles.

Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich, 426 U.S. 696 (1976), involved a dispute over which persons were entitled to control church property held by several corporations. “[T]he Diocesan Bishop ... [was] the principal officer” of those “property-holding corporations.” *Id.* at 720. The denomination defrocked the sitting Diocesan Bishop and divided his former diocese into three. The defrocked bishop refused to recognize either decision, and filed suit “to have himself declared the true Diocesan Bishop,” entitled to control of the property at issue. *Id.* at 706-07. The denomination, in turn, sought “declaratory relief that [the original bishop] had been removed as Bishop of the Diocese and that the Diocese had been properly reorganized into three Dioceses.” *Id.* at 707.

The Illinois courts ruled that the denomination had not properly acted under its own rules when it purported to depose the original bishop and divide his diocese, but the Supreme Court reversed, reasoning that “*questions of church*

discipline and the composition of the church hierarchy are at the core of ecclesiastical concern....” Id. at 717 (emphasis added). When such issues are implicated, therefore, “civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity....” Id. at 713. Moreover, courts must accept those decisions even where they are determinative of disputes over control of church property:

“Resolution of the religious dispute at issue here affects the control of church property in addition to the structure and administration of the ... Diocese. This is because the Diocesan Bishop controls [a monastery at issue] and is the principal officer of [the] property-holding corporations. Resolution of the religious dispute over [the Bishop’s] defrockment therefore determines control of the property.”

Milivojevich, 426 U.S. at 709. *See also id.* at 720 (“[A]lthough the Diocesan Bishop controls [a monastery] and is the principal officer of [the diocese’s] 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, having been reached by the final church judicatory in which authority to make the decision resides.”). Accordingly, because the hierarchical church had determined who was the “true” Bishop, that bishop was entitled to control the property at issue in the case. *Id.*

Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94 (1952) is similarly on point. That case involved a dispute

over which of two bishops – one selected by the patriarch of the Russian Orthodox Church or another selected by the Church’s North American diocese – had the right “to the use and occupancy” of St. Nicholas Cathedral in New York City. It was undisputed that title of the building was held by a corporation that had been created

“for the purpose of acquiring a cathedral for the Russian Orthodox Church in North America as a central place of worship and residence of the ruling archbishop ‘in accordance with the doctrine, discipline and worship of the Holy Apostolic Catholic Church of Eastern Confession’”

344 U.S. at 95.

Accordingly, “[d]etermination of the right to use and occupy Saint Nicholas depend[ed] upon” which body – the Russian patriarch or the North American diocese – had the authority to “select[] the ruling hierarch for the American churches.” 344 U.S. at 96-97. Such appointments, the Court explained, are “strictly a matter of ecclesiastical government.” 344 U.S. at 115.

It was undisputed that the Russian patriarch had held exclusive authority to appoint the ruling hierarch of the North American diocese until the Russian Revolution. 344 U.S. at 115. The North American diocese claimed, however, that it had assumed that authority in the mid-20th Century, when it declared its autonomy from the Russian Orthodox Church, 344 U.S. at 105 (declaring “any administrative recognition” of the Russian Orthodox Church to be “terminated”),

and the New York legislature adopted a statute “bring[ing] all the New York churches, formerly subject to the [Russian Orthodox Church and its patriarch] into an administratively autonomous metropolitan district.” 344 U.S. at 98.

The Court disagreed. It held that the “Russian Orthodox Church was, until the Russian Revolution, an hierarchical church with unquestioned paramount jurisdiction in the governing body in Russia over the American Metropolitanate. Nothing indicates that either the Sacred Synod or the succeeding Patriarchs relinquished that authority or recognized the autonomy of the American church.” 344 U.S. at 105-06. Control, therefore, remained in the Russian Orthodox Church. *See* 344 U.S. at 107 (describing NY statute as “transfer[ring] control” over churches). By “undert[aking] ... to transfer the control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church ... to the governing authorities of the Russian Church in America,” New York’s statute violated the Free Exercise clause of the First Amendment, and was invalid. 344 U.S. at 107-08.

Accordingly, “the use and occupancy” of the Cathedral belonged to the bishop selected by the Russian Orthodox Church. *See Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960) (on action of ejectment following decision in *Kedroff*, holding that bishop chosen by Russian Orthodox Church had right to use and occupy Cathedral).

V. APPLYING THESE LEGAL PRINCIPLES, THE UNDISPUTED FACTS REQUIRE SUMMARY JUDGMENT IN FAVOR OF THE CHURCH AND ITS LOCAL FOLLOWERS.

A. “Who Holds Title and In What Capacity?”

In the light of the legal principles set out above, the Texas Supreme Court concluded that in order to “render judgment on the basis of neutral principles” in this case, there must be “conclusive proof ... about who holds title to each property and in what capacity.” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 652. As suggested above and set out in detail below, the “conclusive proof” in this case shows that “title” to the property at issue is held by the Diocesan Corporation “in its capacity” as property-holding corporation for the ecclesiastical Diocese and its parishes and missions.⁸

First, it is undisputed, and in fact part of Defendants’ own case theory and judicial admissions, that the Diocesan Corporation holds all property on behalf of and in trust for the Diocese and its parishes and missions. Defendants acknowledged to the trial court: “The Corporation holds real property in an express trust for the use and benefit of the congregations that use them, and all other property in an express trust for the use and benefit of the Diocese.” CR 29:10134 (Defendants’ Second Motion for Partial Summary Judgment at 41). And: “The

⁸ As noted *supra*, The Episcopal Church adopts in their entirety the arguments made by the Local Episcopal Parties and Congregations regarding property titled in the name of or otherwise held by the parishes and missions in this case.

Corporation holds property in an express trust for the use and benefit of the parishes, missions, and diocesan organizations that have been using them for 32 years.” CR 35:12582, 12584 (Corrected Response by Defendants to Plaintiffs’ Motion for Partial Summary Judgment at 3, 5); *see also* CR 10:3475 (Second Amended Third-Party Petition of Intervener the Corporation of the Episcopal Diocese of Fort Worth at 5) (Since formation, Diocesan Corporation “has only had authority to hold ‘all real property acquired for the use of the Episcopal Diocese of Fort Worth.’”); CR 31:11094 (corporate representative agreeing that “all property held by the Corporation ... is held in trust for the parishes and missions of the diocese.”); CR 31:11102 (agreeing that Corporation holds diocesan building “for the use of the diocese,” holds Camp Crucis “for the benefit of the diocese and the parishes,” and holds “the rest of the property ... for the benefit of the parishes, missions and congregations”).

Second, the Diocese’s Constitution and Canons confirm that the Diocesan Corporation was created to hold property on behalf of and in trust for the Diocese and its parishes and missions. When the Diocesan Corporation was formed, the Diocese’s Constitution required the Corporation to hold Diocesan property “subject to control of the Church in the Episcopal Diocese of Fort Worth” and to hold parish and mission property “in trust for the use and benefit of such parish or mission.” CR 2:784 (1982 Diocesan Const. art. 13). Similarly, the Diocese’s

canons in effect at the time required the Corporation to conduct its affairs “in accordance with the Constitution and Canons of the Diocese from time to time adopted.” CR 2:787 (1982 Diocesan Canon 11.2). *See also* CR 2:788 (1982 Diocesan Canon 12.1) (Diocesan Corporation could “convey[] or encumber[]” property only “in accordance with the Constitution and Canons” of the Diocese); *Id.* (1982 Diocesan Canon 12.3) (requiring Diocesan Corporation to secure “the advice and consent of the [Diocesan] Standing Committee” before selling, leasing, or “otherwise dispos[ing]” of property). And, like the Constitution, the Diocesan canons provided that real property held “for the use of a particular parish or mission shall be held by the Corporation in trust for the use and benefit of such parish or mission.” *Id.* (1982 Diocesan Canon 12.4).

Third, statements made and findings reached in the Dallas court proceeding further confirm that the Diocesan Corporation holds property on behalf of and in trust for the Diocese. In their petition to the district court in Dallas County, the Diocesan Corporation and its co-petitioners described the Corporation as “a Texas nonprofit corporation, duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth,” CR 5:1441 (Petition at 2), that would hold “all real property acquired for the use of the Church in the Diocese.” CR 5:1445 (Petition at 5). The parties further represented to the Court that the Diocesan Corporation would “henceforth own and control, pursuant to the Constitution and

Canons of the Episcopal Diocese of Fort Worth,” all property transferred to it by the Court. CR 5:1453 (Petition at 13). The District Court of Dallas County adopted those facts as findings in its Judgment granting the petition. CR 5:1508-12 (Judgment at 2-6).

B. “Who is the Diocese?”

Since the undisputed facts show that the Diocesan Corporation holds property on behalf of and in trust for the Diocese and its parishes and missions, the next and final question is: Who is the Diocese? And who are the parishes and missions? As shown below, the undisputed facts and First Amendment principles set out by the U.S. Supreme Court and the Supreme Court of Texas require the conclusion that the Local Episcopal Parties comprise the Diocese, and that the persons and entities that the Local Episcopal Parties identify as the “true” parishes and missions comprise those entities.

First, it is clear that The Episcopal Church is a “hierarchical” denomination. The Court in *Masterson* considered the Church’s structure, on the same record presented here:

“[The Episcopal Church] has three tiers. The first and highest is the General Convention. The General Convention consists of representatives from each diocese and most of [the Church’s] bishops. It adopts and amends [the Church’s] Constitution and Canons, which establish the structure of the denomination and rules for how it operates. Each subordinate Episcopal affiliate must accede to and agree to be subject to [the Church’s] Constitution and Canons.

“The second tier is comprised of regional, geographically defined dioceses. Dioceses have bishops and are governed by their own conventions. Diocesan conventions adopt and amend a constitution and canons for each particular diocese.

“The third tier is comprised of local congregations. Local congregations are classified as parishes, missions, or congregations. To be accepted into union with [the Church] they must accede to and agree to be subject to the constitutions and canons of both [the Church] and the diocese in which the congregation is located.

... “A parish is governed by a rector or priest-in-charge and a vestry comprised of lay persons elected by the parish members. Members of the vestry must meet certain qualifications, including committing to ‘conform to the doctrine, discipline and worship of The Episcopal Church.’”

Masterson, 422 S.W.3d at 600; *see also Episcopal Diocese*, 422 S.W.3d at 647-48 (recognizing same “first and highest,” “second,” and “third” tiers). The Court held that “[this] record conclusively shows [The Episcopal Church] is a hierarchical organization.” *Masterson*, 422 S.W.3d at 608.

Second, it is undisputed that the Church has made a determination regarding who may lead and control its Diocese. On multiple occasions, the Church has made clear its conclusion that the Local Episcopal Parties comprise the Diocese. CR 1:221; CR 1:222-23; CR 3:900-01, CR 5:1641 (decisions of various governing bodies of the Church officially recognizing Local Episcopal Parties as persons with authority to govern the Diocese); CR 2:735; CR 4:1187-97 (General Convention recognition of Provisional Bishop and representatives elected by

reorganized Diocese as those persons authorized to represent the “continuing” Diocese).

It is also undisputed that the Church has confirmed that its polity does not permit a Diocese to withdraw from the denomination unilaterally. CR 2:656 (Executive Council 2007 resolution “remind[ing] the dioceses ... th[at] ... the Constitution ... requires each Diocese to have a Constitution which shall include ‘an unqualified accession to the Constitution and Canons of this Church’” and that “any amendment to a diocesan Constitution that purports in any way to limit or lessen an unqualified accession to the Constitution and Canons of The Episcopal Church is null and void”); CR 2:6564, CR 5:1615-24, 1626, 1630-39 (deposition of two bishops in 2008 for violating the Church’s governance by purporting to lead their dioceses out of the Church and into other denominations).

Third, under *Masterson*, 422 S.W.3d at 601, 607, and *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650, as well as *Kedroff*, 344 U.S. 94; *Milivojevich*, 426 U.S. at 713-14; *Jones*, 443 U.S. 595, and *Hosanna-Tabor*, 132 S. Ct. 694, these are “ecclesiastical” determinations on which civil courts must defer to the decisions made by the hierarchical Church. To hold otherwise would “displace[] one church administrator with another [and] pass[] the control of matters strictly ecclesiastical from one church authority to another,” results that are clearly “contrary to the principles of the First Amendment.” *Kedroff*, 344 U.S. at 119.

Fourth, because under the Church’s governance only the Church’s Diocese has the authority to identify local parishes and missions, CR 3:962 (2006 Canon I.13.1, I.13.2(a)) (local “parishes” and other congregations “establish[ed]” by “the action of the ... Convention[.]” of the Diocese in which they are geographically located), the Diocese’s determination of which persons are the true leaders of the parishes and missions on whose behalf the Diocesan Corporation holds property is dispositive under the controlling law.

* * *

Accordingly, as in *Milivojevich* and *Kedroff*, the ecclesiastical determinations made by the hierarchical church in this case “effectively determine the property rights in question” (*Masterson*, 422 S.W.3d at 606): The Diocesan Corporation holds all property on behalf of and in trust for the Diocese, which only the Local Episcopal Parties are authorized to represent, and the Diocese’s parishes and missions.

CONCLUSION and PRAYER

For the reasons stated herein, and for the reasons stated in the brief submitted on behalf of The Episcopal Church’s co-Appellants, the Local Episcopal Parties and Congregations, this Court should REVERSE the trial court’s decision and direct that it grant summary judgment in favor of the Church and the Local Episcopal Parties and Congregations as a matter of law.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

According to the Word Count feature of Microsoft Word, this brief contains 8,093 words and therefore complies with Tex. R. App. 9.4(i)(2)(B).

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2015, a true and correct copy of the foregoing Brief of Appellant was served upon the following counsel of record via electronic filing.

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