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FORT WORTH, TEXAS
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Case No. 02-15-00220-CV

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

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THE EPISCOPAL CHURCH, ET AL.
Plaintiffs-Appellants
v.
FRANKLIN SALAZAR, ET AL.
Defendants-Appellees

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# BRIEF OF APPELLANTS THE LOCAL EPISCOPAL PARTIES AND CONGREGATIONS

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

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December 3, 2015 **Oral Argument Requested**

## IDENTITY OF PARTIES AND COUNSEL

### 1. Plaintiffs-Appellants: The Episcopal Parties ("Plaintiffs")

Plaintiffs-Appellants are the parties affiliated with The Episcopal Church, an American religious denomination.

#### *i. The Local Episcopal Parties*

The Local Episcopal Parties are Fort Worth Episcopalians recognized by The Episcopal Church as the authorized leaders of the Episcopal Diocese of Fort Worth. They 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. The Local Episcopal Parties include Diocesan bishops, members of the Episcopal Diocesan Standing Committee, trustees of the Episcopal Diocesan Corporation and/or Endowment Funds, and the Diocesan Chancellor.

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### *ii. The Local Episcopal Congregations*

The Local Episcopal Congregations are the continuing Episcopal Congregations and their authorized leaders recognized by The Episcopal Church and the Episcopal Diocese. They 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 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 representative of St. Mary's Episcopal Church (Hamilton); Sarah Walker as representative of Episcopal Church of the Holy Apostles (Fort Worth); Linda Johnson as 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 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 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 those individuals' successors in office.

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### *iii. The Protestant Episcopal Church in the United States (also known as The Episcopal Church) & The Most Rev. Katharine Jefferts Schori (filing a separate brief)*

The Episcopal Church is an American religious denomination founded in 1789 with a worldwide ministry. The Most Rev. Katharine Jefferts Schori was sued and brought into this case by Defendants-Appellees. She was the Presiding Bishop of the Church, its highest ecclesiastical officer, when Defendants sued her.

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**2. Defendants-Appellees: The Breakaway Group ("Defendants"):**

Defendants-Appellees are the splinter group that left The Episcopal Church over theological disagreements in 2008 but continue to hold themselves out without authorization as the Episcopal Diocese of Fort Worth, the Episcopal Congregations, and their clergy and leadership.

***i. 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 cut ties with The Episcopal Church but hold themselves out as the Episcopal Diocese. 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.

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### *ii. The Individual Defendants wrongfully holding themselves out and appearing as the Intervening Congregations.*

The Intervening Congregations are the individual dissidents who cut ties with The Episcopal Church but hold themselves out as the continuing Congregations (some or all dropped the word "Episcopal" in practice or in this suit but claim to be the continuing entities nonetheless). 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 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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## RECORD REFERENCES

Appellants use the following citation formats in this brief:

- The Clerk's Record is cited as "CR[volume]:[page]."
- The Reporter's Record (Vols. 1-10) is cited as "RR[volume]:[page]:[line]."

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## STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs respectfully request the opportunity to present oral argument. Given the prior proceedings, the large record, and the issues raised, Plaintiffs believe that oral argument would materially assist the Court in deciding the case.

## STATEMENT OF THE CASE

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| **Nature of the case** | This case arises out of a doctrinal controversy within The Episcopal Church. Defendants, because of their disagreement with decisions made by the highest authority of The Episcopal Church, the General Convention, purported to sever a subordinate body of the Church, the Episcopal Diocese of Fort Worth, from the Church and exerted *de facto* control over more than $100 million in property held by or for the Diocese and its Congregations. Plaintiffs The Episcopal Church, Local Episcopal Parties, and Local Episcopal Congregations brought claims for declaratory and injunctive relief against Defendants. CR1:26-47. Defendants counterclaimed for declaratory and injunctive relief. CR6:2001-17. |
| **Trial court** | The action was filed in the 141st District Court in Tarrant County. The Honorable John P. Chupp presided. |
| **Course of proceedings** | Defendants filed a motion under Federal Rule of Civil Procedure 12 and a related mandamus petition, arguing that Plaintiffs' counsel had not shown authority to represent the Episcopal Diocese and its Corporation. Noting that those were the issues yet to be decided on the merits, this Court granted mandamus but clarified: "The trial court did not determine on the merits which Bishop and which Trustees are the authorized persons within the Corporation and the Fort Worth Diocese, nor do we. The question of 'identity' remains to be determined in the course of the litigation." *In re Salazar*, 315 S.W.3d 279, 286 (Tex. App.—Fort Worth 2010, orig. proceeding). Plaintiffs sought resolution on the merits in the trial court, and the trial court granted summary judgment for Plaintiffs, the Episcopal parties. CR9:3214-15. The breakaway group appealed directly to the Texas Supreme Court. CR9:3265-68. On August 30, 2013, the Texas Supreme Court issued two opinions, one in this case, *Episcopal Diocese of Fort Worth v. Episcopal* |

| | |
|---|---|
| | *Church*, 422 S.W.3d 646 (Tex. 2013), *cert. denied*, 135 S. Ct. 435 (2014), and one in a related case, *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594 (Tex. 2013), *cert. denied*, 135 S. Ct. 435 (2014). *Masterson* was the lead opinion, defining "the appropriate method for Texas courts" in church-property cases. *Id.* at 605. In *Episcopal Diocese*, the Court noted that this case "involves the same principal issue we addressed in *Masterson*" and incorporated those holdings here. 422 S.W.3d at 647. The Court ruled that "neither" party prevailed on the record before it under the new opinions and remanded for further proceedings. *Id.* at 647. |
| **Trial court disposition** | On remand, the trial court granted two partial summary judgments for the breakaway Defendants, denied Plaintiffs' cross-motions, and signed a Final Judgment in Defendants' favor. CR36:13028; CR39:13953, 14024-27. Plaintiffs appealed. CR39:13980-87, 14049-96. |

## ISSUES PRESENTED

On cross-motions for partial summary judgment, the Court signed two general orders granting partial summary judgments for Defendants and denying Plaintiffs' motions. The Court then merged its orders into a Final Judgment without specifying the grounds for its decision. The Final Judgment declared, among other things, that "Defendants are the proper representatives of the Episcopal Diocese of Fort Worth," granting control of the Diocese to a defrocked Bishop, and ordered The Episcopal Church and its authorized local leaders to "desist" from leading the Episcopal Diocese. It further declared that Defendants were the parties entitled to use property held in trust for the Diocese and its Congregations. The issues presented are:

1. Did the trial court err in granting Defendants' partial summary judgment motions and denying Plaintiffs' partial summary judgment motions in its orders signed on March 2, 2015, and June 10, 2015, and in issuing the declarations, orders, and injunctions in its July 24, 2015 Final Judgment? The trial court's errors in its Final Judgment and orders include but are not limited to:

    a. Violating *Masterson*, *Episcopal Diocese*, and the First Amendment by overriding The Episcopal Church on who may control an Episcopal Diocese and Episcopal Congregations;

b. Violating *Masterson*, *Episcopal Diocese*, and the First Amendment's limits on neutral principles by refusing to "accept as binding" the Church's determination of ecclesiastical issues within this property case;

c. Failing to apply neutral principles of Texas associations law, including an association's right to interpret and enforce its own rules;

d. Failing to apply this Court's holding in *Shellberg v. Shellberg*, 459 S.W.2d 465, 470 (Tex. Civ. App.—Fort Worth 1970, writ ref'd n.r.e.) the law in effect when the Diocese made its contract;

e. Violating Texas trust law by refusing to enforce the express, unrevoked trusts in favor of the Church in fifty-five individual recorded deeds;

f. Failing to find breach of fiduciary duty and to impose a constructive trust where Defendants broke a century's worth of oaths and commitments;

g. Failing to estop Defendants from contradicting their own statements to other courts and parties;

h. Failing to apply Texas corporations law to the undisputed facts,

including a plain application of the Corporation's bylaws;

i. Failing to reject Defendants' claim to title by adverse possession;

j. Holding, if it did, that Plaintiffs did not have standing;

k. Denying Plaintiffs' trespass-to-try-title claim.

If the trial court had not erred, it would have rendered judgment as a matter of law for Plaintiffs and not for Defendants. Alternatively, the trial court would at least have found fact issues requiring further proceedings.

## STATEMENT OF FACTS

### A. The Episcopal Church

The Episcopal Church, also named the Protestant Episcopal Church in the United States of America, is a religious denomination founded in 1789. *Episcopal Diocese*, 422 S.W.3d at 647; CR12:4186.

The Church is a hierarchical religious organization with three tiers. *Masterson*, 422 S.W.3d at 600, 608. The "first and highest" is the General Convention. *Episcopal Diocese*, 422 S.W.3d at 647. The "second" is the 109 "regional" dioceses. *Id.* at 647-48. The "third" is the approximately 7,000 "local" parishes and missions ("congregations"). *Id.* at 647.

"Each subordinate Episcopal affiliate must accede to and agree to be subject to the TEC Constitution and Canons," *Masterson*, 422 S.W.3d at 600, including dioceses, which have their "own constitution and canons, but must accede to TEC's constitution and canons," *Episcopal Diocese*, 422 S.W.3d at 647-48, and congregations, which must "accede to and agree to be subject to the constitutions and canons of both TEC and the diocese in which the congregation is located," *Masterson*, 422 S.W.3d at 600-01.

Dioceses can only be formed "with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or Canons." CR12:4188.

The Church's highest ecclesiastical officer is the Presiding Bishop. CR12:4197. Each diocese is governed by a bishop. *Masterson*, 422 S.W.3d at 600. Diocesan bishops must be approved by representatives of the larger Church and must swear to the "Declaration of Conformity" before taking office: "I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church." CR12:4256, 4351 The Church can remove diocesan bishops for "abandonment of the communion" of the Church and for violating the Declaration of Conformity, among other grounds. CR12:4368-69, 4403-04. Absent a bishop, an elected Standing Committee is "the Ecclesiastical Authority of the Diocese." CR17:6171.

"A parish is governed by a rector or priest-in-charge and a vestry comprised of lay persons elected by the parish members." *Masterson*, 422 S.W.3d at 600. Parish clergy must make the same Declaration of Conformity to the Church upon ordination. CR12:4256, 4329. "[N]o person may be a member of a parish who is not a member of The Episcopal Church, and no person may serve on the vestry of a parish who is not a member. . .in that parish." CR20:7099.

Church Canon I.17.8, *Fiduciary responsibility*, requires: "Any person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised." CR12:4304-05. "The position

of a lay member [in any Church office] becomes vacant upon loss of status as a communicant in good standing." CR12:4432.

### B. The Missionary District becomes the Dallas Diocese

In 1838, The Episcopal Church began ministry in this region, eventually forming the Missionary District of Northern Texas. CR19:6774. In 1895, "the Clergy and Laity, of the Protestant Episcopal Church in the United States of America, resident in that portion of the State of Texas" petitioned the Church for permission to turn the Missionary District into a diocese. CR19:6776, 6779.

The new "Diocese of Dallas" affirmed in its founding Constitution: "The Church in this Diocese accedes to the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and recognizes the authority of the General Convention of said church." CR19:6779. The Diocese could adopt "[c]anons not inconsistent with. . .the Constitution and Canons of the General Convention." CR19:6780.

New parishes of the Diocese had to adopt the Church's and Diocese's Constitution and Canons and "acknowledge[] their authority accordingly." CR19:6783. Likewise, missions committed that, "being desirous of obtaining the services of the Protestant Episcopal Church," they would "sustain the regular worship of the said Church" and "promise conformity to its doctrines, discipline, liturgy, rites, and usages," in exchange for "the privilege of being organized."

CR19:6784-85.

### C. Dallas is permitted to divide and form the Fort Worth Diocese

In June 1982, the Dallas Diocese petitioned the Church to divide and form a new Fort Worth Diocese. CR12:4586-87. Article V of the Church's Constitution authorizes formation of new dioceses "by the division of an existing diocese," "with the consent of the General Convention and under such conditions as the General Convention shall prescribe." CR12:4188.

The Dallas Diocese affirmed that "the new diocese meets the Church's constitutional requirements" and authorized the Dallas Bishop to proceed only "[u]pon ratification by the General Convention." CR12:4587.

The "67th General Convention ratifie[d] the division," confirming "the Constitution and Canons of the General Convention of the Episcopal Church in the USA. . .have been fully complied with." CR12:4589-90.

The Fort Worth Diocese held its Primary Convention on November 13, 1982 "in order to fulfill the requirements of the National [Church] Constitution." CR12:4593. The new Diocese and every Congregation within it signed a "Resolution of Accession to the Constitution and Canons of the Episcopal Church in the United States of America" in which they "**unanimously**" and "**fully** subscribe[d] to and accede[d] to the Constitution and Canons of The Episcopal Church." CR17:6354-60 (emphasis added). Seven pages of signatures followed.

The Fort Worth Diocese's Constitution and Canons would "commence and be in full force and effect on January 1, 1983." CR17:6107. That Constitution's Preamble defined the Fort Worth Diocese as "the Clergy and Laity of the Episcopal Church resident in that portion of the State of Texas." CR17:6090. Article 1 affirmed: "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." *Id.* Article 18 provided: "Canons not inconsistent with this Constitution, or the Constitution and Canons of the General Convention, may be adopted." CR17:6107.

The Diocesan Convention authenticated "the official copy of the Constitution and Canons of the Diocese of Fort Worth of the Episcopal Church in the United States of America" and, on November 24, submitted to the Church for approval:

> 1. The Resolution of Accession to the Constitution and Canons of the Episcopal Church, signed by all clergy and lay delegates participating in the Primary Convention.
>
> 2. A copy of the Constitution and Canons of the Diocese of Fort Worth, which will be in effect when the new Diocese becomes operational on January 1, 1983.

CR17:6054, 6153. The Diocese submitted these documents to obtain "union with The General Convention." CR17:6053. On December 31, 1982, the Church

certified compliance, granting the Diocese union. CR17:6052. The next day, on January 1, 1983, the Diocese's Constitution "commence[d] and be[came] in full force and effect." CR17:6107.

### D. Church property

In 1895, when the Dallas Diocese acceded to Church Canons, those Canons required that local property not be consecrated for use until:

> secured, by the terms of the devise, or deed, or subscription by which they are given, from the danger of alienation, either in whole or in part, from those who profess and practise the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America.

CR31:11267. Accordingly, many deeds recite, *e.g.*, "This Conveyance, however, is in trust for the use and benefit of the Protestant Episcopal Church, within the territorial limits of what is now known as the said Diocese of Dallas, in the State of Texas." CR38:13340.[1] These trusts were never revoked. Their settlors are in most cases deceased.

In 1979, the U.S. Supreme Court invited churches to add a trust clause to their governing documents as one additional way to ensure "that the faction loyal to the hierarchical church will retain the church property." *Jones v. Wolf*, 443 U.S. 595, 606 (1979). Three months later, the Church added the Dennis Canon.

[1] *See also* CR30:10730-53 (Deed Table E).

Thus, in 1982, the Fort Worth Diocese acceded "fully" to Church Canons that required:

> 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.

CR12:4201 ("Dennis Canon").

Article 13 of the founding Diocesan Constitution, "Title to Church Property," required that all real property "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.'" CR17:6102. And "all property hereafter acquired for the use of the Church and the Diocese, including parishes and missions shall be vested in [the] Corporation of the Episcopal Diocese of Fort Worth." *Id.*

Accordingly, on February 28, 1983, the Diocese formed the Corporation. CR17:6055. Article I of its bylaws stated: "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." CR17:6065. In any conflict,

Church documents "shall control." *Id.* The Corporation's directors "must be members of the Diocese, are elected by the Diocese, report to the Diocese, and conduct all affairs by the rules of the Diocese." CR(3dSupp.)1:267.

From 1983 to 2007, the Corporation told the IRS and Tarrant County that it was "a subordinate unit of [the] Protestant Episcopal Church in the United States" and accepted tax exemption on that basis. CR25:8769, 8735-36.

Before division, "the title to all real estate acquired for the use of the Episcopal Church in the Diocese of Dallas was vested in the name of the Bishop and his successors in office in trust." CR12:4522. To complete the Article V process, the dioceses brought a partition action in Dallas court. CR31:11106, at 149:25-150:14; CR12:4520-38, 4594. They told the court that the real property had been "acquired for the use of the Episcopal Church in the Diocese of Dallas" and would be transferred to the Corporation of the Fort Worth Diocese "for the use of the Church in the Diocese." CR12:4522, 4524.

On August 24, 1984, the court signed the partition order, finding that both dioceses were "organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America" and that the court was facilitating "division of the Diocese of Dallas into two separate dioceses as permitted by Article V of the Constitution of the Episcopal Church." CR17:5991, 5993. The court found that the Corporation was "duly organized under the

Constitution and Canons of the Episcopal Diocese of Fort Worth" and transferred "legal title to the [] real and personal property" to it. CR17:5991, 5995.

On those terms, the new Diocese assumed control over more than $100,000,000 of property acquired by the Church's local officers, clergy, and members over 177 years.

As the Diocese told another court, such property was donated and funded by "loyal parishioners," and "it was never their intent that such gifts and memorials be converted" for the use of those who have "abandoned communion with The Episcopal Church." CR20:7077, 7114.

### E. The purported 1989 amendment and later conduct

From inception, the Diocese's Constitution permitted it to adopt only local canons "not inconsistent" with the Church's Canons. CR17:6107. Defendant Iker, expressing "a vital interest in the correct interpretation of church polity," argued in a 2001 amicus brief: "The dioceses have canons that cannot be inconsistent with national canons." CR20:7139, 7149.

In 1989, the Diocese purported to adopt a local canon providing: "No adverse claim to [a congregation's] beneficial interest by the Corporation, by the Diocese, or by The Episcopal Church of the United States of America is acknowledged, but rather is expressly denied." CR17:6202. Defendants now claim that this 1989 local canon negated the effect of the Church's Dennis Canon.

In 1992, however, the Diocesan Corporation brought suit in Tarrant County to recover property from an earlier breakaway group claiming to take a Parish out of the Church.[2] High-ranking Diocesan leaders asked the court to enforce the Dennis Canon and testified that "each Parish within the. . .Diocese. . .has acknowledged that they are governed by and recognize the authority of the General Convention and the Constitution and Canons of the Episcopal Church in the United States of America." CR20:7123-27. A neighboring diocesan bishop testified for the Diocese: "both under diocesan and national canons, even if title had been in the [breakaway congregation] Defendants, the property is impressed with an express trust in favor of the diocese, with the property to be for the use of an Episcopal congregation. . . . Defendants are not Episcopalians, nor do they represent an Episcopal congregation." CR20:7129. Iker, then Bishop, averred that "no person may be a member of a parish who is not a member of The Episcopal Church" and that the breakaways had "no relation to [the Parish] and no right to its property." CR20:7099, 7101. The Diocese recovered the property in settlement. CR20:7062.

For the next two decades, the Diocese continued to participate in the Church, accepting its benefits and administering the Declaration of Conformity to its clergy. CR(3dSupp.)1:31, at 62:21-63:21; CR(3dSupp.)1:36, at 83:5-84:25; CR(3dSupp.)1:50, at 138:21-139:18.

[2] *Corp. of the Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (153d Dist. Ct., Tarrant Cnty., Tex. Oct. 6, 1992).

### F. The current dispute

On June 18, 2006, the Church elected its first female Presiding Bishop. CR31:10965-68. In July, certain Diocesan officers began soliciting bids for insurance policies to cover "Secession" litigation. CR31:10970.

By August, the dissident group amended the Corporation's bylaws to delete references to the Church. CR17:6079-85. In November 2007 and 2008, they claimed by majority vote to remove the Episcopal Diocese from The Episcopal Church. CR29:10100-01.

Before this dispute, Iker made the Declaration of Conformity three times, each as "a condition of [] holding a position within The Episcopal Church" and having access to the property. CR31:11069, at 39:2-24.

In his 2001 amicus brief, Iker, appearing as "Bishop of the Diocese of Fort Worth (Texas) of the Episcopal Church USA," represented to the Fourth Circuit: "A bishop must adhere to the constitution and canons of the Church or be subject to discipline." CR20:7142.

In November 2008, however, Iker announced that the "canonical declarations of the Presiding Bishop of The Episcopal Church pertaining to us are irrelevant and of no consequence" and that "[Presiding Bishop] Katharine Jefferts Schori has no authority over me or my ministry." CR20:6984.

The breakaways affiliated with a foreign religious organization and declared

themselves no longer Episcopalians. *Id.*; CR38:13519-20, at 53:24-55:3. But they continued to hold themselves out as the Episcopal Diocese and assert control over its property. CR20:6984.

In the Church's 219-year history before November 2008, only two other dioceses had claimed to secede (not counting the Civil War, when southern dioceses temporarily purported to separate themselves, then continued in the Church post-war). CR31:11259-60. In these two subsequent cases, the House of Bishops, the Church's highest authority for certain matters, confirmed that such attempts were an "open renunciation" of the Church's polity and that secession was conduct a diocese "does not have authority to make under the Church's Constitution." *Id*.

Church Canons permit only one kind of diocese to leave and join another denomination: missionary dioceses, which are generally extra-territorial and can better function with geographically contiguous churches. CR31:11258; CR12:4296-97. Such departures can occur only with consent of the Presiding Bishop or General Convention. *Id.*

By contrast, all other dioceses lack authority to secede. Long before the Diocese formed, the 1870 *Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States* explained that, in speaking of accession, the Constitution did not "imply the right of any

Diocese to *secede* from the union established by the Constitution." CR(3dSupp.)1:284. The 1850 *Treatise on the Law of the Protestant Episcopal Church* explained that the Church is not "a fugitive coalition, but a perpetual union," and the 1841 *Contributions to the Ecclesiastical History of the United States* explained that dioceses "surrender" "[s]uch an exercise of independency as would permit them to withdraw from the union at their own pleasure." CR(3dSupp.)1:281, 86.

On December 5, 2008, applying Canon III.12.7, the Presiding Bishop accepted Iker's renunciation of ministry and recognized the offices held by Defendants as vacant under Church law. CR20:6882, 6986. In February 2009, Fort Worth Episcopalians convened a Diocesan Convention, called to order by the Presiding Bishop under Canons III.13.1 and I.2.4(a)(3), (6). CR20:7019-20, 7025; CR12:4362, 4277-78. The Diocese elected a Provisional Bishop and other qualified leaders to fill the vacancies left by the breakaways. CR20:7026-29, 7037-40.

In 2009, the Church's highest authority, the General Convention—composed of "representatives from each diocese and most of TEC's bishops," *Masterson*, 422 S.W.3d at 600—passed a formal resolution recognizing Plaintiffs as the only authorized leaders of the continuing Episcopal Diocese of Fort Worth. CR31:11257-58; *see also* CR18:6417-19; CR28:10039, 10041.

### G. The litigation

The Diocese's authorized leadership, together with The Episcopal Church and Episcopal Congregations, sued to recover their property from the breakaway group.

After this Court's mandamus ruling, the trial court granted summary judgment for Plaintiffs under the Deference doctrine of *Watson v. Jones*, in which courts defer the entire dispute to the church hierarchy. CR9:3214-15; *Masterson*, 422 S.W.3d at 605.

On direct appeal, the Texas Supreme Court reversed and held that Texas courts should use a different approach, the neutral principles doctrine of *Jones v. Wolf*, in which courts decide non-ecclesiastical questions while applying the church hierarchy's view on ecclesiastical questions. *Episcopal Diocese*, 422 S.W.3d at 650-51; *see also Masterson*, 422 S.W.3d at 607.

The Court qualified the neutral principles doctrine: civil courts may not veto churches' decisions on ecclesiastical issues, even where "ecclesiastical decisions effectively determine the property issue." *Masterson*, 422 S.W.3d at 607; *see also Episcopal Diocese*, 422 S.W.3d at 650-51.

On remand, the trial court ignored that warning. It signed two general orders granting partial summary judgments for Defendants and denying Plaintiffs' motions. Then it merged those orders into a Final Judgment that overruled the

Church on who may control a diocese and ordered Plaintiffs "to desist from holding themselves out as leaders of the Diocese." CR39:14026-27. As the U.S. Supreme Court said in a similar case, that error is "fatal to the judgment." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708 (1976).

Plaintiffs timely appealed. CR39:13980-87, 14049-96.

## SUMMARY OF ARGUMENT

On *de novo* review, this Court should reverse and render judgment for Plaintiffs.

**Issues 1(a) and 1(b): The trial court's application of neutral principles violated *Masterson*, *Episcopal Diocese*, and the First Amendment.**

On remand, Defendants stated that under neutral principles, all property is held in a legally-enforceable trust for the continuing Episcopal Diocese of Fort Worth and its Congregations. The only question then, to enforce that trust under Defendants' theory, is who decides who controls those religious entities: the Church or the Court?

The Texas Supreme Court answered that question in *Masterson* and here: apply neutral principles of law to all non-ecclesiastical questions, but "accept as binding the decision of the highest authority of a hierarchical religious organization" on ecclesiastical questions, even if "the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue." *Masterson*, 422 S.W.3d at 607; *see also Episcopal Diocese*, 422 S.W.3d at 650-51.

This instruction is "not a choice"—it is "constitutionally required" by the First Amendment, even under neutral principles. *Masterson*, 422 S.W.3d at 602, 607.

The Texas Supreme Court gave examples of ecclesiastical issues, including "who is or can be a member in good standing of TEC or a diocese" and "what happens to the relationship between a local congregation that is part of a hierarchical religious organization and the higher organization when members of the local congregation vote to disassociate." *Episcopal Diocese*, 422 S.W.3d at 652; *Masterson*, 422 S.W.3d at 607. And the U.S. Supreme Court, in a case involving purported Diocesan secession, identified "the government and direction of subordinate bodies" as an ecclesiastical issue. *Milivojevich*, 426 U.S. at 724-25.

Once the neutral principles analysis turned on who may control the Diocese and Congregations, the trial court was required to accept the Church's view on *that* point, even though it would "effectively determine" the property issues. *Masterson*, 422 S.W.3d at 606 (citing *Milivojevich*, 426 U.S. at 709-10). Under the Constitution, "civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation." *Milivojevich*, 426 U.S. at 720.

Defendants admitted this to the U.S. Supreme Court. CR31:10962-63. But they denied it two months later to the trial court. Instead, they wrongly convinced the trial court that "a church's identity should be decided using neutral principles of state law," CR36:12790, and that a civil court could override a church on the question of who may control a diocese. The trial court wrongly ruled that

"Defendants are the proper representatives of the Episcopal Diocese" and ordered The Episcopal Church and its local Bishop and officers "to desist from holding themselves out as leaders of the Diocese." CR39:14026-27. It imposed its own "philosophical preference" on how churches ought to be structured, CR39:13633, asking: "Why do we have to have some big government solution to this where somebody in New York controls what these people in Fort Worth are doing?" RR8:93:1-4. Had this case involved the Catholic Church, the question would have been: why does someone in Vatican City get to decide what Catholic dioceses do?

But a denomination's right to choose and enforce its structure, free from state interference, is "unquestioned." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 713 (2012). The U.S. Supreme Court rejected a holding strikingly similar to the rulings here—where a court overrode the Mother Church's view on "Diocesan reorganization" under the guise of a "purported neutral principles" analysis. *Milivojevich*, 426 U.S. at 706-08, 721. The Texas Supreme Court cited *Milivojevich* repeatedly in framing neutral principles here.

The Final Judgment and orders below inflict First Amendment injury that cannot stand. They violate *Episcopal Diocese* and *Masterson*. This Court should reverse and render for Plaintiffs.

**Issue 1(c): Texas associations law**

This Court should not apply associations law to Church polity. But even if there were no First Amendment, under associations law, only Plaintiffs would be entitled to control the Diocese and Congregations. Plaintiffs are the only lawful beneficiaries of the trust Defendants concede.

Texas "courts will not interfere with the internal management of a voluntary association so long as the governing bodies of such association do not substitute legislation for interpretation, and do not act totally unreasonably or contravene public policy or the laws in such interpretation and administration."[3]

Defendants cannot—and did not—show that the association acted "totally unreasonably or contravene[d] public policy." Rather, it is *Defendants'* conduct that is unreasonable. Representatives from over 100 dioceses voted to recognize Plaintiffs as the authorized Diocesan representatives. CR31:11257-60.

Defendants claim they had an implied right of secession to take the Diocese from the Church. CR35:12609. But a century before the Diocese formed it was known that, under Church law, there was no "impl[ied]. . .right of any Diocese to *secede* from the union established by the Constitution." CR(3dSupp.)1:284. The Church's highest authorities have confirmed this repeatedly, before and after Defendants' conduct here. CR31:11259-60.

[3] *Harden v. Colonial Country Club*, 634 S.W.2d 56, 59 (Tex. App.—Fort Worth 1982, writ ref'd n.r.e.).

Texas common law likewise recognizes that, while individuals are free to come and go, no implied right exists to break a local chapter from the organization that created it. Although the Court should never have used secular law to decide who represents the Diocese, that law also requires the Court to reverse and render judgment for Plaintiffs.

**Issue 1(d): *Shellberg* and the Dennis Canon**

Suppose Defendants could—contrary to law—take control of the Episcopal Diocese and Congregations. Even then, *those* entities would still be bound by their contract to hold all property in trust for The Episcopal Church.

This Court's controlling decision, *Shellberg*, 459 S.W.2d at 470, mandates this result. That was the law when the Diocese committed "fully" to the Church's rules, including its trust clause (the Dennis Canon). Yet the trial court ignored *Shellberg*.

An association's constitution and bylaws constitute a contract. *Shellberg* demonstrates that a party cannot agree by contract to honor a trust, accept the benefits of that contract, and then claim to revoke the trust absent an express contractual right to do so.

Under black-letter law, courts determine the parties' rights under a trust by "the law in effect at the time the trust became effective." *Carpenter v. Carpenter*, No. 02-10-00243-CV, 2011 WL 5118802, at *3 (Tex. App.—Fort Worth Oct. 27,

2011, pet. denied) (mem.). *Shellberg*, decided in 1970, governs the Diocese's 1983 contract to hold Church property in trust.

The Texas Supreme Court declined to review it. Texas trust experts have universally endorsed *Shellberg* for 45 years. *Johanson's* highlights it as a "Leading Case." The Legislature recodified that trust-law provision without modification, subsuming *Shellberg*'s construction. The case has never been criticized.

The trial court erred by declining to follow this Court's doctrine. This Court should apply *Shellberg* to undisputed facts and reverse and render judgment for Plaintiffs.

**Issue 1(e): Express trusts in fifty-five individual deeds**

The previous issue concerns the Dennis Canon, the national Church's trust clause.

But there are also additional express trusts in fifty-five individual deeds recorded in favor of the Church. These trusts were never revoked. Their settlors have long since passed. The trial court simply declined to enforce them.

To avoid the obvious, Defendants claimed the 1984 judgment "impliedly" transferred equitable title away from the Church. On its face, the judgment explains it is transferring "legal title," not equitable title, "for the use of the Church in the Diocese." By law, one who lacks equitable title cannot transfer it, expressly

or "impliedly." More oddly, Defendants argued that trusts favoring "the clergy and laity of the Protestant Episcopal Church" means *them*—people with no connection to the Church. The Court should reverse and render judgment for Plaintiffs on these fifty-five deeds.

**Issue 1(f): Constructive trust**

Constructive trusts remedy broken vows and express trusts that fail contrary to equity. That is what the *Libhart* court did, returning church property from runaway church trustees. Before Defendants decided to break their oaths, they admitted to another court that "it was never the[] intent" of "loyal parishioners" that their "gifts and memorials be converted" by those who "abandoned communion with The Episcopal Church."[4] This Court should render for Plaintiffs on their legal points. But under equity, a century's worth of commitments also requires rendition for Plaintiffs.

**Issue 1(g): Estoppel**

Defendants and their predecessors-in-office have told court after court the exact opposite of what Defendants say now to take property. As Justice Lehrmann noted in her *Masterson* dissent, the law has a remedy for that. This Court should estop Defendants, under quasi-estoppel, judicial estoppel, and equitable estoppel, from reversing positions for gain. This includes Defendants' reversals on

[4] CR20:7077, 7114-15.

*Masterson*'s "appropriate method for Texas courts," on the enforceability of the Dennis Canon, and on Church polity. Again, judgment should be rendered for Plaintiffs.

**Issue 1(h): Texas corporations law**

The points above do not turn on who controls the Corporation. Corporate control is a sideshow: either Plaintiffs control the Corporation or the Corporation is in breach.

Defendants concede that the Corporation is at most a trustee with bare legal title. It must hold the property *for* the Diocese and Congregations. That means Plaintiffs. Thus, if Defendants *did* control the Corporation, then the Corporation has breached its fiduciary duties as trustee for Plaintiffs, and the Court should remove the breaching Corporation as trustee of Plaintiffs' trusts.

That said, Defendants have no legal right to sit on the Corporation. The trial court failed to analyze the Corporation's bylaws, which show Defendants no longer occupy any posts in the Corporation. Under the plain terms of those bylaws, Defendants vacated their seats upon disqualification within the Diocese. But the issue is ultimately a red herring: either way, Plaintiffs are the final beneficiaries of the property.

**Issue 1(i): Adverse possession**

Defendants claim a right to the property by adverse possession based on a

1989 Diocesan Canon that purports to revoke the Church's trust interest in the property. But, under Texas law, no limitations period could have begun to run until November 15, 2008, when Defendants broke away from the Church and began wrongly possessing the property. Moreover, in 1992, Defendants admitted the validity of the trust established by the Dennis Canon, which is fatal to their adverse-possession claim.

**Issue 1(j): Standing**

Defendants argued that Plaintiffs lack standing. But a party has standing so long as she alleges a peculiar interest. Nor is there any problem with the individual Plaintiffs first seeking to establish themselves as leaders of the Diocese, Congregations, and Corporation and then, contingent on that, enforcing those entities' rights. Texas law permits and sometimes requires such claims to be brought simultaneously.

**Issue 1(k): Trespass to Try Title**

A plaintiff may recover on a trespass-to-try-title claim by showing a superior title out of a common source. Here, the parties do not dispute the common source of their title, and Plaintiffs have superior title for all the reasons mentioned above.

For all these reasons, the Court should reverse the Final Judgment and render judgment for Plaintiffs and remand for the sole purpose of determining Plaintiffs' attorneys' fees and expenses. Alternatively, the Court should reverse and remand for further proceedings.

## ARGUMENT

### I. The trial court violated *Episcopal Diocese*, *Masterson*, and the First Amendment. (Issues 1(a)-(b))

The Texas Supreme Court held: apply neutral principles of law to non-ecclesiastical issues but defer to church authorities on ecclesiastical issues—even if that ecclesiastical deference affects the property issue. *Masterson*, 422 S.W.3d at 604-05; *Episcopal Diocese*, 422 S.W.3d at 650-51.

This holding was "not a choice"—it reflects a "fundamental" jurisdictional limit. *Masterson*, 422 S.W.3d at 602, 606. Defendants admitted this to the U.S. Supreme Court. CR31:10962-63.

But on remand, the trial court violated that holding and applied neutral principles to the *ecclesiastical* issue of who may control and comprise the Episcopal Diocese. That is reversible error. It is "fatal to the judgment." *Milivojevich*, 426 U.S. at 708.

Defendants' own pleadings show this case comes down to who may control the Diocese and Congregations. This Court should apply "the appropriate method for Texas courts" to Defendants' case theory and reverse and render for Plaintiffs.[5]

[5] Plaintiffs' arguments throughout this brief are based on the Texas Supreme Court's opinions. However, Plaintiffs preserved their claims that: (1) this case should be decided in Plaintiffs' favor under *Watson v. Jones*'s deference approach, because the hierarchical church indisputably resolved this entire dispute in Plaintiffs' favor; (2) application of neutral principles here is unconstitutionally retroactive under *Jones*; (3) neutral principles is no longer a constitutionally viable means of resolving church-property disputes, particularly in light of *Hosanna-Tabor*; and (4) the First Amendment and *Jones v. Wolf* require courts to enforce express trusts recited in

### A. The "appropriate method for Texas courts"

In the first appeal, the Texas Supreme Court described two approaches to church-property cases:

1. **The Deference Approach** of *Watson v. Jones*, 80 U.S. 679 (1871): when competing factions within a religious body claim church property, courts defer the entire dispute to the hierarchical church. *Masterson*, 422 S.W.3d at 605 (under the deference approach, courts "simply defer to the ecclesiastical authorities with regard to the property dispute").
2. **The Neutral Principles Approach** of *Jones v. Wolf*, 443 U.S. 595 (1979): courts apply civil law to all non-ecclesiastical issues, while deferring to church authorities *only* on ecclesiastical issues, even if that affects property. *Id.* at 607.

*Masterson* adopted neutral principles as the sole method for Texas courts. 422 S.W.3d at 605. But the Court made clear: the First Amendment still demands deference on *ecclesiastical* issues within the neutral principles analysis:

> **But 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

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governing church documents irrespective of state law. *See* CR30:10781-92, 10821, 10897; CR39:13763-64. Plaintiffs re-urge those claims here for preservation purposes.

> 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*, 422 S.W.3d at 650 (emphasis added).

Critically, that ecclesiastical deference under neutral principles is mandatory, ***even if applying those ecclesiastical decisions will affect the property case*:**

> Further, 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. Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist.

*Masterson*, 422 S.W.3d at 606.

This ecclesiastical deference is not optional. "As the [U.S. Supreme] Court elaborated. . .in *Jones*, '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. "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." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 120-21 (1952).

The Texas Supreme Court noted which level of church hierarchy is entitled

to that deference: "Civil courts are constitutionally required to accept as binding the decision of the **highest authority** of a hierarchical religious organization to which a dispute regarding internal government has been submitted." *Masterson*, 422 S.W.3d at 607 (emphasis added). The Court held that The Episcopal Church is "conclusively" a "hierarchical organization," whose "highest" tier is the General Convention. *Id.* at 600, 608.

The Court was also clear on which types of issues are ecclesiastical. They include "church polity issues such as who may be members of the entities and whether to remove a bishop," *Episcopal Diocese*, 422 S.W.3d at 650, "who is or can be a member in good standing of TEC or a diocese," *id.* at 652, and "what happens to the relationship between a local congregation that is part of a hierarchical religious organization and the higher organization when members of the local congregation vote to disassociate," *Masterson*, 422 S.W.3d at 607.

*Masterson* cited two examples where ecclesiastical issues affected a neutral principles analysis. The Court explained that, in *Brown v. Clark*, 116 S.W. 360 (Tex. 1909), the neutral principles analysis concerned a deed to church property. *Id.* at 605.[6] Applying secular property law, the deed vested full title in the local congregation. But two parties claimed to *be* that local congregation, and resolution of *that* question was ecclesiastical. *Id.* at 604. "Because the property dispute's

[6] Plaintiffs present, *arguendo*, the *Masterson* Court's reading of *Brown* without waiving their retroactivity arguments. *See* n.5.

resolution turned, under neutral principles of Texas law, on the local church body's identity—an ecclesiastical matter—the court deferred to the national denomination's understanding of the church's identity." CR31:10963.

*Masterson* also cited a U.S. Supreme Court case, *Milivojevich*, seven times in relating the First Amendment limits on neutral principles. *See Masterson*, 422 S.W.3d at 596, 601, 606-08. In *Milivojevich*, a Diocesan Bishop of the Serbian Orthodox Church "declared the Diocese separate from the Mother Church" and refused "to recognize his suspension or the [Mother Church's] Diocesan reorganization," claiming the Mother Church had "contravened the administrative autonomy of the Diocese guaranteed by the Diocesan constitution." 426 U.S. at 704-06. Both sides sued for control of the Diocese and its property.

Instead of accepting the Mother Church's view on Diocesan control, the Illinois Supreme Court "relied on purported 'neutral principles' for resolving property disputes" to determine that "the Diocesan reorganization was invalid because it was beyond the scope of the Mother Church's authority to effectuate such changes without Diocesan approval." *Id.* at 708, 721.

The U.S. Supreme Court reversed, holding that "the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs." *Id.* at 721. "The fallacy fatal to the judgment of the Illinois Supreme Court" was that it "impermissibly substitute[d] its own inquiry into

church polity and resolutions based thereon." *Id.* at 708.

The U.S. Supreme Court found: "Resolution of the religious disputes at issue here affects the control of church property." *Id.* at 709. But, it held, "civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation." *Id.* at 720.

In short, *Masterson*'s rule is clear: apply neutral principles to non-ecclesiastical issues but defer on ecclesiastical ones, even if "the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue." 422 S.W.3d at 607.

This is **not** the older, broader *Watson* "Deference" approach, where civil courts "simply defer to the ecclesiastical authorities with regard to the property dispute." *Id.* at 605. Rather, under neutral principles, courts *adjudicate* the property dispute while deferring *only* on ecclesiastical points *within* that analysis. This is the "fundamental" limit on a valid neutral principles approach under the First Amendment. *Id.* at 605-06.

### B. Defendants admitted "the appropriate method" to the U.S. Supreme Court.

In their U.S. Supreme Court filing, Defendants admitted that *Masterson*'s neutral principles approach requires deference to the Church on ecclesiastical matters:

> In *Brown*, the deed to church property vested title in a

> local church. "[U]sing principles of Texas law," *Brown* concluded that 'whatever body is identified as being the church to which the deed was made must still hold the title.' **Because the property dispute's resolution turned, under neutral principles of Texas law, on the local church body's identity—an ecclesiastical matter—the court deferred to the national denomination's understanding of the church's identity**. *Id.* at 21a–22a; see *Jones*, 443 U.S. at 604 (**confirming that if neutral principles of state law require resolution of religious question, courts must defer to ecclesiastical authorities**).
>
> 'The method by which this Court addressed the issues in *Brown*,' the Texas Supreme Court held, 'remains the appropriate method for Texas courts.'

CR31:10962-63 (citations omitted).

Defendants embraced this reading of *Masterson* to avoid review.

### C. But on remand, Defendants induced reversible error.

On remand, Defendants conceded: under neutral principles, the Corporation holds all property in an express, unrevoked trust for the Diocese and its Congregations. CR29:10134.[7]

To enforce the trust under neutral principles, the court had to identify which parties represented the trust's beneficiaries, the Diocese and Congregations. And on *that* question, the court was required to accept the Church's determination.

Instead of continuing to acknowledge the appropriate method, Defendants

[7] *See also* C35:12582, 12584 ("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."); CR31:11073-74, 11094, 11098, 11102; *accord* CR17:6102.

told the trial court that it must do the opposite: apply neutral principles to the *ecclesiastical* question of who may control the Diocese and Congregations.

Specifically, Defendants moved for summary judgment claiming: "The Episcopal Diocese of Fort Worth ("the Diocese") is an unincorporated association formed and operating in Texas, so **issues concerning its officers and control** are governed by the Texas Uniform Unincorporated Nonprofit Association Act." CR29:10096-97 (emphasis added). Defendants claimed "a church's identity should be decided using neutral principles of state law." CR36:12790.

Defendants thus invited the trial court to use neutral principles to override the Church on who may represent an Episcopal Diocese and Congregations. That violates the Texas Supreme Court's holdings and contradicts Defendants' admissions to the U.S. Supreme Court.

The trial court accepted Defendants' invitation. It held that "Defendants are the proper representatives of the Episcopal Diocese of Fort Worth, the Texas unincorporated association formed in 1982." CR39:14026. The court ordered the Church and its authorized Episcopal clergy and leaders to "desist from holding themselves out as leaders of the Diocese." CR39:14027.

The trial court's Final Judgment also effectively named defrocked Bishop Iker the Bishop of the Diocese and other Defendants as its Standing Committee (*i.e.*, "the Ecclesiastical Authority of the Diocese" absent a bishop, who must all be

clergy or "Confirmed Communicants in good standing," CR17:6171). *See Milivojevich*, 426 U.S. at 708 (declaration invalidating diocesan reorganization effectively reinstated a defrocked bishop). Further, because the Corporation's bylaws state that the Bishop of the Diocese "shall be the Chairman of the Board of the Corporation," CR17:6079; *see* n.61, *infra,* and the other directors must either be "lay persons in good standing of a parish or mission" or "members of the clergy canonically resident" in the Diocese, CR17:6080, the Final Judgment—which placed Iker as the Corporation's Chairman and other Defendants as the remaining directors, CR39:14026—necessarily declared who the Bishop of the Diocese is and who is a member of the Diocese in good standing.

The trial court ignored every warning in *Masterson*, *Episcopal Diocese*, and *Milivojevich.* It ignored that "the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs." *Milivojevich*, 426 U.S. at 721. It ignored that courts must defer on "whether to remove a bishop" and "who is or can be a member in good standing of TEC or a diocese." *Episcopal Diocese*, 422 S.W.3d at 650, 652. It "substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunals," *e.g.*, on whether "the Diocese 'manifested a clear intention to retain independence and autonomy.'" *Milivojevich*, 426 U.S. at 721. And it ignored that when Mother Churches "decide disputes over the government

and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." *Id.* at 724-25.

Defendants concede and celebrate that the trial court overruled the Church on these ecclesiastical matters, announcing after the March 2, 2015 order that: "The court has declared that I am the Bishop of the Episcopal Diocese of Fort Worth"[8] and has "confirmed the Diocese's right to dissociate from TEC."[9] They further announced, "the Hon. John Chupp has ruled that [Defendants] control the Episcopal Diocese of Fort Worth."[10]

Defendants had to induce this error to prevail. They knew that the property question turned on the question of Diocesan control. That is why they asked a court to declare an ecclesiastical matter—that "Defendants are the proper representatives of the Episcopal Diocese"—rather than staying on civil ground. CR39:13958. As one Defendant conceded under oath: "Our claims are based on our membership in the diocese; simple as that."[11]

As in *Milivojevich*, "[t]he fallacy fatal to the judgment. . .is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church. . .and impermissibly substitutes its own inquiry into

[8] CR38:13599.

[9] CR39:13632.

[10] *Id.*

[11] CR38:13526, at 78:13-18.

church polity and resolutions. . .of those disputes." 426 U.S. at 708.

### D. The trial court imposed its "philosophical preference" on church government.

The constitutional injury did not stop there. The trial court did more than substitute its own interpretation of Church polity and law. By all appearances, it substituted its own *preference* on how churches *ought* to be structured.

During one summary judgment hearing, the court asked: "Why do we have to have some big government solution to this where somebody in New York [*i.e.*, The Episcopal Church] controls what these people in Fort Worth [*i.e.*, the Episcopal Diocese] are doing?" RR8:93:1-4. Expressing a similar sentiment, the court asked:

> PLAINTIFFS' COUNSEL: And so we have a majority faction and a minority faction; both claim to be the diocese. That is what the Court needs to decide. The Court decides that by deferring to the Episcopal Church's determination of who is the diocese. Because in the Texas Supreme Court opinions --
>
> THE COURT: Well, what if I want to defer to the majority of the diocese's decision, who they think it is?

RR8:15:9-11.

After the hearing, Defendants described the trial court's position: "Near the conclusion of the hearing he indicated **a philosophical preference for local self-determination**, asking, 'Why do we need to have a 'big government' solution to this where a New York church says [what is best]?'" CR39:13633 (emphasis

added).

But "religious freedom encompasses the 'power (of religious bodies) to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Milivojevich*, 426 U.S. at 721-22. The right of "ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned." *Hosanna-Tabor*, 132 S. Ct. at 713 (citations omitted).

Professor Laycock, recognized during Congressional hearings as "a leading authority on freedom of religion,"[12] warned of the exact harm suggested here: "Differences in church governance reflect deep theological disagreement; the wars of religion were fought in part over these choices of whether to have a Pope, whether to have bishops, whether to have elected assemblies, or whether to have no authority at all higher than the local congregation."[13] And while "[r]eligious liberty includes the right to choose from among these forms of church organization," civil courts often do not understand "the religious significance of congregationalizing a hierarchical or presbyterial church" or acting on "congregationalist principles."[14]

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[12] *See* http://www.justice.gov/sites/default/files/jmd/legacy/2014/02/13/hear-j-102-82-1992.pdf at 29 (last visited December 1, 2015).

[13] Douglas Laycock, *Church Autonomy Revisited*, 7 GEO. J.L. & PUB. POL'Y 253, 257-58 (2009).

[14] *Id.*

The trial court "congregationalized" a hierarchical Church here. By dismantling Church polity through summary judgment, the trial court committed an unconstitutional, reversible error.

### E. The trial court relied on mistaken principles.

While the trial court's Final Judgment and orders did not explain its reasoning, it appeared to rely on Defendants' mistaken claims.

#### 1. The First Amendment protects doctrine *and* polity.

First, Defendants claimed tried to distinguish *Brown* from this case, arguing that the identity issue in *Brown* turned on a "doctrinal" question, while the identity issue here turned on the association's rules of governance. *See* CR32:11519-20; RR8:57:8-14, 70:10-71:24. That is factually inaccurate and irrelevant: *Milivojevich* squarely rejects the false distinction between 'doctrine' and 'polity' or 'governance,' holding religious freedom extends to "matters of church government as well as those of faith and doctrine." 426 U.S. at 721-22 (citation omitted). *Masterson* agreed, noting civil courts are prohibited from inquiring into matters of "theological controversy" *or* "ecclesiastical government." 422 S.W.3d at 601 (citing *Milivojevich*, 426 U.S. at 713-14).

#### 2. The Texas Supreme Court rejected the non-ecclesiastical deference of *Watson* but embraced the ecclesiastical deference of *Jones*.

Second, Defendants confused the court between two different concepts: (1) the *Watson* "Deference Method" under which courts defer the entire property

case—ecclesiastical and non-ecclesiastical issues alike—to the church, and (2) deference on *ecclesiastical* issues only that is still required under neutral principles. *See, e.g.*, RR8:56:3-6; CR36:12788. Beyond doubt, the Texas Supreme Court rejected *Watson*'s deference approach and adopted neutral principles as the sole method for Texas courts. *See Masterson*, 422 S.W.3d at 596. But the Court made clear that, under neutral principles, deference on *ecclesiastical* issues is "constitutionally required." *Id.* at 607.

### 3. Applying neutral principles does not guarantee there will be no ecclesiastical issues.

Finally, Defendants told the trial court that one of the purposes of neutral principles was to extricate the Court from ecclesiastical issues. CR32:11520. That is true. The parties *could* have arranged their affairs so that the property analysis was separate from any ecclesiastical questions. But the Texas Supreme Court knew that would not always be the case, which is why it explained what happens under neutral principles when "the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue." *Masterson*, 422 S.W.3d at 607.

Again, the trial court did not follow the Texas Supreme Court's holding on these facts.

### F. This Court should apply the First Amendment and render judgment for Plaintiffs.

This Court should reverse and render based on two undisputed points: (1) under neutral principles, the property is held in a legally-enforceable trust naming the Diocese or its Congregations as the ultimate beneficiaries, and (2) the relevant authorities of The Episcopal Church have formally determined that Plaintiffs are the only authorized representatives of the Diocese and Congregations.[15]

Applying the undisputed determination of the highest authorities of the Church on the ecclesiastical question of Diocesan and Congregational control alone will "effectively determine the property rights in question." *Masterson*, 422 S.W.3d at 606.[16] By placing the property in trust and naming the Diocese and its Congregations as the beneficiaries, "the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue." *Id.* at 607. Under the First Amendment, this Court "must accept that consequence as the

[15] CR31:11257-60; *see also* CR18:6417-22, 6435-37, 6442-43; CR19:6719, 6721-22; CR20:6887-88, 6952-53, 6955-57, 6962; CR28:10039; CR31:11257-58; CR33:11725, at 140:5-17.

[16] Defendants tried avoiding the ecclesiastical question of Congregational control, claiming the trust was really for whichever congregational faction was "in union with" the Diocese (later conceding "[t]hose words are -- are not there."). CR38:13536, at 118:4-7; *cf.* CR17:6102 (trust for continuing Congregations). Even if the test *were* "union with" the Diocese, that would emphasize the ecclesiastical issue of Diocesan control.

incidental effect of an ecclesiastical determination that is not subject to judicial abrogation." *Milivojevich*, 426 U.S. at 720.

Applying the appropriate method, this Court should render judgment for Plaintiffs.[17]

## II. The trial court violated Texas associations law. (Issue 1(c))

The First Amendment forbids civil courts from overriding a hierarchical church on the question of who can represent a diocese or congregation. The trial court did just that—ignored the First Amendment and used civil associations law to override the Church.

But even if there were no First Amendment, proper application of Texas associations law should have reached the same result: only Plaintiffs are entitled to control the Diocese and Congregations.

### A. Associations are entitled to interpret and apply their own rules.

"The right of a voluntary club or association to interpret its own organic agreements, such as its charter, its bylaws and regulations, after they are made and adopted, is not inferior to its right to make and adopt them. . . ."[18] Texas "courts will not interfere with the internal management of a voluntary association so long

[17] The same holdings apply to other property held in trust for the Diocese and its Congregations by other trustees, such as certain endowment funds, *see* CR17:5995-6003, as well as property titled directly in the Diocese or Congregations. Plaintiffs moved below, and this Court should render judgment for Plaintiffs on, all Property as defined/listed at Table D, incorporated herein. CR30:10660-729.

[18] *Juarez v. Tex. Ass'n of Sporting Officials El Paso Chapter*, 172 S.W.3d 274, 279 (Tex. App.—El Paso 2005, no pet.).

as the governing bodies of such association do not substitute legislation for interpretation, and do not act totally unreasonably or contravene public policy or the laws in such interpretation and administration."[19] "A member, by becoming such, subjects himself to his organization's power to administer, as well as its power to make, its rules."[20]

Without basis, the trial court disturbed the association's interpretation and application of its own rules. Representatives from over 100 dioceses recognize Plaintiffs as the authorized representatives of the continuing Diocese. CR31:11257-60. The association consistently rejected any purported right to take an Episcopal Diocese from the Church before the present dispute. *Id.*

Defendants concede the association's rules govern but point to no rule authorizing their conduct; instead, they claimed an unwritten/implied right to take an Episcopal Diocese from The Episcopal Church. CR35:12609. In 1870, over a century before the Diocese formed under Church rules, it was recognized that the association's rules did not "imply the right of any Diocese to *secede* from the union established by the Constitution." CR(3dSupp.)1:284. Rather, as the 1850 *Treatise on the Law of the Protestant Episcopal Church* explained, the association is "not a fugitive coalition, but a perpetual union." CR(3dSupp.)1:281. And, as an 1841

[19] *Harden*, 634 S.W.2d at 59.

[20] *Stevens v. Anatolian Shepherd Dog Club*, 231 S.W.3d 71, 74 (Tex. App.—Houston [14th Dist.] 2007, pet. denied).

treatise noted, dioceses "surrender" "[s]uch an exercise of independency as would permit them to withdraw from the union at their own pleasure." CR(3dSupp.)1:286.

In 2008, before this purported secession here, the General Convention's House of Bishops rejected similar arguments from two other dissident groups, confirming the Presiding Bishop's 2007 observation that defection as a diocese was an act a dissident group "does not have authority to make under the Church's Constitution." CR31:11260. The Church determined that attempted secession constitutes "open renunciation" of the association's structure and rules. *Id.*

Beyond violating the association's application and interpretation of its rules, the judgment below finds no support in the rules' text either. Only the Church is authorized to create, divide, or dissolve a diocese. CR12:4188. To gain union, dioceses must accede fully to Church governance, as this Diocese did. CR17:6354. The Church Constitution permits only one type of diocese to separate from the Church: *missionary* dioceses, which are generally extraterritorial and can better function with geographically-contiguous churches—and even then, they may separate *only* with the express prior permission of the Presiding Bishop or the General Convention. CR31:11258; CR12:4296-97.

Inventing an implied right of secession ignores a basic principle of construction: *expressio unius*—the mention of one thing (departure of missionary

dioceses) is "equivalent to an express exclusion of all others" (departure of wholly internal dioceses).[21] And, as this Court has held, associations need not list everything subordinate entities *cannot* do.[22] Rather, subordinate entities must point to an affirmative right to do something.[23]

If missionary dioceses can depart on grounds of geographic discontinuity only with permission, it would make no sense to "imply" an unwritten, unrestrained right for dioceses at the geographic core of the Church to break away at will.

Here, the association repeatedly interpreted its rules to reject the alleged "implied" right. Under Texas neutral principles, an association's interpretation need not be the only one, or even the best one, as long as it is not "totally unreasonabl[e]" or contrary to "public policy or the laws."[24] Plaintiffs have far exceeded that standard: their interpretation is not only reasonable but superior, and it tracks Texas public policy.

The trial court may not presume an "implied" right that the association rejected for over a century before Defendants chose to join.

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[21] *State v. Mauritz-Wells Co.*, 175 S.W.2d 238, 241 (Tex. 1943).

[22] *Simpson v. Charity Benevolent Ass'n*, 160 S.W.2d 109, 112 (Tex. Civ. App.—Fort Worth 1942, writ ref'd w.o.m.).

[23] *See id.*

[24] *Harden*, 634 S.W.2d at 59.

### B. The association's rules are consistent with Texas policy.

Texas law likewise begins with the common-sense presumption that local chapters have no "implied" right to break away from their parent organizations.

As this Court has held, local fraternal organizations are limited to the "authority or power" "delegated" to them by "the Grand Lodge that blew the breath of life" into them and not by "claimed" or implied rights (discussing unincorporated lodges governed by common law).[25]

Likewise, "[i]t is well settled that when a person ceases to be a member of a voluntary association, his interest in its funds and property ceases and the remaining members become jointly entitled thereto, and this rule applies where a number of members secede in a body and although they constitute a majority and organize a new association" (discussing unions).[26]

As Defendants concede:

> From 1899 till today, Texas statutes have required subordinate chapters of . . . benevolent societies to forfeit all property to "the grand body" upon termination: "all property and rights existing in the subordinate body pass to and vest in the grand body to which it was attached."[27]

And while this statute did not apply to the unincorporated lodge in *Odd Fellows*,

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[25] *Simpson*, 160 S.W.2d at 112.

[26] *Progressive Union of Tex. v. Indep. Union of Colored Laborers*, 264 S.W.2d 765, 768 (Tex. Civ. App.—Galveston 1954, writ ref'd n.r.e.) (emphasis added).

[27] *See* CR35:12607; *see also Veterans of Foreign Wars, Post No. 837 v. Byrom*, 357 S.W.2d 426 (Tex. Civ. App.—Beaumont 1962, no writ).

the court nonetheless cited to it as indicative of "public policy," "to be looked for in legislative enactments."[28]

Thus, a century of Texas associations law is consistent with the Church's interpretation of its own rules.

Only Plaintiffs may represent the Diocese and its Congregations. That is true under the First Amendment, under the association's rules, and consistent with Texas associations law. Since Defendants concede all property ultimately belongs to the Diocese and Congregations under neutral principles of law, that means Plaintiffs.

## III. The trial court failed to apply *Shellberg*. (Issue 1(d))

In the first two sections, Plaintiffs took Defendants' case theory as given: the property is in trust for the Diocese and Congregations. Under either the First Amendment or Texas associations law, that can only be Plaintiffs.

This section considers a different point. Suppose the trial court could—contrary to law—give control of the Episcopal Diocese and Congregations to Defendants.

Even then, those entities would still be bound by their commitment to hold all of the property in trust for The Episcopal Church, under this Court's holding in *Shellberg.*

[28] *Dist. Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d 915, 920 (Tex. 1942).

### A. The Diocese made a contract and accepted the benefits.

In Texas, when a local chapter joins a parent organization, the constitution and bylaws of the parent organization become a contract between the organization and its constituent members.[29]

As a condition of formation, the Diocese and Congregations agreed in writing to submit "fully" to the Church's Constitution and Canons, followed by seven pages of signatures from the Diocese and every Congregation. CR17:6354-60. At the time, and now, those Canons included the Dennis Canon's trust commitment. CR12:4201, 4289.[30]

In exchange, the Diocese and Congregations accepted, among other benefits, division under Article V, formation of the new Diocese, transfer of property to that Diocese, the new Diocese's union with and membership in the Church, its participation in Church government, tax exemption through the Church, grants and loans, participation in Church benefits programs worth millions of dollars, and the ability to represent itself and its clergy as part of a recognized American religious denomination. CR12:4589-90; CR17:6052; CR31:11081; CR24:8404, 8526-27; CR25:8770.

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[29] *Dist. Grand Lodge No. 25*, 160 S.W.2d at 920; *see also Int'l Printing Pressmen & Assistants' Union v. Smith*, 198 S.W.2d 729, 736 (Tex. 1946).

[30] This signed, self-declaration of trust, *see* Tex. Prop. Code §§ 112.001(1), 112.004, permissibly incorporates an unsigned paper, the Church's Constitution and Canons, by reference, *see In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004); *see also* CR31:4089-98.

### B. The trust was contractual and thus irrevocable.

Before the Diocese agreed to this trust in Fort Worth, this Court set important governing rules for Texas trusts.[31]

In *Shellberg*, this Court analyzed the statutory presumption of revocability, which the Texas legislature had borrowed from Oklahoma law, and held: "Sec. 41 of Art. 7425b, V.A.T.S., (The Texas Trust Act) [now Tex. Prop. Code § 112.051(a)] is inapplicable to a trust that is created by contract and based on a valuable consideration."[32]

That case has since been cited with approval by every leading expert on Texas trust law. *See, e.g.*:

- Vernon's Texas Codes Annotated, Property Code § 112.051 (2013), cmt. 3: "Contractual trusts."
- Johanson's Texas Estates Code Annotated § 112.051 (2014): the presumption of revocability "does not apply to trust[s] created by agreement and supported by consideration; such a trust is irrevocable even if it does not expressly so state."

[31] Plaintiffs contend that the Dennis Canon is enforceable under Texas trust law, but again, they do not waive their argument that—under *Jones v. Wolf*—the trust is enforceable regardless of the content of state law requirements. *See* n.5, *supra*.

[32] *Shellberg*, 459 S.W.2d at 470.

- Restatement (Third) of Trusts § 62 (2003): "Where consideration is involved in the creation of a trust, the rules governing transfers for value and contracts are applicable."
- Bogert's The Law of Trusts and Trustees § 998 n.8 (2015): "Section 41 of the Texas Trust Act [now Tex. Prop. Code § 112.051(a)], providing that every trust is revocable unless expressly made irrevocable, [does] not apply to a contractual trust based on valuable consideration."
- Professor Gerry Beyer, author of *Texas Trust Law*: "A trust supported by consideration is a contractual trust, which is irrevocable even without an express statement of irrevocability in the instrument."[33]

Every Texas trust law treatise and expert has lauded *Shellberg* because it is a carefully-reasoned opinion, based on the history of the statute and its Oklahoma model (whose Supreme Court reached the same conclusion). After passage of the Texas Trust Act in 1943, Texas trust lawyers immediately recognized that the Act raised questions of whether the presumption of revocability would apply "in those cases where the creation of the trust was induced by a consideration passing to the trustor." R. Dean Moorhead, *The Texas Trust Act*, 22 TEX. L. REV. 123, 131 (1943-1944).

[33] CR31:11241; *see also* CR31:11225-55.

As a matter of statutory construction, scholars argued that the presumption was "not intended to be applicable to any trust created for a consideration." Arthur Yao, *Revocation of Trust Under Section 41 of the Texas Trust Act*, 7 S. TEX. L.J. 22, 29 (1963-1964); *cf.* Gerry Beyer, Texas Trust Law: Cases and Materials 33 (2d ed. 2009) (defining "trust" generally to mean a "gratuitous property transfer," as opposed to a "contractual arrangement" to hold property for another that, due to valid consideration, can be enforced as a contract).

In 1970, this Court agreed.[34] Recognizing that Section 41 (now Tex. Prop. Code § 112.051(a)) "was borrowed from the Oklahoma Trust Act," the court looked to *Harrison v. Johnson*, 312 P.2d 951 (Okla. 1956), in which the Oklahoma Supreme Court held that a contractual trust is irrevocable where the trust was silent as to its revocability.[35]

This Court applied the long-established rule that a later construction of an adopted statute by the originating state's courts is "strongly persuasive" of the meaning of the statute.[36] Seeing "no reason why Texas should not follow the holding of the Oklahoma courts in the *Harrison* case," the court concluded "that the decision in that case is sound."[37] And it is easy to see why: permitting

[34] *Shellberg*, 459 S.W.2d at 469-70.

[35] *Id.* at 469.

[36] *Id.*

[37] *Id.*

someone to revoke a trust that she established in exchange for consideration would "subvert the ends of justice by allowing her to take what she was not entitled to."[38]

### C. *Shellberg* controls here.

Under Texas law, courts determine the parties' rights under a trust by looking to the instrument and "the law in effect *at the time the trust became effective*." *Carpenter*, 2011 WL 5118802, at *3; *see also Cutrer v. Cutrer*, 345 S.W.2d 513, 519 (Tex. 1961); *In re Ellison Grandchildren Trust*, 261 S.W.3d 111, 118 (Tex. App.—San Antonio 2008, pet. denied). This "recognizes that the interests of the trust beneficiaries accrue when the trust is executed and protects those interests." *McGehee v. Edwards*, 597 S.E.2d 99, 102 (Va. 2004).

*Shellberg*, decided in 1970, was the law when the Diocese and Congregations agreed in 1982 that the property would be held in trust for the Church. As Defendants told the trial court, the parties were presumed to know the law in effect, which confirms their intent in forming the trust. CR29:10136. The Church's beneficial interest accrued at that time. Any subsequent change in the law neither alters the intent of the Diocese and Congregations at the time the trust became effective, nor divests the Church of its pre-existing equitable property interest.

[38] Yao, *supra*, at 29.

Moreover, *Shellberg* warrants deference today:

- It is a "Leading Case" cited in treatises and casebooks across Texas for forty years. The Texas Supreme Court declined to review it. It has never been criticized. *See* Section III.B, *supra*.
- The Texas Legislature re-enacted Section 112.051(a) without substantive change *after* *Shellberg* and is thus presumed by law to have adopted that interpretation. *See Coastal Indus. Water Auth. v. Trinity Portland Cement Div. Gen. Portland Cement Co.*, 563 S.W.2d 916, 918 (Tex. 1978); *cf. Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 749-50 (Tex. 2006).
- "*Stare decisis* is strongest in cases involving statutory construction," as here, "because the Legislature may correct perceived construction errors through statutory amendment." *Grimes Cnty. Bail Bond Bd. v. Ellen*, 267 S.W.3d 310, 316 (Tex. App.—Houston [14th Dist.] 2008, pet. denied); *accord Fiess*, 202 S.W.3d at 749.

*Shellberg* was recent, binding law that the parties were deemed to have known when they arranged their affairs. Because it was the law in effect when the trust became effective, it governs the trust here.

**D. Defendants concede their other commitments are irrevocable.**

The Diocese made other commitments in its founding documents, beyond

the trust clause, including to use church buildings only for "purposes, either authorized or approved by this Church, and for no other use" and "subject to control of the Church in the Episcopal Diocese of Fort Worth." CR17:6134; CR17:6102.

Defendants conceded that such non-trust commitments *are* contractual and irrevocable. CR35:12590. Thus, even beyond the trust clause, the Diocese is bound by its other contractual commitments binding the property to Plaintiffs.

The trial court erred by ignoring *Shellberg* and the Diocese's commitments.

## IV. The trial court ignored fifty-five deeds with express trusts. (Issue 1(e))

Section III addressed the express trust in the Church's governing documents. But there are also express trusts for the Church recited in fifty-five individual, recorded deeds dating back decades. *See* CR30:10730-53 (Table E—"In Trust for The Episcopal Church").

The Texas Supreme Court instructed the trial court to look to these deeds. *Episcopal Diocese*, 422 S.W.3d at 651-52. The trial court failed to enforce them.

### A. Fifty-five deeds recite express, unrevoked trusts.

Long before the Church approved the formation of the Diocese, the Church's Canons required that local property be "secured, by the terms of the devise, or deed, . . . from the danger of alienation, either in whole or in part, from

those who profess and practise the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America." CR31:11267.

Accordingly, fifty-five of the deeds here recite express trusts in favor of The Episcopal Church with similar language:

> This Conveyance, however, is in trust for the use and benefit of the Protestant Episcopal Church, within the territorial limits of what is now known as the said Diocese of Dallas, in the State of Texas . . . .

CR38:13340. There is no evidence that any of these trusts has been revoked, and likely, the grantors of these historical properties have long since died, making the trusts irrevocable as a matter of law. *See Ayers v. Mitchell*, 167 S.W.3d 924, 931 (Tex. App.—Texarkana 2005, no pet.); *Citizens Nat'l Bank v. Allen*, 575 S.W.2d 654, 658 (Tex. Civ. App.—Eastland 1978, writ ref'd n.r.e.).

### B. There is no basis to ignore these trusts.

The trial court did not explain its reasoning but apparently accepted Defendants' incorrect arguments.

First, Defendants claimed that the language above creates an express trust for the Diocese of Dallas—whether or not connected to The Episcopal Church—rather than for the Episcopal Church within a particular region. CR32:11529-30.

Defendants' interpretation contradicts the plain language of the deed—an express trust in favor of "**the Protestant Episcopal Church**, within the territorial

limits of what is **now known as** the said Diocese of Dallas," CR38:13340 (emphasis added).[39]

Moreover, the intent is plain in the Church's Canons at the time of the grants, which required that property be "secured" for "those who profess and practice the doctrine, discipline, and worship of the **Protestant Episcopal Church in the United States of America**." CR31:11267 (emphasis added). The deeds and the instructions for those deeds match.

Finally, the very *definition* of the Diocese of Dallas *is* "the Clergy and Laity, of the Protestant Episcopal Church, in the United States of America, resident in that portion of the State of Texas." CR19:6779; *see also* CR17:6090 (defining the Fort Worth Diocese likewise); CR34:11860 (Iker averring to same).

The trial court simply cannot say a trust for The Episcopal Church is a trust for people who rejected and left The Episcopal Church.

Second, Defendants argued that the 1984 judgment impliedly "split beneficial title" between the two dioceses, stripping the Church of existing trust interests—even though the judgment "did not specify what entity took [beneficial title]." CR32:11532. But on its face, the judgment states that it transferred "legal title" to the property, CR17:5995, and one who holds only legal title cannot transfer equitable title, *see In re Maple Mortg.*, 81 F.3d 592, 597 (5th Cir. 1996);

[39] *See also* CR30:10730-53 (Table E—"In Trust for The Episcopal Church").

*see also Binford v. Snyder*, 189 S.W.2d 471, 473 (Tex. 1945); *Perfect Union Lodge No. 10 v. Interfirst Bank*, 748 S.W.2d 281, 220 (Tex. 1988).

The plain language of fifty-five deeds creates an express trust in favor of The Episcopal Church. Those trusts have never been revoked, and the settlors have long since died. The 1984 judgment did nothing to divest the Church of its equitable interest in the property. This Court should render judgment in favor of Plaintiffs on those fifty-five deeds.

## V. A constructive trust is warranted. (Issue 1(f))

If every ground above were ignored, Defendants still may not break a century of commitments to the Church.

Constructive trusts apply where express trusts fail and where no trust was contemplated at all. *Murphy v. Johnson*, 439 S.W.2d 440, 442 (Tex. Civ. App.—Houston [1st Dist.] 1969, no writ); *Mills v. Gray*, 210 S.W.2d 985, 988-89 (Tex. 1948). They prevent unjust enrichment from fraud or breach of a duty or promise. *See Hubbard v. Shankle*, 138 S.W.3d 474, 485-86 (Tex. App.—Fort Worth 2004, pet. denied). They return church property taken by church trustees. *See Libhart v. Copeland*, 949 S.W.2d 783, 804 (Tex. App.—Waco 1997, no writ).

That is precisely what happened in *Falls Church v. Protestant Episcopal Church*, 740 S.E.2d 530, 540-42 (Va. 2013), *cert. denied*, 134 S. Ct. 1513 (2014). Where an express trust failed under Virginia law, the Virginia Supreme Court

imposed a constructive trust because the breakaways' "attempt[] to withdraw from TEC. . .yet still maintain the property represents a violation of. . .fiduciary obligation to TEC." *Id.* at 540-42.

Below, Plaintiffs catalogued decades of promises, now broken, *see* CR30:10856-68, including:

The commitments include:

- Iker and every dissident cleric made the signed, sworn Declaration of Conformity as a condition of office and access to property.[40]
- Defendants *continued* to administer that oath, feigning commitment to the Church while planning defection.[41]
- Every officer in the Church served under the Fiduciary Responsibility Canon.[42]
- Defendants concede that to operate, the Church "expects. . .bishop[s] to act in compliance with [their] oath" and must "trust" them "to run the day-to-day affairs of the diocese."[43]
- In another case, Defendants recovered property from prior breakaways, telling the court "it was never the[] intent" of "loyal

[40] CR19:6788; CR31:11069, at 39:2-24.

[41] CR12:4256; CR31:11080, at 132:15-133:3.

[42] CR12:4304-05.

[43] CR31:11072, at 79:17-20, 81:16-18.

parishioners" that their "gifts and memorials be converted" by those who "abandoned communion with The Episcopal Church."[44]

In this suit, Defendants' Director of Finance confirmed "over half a million dollars missing from bank accounts,"[45] admitting Defendants' "decision" that the money would be harder for a court to reach out of state.[46] The Director testified she did not disclose this account to the trial court because she "forgot."[47]

By refusing to impose a constructive trust, the trial court allowed Defendants to renege on their promises, break their commitments, and breach relationships of trust and confidence as Church officers. This Court should impose a constructive trust to prevent that outcome. *See Fitz–Gerald v. Hull*, 237 S.W.2d 256, 262-63 (Tex. 1951).

## VI. The trial court should have applied estoppel. (Issue 1(g))

### A. Quasi-estoppel.

In the *Masterson* dissent, Justice Lehrmann noted that while the Episcopal parties there had not raised the issue of quasi-estoppel, judgment on that ground was proper: "Having made these promises and accepted these benefits, [the breakaway group] may not now contend it is free to disregard these positions

[44] CR20:7077, 7114-15.

[45] CR31:11129, at 84:13-16.

[46] CR31:11131, at 93:18-22.

[47] CR31:11130, at 88:3-6.

because a majority of its members have voted to do so."[48] That neutral principle applies here.

"Quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken."[49] Defendants accepted benefits as a result of their promise to hold property in trust for the Church.[50] Now Defendants have changed positions. Because it is unconscionable for stewards to breach promises and take historic property, quasi-estoppel applies.

### B. Equitable estoppel.

Equitable estoppel prevents a party from benefitting from misrepresentations that induce an opposing party to change position to its detriment.[51] As Iker testified, he and other Defendants would not have received office or access to property and benefits but for their representations, now broken.[52] Plaintiffs relied on these representations, as Defendants intended.[53] Plaintiffs neither knew, nor had the means to know, that Defendants would break these promises. Accordingly, Defendants should be equitably estopped from taking the property.

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[48] 422 S.W.3d at 623 (Lehrmann, J., dissenting).

[49] *Lopez v. Munoz, Hockema & Reed*, 22 S.W.3d 857, 864 (Tex. 2000) (citation omitted).

[50] *See supra* Section III.

[51] *See Office of Attorney Gen. of Tex. v. Scholer*, 403 S.W.3d 859, 862 (Tex. 2013).

[52] *See* CR31:11069, at 39:2-24.

[53] *See* CR12:4589-90.

### C. Judicial estoppel.

"Judicial estoppel precludes a party who successfully maintains a position in one proceeding from afterwards adopting a clearly inconsistent position in another proceeding to obtain an unfair advantage."[54] The doctrine "prevent[s] parties from playing fast and loose with the judicial system for their own benefit."[55] As described above, Defendants have made numerous judicial statements regarding, *inter alia*, The Episcopal Church's structure and discipline, the inability of a constituent part to leave the Church with property, the manner in which one abandons communion with the Church, and the method by which Texas courts must determine the identity of religious entities.[56] The trial court erred by allowing Defendants to contradict these statements now.

## VII. Control of the Corporation is a red herring: either Plaintiffs control it or Defendants are in breach. (Issue 1(h))

None of the above grounds turns on who controls the Corporation.

Defendants have now admitted that, at most, the Corporation is a mere trustee. It holds only legal title and administers property in trust for the Diocese and Congregations. Thus, even if Defendants *did* have a right to control the Corporation, the Corporation would still be bound by its fiduciary duties as trustee to the Diocese and Congregations. Defendants concede any Corporation controlled

[54] *Ferguson v. Bldg. Materials Corp.*, 295 S.W.3d 642, 643 (Tex. 2009).

[55] *Id.*

[56] CR31:10962-63; *see also supra* Statement of Facts.

by them could not properly administer trusts for Plaintiffs. CR(3dSupp.)1:148, at 202:15-23. Any such Corporation would be in breach of its duties to Plaintiffs. The law remedies that scenario: if Defendants were to control the Corporation, then the Corporation should be removed as trustee of these trusts.[57]

Nonetheless, under basic Texas corporations law, the trial court erred by placing Defendants in control of the Corporation contrary to the Corporation's own bylaws.

### A. The trial court failed to apply even the 2006 corporate bylaws.

Below, Defendants conceded that even under their own alleged 2006 corporate bylaws, each director of the Corporation must be a member in good standing of a parish in the Diocese.[58]

The 2006 bylaws also provide that each director "shall hold office from the date of his election" until a successor is elected *or* "until his death, resignation, ***disqualification*** or removal."[59]

By December 5, 2008 or February 2009 at the latest, Defendants held no role in the Diocese. *See* Facts Section F and Sections I-II, *supra*.

At that point, even under the 2006 bylaws, Defendants were "disqualified"

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[57] *See* Tex. Prop. Code § 113.082(a).

[58] CR29:10113. The Diocesan Bishop serves *ex officio.* CR17:6079.

[59] CR17:6080 (emphasis added).

from the corporate board and ceased to "hold office."[60] No act of removal was necessary; the bylaws state that the terms of office end upon "disqualification ***or*** removal."[61]

The corporate board being vacant, Plaintiffs were the only parties qualified to fill those slots under the Corporation's bylaws. This Court has authority to recognize Plaintiffs' appointments or to appoint those qualified directors.[62]

### B. If Defendants *did* control the Corporation, the Corporation is disqualified as trustee.

As Defendants "concede, it would not work well for [the parties] – for [Plaintiffs] to own legal title for [Defendants] or vice versa."[63] Thus, if the Court finds that Defendants still control the Corporation, it should exercise its discretion to remove the Corporation as trustee over the Property "to prevent the trustee from engaging in further behavior that could potentially harm the trust,"[64] and also because hostility exists between the parties, which impedes the trustee's ability to effectively manage the trust property.[65]

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[60] *Id.*

[61] *Id.* (emphasis added). Defendants never enacted their "Corporate Bishop" procedure to fill the *ex officio* vacancy so it is irrelevant. CR(3dSupp.)1:196, at 163:18-164:15.

[62] *See Byerly v. Camey*, 161 S.W.2d 1105, 1111 (Tex. Civ. App.—Fort Worth 1942, writ ref'd w.o.m.); *see also* CR35:12524-28.

[63] RR10:52:2-6.

[64] *Ditta v. Conte*, 298 S.W.3d 187, 192 (Tex. 2009).

[65] *Barrientos v. Nava*, 94 S.W.3d 270, 288-89 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

## VIII. Defendants' other arguments fail. (Issues 1(a)-(k))

### A. Defendants' claims as to All Saints fail.

The trial court held separate summary judgment proceedings for All Saints' Episcopal Church (Fort Worth), one of the congregations where the majority wished to stay with the Church. But the court awarded All Saints' sanctuary and rectory to Defendants anyway. CR36:13028.

Under oath, Defendant "Diocese" conceded the relevant property is held in trust for Plaintiff All Saints:

> Q. Well, you're telling me, I take it, that you're – the Corporation is holding in trust for All Saints' the All Saints' real estate, aren't you?
>
> A. Yes.
>
> Q. Now, you understand All Saints', and you don't challenge it, stayed with The Episcopal Church; you remember that?
>
> A. Yes, the vestry did.[66]
>
> * * *
>
> Q. And – accordingly, you have no – no challenge to the legality of the action of the vestry of All Saints', do you?
>
> A. On what?
>
> Q. On any of the property issues we're here about.
>
> A. Well, I have no objection to their vote to remain in The Episcopal Church.

[66] CR(3dSupp.)1:74, at 236:25-237:7.

Q. [] So as for purposes of this lawsuit, you've always conceded that All Saints' Episcopal Church stayed with the national church and opted not to go with your diocese, true?

A. Yes.

Q. Okay. And that's still your position today?

A. Yes.[67]

* * *

Q. Okay. And again, you – you contend in this lawsuit that the Corporation really owns the legal title to it and is holding it for the benefit and use of All Saints' Church that en – that entity that we – whose vestry we discussed earlier?

A. Yes.[68]

* * *

Q. [L]egal title would be in the name of the Corporation, but it's holding it for the use and benefit of the All Saints' Church entity that was controlled by the vestry we talked about earlier.

A. Yes.[69]

Defendant "All Saints" admitted it is a new entity, formed in 2009.[70] It tried to backtrack on Defendant Diocese's testimony and claim instead that the trust was

[67] CR(3dSupp.)1:73, at 232:18-233:9; CR17:6210 (Vestry "legal representatives" of Parish for property matters); JA00495. Though not required, 82% of congregants supported the Vestry's decision. CR39:13636.

[68] CR(3dSupp.)1:79, at 254:13-18.

[69] CR(3dSupp.)1:78, at 253:10-15 (emphasis added).

[70] CR38:13519, at 52:12-19; CR38:13528, at 86:7-9.

not for the continuing All Saints, but for whatever entity was 'in union with' *Defendants*.[71] Faced with the actual trust instrument, however, Defendant had to concede: "Those words are -- are not there."[72] Finally, Defendants conceded they could not administer a trust for All Saints.[73]

Thus, for the reasons set forth in Sections I, II, and VII and for the specific testimony and evidence at CR38:13331-600, CR39:13627-790 and above, the All Saints property is in trust for Plaintiff All Saints.

The All Saints property is also in trust for the Church. The Dennis Canon, *see* Section III, *supra*, and All Saints' *own* governing documents recite an express trust over the property for the Church.[74] Defendants did not and cannot revoke that trust. And on top of that, the recorded deed for All Saints' sanctuary reads: "This Conveyance, however, is in trust for the use and benefit of the Protestant Episcopal Church, within the territorial limits of what is now known as the said Diocese of Dallas, in the State of Texas . . . ."[75] That trust was never revoked. *See* Section V, *supra*.

For all these reasons, the Court should reverse and render for Plaintiffs as to All Saints.

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[71] CR39:13794-98.

[72] CR38:13536, at 118:4-7.

[73] CR(3dSupp.)1:148, at 202:15-23.

[74] CR38:13455.

[75] CR38:13340.

### B. Defendants' adverse possession claims fail. (Issue 1(i))

Defendants theorize that they have really been squatting on this property since 1989 and own it by adverse possession.

In Texas, adverse possession statutes place periods of limitations within which "[a] person must bring suit to recover real property held ***by another***."[76] Yet, at least until 2008, the Diocese and Congregations "were part of The Episcopal Church."[77] The running of limitations against the Church could not have begun until an entity that was not "part and parcel" of the Church possessed the property.[78] This did not occur until at least November 15, 2008. Plaintiffs filed suit on April 15, 2009, well within even the shortest limitations period pleaded.

Moreover, "limitations do[] not accrue" against a party that, while having an ultimate interest in the property, "does not have a possessory interest that would allow him to institute a trespass to try title action seeking the ouster of the trespasser."[79] A possessor's mere "claim of ownership" over the property does not change this conclusion or trigger a cause of action.[80] Here, Plaintiffs had no right to seek Defendants' ouster until Defendants broke away from the Church but

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[76] Tex. Civ. Prac. & Rem. Code § 16.024 (three-year statute); *see also id.* § 16.025 (five-year); *id.* § 16.026 (10-year); § 16.028 (25-year).

[77] *See* CR(3dSupp.)1:30, at 60:12-16.

[78] *Minor v. St. John's Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893, 896 (Tex. Civ. App.—Galveston 1910, writ ref'd).

[79] *State v. Beeson*, 232 S.W.3d 265, 277 (Tex. App.—Eastland 2007, pet. dism'd).

[80] *See Perkins v. Perkins*, 166 S.W. 917, 917 (Tex. Civ. App.—Galveston 1914, writ ref'd).

refused to turn over the property.[81] Only then did a legal cause of action accrue. "Adverse possession, to ripen into title, must be such as would expose the possessor to some liability for what was done by him or under his authority during the limitation period."[82] Before Defendants left the Church and took property, their disputes were intra-church disputes over canons.

Finally, even "a single admission of title in another during the limitation period is fatal to a claimant's title by limitation."[83] In 1992, Defendants and their predecessors-in-office brought suit urging that the court return property to the Diocese from a runaway parish under the Dennis Canon. Diocesan, Corporation, and Congregational leaders stated in court filings that the Church's "national canons" created an "express trust" over property within the Diocese, enforceable by the civil court "even if [legal] title had been in [a breakaway faction]."[84] They relied expressly on the Dennis Canon, with a Diocesan leader averring to its text and attaching it as an exhibit.[85] Even if Defendants' 1989 local canon could have any adverse possession effect, these subsequent admissions, plus many others, *see* Section VI, *supra*, are "fatal to [Defendants'] title by limitation."[86]

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[81] CR12:4201 (no limitation on use "so long as" under Church rule).

[82] *Niendorff v. Wood,* 149 S.W.2d 161, 164 (Tex. Civ. App.—Amarillo 1941, writ ref'd).

[83] *Allen v. Sharp,* 233 S.W.2d 485, 488 (Tex. Civ. App.—Fort Worth 1950, writ ref'd).

[84] CR20:7129.

[85] CR20:7125.

[86] *Allen,* 233 S.W.2d at 488.

### C. Plaintiffs have standing. (Issue 1(j))

A party has standing so long as she "allege[s] an interest peculiar to [herself] and distinguishable from the public generally . . . ." *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984).

Plaintiffs have alleged such interests as (1) the displaced minority that formerly enjoyed use of property and as the only parties authorized by the Church to lead the Diocese; and (2) the Church that formed the Diocese and received a trust interest in the property. These interests cannot be alleged by the general public. Plaintiffs not only can but must bring their contingent claims for control of the entities and then to enforce those entities' rights in a single action. *See Getty Oil Co. v. Ins. Co. of N. Am.*, 845 S.W.2d 794, 798-79 (Tex. 1992). Defendants' standing arguments fail.

## IX. Trespass to Try Title (Issue 1(k))

Plaintiffs are entitled to recover possession of the property under trespass-to-try-title, having shown "a superior title out of a common source." *See Bacon v. Jordan*, 763 S.W.2d 395, 396-97 (Tex. 1988). The common source is undisputed. As shown particularly in Sections I (First Amendment), II (Associations Law), III and IV (Express Trust), V (Constructive Trust), and VI (Estoppel)—Plaintiffs have superior title to the property on numerous grounds, and Defendants' arguments fail. *See* Section VIII, *supra*.

## X. The Final Judgment was error. (Issues 1(a)-(k))

### A. The declarations, orders, and injunctions were error.

The Final Judgment's declarations, orders, and injunctions (CR39:14024-27) are error for all reasons stated in the Statement of Facts and Sections I-IX, including without limitation:

- Declaration 1 that neutral principles govern is unconstitutionally retroactive. *Masterson* rewrote the holding of *Brown* and acknowledged Texas courts applied *Brown* as a *Watson* case. *Masterson*, 422 S.W. 3d at 605. Applying neutral principles now to Church affairs settled decades ago, without "clearly enunciat[ing]" the doctrine before those affairs were settled, is unconstitutionally retroactive. *Jones*, 443 U.S. at 606 n.4; *see also* n.5, *supra*; CR30:10784-85. Plaintiffs prevailed under *Watson* but lost below under neutral principles as applied, demonstrating the harm of this retroactive switch.
- Declarations 2, 3, and 7 that Defendants hold legal and beneficial title to disputed property, funds, and endowments are error per Sections I-IX;
- Declarations 4-5 that Defendants are the properly elected Trustees and Chairman of the Corporation and the injunction against Plaintiffs

"holding themselves out as leaders of the. . .Corporation" are unconstitutional and error per Sections I-II and VII;

- Declaration 6 that "Defendants are the proper representatives of the Episcopal Diocese of Fort Worth" and the injunction against Plaintiffs "holding themselves out as leaders of the Diocese" are unconstitutional and error per Sections I-II;
- Declaration 8 that Plaintiffs have no express, implied, or constructive trust in the properties or funds is error per Sections I-IX;
- Declaration 9 that Defendants have not breached fiduciary duties or special relationships is error per Section V.

Since Plaintiffs should prevail, the orders that Defendants recover costs and that Plaintiffs recover nothing, cancel all *lis pendens*, and surrender property fail, too.

### B. Defendants cannot support the Judgment. (Issues 1(a)-(k))

The March 2, 2015 and June 10, 2015 orders and the Final Judgment were error because:

- The court's use of neutral principles is unconstitutionally retroactive and unconstitutional as applied. Section I; n.5, *supra*. Defendants urged Texas to "adopt" not *continue* neutral principles,[87] and sought

[87] Appellants' Brief at 9, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265).

application of secular law to *ecclesiastical* questions, CR:29:10103-06; CR:37:13277; Section I.E(ii), *supra*.

- Defendants have not carried their burden to show no genuine, material fact issue under Texas associations law. CR:29:10103-06. While there is no genuine issue underlying Plaintiffs' claims, *see* CR35:12467-73, Defendants' claims are contrary to the record, invented, and raise material fact issues, including as to the role of bishops, polity, the formation of the Diocese, and its accession to the Church. *See* CR35:12473-78; Section II, *supra*.
- Defendants have not carried their burden to show no express trusts exist in Plaintiffs' favor, CR:29:10128-37; CR:29:10153-55; CR:37:13282-84, either through the Dennis Canon or in the individual deeds. Sections III-IV, *supra*. The Court should render judgment for Plaintiffs; Defendants' strained claims of "qualified" accession (when the Diocese "fully" acceded) and The Episcopal Church meaning *them* fail legally but at minimum raise genuine, material fact issues.
- Defendants have not carried their burden against a constructive trust. CR:29:10137-53; CR:37:13284. Defendants claim that courts may apply neutral principles to who *is* the Diocese but not to whether Defendants honored commitments to property rules. CR:32:11537.

While there is no genuine dispute as to Plaintiffs' entitlement to a constructive trust, Defendants' claims are unsupported in the record and genuinely, materially disputed. *See* CR35:12471-73; Section V *supra*.

- Estoppel bars Defendants' claims per Section VI; CR:29:10155-56; CR:37:13285. Or at least there are fact issues. *See* Sections II-VI, *supra*.
- The Corporation does not "own" the property, CR:29:10106-10; CR:37:13278-80; it holds bare legal title, with beneficial title vested in Plaintiffs. Section VII, *supra*. Any Defendant-controlled Corporation would admittedly be in breach of fiduciary duty as Plaintiffs' trustee and must be removed. CR:29:10111-27; CR:37:13281. While Plaintiffs' facts are undisputed as to corporate control, there are material, genuine disputes as to Defendants' fact claims (*e.g.*, Defendants rely on their "Corporate Bishop" theory but admit under oath their "Corporation" never executed that procedure). *Id.*
- Defendants cannot use adverse possession per Section VIII. While Plaintiffs' facts are plain on the record, Defendants' grounds present material, genuine fact issues, such as when they first became

"another" entity not part of the Church (which their own testimony shows was not until November 2008). CR:29:10129-30.

## PRAYER

Plaintiffs pray that the Court reverse the trial court's Final Judgment (and orders) and render judgment for Plaintiffs, issuing the declarations, injunctions, and orders prayed for below, *see* CR30:10895-99; CR39:13753-65, 13788, and for such other and further relief to which Plaintiffs may be justly entitled. The case should be remanded for the sole purpose of determining the amount of attorneys' fees, costs, and expenses to which Plaintiffs are entitled. Alternatively, the Court should reverse and remand for further proceedings.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Tex. R. App. P. 9.4(i)(3), the undersigned hereby certifies that this Brief of Appellants complies with the applicable word count limitation because it contains 14,994 words, excluding the parts exempted by Tex. R. App. P. 9.4(i)(1). In making this certification, the undersigned has relied on the word-count function in Microsoft Word 2010, which was used to prepare the Brief of Appellants.

/s/ *Thomas S. Leatherbury*
Thomas S. Leatherbury

## CERTIFICATE OF SERVICE

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

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## APPENDIX INDEX

# Exhibit A

**NO. 141-252083-11**

| | | |
|---|---|---|
| **THE EPISCOPAL CHURCH, et al.** | § | **IN THE DISTRICT COURT** |
| | § | |
| **v.** | § | **TARRANT COUNTY, TEXAS** |
| | § | |
| **FRANKLIN SALAZAR, et al.** | § | **141ST JUDICIAL DISTRICT** |

## FINAL JUDGMENT

This Final Judgment merges and supersedes the Court's orders of March 2, 2015, and June 10, 2015. In accordance with those orders, and having considered all the parties' pleadings, motions, responses, replies, evidence on file, governing law, and arguments of counsel, the Court issues this Final Judgment.

The Court hereby **ORDERS** that Defendants' Second Motion for Partial Summary Judgment filed December 1, 2014, is **GRANTED** except with respect to claims relating to All Saints Episcopal Church (Fort Worth), and Plaintiffs' Motion for Partial Summary Judgment filed December 1, 2014, is **DENIED**.

The Court further **ORDERS** that Defendants' Third Motion for Partial Summary Judgment Relating to All Saints Episcopal Church filed May 6, 2015, is **GRANTED**, and Plaintiffs' Supplemental Motion for Partial Summary Judgment on Claims Relating to All Saints' Episcopal Church filed May 6, 2015, is **DENIED**.

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Weaver, Lyser, Brister, Leatherbury, Sharp

COURT'S MINUTES
TRANSACTION# 1033

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E-MAILED + mailed
07/27/15
SR

7. The Defendants hold legal title and control of the funds and endowments listed on Exhibit 2 attached to this Order, subject to the terms of each.

8. Plaintiffs have no express, implied, or constructive trust in the properties or funds listed in the Exhibits attached to this Order.

9. Defendants have not breached any fiduciary duty to or special relationship with any Plaintiffs.

The Court further **ORDERS** that the following listed claims and defenses remain pending in Cause No. 141-237105-09, and to the extent they are also pending in this cause are hereby **DISMISSED WITHOUT PREJUDICE** and preserved for litigation in Cause No. 141-237105-09: claims for attorneys' fees in both causes, Conversion, Texas Business & Commercial Code § 16.29, damages for Breach of Fiduciary Duty (as opposed to as a predicate of constructive trust), Action to Quiet Title, and for an Accounting.

The Court further **ORDERS** that Plaintiffs take nothing, and that Defendants recover costs of court in this cause.

The Court further **ORDERS** that Plaintiffs are to cancel all *lis pendens* filed as to properties listed on Exhibits 1 and 2, and surrender possession thereof, to the Defendants 30 days after this Judgment becomes final.

The Court further issues a **DECLARATORY JUDGMENT** pursuant to Texas Civil Practice and Remedies Code §§ 37.001, *et seq.*, declaring that:

1. Neutral principles of Texas law govern this case, and applying such law is not unconstitutionally retroactive;

2. The Corporation of the Episcopal Diocese of Fort Worth and Defendant Congregations hold legal title to all the properties listed on Exhibit 1 attached to this Order, subject to control by the Corporation pursuant to the Diocese's charters.

3. The Episcopal Diocese of Fort Worth and the Defendant Congregations in union with that Diocese hold beneficial title to all the properties listed on Exhibit 1 attached to this Order.

4. Defendants Dr. Franklin Salazar, Jo Ann Patton, Walter Virden, III, Rod Barber, and Chad Bates are, and have been since 2005, the properly elected Trustees of the Corporation for the Episcopal Diocese of Fort Worth.

5. Defendant Jack Iker is, and has been since 2005, the proper Chairman of the board and one of the Trustees of the Corporation for the Episcopal Diocese of Fort Worth.

6. Defendants are the proper representatives of the Episcopal Diocese of Fort Worth, the Texas unincorporated association formed in 1982.

The Court further **ORDERS** the Plaintiffs to desist from holding themselves out as leaders of the Diocese or the Corporation when this Order becomes final and appealable.

All relief not expressly granted herein is denied. This judgment disposes of all parties and claims in the above-referenced case, and is a final and appealable judgment.

Signed this 24 day of July, 2015.

Judge Presiding

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 1 | 6.0 acre tract out of Block 2, Irrigation Subdivision, John A. Scott Survey No. 7, Abstract 297, and the O.H.P. Davis Survey, Abstract 65, Wichita County, Texas | Bishop C. Avery Mason | *JA00876-JA00877* |
| 2 | A part of Survey No. 16 for 640 acres patented to John A. Scott, Assignee, on March 21st, 1855, and being the East 70 feet of Lots (9) and (10) in Block No. One Hundred Ninety (190), in the town of Wichita Falls, in Wichita County, as shown by the recorded map or plat thereof | Bishop Alexander C. Garret | *JA00890-JA00892* |
| 3 | The West Fifty (50) feet of Lots Nos. 1 and 2, and the West Fifty (50) feet of the North Ten (10) feet of Lot No. 3, in Block No. 190 of the original Town of Wichita Falls, Texas, and being the same property described in a deed from John M. Barnard, et al, to K.W.. Anderson, et al, dated August 15, 1947, and recorded in Volume 463; page 163 of the Deed Records of Wichita County, Texas | Bishop C. Avery Mason | *JA00896-JA00897* |
| 4 | The North Forty (40) feet of Lot No. 7 and the south ten (10) feet of Lot No. 8, in Block No. 190 in the original city of Wichita Falls, Texas according to the plat thereof of record in the Deed records of Wichita County, Texas | Bishop C. Avery Mason | *JA00901-JA00902* |
| 5 | The North ninety-five (95) feet of Lots Nos. four (4), five (5) and six (6), Block No. thirteen (13), East Breckenridge Addition to the City of Breckenridge, a plat of said Addition being on file in the office of the Stephens County Clerk | Bishop C. Avery Mason | *JA00908-JA00910* |
| 6 | Lot 12, Block 215, Dalworth Park Addition to the City of Grand Prairie, Dallas County, Texas, commonly known as 734 College St. College St., Grand Prairie, Texas, according to the plat thereof as recorded in Volume 1, Pages 546 and 547 of the Map Records of Dallas County, Texas | Bishop A. Donald Davies | *JA00953-JA00956* |
| 7 | Part of Block Number Thirty-Two (32) of the Wiggins Addition to the City of Mineral Wells, Palo Pinto, Texas; being the same property described in the Deed from Betty J. Wall, et vir, to Tom A. Whitley, dated March 29, 1972; recorded in Vol. 406, Page 218 of the Deed Records of Palo Pinto County, Texas | Bishop & trustees of St. Luke's | *JA00991-JA00993* |
| 8 | Being a 0.687 Acre tract of land in T E & L Co Survey No 2856, A-784, Montague County, Texas, and being a part of a 170 acre tract described in deed from Lancaster Ould to J.C. Baccus recorded in Vol. R. Page 411, Deed Records, Montague County, Texas | Bishop A. Donald Davies | *JA00999-JA001001* |
| 9 | Out of the M.E. Chuck survey of 640 acres and a part of Lots 5, 6, 7 and 8 of Block 11 Lindsay's Addition to the City of Gainesville | Bishop Alexander C. Garret | *JA01021-JA01024* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 10 | Three tracts of land situated in Block 21, Denton County School Lands, Wichita County, Texas, and containing 4.6 acres, more or less. TRACT NO. 1: Being the Northwest corner of Lot 1, Block 1, Section E-1, University Park Addition to the City of Wichital Falls, Texas. TRACT NO. 2: Being located southerly along said East right-of-way line 259.00 feet from the South right-of-way line of Lindale Drive, said point also being the Northwest corner of the above described tract. TRACT NO. 3: Beginning at the point of intersection of the southwesterly right-of-way line of Lindale Drive with Northwest boundary of Section T-1, University Park Addition to the City of Wichita Falls, Texas | Bishop C. Avery Mason | *JA01040-JA01046* |
| 11 | Being a part of Ambrose Crain Survey, Abstract No. 83 | Bishop C. Avery Mason | *JA01072-JA01073* |
| 12 | Part of Lot Number 3, in Block Number 8 of the Original Town of Weatherford | Bishop Harry T. Moore | *JA01074-JA01076* |
| 13 | All of Block 14, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 63, Page 21, Deed Records, Tarrant County, Texas | Bishop C. Avery Mason | *JA01103-JA01105* |
| 14 | Lots 6, 7, 8, the West 15 feet of Lot 5 and the East 20 feet of Lot 9, Block 26, Chamberlin Arlington Heights First Filing, and Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 63, Page 21, Deed Records, Tarrant County, Texas | Bishop C. Avery Mason | *JA01116-JA01120* |
| 15 | Being a tract of land out of the John McCoy Survey, Abstract No. 381, Hood County, Texas, a portion of the tract of land described in the deed, to J.R. Hopkins and wife, Mary Alice Hopkins, recorded on Page 497 in Volume 105 of the Deed Records of Hood County, Texas | Bishop A. Donald Davies | *JA01205-JA01208* |
| 16 | Being all that certain tract or lot of land, lying and situated in the City of Cleburne, Johnson County, Texas being Lots Number One (1) and Three (3) in Block Nineteen (19), the same being the lots conveyed by O.J., J.A. and O.P. Arnold to Mrs. M.A. McNeece by deed dated February 11, 1892 of record in Volume 47, Page 541, Johnson County Record of deeds | Bishop Alexander C. Garret | *JA01219-JA01220* |
| 17 | Lot No. Two (2) in Block No. Eleven (11) of the Airport Addition to the City of Graham, Young County, Texas | Bishop C. Avery Mason | *JA01235-JA01236* |
| 18 | FIRST TRACT: Being all of Lot No. 1 in Block No. 11 of the Airport Addition to the City of Graham, Texas SECOND TRACT: Being 1.2 acre, more or less, out of the B.F. Dudney Survey, Abstract No. 1406, and the William McLeoud Survey, Abstract No. 1481, Young County, Texas | Bishop C. Avery Mason | *JA01240-JA01243* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 19 | The South Eighty (80) Feet of Lots Nos. Fifteen (15) and Sixteen (16), Block G/2 of the Nellie Connelle Addition or Sub-division of the said City of Eastland, Eastland County, Texas. | Bishop C. Avery Mason | *JA01247-JA01249* |
| 20 | THE SURFACE ONLY of Lots 4, 5 and 6 in Block 12 of the East Breckenridge Addition to the City of Breckenridge, SAVE AND EXCEPT the following described tracts which are expressly excepted herefrom and reserved unto prior grantors, to-wit: The North 72 feet of said Lots 5 and 6 and the East 5 feet of the North 72 feet of said Lot 4; and being the same land conveyed to Grantor herein by Special Warranty Deed dated October 24, 1963 and recorded in Volume 329, Page 92, of the Stephens County Deed Records | Bishop C. Avery Mason | *JA01285-JA01287* |
| 21 | Lot "B" in Block Forty-One (41) of South Hills, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-12, Page 57, of the Plat Records of Tarrant County, Texas | Bishop C. Avery Mason | *JA01461-JA01463* |
| 22 | 4.304 acres of land situated in the Henry McGehee Survey, Abstract Number 998, Tarrant County, Texas, and being a portion of that certain parcel of land conveyed by deed to Mansfield-Walnut Creek Development Corporation, as recorded in Volume 5975, Page 466, Tarrant County Deed Records, and also being that same tract of land conveyed to A. DONALD DAVIES, BISHOP OF THE DIOCESE OF DALLAS OF THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA AND HIS SUCCESSORS IN OFFICE, IN TRUST, as recorded in Volume 6517, Page 759, of the Deed Records of Tarrant County, Texas, said tract of land having since been platted and now know as: Lot 9, Block 20 of Walnut Creek Valley, and Addition to the City of Mansfield, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-125, Page 89, Plat Records, Tarrant County, Texas | Bishop A. Donald Davies | *JA01577-JA01580* |
| 23 | 1.50 acres of land out of the C. Winters Survey, Abstract 322, Wichita County, Texas | Bishop C. Avery Mason | *JA01600-JA01601* |
| 24 | Being a tract of land out of the C. Winters Survey, Abstract 322 | Bishop C. Avery Mason | *JA01602-JA01606* |
| 25 | Lot 1, Block 17, Z. BOAZ COUNTRY PLACE, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 204 Page 93, Plat Records, Tarrant County, Texas | Bishop C. Avery Mason | *JA01668-JA01669* |
| 26 | Lot No. (3) Three of Block No. (8) Eight of the original or first Division of the Town of Hamilton, as shown by the plot of said Town. Together with all and singular the rights, members, hereditaments and appurtenances to the same belonging or in anywise incident or appertaining | Bishop Alexander C. Garret | *JA01673-JA01676* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 27 | A 5.32 acre tract of land situated in the Robert Always Survey, Abstract No. 4, Hood County, Texas and commonly known as Camp Crucis, 2100 Loop 567, Granbury, Texas | Bishop C. Avery Mason | *JA01753-JA01759* |
| 28 | A 154.383 acre tract of land situated in the Robert Always Survey, Abstract No. 4, Hood County, Texas and commonly known as Camp Crucis, 2100 Loop 567, Granbury, Texas | Bishop C. Avery Mason | *JA01768-JA01770* |
| 29 | A part of Survey No. 16 for 640 acres patented to John A. Scott, Assignee, on March 21st 1855, and being Eighty feet off of the Southwest end of Lots No. Nine (9) and Ten (10) in Block No. One Hundred and Ninety (190) in the town of Wichita Falls, in said County being the same property conveyed to me J.C. Zeigler and wife on January 23rd 1913, by deed recorded in Vol. 63, Page 609 of the Deed Records of Wichita County | Bishop Alexander C. Garret | *JA01873-JA01876* |
| 30 | Seventeen and one-half (17 1/2') feet off of the West side of Lot No. Two (2) and all of Lots No.Three (3) and Four (4) in Block No. Twelve (12) of the Onstott Addition to the town of Hubbard City, Hill County, Texas | Bishop Harry T. Moore | *JA01894-JA01897* |
| 31 | Block D, COLLEGE HILLS ADDITION BLOCKS C & D, being a Revision of a Portion of Block A, Block B, and Abandoned Portion of University Drive, an Addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-195, Page 34, as amended by plat recorded in Volume 388-211, Page 8, Plat Records of Tarrant County, Texas, said Block D being comprised of all of the following tracts of land: TRACT 1: Block "B" COLLEGE HILLS ADDITION, an Addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-C, Page 182, Plat Records, Tarrant County, Texas as conveyed by C.H. Wilemon, Jr. to C. Avery Mason, as Bishop of the Protestant Episcopal Church, for the Diocese of Dallas, in the State of Texas, his successors in office and assigns, recorded in Volume 2264, Page 600, Deed Records, Tarrant County, Texas Tract 2: Part of Block "A", COLLEGE HILLS ADDITION, an Addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-C, Page 182, Plat Records, Tarrant County, Texas, as conveyed by C.H. Wilemon, C.H. Wilemon, Jr., and Stewart W. DeVore to C. Avery Mason, as Bishop of the Protestant Episcopal Church for the Diocese of Dallas, in the State of Texas, his successors in office and assigns, recorded in Volume 2692, Page 441, Deed Records, Tarrant County, Texas | Bishop C. Avery Mason | *JA01902-JA01904* |
| 32 | Being part of Block "A" of COLLEGE HILLS ADDITION to the City of Arlington, Tarrant County, Texas | Bishop C. Avery Mason | *JA01906-JA01908* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 33 | All of Lots One (1), Two(2), and Three (3), in Block Twelve (12), East Breckenridge Addition to the City of Breckenridge. Stephens County, Texas | Bishop C. Avery Mason | *JA01994-JA01995* |
| 34 | Being a part of Block 4, Hirshfield's Addition, to the City of Fort Worth | Bishop Harry T. Moore | *JA02031-JA02033* |
| 35 | The North 56 1/2 feet, Lot 6, Block 4, Hirschfield Addition to the City of Fort Worth, Tarrant County, Texas | Bishop C. Avery Mason | *JA02034-JA02044* |
| 36 | A tract or parcel of land out of the C. Brown Survey, Abstract #157, situated in Tarrant County, Texas, and more particularly the same tract of Land conveyed by Fort Worth National Bank, Trustee, to C. Avery Mason, Bishop of the Diocese of Dallas of the Protestant Episcopal Church in the United States of America, as recorded in Volume 3815, Page 647, Deed Records, Tarrant County, Texas, legal description in said deed being later corrected by Correction Warranty Deed recorded in Volume 7067, Page 1864, Deed Records of Tarrant County, Texas | Bishop C. Avery Mason | *JA02107-JA02111* |
| 37 | Being a 3.938 acre tract or parcel of land, more or less, out of the N.H. CARROLL SURVEY situated in Tarrant County, Texas and being more particularly the south part of a tract known as Tract 25 as recorded in Vol. 2823, Page 387; the south part of a tract known as Tract 24 as recorded in Vol. 2598, Page 103; the south part of a tract known as Tract 24 as recorded in Vol. 2598, Page 103; the south part of a tract known as Tract 23 as recorded in Vol. 2196, Page 374, all in the Deed Records of Tarrant County, Texas, said part of the three Tracts being described as one by metes and bounds in Deed Recorded as Volume 3901, Page 525, Deed Records, Tarrant County, Texas. Said tract being platted into Lots 23B, 24B and 25B, SAINT ELIZABETH'S SUBDIVISION, an addition to the City of River Oaks, Tarrant County, Texas according to the plat recorded in Volume 388-28, Page 33, Plat Records, Tarrant County, Texas | Bishop C. Avery Mason | *JA02115-JA02117* |
| 38 | Being the East 100 feet of Lots I and 2, in Block 4; and being a portion of lots 1 and 2 in Block 4 of the R. M. Page Addition to the City of Fort Worth, Tarrant County, Texas | Bishop Harry T. Moore | *JA02123-JA02124* |
| 39 | Parts of Lots No. 4 and 5 in Block 4 of R. M. Page's Addition to the City of Fort Worth in Tarrant County, Texas, according to his Second Revised Plat, which plat is of record in Vol. 63, Page 142 of the Plat Records of Tarrant County | Bishop C. Avery Mason | *JA02126-JA02127* |
| 40 | Lot No. 5, in Block No. 8, Ryan Place Addition, to the City of Fort Worth, Tarrant County, Texas, according to plat recorded in Volume 310, Page 80, Deed Records of Tarrant County, Texas | Bishop C. Avery Mason | *JA02163-JA02165* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 41 | Lot Eighteen (18), NORTHWOODS ADDITION (Replat) to the City of Mineral Wells, Texas as shown by the Plat of record in Volume 2, Page 109, Plat Records of Palo Pinto County, Texas; | Bishop A. Donald Davies | *JA02201-JA02210* |
| 42 | Lots 1, 2, 3, 17, 18 and 19, in Block No. 1 of Meadowbrook Addition to the City of Fort Worth, in Tarrant County, Texas, according to the recorded plat thereof of record in Volume 1944, Pages 43-44 of the Plat Records of Tarrant County, Texas, and subject to the easements and building lines shown in said plat. Being Replatted into Tract A, Block 1 Meadowbrook Addition to the City of Fort Worth, Tarrant County, Texas, according to the recorded plat in Volume 388-16, Page 261 of the Plat Records of Tarrant County, Texas | Bishop C. Avery Mason | *JA02254-JA02256* |
| 43 | BEING a 4.837 acre tract of land and a part of the JAMES HYDEN SURVEY, Abstract No.712, Tarrant County, Texas, and part of a 46.36 acre tract described in deed to J.J. Randol by Jane Sutton, of record in Volume 2718, Page 216, Deed Records of Tarrant County, Texas. Said 4.837 acres later platted into Lot 1, Block A, ST. MARK'S ADDITION, an addition to the City of Arlington, Tarrant County, Texas according to the plat thereof recorded in Volume 388-82, Page 50, Plat Records, Tarrant County, Texas | Bishop C. Avery Mason | *JA02283-JA02284* |
| 44 | Lots Sixteen (16) and Seventeen (17), in Block Seventeen (17) of RICHLAND HILLS, THIRD FILING an addition to the City of Fort Worth, Tarrant County, Texas, (now to Richland Hills) according to plat records in Book 1846, Page 539, Deed Records of Tarrant County, Texas | Bishop C. Avery Mason | *JA02325-JA02326* |
| 45 | Being a 4.784 acre tract of land out of the S. D. Kelly Survey, Abstract No. 916, and Lot 13, S. D. KELLY ADDITION, an Addition to the City of Arlington, Tarrant County, Texas said tract of land being more fully described in Warranty Deed in Volume 7231, Page 1009, Deed Records of Tarrant County, Texas, said 4.784 acre tract having since been replatted and is now know as: Lot 13, S.D. KELLY ADDITION, an addition to the City of Arlington, Tarrant County, Texas, according to the plat recorded in Volume 388-154, Page 55, Plat Records, Tarrant County, Texas | Bishop A. Donald Davies | *JA02330-JA02331* |
| 46 | LOT 22 in Block 29, Rosedale Park No. 2, an addition to the City of Fort Worth, Tarrant County, Texas, same being a replat of Block 15, 21, 22, 27, 28 and 29, and parts of Blocks 14, 20 and 26 of Rosedale Park No. 2, according to the plat thereof recorded in Volume 388-V, Page 1, Plat Records, Tarrant County, Texas | Bishop A. Donald Davies | *JA02344-JA02346* |
| 47 | LOTS 20 and 21, Rosedale Park No. 2, an addition to the City of Fort Worth, Tarrant County, Texas | Bishop A. Donald Davies | *JA02347-JA02354* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 48 | Being a portion of Stalcup Road right-of-way to be closed, adjacent to Lot 22, Block 29, ROSEDALE PARK NO. 2, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the Plat thereof recorded in Volume 388-V, Page 1 of the Plat Records of said Tarrant County | Bishop A. Donald Davies | *JA02358-JA02361* |
| 49 | Lot 2, St. Stephens Subdivision of Wichita Falls, Wichita County, Texas, commonly known as 5023 Lindale, Wichita Falls, Texas 76310. Being a portion of the Final Plat recorded in Volume 22, Page 145-146, Plat Records of Wichita County, Texas, dated September 16, 1974 | Bishop C. Avery Mason | *JA02365-JA02370* |
| 50 | Being a part of Lot 6, Block 2, Trueland Addition to the City of Fort Worth, Tarrant County, Texas, and being more particularly described by metes and bounds found in Volume 3932, Page 232, Deed Records, Tarrant County, Texas ; Said portion of Lot 6, is combined with Lot 3, Block 2, TRUELAND ADDITION, and platted into Lot 3R, Block 2, TRUELAND ADDITION, an addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-93, Page 971, Plat Records, Tarrant County, Texas | Bishop C. Avery Mason | *JA02383-JA02399* |
| 51 | Part of Lots 4 and 5, in Block 2, TRUELAND ADDITION, an Addition to the City of Fort Worth, Tarrant County, Texas, being that land shown in deed dated August 11, 1977, in Book 6324, Page 629, Deed Records of Tarrant County, Texas from Edward Joyce to Ruth L. Joyce, as her sole and separate property | Bishop A. Donald Davies | *JA02390-JA02391* |
| 52 | Lot 3, Block 2, TRUELAND ADDITION, and A part of Lot 6, Block 2, TRUELAND ADDITION, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 348, Page 587, Plat Records, Tarrant County, Texas. BOTH OF THE ABOVE mentioned tracts of land were replatted in 1976 and are now known as: Lot 3R, Block 2, TRUELAND ADDITION, an Addition to the City of Fort Worth, Tarrant County, Texas | Bishop C. Avery Mason | *JA02395-JA2397* |
| 53 | 3.791 Acres of the H H Hall Survey 49, Abstract 400, in Brown County, Texas, commonly known as 1800 Good Shepherd Dr., Brownwood, Texas 76801 | Bishop C. Avery Mason | *JA02484-JA02485* |
| 54 | Being all of lots 1, 2, and 4, the East one-half (1/2)of lot 3, and the East one-half (1/2) of Lot 6, all in Block 4, Slaughter & Barber West Addition to the City of Mineral Wells, Palo Pinto County, Texas | Bishop Harry T. Moore | *JA02489-JA02491* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 55 | Being part of Block Four, Slaughter & Barbar's West Addition, to the City of Mineral Wells, Palo Pinto County, Texas; according to plat recorded in Volume "I", Page 450, of the Deed Records of Palo Pinto County, Texas; being part of a certain tract described in Volume 485, Page 490, of the Deed Records of Palo Pinto County, Texas | Bishop A. Donald Davies | *JA02499-JA02502* |
| 56 | All that certain lot and parcel of land situated in the City of Gainesville, Cooke County, Texas, being part of Lots No. Five (5) and Six (6) in Block No. Thirty-one (31) of Lindsay's Addition to the said City of Gainesville, Texas | Bishop C. Avery Mason | *JA02506-JA02507* |
| 57 | Being the South 30 feet of Lots 11 through 15 inclusive, all in Block "D", East Breckenridge Addition to the City of Breckenridge, Stephens County, Texas | Wardens and Vestry of St. Andrew's Episcopal Church, Breckenridge | *JA00920-JA00921* |
| 58 | A part of Block 2 of June Smith Addition in Fort Worth in Tarrant County, Texas, and embracing the tract conveyed to Aardvark Oil Company by a deed recorded in Volume 3230, Page 249 of the Deed Records of Tarrant County, Texas | Rector, Wardens, and Vestry of St. Andrew's Episcopal Church, Fort Worth | *JA01301-JA01306* |
| 59 | That tract or parcel of land out of Block 2, Junius W. Smith Addition to the City of Fort Worth, Tarrant County, Texas, known also as June Smith Addition | Rector, Wardens, and Vestry of St. Andrew's Episcopal Church, Fort Worth | *JA01310-JA01313* |
| 60 | Lots 9 and 10, Block 10, of RIDGLEA ADDITION, an Addition to the City of Fort Worth, Tarrant County, Texas, according to map or plat thereof recorded in Volume 1321, Page 273, of the Plat Records of Tarrant County, Texas | Trustee of 1985 Permanent Fund, St. Andrew's Episcopal Church, Fort Worth | *JA01317-JA01319* |
| 61 | Lot No. Four (4) in Block No. Four (4) of Hirshfield Addition to the City of Fort Worth, Tarrant County, Texas | St. Andrew's Parish Episcopal, Fort Worth | *JA01732-JA01733* |
| 62 | Seven (7) tracts, being 144.081 acres more or less, located in the MEP and PRR Co. Survey, Abstract No.937 and the HR Moss Survey, Abstract No. 888, Parker County, Texas | All Saints' Episcopal Church, Weatherford, Texas | *JA01868-JA01869* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 63 | All of Block 4 of HIRSHFIELD ADDITION, an Addition to the City of Fort Worth, Tarrant County, Texas. Said Block 4 of HIRSHFIELD ADDITION, is revised and platted in to Block 4R, HIRSHFIELD ADDITION, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-207, Page 1, Plat Records, Tarrant County, Texas | St. Andrew's Episcopal Church of Fort Worth, Texas | *JA02026-JA02027* |
| 64 | The north fifty-six and one-half feet of lot six in block four of Hirschfield Addition to the City of Fort Worth, Tarrant County, Texas | Rector and Wardens of St. Andrew's Parish, Fort Worth, Texas | *JA02039-JA02040* |
| 65 | Lot 1, Block 4, Hirschfield Addition to the City of Fort Worth, Tarrant County, Texas | Rector, Wardens and Vestry of St. Andrew's Episcopal Church, Fort Worth, Texas | *JA02049-JA02077* |
| 66 | Being the North one-half of Lot 2, Block 4, Hirschfield Addition, to the City of Fort Worth, Tarrant County, Texas | Rector, Wardens and Vestry, St. Andrew's Episcopal Church, Fort Worth | *JA02079-JA02095* |
| 67 | Lot 8, Block 4, Hirshfield (Hirschfield) Addition, to the City of Fort Worth, Tarrant County, Texas,, as described in the deed to Allright Properties, Inc. recorded in Volume 6959, Page 251 of the Tarrant County Deed Records | Rector, Wardens and Vestry, St. Andrew's Episcopal Church, Fort Worth | *JA02096-JA02099* |
| 68 | Being the South 101.5 feet of Lot 3, Block 4, Hirshfield Addition, to the City of Fort Worth, Tarrant County, Texas | Rector, Wardens and Vestry, St. Andrew's Episcopal Church, Fort Worth | *JA02100-JA02103* |
| 69 | Lot 1-A, Block 11, GLEN GARDEN ADDITION, First Filing, to the City of Fort Worth, Tarrant County, Texas, according to the Plat recorded in Volume 388-F, Page 395, Plat Records, Tarrant County, Texas | St. Timothy's Episcopal Church | *JA02405-JA02407* |
| 70 | Lot 12, Block 12, Hillcrest Addition to the City of Fort Worth, Tarrant County, Texas | Permanent Fund of St. Andrew's Episcopal Church | |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 71 | Surface of Lot 5, Block 6, Waldon Estate, an addition to the City of Breckenridge in Stephens County, Texas as shown on the amended map or plat of said addition of record in the office of the County Clerk of Stephens County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA00914-JA00916* |
| 72 | Being LOT 11 in the Block 215 of DALWORTH PARK ADDITION, an addition to the City of Grand Prairie, Dallas County, Texas according to the map thereof recorded in Volume 1, Page 546 of the Map Records of Dallas County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA00925-JA00928* |
| 73 | Being Lots 13 and 14 in Block 215 of DALWORTH PARK ADDITION, an addition to the City of Grand Prairie, Dallas County, Texas according to the map thereof recorded in Volume 1, Page 546 of the Map Records of Dallas County, Texas. Commonly known as: 726 & 730 College Street Grand Prairie, Texas 75050 | Corporation of Episcopal Diocese of Fort Worth | *JA00932-JA00936* |
| 74 | Being Lot 20 in Block 214, of DALWORTH PARK ADDITION, an addition to the City of Grand Prairie, Dallas County, Texas according to the map thereof recorded in Volume 1, Page 546 of the Map Records of Dallas County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA00940-JA00943* |
| 75 | Lot 1A, Block 5, PARKVIEW PHASE 1B, an Addition to the City of Grand Prairie, Dallas County, Texas, according to Map or Plat recorded in Document No. 200600141936, Map Records, Dallas County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA00947-JA00949* |
| 76 | Being a tract or parcel of land situated in the City of Grand Prairie, Dallas County, Texas, and being part of the Thomas J. Tone Survey, Abstract Number 1460; and being part of that tract of land described as Tract "B" conveyed to G.P. Investment Partners, Ltd. by Deed recorded in Volume 83212, Page 1680, Deed Records, Dallas County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA00960-JA00981* |
| 77 | Being all of Lot 1, Subdivision "F", in Block 32 of the Wiggins Addition to the City of Mineral Wells, Palo Pinto County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA00985-JA00987* |
| 78 | Being a part of Lots 5 and 8 in Block 11 of the Lindsay Addition, City of Gainesville, Cooke County, Texas, being the same lot conveyed by D.L. Monroe, et ux to Leo E. Swick by deed recorded in Volume 358, Page 23 of the Cooke County Deed Records | Corporation of Episcopal Diocese of Fort Worth | *JA01005-JA01006* |
| 79 | Being Part of Lot Eight (8) of Block Eleven (11) of the Lindsay Addition, to the City of Gainesville, Cooke County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01010-JA01011* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 80 | All that certain tract or parcel of land situated in Lots 3, 4, 5 and 8, Block 11, Lindsay Addition to the City of Gainesville, Cooke County, Texas; said tract being the tracts described in deed from Thos. C. Schneider to R.D. Clack as recorded in Volume 468, page 23 of the Deed Records of Cooke County, Texas and a tract from Leo Ansley et al to R.D. Clack as shown by Deed recorded in Volume 469, Page 82 of the Deed Records of Cooke County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01015-JA01017* |
| 81 | Being 1. 0 acre out of the A. J. Smith Survey, Abst. 393, and being a part of a tract of land purchased by the Authority from Mrs. Hugh G. Thomas, recorded in Vol. 182, page 142, deed records of Palo Pinto Count, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01028-JA01036* |
| 82 | Part of Lots 2, 3, 6, 7 and 8 Block 34 of the Original Townsite of the City of Jacksboro and a tract of land 20.6 feet by 33.1 feet out of the J.W. Buckner Survey, Abstract No. 34, Jack County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01064-JA01068* |
| 83 | All that certain lot, tract or parcel of land lying and being situated in Parker County, Texas and being a part of Lot 4, Block No. 8, of the Original Town of Weatherford, in Parker County, Texas and being a part of Lot 4, Block No.8, of the Original Town of Weatherford, in Parker County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01124-JA01142* |
| 84 | Lot 5 in Block 1 of WALNUT CREEK, a subdivision of Hood County, Texas, according to the plat thereof recorded in Slide A-297-B of the Plat Records of Hood County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01189-JA01193* |
| 85 | Lot 6, Block 1, WALNUT CREEK SUBDIVISION ADDITION, City of Acton, Hood County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01197-JA01201* |
| 86 | Being Lots 2 and 4, Block 19, City of Cleburne, Johnson County, Texas, according to the Plat recorded in Volume 197, Page 639, Deed Records, Johnson County, texas, being the same property and all of the following three tracts of land, R.M. Shiflet, Jr., et ux to Doctors Clinic, Inc. by deed dated November 4, 1959 and recorded in Volume 431, Page 048, Deed Records, Johnson County, Texas; W.J. Patterson, et ux to Doctors Clinic, Inc. by deed dated April 10, 1962 and recorded in Volume 448, Page 253, Deed Records, Johnson County, Texas; and Fred I. Hollingsworth, et al to Mason Shiflett by deed dated March 21, 1974, and recorded in Volume 633, Page 786, Deed Records, Johnson County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01224-JA01231* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 87 | Being Lots 11, 12, 18, 19, 20, 21, 22, 23 and 24, in WESTWAY, a subdivision on Lake Whitney, Bosque County, Texas, according to the Plat thereof recorded in volume 170, page 516, Deed Records of Bosque County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01253-JA01254* |
| 88 | Lots 98 & 99, Wildwood Subdivision, Three Fingers Rd. & Crockett Trail, Bosque County, Texas 76634, according to the plat thereof recorded in Volume 180, Page 265, Deed Records of Bosque County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01258-JA01260* |
| 89 | Surface only of the south 45 ft. of Lots 4, 5 and 6, Block 13, East Breckenridge Addition to the City of Breckenridge, Stephens County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01272-JA01277* |
| 90 | LOT 3, BLOCK 214, DALWORTH PARK ADDITION, an Addition to the City of Grand Prairie, Texas, accoriding to the Revised Map thereof recorded in Volume 1, Page 546, Map Records, Dallas County, Texas; SAVE AND EXCEPT that part of said lot deeded to The City of Grand Prairie, by deed dated 3/30/79, recorded in Volume 79070, Page 419, Deed Records, Dallas County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01403-JA01407* |
| 91 | All that certain lot, tract, or parcel of land situate, lying and being in the County of Dallas, State of Texas, and being more particularly described as follows, to-wit: Lot 19, Block 214, DALWORTH PARK ADDITION, an Addition to the City of Grand Prairie,Dallas County, Texas, according to the Map thereof recorded in Volume 1, Page 546, of the Map Records of Dallas County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01414-JA01416* |
| 92 | Being a 2.22 acre tract of land out of the William Balch Survey, Abstract No. 48, Johnson County, Texas; part of 146.19 acre tract conveyed to Otis V. Percifield et al, as recorded in Volume 839, Page 590, Deed Records of Johnson County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01435-JA01448* |
| 93 | 5.608 acres of land located in the John Edmonds Survey, Abstract No. 457, Tarrant County, Texas, being a portion of TRACT III described in the deed to Parkway 38 Limited, a Texas limited partnership, recorded in Volume 13429, Page 160, Deed Records of Tarrant County, Texas, said 5.608 acre tract of land also being more particularly described in Special Warranty Deed With Vendor's Lien recorded in Document No. D205159863, Deed Records of Tarrant County, Texas and said tract of land having since been platted and being now known as: Lot1, Block 1, Saint Barnabas Addition, an Addition to the City of Fort Worth, Tarrant County, Texas, as shown on the plat thereof recorded in Cabinet A, Slide 12358, Plat Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01452-JA01457* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 94 | SURFACE ESTATE ONLY in and to Block 36, EL CHICO ADDITION, a subdivision in Parker County, Texas, recorded in Vol. 277, Page 358, Deed Records, Parker County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01467-JA01470* |
| 95 | Being Lot 2 (now 2-B), Block 88, (situated on the east side of Patrick Street) in the town of Dublin, Erath County, Texas conveyed by William O'Bryant et ux Jonnie O'Bryant to W.E. Abbo by Deed dated April 26, 1902, recorded in Vol. 73, Page 603, Deed Records of Erath County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01474-JA01476* |
| 96 | Being a tract of land situated in the NANCY CASTEEL SURVEY, ABSTRACT #349 in the City of Fort Worth, Tarrant County, Texas, and being known as Lot 6, Block 1, of WILDWOOD ACRES, an unrecorded plat of tracts in said survey, also being a portion of Blocks 1 and 2, KIN ACRES, an Addition to the City of Fort Worth as recorded in Volume 388-5, Page 79, Deed Records, Tarrant County, Texas, being further described by metes and bounds in Warranty Deed Recorded as Volume 8273 Page 1495, Deed Records, Tarrant County, Texas; Save and Except any portions lying in Highway 2871. Now known as: Lot 2-R, Block 1, KIN ACRES ADDITION, according to the plat thereof recorded in Volume 388-206, Page 7, Plat Records, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01488-JA01492* |
| 97 | The West 1/2 of the South 1/2 and the North 1/2 of the West 1/2 of Block 49, AND THE North 50 feet of the West 107 1/2 feet of Block 50, The South 100 feet of the West 1/2 of Block 50 and the West 1/2 of Block 51, SILVER LAKE ADDITION to the City of Fort Worth, Tarrant County, Texas, according to plat recorded in Volume 204, Page 36, Deed Records of Tarrant County, Texas; AND that portion of Block 50, SOUTH FORT WORTH ADDITION to the City of Fort Worth, Tarrant County,Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01496-JA01499* |
| 98 | Being a tract of land situated in the state of Texas, Count of Tarrant, and the City of Fort Worth, being all of Lot 26 and a part of Lot 25, Block 5 of Trentman City Addition, an Addition to the City of Fort Worth according to the plat thereof recorded in Volume 388-B, Page 199 of the Plat Records of Tarrant County, Texas, Being all of a tract of land conveyed to Kenneth A. Bennett by deed recorded in Volume 17071, Page 14 of the Deed Records of Tarrant County, Texas. Now known as: Lot 26-R, Block 5 Trentman City Addition, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Cabinet B, Slide 3337, Plat Records, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01503-JA01511* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 99 | BLOCK 8, LOT 1A,Trentman City Addition, situated in the City of Fort Worth, Tarrant Count, Texas, as shown by a deed of record in Volume 10878, Page 1732, of the Deed Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01515-JA01519* |
| 100 | Block 8, Lot 1B, Trentman City Addition, situated in the City of Fort Worth, Tarrant County, Texas, as shown by a deed of record in Volume 10878, Page 1732, of the Deed Records of Tarrant County Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01523-JA01527* |
| 101 | Block 8, Lot 1C, Trentman City Addition, situated in the City of Fort Worth, Tarrant County, Texas, as shown by a deed of record in Volume 10878, Page 1732, of the Deed Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01531-JA01535* |
| 102 | Block 8, Lot 1D, Trentman City Addition, situated in the City of Fort Worth, Tarrant County, Texas, as shown by a deed of record in Volume 8686, Page 852, of the Deed Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01539-JA01545* |
| 103 | Lot 2-A, Block 8, TRENTMAN CITY ADDITION, an Addition to the City of Fort Worth, Tarrant County,Texas, according to the revised plat recorded in Volume 388-Q, Page 335, Plat Records, Tarrant County, Texas. Save and Except that portion of said Lot 2-A, Block 8, which was replatted in Volume 388-177, Page 35, Plat Records, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01547-JA01551* |
| 104 | Being Block 37, of EL CHICO addition to the City of Willow Park, Parker County, Texas, recorded in Vol. 277, Page 358, Deed Records, Parker County, Texas. SUBJECT TO Restriction as set out in Volume 277, Page 359, Deed Records of Parker County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01570-JA1573* |
| 105 | Being a 100 feet x 100 feet tact in the South corner of Block No. 20, Rankin Addition, an unrecorded Plat Addition to the City of Brownwood, and the same tract consisting of two tracts, a 50 feet x 100 feet tract conveyed from Robert Colvin and wife to Southern Savings and Loan Association by Warranty Deed dated March 23, 1978, recorded in Volume 727, Page 905, and the second tract, a 50 feet x 100 feet tract conveyed from Don Jordan, Jr. to Southern Savings and Loan by Warranty Deed dated September 9, 1977, recorded in Volume 716, Page 337 of the Deed Records of Brown County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01594-JA01596* |
| 106 | All of Lot Number One (1) in Block Nunber Seventy-Four (74); and all of lots Number Ten (10) and Eleven (11) in Block Number Seventy-Seven (77). All as shown by the official map or plat of said Town of Oran now of record in the Deed Records of Palo Pinto County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01637-JA01642* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 107 | A part of the J. E. Ross League and Labor of land, in Hill County, Texas, said tract of land hereby conveyed, being a town-lot and a part of the Craig Addition to the Town of Hillsboro and being further known as Lot No. 38 (Thirty-Eight) of a subdivision of said Craig addition into Town Lots | Corporation of Episcopal Diocese of Fort Worth | *JA01685-JA01686* |
| 108 | All that certain lot, tract or parcel of land situated in the City of Comanche, Comanche County, Texas, out of Block No. 18, Walcott Addition to the City of Comanche, Texas, and being the same land conveyed from Thomas W. Wilhelm, et ux, to Kenneth White, et ux, and of record in Volume 339, Page 400, Deed Records of Comanche County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01690-JA01692* |
| 109 | A tract of land being a part of Block 94 of WRIGHTS ADDITION to the town of Comanche, Texas. LESS AND EXCEPT: 1. a tract of land conveyed by N.N. Durham to James E. Foreman, on September 5, 1969, and described in Warranty Deed recorded in Volume 355, Page 83, Deed Records of Comanche County, Texas 2. a tract of land conveyed by N.N. Durham to E.E. Coyle on October 12, 1970, and described in Warranty Deed recorded in Volume 363, Page 395. Being that same land and premises described in Warranty Deed from Jimmy L. Davis and wife, Jerri L. Davis of record in Volume 560, Page 480, of the Deed Records of Comanche County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01700-JA01706* |
| 110 | Being 2.004 acres of land located in the HAYS COVINGTON SURVEY, Abstract No. 256, Fort Worth, Tarrant County, Texas, and being a portion of the tract of land conveyed to All Saints Episcopal School of Fort Worth by the deed recorded in Volume 12569, Page 23, of the Deed Records of Tarrant County, Texas and being more particularly described by metes and bounds found in Volume 13735, Page 295, Deed Records, Tarrant County, Texas. Said 2.004 acres of land is platted into Lot 1, Block 1, EPISCOPAL DIOCESE ADDITION | Corporation of Episcopal Diocese of Fort Worth | *JA01856-JA01864* |
| 111 | Part of Block "A," COLLEGE HILLS ADDITION AND Lot 8R, Block 1 MORGAN ADDITION to the City of Arlington, Tarrant County, Texas according to the Plat and Dedication recorded in Volume 388-C, Page 182, Plat Records, Tarrant County, Texas, and being further described by metes and bound in Special Warranty Deed Recorded as Volume 16747, Page 132, Deed Records, Tarrant County, Texas. Tract 2: Lot 8R, Block 1, MORGAN ADDITION to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Cabinet A, Slide 5357, Plat Records, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01922-JA01937* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 112 | Lot 3 and part of Lot 4, Block 1 MORGAN ADDITION to the City of Arlington, Tarrant County, Texas, according to the Plat and Dedication recorded in Volume 388-E, Page 90, Plat Records, Tarrant County, Texas and being more particularly described by metes and bounds in Special Warranty Deed Recorded as instrument number D207247715, Deed Records, Tarrant County, Texas. TRACT 2: Lot 1, Block 1, MORGAN ADDITITION to the City of Arlington, Tarrant County, Texas, as described in Volume 388-E, Page 90, Real Property Records of Tarrant County, Texas. TRACT 3: Lot 5, Block 1, MORGAN ADDITION to the City Arlington, Tarrant County, Texas, as described in Volume 388-E, Page 90, Real Property Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA01941-JA01962* |
| 113 | The South 60 feet of Lot 6, Block 4, Hirshfield Addition, to the City of Fort Worth, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA02047-JA02048* |
| 114 | BEING 2,300 square feet of land located in Lot 5, Block 4, R.M. Page's Addition, to the City of Fort Worth, Tarrant County, Texas, according to the Second Revised Plat thereof, recorded in Volume 63, Page 142 of the Plat Records of Tarrant County, Texas, said portion of Lot 5 being a part of the tract of land conveyed to the Unity Center of Fort Worth, Inc. by the deed recorded in Volume 4189, Page 181 of the Deed Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA02138-JA02143* |
| 115 | Being Lot 1, Lot 2, Lot 4, and the west 23 feet of Lot 5, Block 4, R.M. PAGE ADDITION, Second Revised, an addition to the City of Fort Worth, Tarrant County, Texas according to the revised plat thereof recorded in Volume 63, Page 142, Plat Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA02146-JA02154* |
| 116 | That certain tract of land situated in the Samuel Freeman Survey, Abstract No. 525, City of Southlake, Tarrant County, Texas, being a portion of that certain tract of land described in deed to Walter Starkey and wife, Gertrude Starkey as recorded in Volume 3242, Page 317, of the Deed Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA02186-JA2190* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 117 | PARCEL 1: Being a 3.19 acre tract of land situated in Tarrant County, Texas and being part of the SAMUEL FREEMAN SURVEY, Patent 875, Volume 13, and being more particularly described in that certain Warranty Deed recorded in Volume 4876, Page 527, Deed Records of Tarrant County, Texas said 3.19 acre tract having since been platted into: Lot 1, Block A, SAINT LAURENCE EPISCOPAL CHURCH ADDITION, an addition to the City of Southlake, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-213, Page 36, Plat Records, Tarrant County, Texas. PARCEL 2: All that certain tract or parcel of land situated in the SAMUEL FREEMAN SURVEY, Abstract No. 525, Tarrant County, Texas, and being the tract of land conveyed by Lloyd R. Smith to Reeder A. Cummings and wife, Sue Cummings, recorded in Volume 3323, Page 252, Deed Records, Tarrant County, Texas, and being more fully described in General Warranty Deed recorded in Volume 12240, Page 861, Deed Records, Tarrant County, Texas. ALL OF THE ABOVE mentioned tracts of land were replatted in 1997 and are now known as: Lot 1R, Block A, SAINT LAURENCE EPISCOPAL ADDITION, an Addition to the City of Southlake, Tarrant County, Texas, according to the plat recorded in Cabinet A, Slide 3900 | Corporation of Episcopal Diocese of Fort Worth | *JA02198-JA02200* |
| 118 | A 1.789 acre tract of land situated in the M.E.P. & P.R.R. Company Survey, Abstract No. 1125, City of Arlington, Tarrant County, Texas, and being a portion of that same tract of land described in deed recorded in Volume 10380, Page 508 of the Deed Records of Tarrant County, Texas, also being a portion of that same tract of land as described in deed recorded in Volume 103, Page 47, Deed Records of Tarrant County, Texas AND That part of the vacated portion of Old New York Avenue as described in the City of Arlington Ordinance Number O2-L26 City of Arlington, Tarrant County, Texas. NOW AS: Lot 1, M.E.P. & P.R.R. RAILROAD ADDITION, an Addition to the City of Arlington, Tarrant County, Texas, according to the plat recorded in Cabinet A, SLide 9810, Plat Records, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA02335-JA02340* |
| 119 | A 4.520 acre tract of land in the Isaac Carodine Survey, Abstract No. 387, and the William Doty Survey, Abstract No. 420, situated in the City of Hurst, Tarrant County, Texas, said tract being more particularly described in Warranty Deed with Vendor's Lien from The Sid and Elaine Parker Family Living Trust, Sid Parker and Elaine Parker, Trustees, to Corporation of the Episcopal Diocese of Fort Worth, Texas, recorded in Volume 11687, Page 1316, Deed Records, Tarrant County, Texas, said 4.520 acre tract of land having since been platted into: Lot 1, Block L, SAINT STEPHEN'S EPISCOPAL CHURCH ADDITION, an Addition to the City of Hurst, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA02376-JA02379* |

# EXHIBIT 1

| | Property Description | Original Grantee | Joint Appendix Locator |
|---|---|---|---|
| 120 | The South 1/2 of Lot 4, Block 4 R.M. Page's Addition to the City of Fort Worth, Tarrant County, Texas, according to plat recorded in Volume 63, Page 142, Deed Records of Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | *JA02508-JA02510* |
| 121 | A 1.028 acre tract (Parcel 2) and a 7.640 acre tract (Parcel 3) both out of the McKINNEY & WILLIAMS SURVEY, Abstract No. 1119, and out of the B. COOK SURVEY, Abstract No. 284, Tarrant County, Texas | Corporation of Episcopal Diocese of Fort Worth | |

# EXHIBIT 2

**Corporation as trustee**

The Endowment for the Episcopate

The Diocesan Fund

The Memorial Scholarship Fund

The Thomas Meek Scholarship Fund

**Bishop Iker as trustee/administrator**

The E.D. Farmer Foundation

The E.D. Farmer Trust

The Betty Ann Montgomery Farley Fund

The Eugenia Turner Fund

The Efrain Huerta Fund

The Anne S. and John S. Brown Trust

**Bishop Iker, Chancellor, and Treasurer of the Defendant Diocese as trustees**

The St. Paul's Trust

# Exhibit B

**NO. 141-252083-11**

| | | |
|---|---|---|
| **THE EPISCOPAL CHURCH, et al.** | § | **IN THE DISTRICT COURT** |
| | § | |
| **v.** | § | **TARRANT COUNTY, TEXAS** |
| | § | |
| **FRANKLIN SALAZAR, et al.** | § | **141ST JUDICIAL DISTRICT** |

**ORDER ON MOTIONS FOR**
**PARTIAL SUMMARY JUDGMENT**

On the 20th day of February, 2015, came on to be heard all parties' Motions for Partial Summary Judgment. Having considered the pleadings, motions, responses, replies, evidence on file, governing law, and arguments of counsel, the Court orders as follows:

**IT IS, THEREFORE, ORDERED** that Defendants' Second Motion for Partial Summary Judgment is GRANTED, except with respect to claims relating to All Saints Episcopal Church (Fort Worth) ~~which are DENIED~~.

**IT IS FURTHER ORDERED** that Plaintiffs' Motion for Partial Summary Judgment is DENIED.

Signed this 2 day of ~~February~~ March, 2015.

Judge Presiding

# Exhibit C

COPY

CAUSE NO. 141-252083-11

| | | |
|---|---|---|
| THE EPISCOPAL CHURCH, et al. | § | IN THE DISTRICT COURT OF |
| | § | |
| v. | § | TARRANT COUNTY, TEXAS |
| | § | |
| FRANKLIN SALAZAR, et al., | § | 141ST JUDICIAL DISTRICT |

**ORDER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT RELATING TO ALL SAINTS EPISCOPAL CHURCH**

On June 10 2, 2015, came on to be heard all parties' Motions for Partial Summary Judgment relating to All Saints Episcopal Church of Fort Worth. Having considered the pleadings, motions, responses, replies, evidence on file, governing law, and arguments of counsel, the Court orders as follows:

**IT IS, THEREFORE, ORDERED** that Defendants' Third Motion for Partial Summary Judgment is GRANTED.

**IT IS FURTHER ORDERED** that Plaintiffs' Supplemental Motion for Partial Summary Judgment is DENIED.

Judge Presiding

6/10/2015

# Exhibit D

United States Code Annotated
Constitution of the United States
Annotated
Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances (Refs & Annos)

U.S.C.A. Const. Amend. I-Full text

AmendmentI. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<This amendment is further displayed in three separate documents according to subject matter>

<see USCA Const Amend. I, Religion>

<see USCA Const Amend. I, Speech>

<see USCA Const Amend. I, Assemblage>

U.S.C.A. Const. Amend. I-Full text, USCA CONST Amend. I-Full text
Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

**End of Document**

# Exhibit E

**Robert MASTERSON, Mark Brown, George Butler, Charles Westbrook, Richey Oliver, Craig Porter, Sharon Weber, June Smith, Rita Baker, Stephanie Peddy, Billie Ruth Hodges, Dallas Christian, and the Episcopal Church of the Good Shepherd, Petitioners,**

**v.**

**The DIOCESE OF NORTHWEST TEXAS, The Rev. Celia Ellery, Don Griffis, and Michael Ryan, Respondents.**

**No. 11–0332.**

Supreme Court of Texas.

Argued Oct. 16, 2012.

Delivered Aug. 30, 2013.

Rehearing Denied March 21, 2014.

**Background:** Episcopal Church brought declaratory action to establish its right of continued possession and control over local church property. Former parishioners counterclaimed seeking to quiet title. The 51st Judicial District Court, Tom Green County, J. Blair Cherry, J., granted summary judgment to Episcopal Church. Former parishioners appealed. The Court of Appeals, 335 S.W.3d 880, affirmed. Former parishioners petitioned for review.

**Holdings:** Upon grant of review, the Supreme Court, Johnson, J., held that:

(1) trial court lacked jurisdiction over and properly deferred to bishop's exercise of ecclesiastical authority;

(2) trial court had jurisdiction to determine who owned local church property;

(3) local church's corporate powers were not restricted by its affiliation with hierarchical church organization; and

(4) local church corporation was not precluded from revoking any trusts actually or allegedly placed on its property.

Reversed and remanded.

Boyd, J., filed a concurring opinion joined by Willett, J.

Lehrmann, J., filed a dissenting opinion joined by Jefferson, C.J.

**1. Religious Societies ⚿14, 24**

Under the neutral principles methodology, courts decide non-ecclesiastical issues such as property ownership based on the same neutral principles of law applicable to other entities, while deferring to religious entities' decisions on ecclesiastical and church polity questions.

**2. Courts ⚿4**

A court has no authority to decide a dispute unless it has jurisdiction to do so.

**3. Constitutional Law ⚿2570**
**Courts ⚿155**

Texas courts are bound by the Texas Constitution to decide disputes over which they have jurisdiction, and absent a lawful directive otherwise they cannot delegate or cede their judicial prerogative to another entity. Vernon's Ann.Texas Const. Art. 5, §§ 8, 16, 19.

**4. Constitutional Law ⚿1338**

The free exercise clause severely circumscribes the role that civil courts may play in resolving church property disputes 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. U.S.C.A. Const.Amend. 1.

**5. Constitutional Law ⚿3851**

The First Amendment is applicable to the states through the Fourteenth Amendment. U.S.C.A. Const.Amends. 1, 14.

**6. Constitutional Law ⚿1338**

The First Amendment does not require states to follow a particular method of resolving church property disputes; rather, a state may adopt any one of vari-

ous approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith. U.S.C.A. Const.Amend. 1.

**7. Religious Societies ⚿14, 24**

Properly exercising jurisdiction requires courts to apply neutral principles of law to non-ecclesiastical issues involving religious entities in the same manner as they apply those principles to other entities and issues; thus, courts are to apply neutral principles of law to issues such as land titles, trusts, and corporate formation, governance, and dissolution, even when religious entities are involved.

**8. Religious Societies ⚿24**

Texas courts should use the neutral principles methodology to determine property interests when religious organizations are involved.

**9. Appeal and Error ⚿893(1)**

Supreme Court reviews the trial court's grant of summary judgment de novo.

**10. Constitutional Law ⚿1331**

Civil courts are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted. U.S.C.A. Const.Amend. 1.

**11. Constitutional Law ⚿1328**

Courts are precluded from exercising jurisdiction over matters the First Amendment commits exclusively to the church, even where a hierarchical religious organization fails to establish tribunals or specify how its own rules and regulations will be enforced. U.S.C.A. Const.Amend. 1.

**12. Constitutional Law ⚿1331**
**Religious Societies ⚿14**

Trial court lacked jurisdiction over and properly deferred to bishop's exercise of ecclesiastical authority on questions as to whether bishop was authorized to form a parish and recognize its membership, whether he could or did authorize that parish to establish a vestry, and whether he could or did properly recognize members of the vestry; such questions were ecclesiastical matters of church governance. U.S.C.A. Const.Amend. 1.

**13. Constitutional Law ⚿1338**
**Religious Societies ⚿24**

Trial court had jurisdiction to determine who owned local church property in dispute between hierarchical church organization and former parishioners since the dispute did not involve ecclesiastical matters of church governance and the decision could be based on neutral principles.

**14. Religious Societies ⚿5, 11**

Local church's corporate powers were not restricted by its affiliation with hierarchical church organization, and thus, church members were free to amend bylaws; absent specific, lawful provisions in corporation's articles of incorporation or bylaws, whether and how the corporation's directors or those entitled to control its affairs could change its articles of incorporation and bylaws was a secular, not an ecclesiastical, matter. U.S.C.A. Const. Amend. 1; Vernon's Ann.Texas Civ.St. art. 1396–2.09 (Repealed).

**15. Religious Societies ⚿18**

Local church corporation was not precluded from revoking any trusts actually or allegedly placed on its property; it was undisputed that titled to the local church's real property was in the name of the corporation and that the language of the deeds did not provide for an express trust in favor of the hierarchical church organization.

---

Douglas Laycock, University of Virginia Law School, Charlottesville, VA, Thomas

S. Leatherbury, Vinson & Elkins LLP, Dallas, TX, for Amicus Curiae General Council on Finance and Administration.

Sandra Cockran Liser, Naman Howell Smith & Lee PLLC, Fort Worth, TX, for Amicus Curiae The Episcopal Church.

Scott A. Brister, Andrews Kurth LLP, Austin, TX, for Amicus Curiae The Episcopal Diocese of Forth Worth.

David B. West, Cox Smith Matthews Incorporated, San Antonio, TX, Lloyd J. Lunceford, Taylor Porter Brooks & Phillips, L.L.P., Baton Rouge, LA, for Amicus Curiae The Presbyterian Lay Committee.

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Justice JOHNSON delivered the opinion of the Court, in which Justice HECHT, Justice GREEN, Justice GUZMAN, and Justice DEVINE joined, and in parts I, II, III–A, and V of which Justice WILLETT and Justice BOYD joined.

The question before us is what happens to the property when a majority of the membership of a local church votes to withdraw from the larger religious body of which it has been a part. In this case, title to property of the local church is held by a Texas non-profit corporation originally named The Episcopal Church of the Good Shepherd (corporation or Good Shepherd). The corporation was formed as a condition of Good Shepherd's congregation being accepted into union with the Episcopal Diocese of Northwest Texas (Diocese). When members of the congregation became divided over doctrinal positions adopted by The Episcopal Church of the United States (TEC), a majority of the parishioners voted to amend Good Shepherd's articles of incorporation and bylaws to withdraw Good Shepherd from communion with TEC and the Diocese and revoke any trusts on the corporation's property in favor of those entities. The corporation and the withdrawing faction of parishioners maintained possession of the property.

The Diocese and leaders of the faction of parishioners loyal to the Diocese and TEC filed suit seeking title to and possession of the property. The trial court eventually granted summary judgment in favor of the loyal faction. The court of appeals affirmed.

**[1]** The first issue we confront is the legal methodology to be applied. At least two are permissible under the First Amendment to the United States Constitution: "deference" and "neutral principles of law" (neutral principles). The court of appeals held that Texas courts may use either. We conclude that greater predictability in this area of the law will result if Texas courts apply only one methodology. We also conclude that the neutral principles methodology should be applied because it better conforms to Texas courts' constitutional duty to decide disputes within their jurisdiction while still respecting limitations the First Amendment places on that jurisdiction. Under the neutral principles methodology, courts decide non-ecclesiastical issues such as property ownership based on the same neutral principles of law applicable to other entities, *Jones v. Wolf,* 443 U.S. 595, 603–04, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), while deferring to religious entities' decisions on ecclesiastical and church polity questions. *See Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 708, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

Applying neutral principles of law to the record before us, we conclude that the trial court erred by granting summary judg-

ment and the court of appeals erred by affirming. We reverse the judgment of the court of appeals and remand the case to the trial court for further proceedings.

## I. Background

### A. Episcopal Good Shepherd

In 1961 individuals purchased a tract of land in San Angelo (1961 tract) and donated it to the Northwest Texas Episcopal Board of Trustees (Trustees). The donation was for the purpose of establishing a mission church. In 1965 a group of worshipers filed an application with the Diocese to organize a mission to be named "The Episcopal Church of the Good Shepherd" (the Church). The Diocese eventually approved the application and TEC made loans and grants to the Church to assist its growth. The bishop of the Diocese ultimately approved plans for a building, presided over the groundbreaking ceremony, then formally dedicated the building. In 1969 individuals purchased another tract of land (1969 tract) that was adjacent to the 1961 tract and donated it to the Trustees.

In March 1974 the Church applied to the Diocese for parish status. It was formally accepted into union with the Diocese at the Diocese's annual convention in April 1974. That same year, in conformance with canons of the Diocese which required parishes to be corporations, the Church incorporated under the Texas Non–Profit Corporations Act. *See* TEX.REV.CIV. STAT. art. 1396. The corporation's bylaws provided that the corporation would be managed by a Vestry elected by members of the parish.[1] The bylaws prescribed qualifications for voting at parish meetings[2] and specified that amendments to the bylaws would be by majority vote.[3]

In 1982 the Trustees conveyed the 1961 and 1969 tracts to the corporation by warranty deed. In 2005 two individuals sold a tract of land (the 2005 tract) to Good Shepherd. The tract was conveyed to the corporation by warranty deed with a vendors lien to secure a purchase-money note executed by the corporation. Neither the 1982 deed from the Trustees nor the 2005 deed provided for or referenced a trust in favor of TEC or the Diocese.

### B. Schism

Due to doctrinal differences with TEC, some members of the parish proposed disassociating from TEC and organizing as an independent church under the name "An-

1. Article VI of the Articles of Incorporation addressed election of the Vestry:

> Article VI
>
> The number of vestrymen constituting the initial vestry of the corporation is nine....
>
> The vestrymen named in these Articles of Incorporation as the first vestry of the Episcopal Church of the Good Shepherd shall hold office in accordance with the Church Canons until the expiration of their duly elected terms of office. At the expiration of the term of office of each member of the vestry, successors will be elected at the annual meeting of the members of the parish with the duly elected vestry-men serving in staggered terms of three years each.

2. Those qualified to vote at Parish meetings were "communicants of the Parish, as shown on the Parish register, who are at least sixteen (16) years of age and are baptized members of the congregation who are regular contributors as shown by the Treasurer's records."

3. Provisions for amending the bylaws were as follows:

> These By–Laws may be amended at an Annual Parish Meeting or at a special meeting called for that purpose by a majority vote of the duly qualified voters of the Parish. Notice of the proposed amendments shall be given to all qualified voters in writing at least thirty (30) days before such meeting. A majority vote of the duly qualified voters of the Parish will be necessary to approve an amendment to these By–Laws.

glican Church of the Good Shepherd" (withdrawing faction). The parish held a called meeting on November 12, 2006, during which four resolutions were presented. The resolutions were to (1) amend the corporate bylaws to, among other changes, remove all references to TEC and the Diocese; (2) withdraw the local congregation's membership in and dissolve its union with TEC and the Diocese; (3) revoke any trusts that may have been imposed on any of its property by TEC, the Diocese, or the Trustees; and (4) form a new church named Anglican Church of the Good Shepherd and change the name of the corporation to that name. The resolutions passed by a vote of 53 to 30. The stated effective date of the vote was January 5, 2007. Amended articles of incorporation changing the corporate name to Anglican Church of the Good Shepherd were then filed. *See* TEX. BUS. ORGS. CODE §§ 3.052–.053, 22.106 (providing procedures for amending certificate of formation of a nonprofit corporation).

After the parish vote, but before the effective date, the Diocese's Bishop, Rev. Wallis Ohl, took the position that Good Shepherd could not unilaterally disassociate from the Diocese and that the vote did not have any effect on Good Shepherd's relationship with the Diocese or TEC. He held a meeting with the faction of the parish loyal to TEC and the Diocese and appointed Rev. Celia Ellery as Priest–in–Charge of the Parish. Under the leadership of Rev. Ellery, the loyal faction elected a vestry and was recognized by Bishop Ohl as the "continuing Episcopal Parish operating Good Shepherd."

The withdrawing faction continued to use the parish property, so two vestry members of the loyal faction together with Rev. Ellery and the Diocese (collectively, Episcopal Leaders) filed suit against leaders of the withdrawing faction and the Good Shepherd corporation (collectively, Anglican Leaders). The Episcopal Leaders sought a declaratory judgment that (1) Good Shepherd's property could not be alienated or used by the Anglican Leaders for any purpose other than the mission of TEC; (2) the continuing Parish of the Good Shepherd was represented by those persons recognized by the Bishop as the loyal faction; (3) the actions of the Anglican Leaders in seeking to sever ties between Good Shepherd, the Diocese, and TEC were void; and (4) all the parish property was held in trust for TEC and the Diocese and the Episcopal Leaders were entitled to possess and control it.[4] In their pleadings the Episcopal Leaders based their claim to the property on the allegation that: "According deference to the Bishop, Plaintiffs assert that they are entitled to title, possession and use of all real and personal property belonging to the GOOD SHEPHERD, including the CHURCH PREMISES."

The Anglican Leaders answered and filed a counterclaim seeking judgment quieting title to the property in the Anglican Church of the Good Shepherd, a Texas non-profit corporation, and removing any cloud to the title created by the Episcopal Leaders' claims. The Anglican Leaders asserted that under Texas law the nonprofit corporation held unencumbered title to the property; the individual Anglican Leaders had been elected as the corporation's vestry in accordance with the corporate Articles of Incorporation and bylaws; the Episcopal Leaders had no right or authority to act on behalf of the corporation; and the Episcopal Leaders' claims were barred by statutes of frauds. *See*

4. The Episcopal Leaders also sought an accounting for funds and personal property of the Parish being held by defendants and damages for conversion of Parish personal property and funds. Those claims were non-suited before summary judgment was granted.

TEX. BUS. & COM.CODE § 26.01; TEX. PROP. CODE § 112.004.

The Episcopal Leaders moved for summary judgment. They asserted that TEC is a hierarchical church; its Canons and rules provide that all property of a Parish is held in trust for use of TEC and the respective Diocese; when congregations of hierarchical churches split, Texas courts defer to the decisions of the church's superior hierarchical authority as to which faction comprises the true church; the members loyal to TEC have been recognized by the Diocese's Bishop as the true church; and the parish property is held in trust for TEC and the Diocese. In both their motion and reply to the Anglican Leaders' response, the Episcopal Leaders maintained that "[t]he sole legal issue is whether or not the Episcopal Church is hierarchical." They did not plead or assert as grounds for summary judgment that they were entitled to the property on the grounds that application of neutral principles of law mandated summary judgment in their favor, although in reply to the Anglican Leaders' response to their motion for summary judgment, the Episcopal Leaders argued that they were entitled to the property under both deference and neutral principles analyses.

The trial court granted the Episcopal Leaders' motion. It made several findings in its order, including a finding that TEC is a hierarchical church. The court declared and ordered that (1) "the continuing Parish of the Good Shepherd is identified as and represented by those persons recognized by the Bishop of the [Diocese]"; (2) the actions of the Anglican Leaders in seeking to withdraw Good Shepherd as a Parish of the Diocese and from TEC were void; (3) the Anglican Leaders could not "divert, alienate, or use" Parish property except for the mission of TEC; and (4) all the property of Good Shepherd is held in trust for TEC and the Diocese. The court ordered the Anglican Leaders to relinquish control of the property to the Vestry of the faction recognized by Bishop Ohl as The Episcopal Church of the Good Shepherd.

The Anglican Leaders appealed and the court of appeals affirmed. 335 S.W.3d 880. It held that Texas courts may analyze disputes such as these under either the deference or neutral principles methodologies. It analyzed the case under both and reached the same conclusion: the summary judgment should be affirmed. *Id.* at 892. The appeals court concluded that when the withdrawing faction voted to disaffiliate from TEC, the vote was only effective as to those parishioners who withdrew and who were free to join the Anglican community; the vote did not withdraw Good Shepherd itself from TEC, and therefore, the church property remained under the authority and control of TEC. *Id.* at 892–93.

In this Court the Anglican Leaders primarily argue that the proper approach to dealing with church property disputes in Texas is the neutral principles methodology because that methodology, at bottom, simply allocates decisions to the proper forum: ecclesiastical decisions are made by the church and secular decisions are made by courts. They urge that the court of appeals' classification of this dispute as an inherently ecclesiastical question of identity—*i.e.,* which parishioners comprise the continuing Episcopal parish—ignores the fact that there is a Good Shepherd non-profit corporation controlled by its members; the Bishop of the Diocese has no authority to determine affairs of the corporation, including who its members are and who comprises its Vestry; a majority of those qualified to vote in corporate matters voted to amend the corporate governing documents and disassociate the corporation from the Diocese and TEC;

and under Texas law and the corporate bylaws the majority vote prevails. Not wanting to put all their eggs in the neutral principles basket, the Anglican Leaders also argue that even if the case is analyzed under the deference approach, the judgment of the court of appeals must be reversed. They assert that the deference approach is predicated on a church organization having superior ecclesiastical tribunals with control over the specific dispute, and because neither TEC nor the Diocese have such tribunals, there is no basis to afford deference to decisions of either of those entities. Finally, the Anglican Leaders contend that the effect of the court of appeals' decision is to deny the right of a non-profit corporation to withdraw from an association with another entity when the corporate documents do not preclude its doing so, a majority of its voting members desire to do so, and its elected leadership desires to do so. That, they argue, violates its rights under the First Amendment to the United States Constitution.

The Episcopal Leaders respond that Good Shepherd is bound by the Canons and Constitution of TEC because Episcopal Good Shepherd is and always has been part of TEC's hierarchical structure. They argue that the only question to be decided by civil courts is the identity of the body of believers comprising the true faction continuing Episcopal Good Shepherd, and that question must be answered by deferring to the decision of TEC and the Diocese because it is a matter of church polity and administration. They urge that in the past Texas has embraced the "identity" approach to church property disputes involving hierarchical churches and should continue to do so. As do the Anglican Leaders, the Episcopal Leaders offer an alternative argument. They say that even under a neutral principles analysis, the judgment of the court of appeals should be affirmed because the Constitution, Canons, and other rules of TEC and the Diocese provide that the property is held in trust for TEC and the Diocese.

Because arguments of the parties reference the organizational structure of TEC, we briefly review it.

### C. Organizational Structure

TEC is a religious denomination founded in 1789. It has three tiers. The first and highest is the General Convention. The General Convention consists of representatives from each diocese and most of TEC's bishops. It adopts and amends TEC'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 TEC 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 TEC they must accede to and agree to be subject to the constitutions and canons of both TEC and the diocese in which the congregation is located.

This case involves a parish. 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."

## II. Who Decides What

**[2, 3]** Good Shepherd corporation's bylaws prescribe who can vote when vestry members are elected, how the corpora-

tion's vestry is elected, who can vote on proposed amendments to the bylaws, and how the bylaws and articles of incorporation are amended. The essential issue presented is whether either (1) the decision by Bishop Ohl to recognize the Episcopal Leaders and the loyal faction as the vestry and members of the continuing Good Shepherd Parish served to establish those vestry members as the vestry of the corporation and the loyal faction as the voters entitled to vote on corporate matters when neither the articles of incorporation nor the bylaws afforded him that authority; or (2) his decision determined who was entitled to the corporation's property regardless of the decisions of elected leaders of the corporation and persons specified by the corporate bylaws as qualified to vote on corporate affairs. In addressing the issue we are guided by two principles. The first is that a court has no authority to decide a dispute unless it has jurisdiction to do so. *See, e.g., In re United Servs. Auto. Ass'n,* 307 S.W.3d 299, 309 (Tex.2010). The second is that Texas courts are bound by the Texas Constitution to decide disputes over which they have jurisdiction, and absent a lawful directive otherwise they cannot delegate or cede their judicial prerogative to another entity. *See Morrow v. Corbin,* 122 Tex. 553, 62 S.W.2d 641, 645 (1933) ("We are equally clear that the power thus confided to our trial courts [by the Constitution] must be exercised by them as a matter of nondelegable duty, that they can neither with nor without the consent of parties litigant delegate the decision of any question within their jurisdiction, once that jurisdiction has been lawfully invoked, to another agency or tribunal.") (citations omitted).

### A. Jurisdiction In Church Property Disputes

**[4, 5]** The Free Exercise clause of the First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. The clause "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)). The First Amendment is applicable to the states through the Fourteenth Amendment. *See Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

**[6]** Attempts by courts to resolve church property disputes while balancing the competing interests of property rights and the First Amendment's Free Exercise provision have resulted in two general approaches to the issue. They are typically referred to as the "neutral principles of law" approach and the "deference" or "identity" approach. *See, e.g., Jones v. Wolf,* 443 U.S. 595, 602–10, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (discussing both approaches to church property disputes). The First Amendment does not require states to follow a particular method of resolving church property disputes; rather, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.* at 602, 99 S.Ct. 3020 (citing *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.,* 396 U.S. 367, 368, 90 S.Ct. 499, 24 L.Ed.2d 582

(1970) (Brennan, J., concurring)) (emphasis in original).

### 1. Deference

The Supreme Court recently elaborated on its decision in *Watson*, which is often cited as the seminal case regarding the "deference" or "identity" approach in church property dispute cases:

> In [*Watson*], the Court considered a dispute between antislavery and proslavery factions over who controlled the property of the Walnut Street Presbyterian Church in Louisville, Kentucky. The General Assembly of the Presbyterian Church had recognized the antislavery faction, and this Court—applying not the Constitution but a "broad and sound view of the relations of church and state under our system of laws"—declined to question that determination. *Id.* at 727. [The Court] explained that "*whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.*" *Ibid.* As [the Court] would put it later, [the] opinion in *Watson* "radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 [73 S.Ct. 143, 97 L.Ed. 120] (1952).

*Hosanna–Tabor Evangelical Lutheran Church and School v. Equal Emp't Opportunity Comm'n*, —— U.S. ——, 132 S.Ct. 694, 704, 181 L.Ed.2d 650 (2012) (emphasis added); *see also Jones*, 443 U.S. at 602, 99 S.Ct. 3020. The deference approach embodies this general principle. A court applying the deference approach defers to and enforces the decision of the highest authority of the ecclesiastical body to which the matter has been carried. *See Jones*, 443 U.S. at 604–05, 99 S.Ct. 3020.

While the deference approach is based on principles set forth in *Watson*, *Watson* itself clarified that the First Amendment does not require a court to forego application of secular legal principles when resolving church property disputes:

> Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, . . . we enter upon its consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us.

80 U.S. at 714. As the Court elaborated in *Presbyterian Church v. Blue Hull Memorial Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) and in *Jones*, "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. 443 U.S. at 602–03, 605, 99 S.Ct. 3020. But when the question to be decided is not ecclesiastical, courts are not deprived of jurisdiction by the First Amendment and they may apply another Constitutionally acceptable approach. *Id.*

### 2. Neutral Principles

In *Jones v. Wolf* the Supreme Court approved the neutral principles methodolo-

gy as constitutionally permissible. 443 U.S. at 604, 99 S.Ct. 3020. *Jones* concerned the Vineville Presbyterian Church, which was incorporated under Georgia law and was a member church of the Augusta–Macon Presbytery of the Presbyterian Church in the United States (PCUS). The PCUS maintained a hierarchical form of government. *Id.* at 597–98, 99 S.Ct. 3020. Under the PCUS polity, the actions of local churches were subject to review and control by higher church courts. *Id.* at 598, 99 S.Ct. 3020. The powers and duties of each level of the church hierarchy were set out in the PCUS constitution, the Book of Church Order. *Id.*

At a 1973 meeting, the Vineville Church's pastor and a majority of its members voted to separate from the PCUS and unite with the Presbyterian Church in America. *Id.* The Augusta–Macon Presbytery of the PCUS concluded that the minority faction remaining loyal to the PCUS constituted "the true congregation of Vineville Presbyterian Church." *Id.* The Presbytery then withdrew "all authority to exercise office derived from the PCUS" from the majority faction and the minority sued in state court to establish their right to exclusive possession of the church property. *Id.* at 598–99, 99 S.Ct. 3020.

The trial court granted judgment for the majority. The Georgia Supreme Court affirmed, rejecting the minority faction's First Amendment challenge and holding that the trial court had correctly applied neutral principles of law. *Id.* at 599, 99 S.Ct. 3020.

The United States Supreme Court affirmed. It held that the methodology employed by the Georgia courts was not constitutionally infirm. *Id.* at 600, 99 S.Ct. 3020 (*citing Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322 (1976), *cert. denied*, 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148; *Presbyterian Church v. E. Heights*, 225 Ga. 259, 167 S.E.2d 658, 658–60 (1969) (*Presbyterian II*), *cert. denied*, 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976)). Under the neutral principles methodology, ownership of disputed property is determined by applying generally applicable law and legal principles. That application will usually include considering evidence such as deeds to the properties, terms of the local church charter (including articles of incorporation and by laws, if any), and relevant provisions of governing documents of the general church. *E.g., Jones*, 443 U.S. at 602–03, 99 S.Ct. 3020; *see Presbyterian II*, 167 S.E.2d at 659–60. The Court held that the First Amendment precluded neither application of neutral principles of law nor a state's adopting a presumptive rule of majority rule. *Jones*, 443 U.S. at 604, 607, 99 S.Ct. 3020. It noted that "any rule of majority representation can always be overcome, under the neutral-principles approach, either by providing in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way . . . [such as] by providing that the church property is held in trust for the general church and those who remain loyal to it[,]" or any other method that "does not impair free-exercise rights or entangle the civil courts in matters of religious controversy." *Id.* at 607–08, 99 S.Ct. 3020.

Since the identity of the local Vineville congregation was a matter of state law, the Supreme Court remanded the case to the Georgia Supreme Court. On remand the Georgia Supreme Court held that Georgia applies the presumptive majority rule to church identity and nothing in Georgia's statutes or the relevant corporate charters, deeds, and organizational constitutions of the denomination rebutted that presumption "as to the right to control the actions of the titleholder." *Jones v. Wolf*, 244 Ga. 388, 260 S.E.2d 84, 85 (1979).

### B. Texas

In *Brown v. Clark*, this Court addressed a dispute similar to both the one the Supreme Court addressed in *Jones* and the one now before us. 102 Tex. 323, 116 S.W. 360 (1909). In that case, property had been conveyed by general warranty deed to "trustees named for the Cumberland Presbyterian Church [of Jefferson, Texas]." *Id.* at 361. The dispute in the local church arose following a vote by the majority of the presbyteries of the General Assembly of the Cumberland Presbyterian Church and the General Assembly of the Presbyterian Church of the United States of America to reunite as one church. *Id.* at 362. This Court described the schism in the Jefferson church and resulting lawsuit as follows:

> There was at all times a strong minority which opposed the reunion, and, when the General Assembly of the Cumberland Presbyterian Church adopted the report and declared the union completed, the dissenting commissioners in attendance upon that General Assembly held a meeting, and organized another General Assembly of the Cumberland Presbyterian Church. Much dissatisfaction prevailed in the churches of the Cumberland Presbyterian, and in the church at the city of Jefferson, Tex., there was a difference of opinion upon the subject of reunion among its members. Those who opposed the reunion instituted this action, claiming that they constituted the session of the Cumberland Presbyterian Church at Jefferson. The defendants in the action claimed to be the session of the Presbyterian Church of the United States of America, and were in possession of the property, and claimed that by the union the property had been transferred to the Presbyterian Church of the United States of America. The case was tried before the judge without a jury, and a judgment was rendered in favor of the defendants-those who claimed under the Presbyterian Church of the United States of America. The Court of Civil Appeals of the Sixth Supreme Judicial District reversed that judgment, and rendered judgment in favor of the plaintiffs below.

*Id.*

The principal issues presented were whether the General Assembly of the Cumberland Church had authority to reunite the Cumberland Church with the Presbyterian Church, and if so, how did the reunion affect the church property in Jefferson? *Id.* at 363–64. The Court held that the first issue was within the exclusive jurisdiction of the General Assembly because it was the highest court of the church, it had decided the question, and thus "there is no ground for action by this court." *Id.* at 364. As to the second issue, the Court noted that the question of how the reunion affected the property was "perhaps the only question in the case" over which it had jurisdiction. *Id.* As opposed to the first issue, which presented no basis on which the Court could consider the merits or take action, the Court addressed the merits of the second:

> The deed for the property was made to the trustees of the Cumberland Presbyterian Church at Jefferson, Tex. It expressed no trust nor limitation upon the title. The property was purchased by the church and paid for in the ordinary way of business, and there is not attached to that property any trust either express or implied. *It follows, we think, as a natural and proper conclusion, that the church to which the deed was made still owns the property, and that whatever body is identified as being the church to which the deed was made must still hold the title.* The Cumberland Presbyterian Church at Jefferson was but a member of and under the control of the larger and more important Christian organization, known as the

> Cumberland Presbyterian Church, and the local church was bound by the orders and judgments of the courts of the church. *Watson v. Jones*, 13 Wall. at 727, 20 L.Ed. 666. The Jefferson church was not disorganized by the act of union. It remained intact as a church, losing nothing but the word 'Cumberland' from its name. Being a part of the Cumberland Presbyterian Church, the church at Jefferson was by the union incorporated into the Presbyterian Church of the United States of America. The plaintiffs in error and those members who recognize the authority of the Presbyterian Church of the United States of America are entitled to the possession and use of the property sued for.

*Id.* at 364–65 (emphasis added). *See Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95 (Tex.2012) (noting that the opinion of a court without jurisdiction is advisory to the extent it addresses issues other than the jurisdictional issue because the Texas Constitution does not authorize courts to make advisory decisions or issue advisory opinions); *Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex.2000) (per curiam) ("Under article II, section 1 of the Texas Constitution, courts have no jurisdiction to issue advisory opinions."); *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 517 n. 15 (Tex.1995).

Courts of appeals have read *Brown* as applying a deference approach, and generally have applied deference principles to hierarchical church property dispute cases.[5] It is true that in *Brown* the Court determined it lacked jurisdiction over the ecclesiastical questions of whether the doctrines of the two general churches were dissimilar and whether their merger was proper. But it did not simply defer to the ecclesiastical authorities with regard to the property dispute. Instead, the Court addressed the merits of the title question by examining the deed using principles of Texas law. It concluded that the deed transferred the property to trustees of the local church that was a subordinate part of the merged Presbyterian Church of the United States of America, thus the believers recognizing the authority of that body were entitled to possession and use of the property. *Brown*, 116 S.W. at 365.

**[7]** The method by which this Court addressed the issues in *Brown* remains the appropriate method for Texas courts to address such issues. Courts do not have jurisdiction to decide questions of an ecclesiastical or inherently religious nature, so as to those questions they must defer to

**5.** *See Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 552 (Tex.App.–Austin 1991, writ denied) ("Where a congregation of a hierarchical church has split, those members who renounce their allegiance to the church lose any rights in the property involved and the property belongs to the members who remain loyal to the church. It is a simple question of identity."); *Templo Ebenezer, Inc. v. Evangelical Assemblies, Inc.*, 752 S.W.2d 197, 198 (Tex.App.–Amarillo 1988, no writ); *Schismatic & Purported Casa Linda Presbyterian Church in Am. v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 706–07 (Tex.App.–Dallas 1986, writ ref'd n.r.e.) (applying the deference rule); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865, 871–72 (Tex.Civ.App.–Texarkana 1977, no writ) (determining that the question of which faction of a congregation that is part of a hierarchical religious body is entitled to church property is a question of identity answered by which faction is recognized by the higher, more important religious body); *Browning v. Burton*, 273 S.W.2d 131, 135 (Tex.Civ.App.–Austin 1954, writ ref'd n.r.e) ("[T]he right to sell the property must come from the members of the religious organization in whom the beneficial title is vested or as the laws of that group may direct."); *see also Church of God in Christ, Inc. v. Cawthon*, 507 F.2d 599, 602 (5th Cir. 1975) (discussing Texas law) ("Here the national church is a party and, as a church of the hierarchical polity, has established its right to possession and control.").

decisions of appropriate ecclesiastical decision makers. But Texas courts are bound to exercise jurisdiction vested in them by the Texas Constitution and cannot delegate their judicial prerogative where jurisdiction exists. Properly exercising jurisdiction requires courts to apply neutral principles of law to non-ecclesiastical issues involving religious entities in the same manner as they apply those principles to other entities and issues. Thus, courts are to apply neutral principles of law to issues such as land titles, trusts, and corporate formation, governance, and dissolution, even when religious entities are involved.

We recognize that differences between ecclesiastical and non-ecclesiastical issues will not always be distinct, and that many disputes of the type before us will require courts to analyze church documents and organizational structures to some degree. Further, 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. *See Milivojevich*, 426 U.S. at 709–10, 96 S.Ct. 2372; *Brown*, 116 S.W. at 364–65. Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist. The neutral principles methodology also respects and enforces the manner in which religious entities and their adherents choose to structure their organizations and their property rights in the same manner as those structures and rights are respected and enforced for other persons and entities.

[8] We join the majority of states [6]

**6.** The parties differ on exactly which states have adopted neutral principles, and which have not. We interpret the decisions of the following state supreme courts to have adopted the basic concepts of neutral principles: *African Meth. Epis. Zion Church v. Zion Hill Meth. Church, Inc.*, 534 So.2d 224, 225 (Ala.1988); *St. Paul Church, Inc. v. Bd. of Trs.*, 145 P.3d 541, 553 (Alaska 2006); *Ark. Presbytery v. Hudson*, 344 Ark. 332, 40 S.W.3d 301, 306 (2001); *In re Episcopal Church Cases*, 45 Cal.4th 467, 87 Cal.Rptr.3d 275, 198 P.3d 66, 70 (2009); *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 96 (Colo.1986); *Episcopal Church in the Diocese of Conn. v. Gauss*, 302 Conn. 408, 28 A.3d 302, 316 (2011); *E. Lake Meth. Epis. Church, Inc. v. Trs.*, 731 A.2d 798, 810 (Del.1999); *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 354 (D.C.2005); *Rector, Wardens, Vestrymen of Christ Church in Savannah v. Bishop of Epis. Diocese*, 290 Ga. 95, 718 S.E.2d 237, 241 (2011); *Gospel Tabernacle Body of Christ Church v. Peace Publishers & Co.*, 211 Kan. 420, 506 P.2d 1135, 1138 (1973); *Fluker Cmty. Church v. Hitchens*, 419 So.2d 445, 447 (La.1982); *Attorney Gen. v. First United Bapt. Church of Lee*, 601 A.2d 96, 99 (Me.1992); *From the Heart Church Ministries, Inc. v. African Meth. Epis. Zion Church*, 370 Md. 152, 803 A.2d 548, 565 (2002); *Maffei v. Roman Catholic Archbishop*, 449 Mass. 235, 867 N.E.2d 300, 310 (Mass.2007); *Piletich v. Deretich*, 328 N.W.2d 696, 701 (Minn.1982); *Schmidt v. Catholic Diocese*, 18 So.3d 814, 824 (Miss.2009); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465, 467 (Mo. 1984); *Hofer v. Mont. Dep't of Pub. Health*, 329 Mont. 368, 124 P.3d 1098, 1103 (2005); *Medlock v. Medlock*, 263 Neb. 666, 642 N.W.2d 113, 128–29 (2002); *Berthiaume v. McCormack*, 153 N.H. 239, 891 A.2d 539, 547 (2006); *Blaudziunas v. Egan*, 18 N.Y.3d 275, 938 N.Y.S.2d 496, 961 N.E.2d 1107, 1110 (2011); *Harris v. Matthews*, 361 N.C. 265, 643 S.E.2d 566, 570 (2007); *Serbian Orthodox Church Congregation v. Kelemen*, 21 Ohio St.2d 154, 256 N.E.2d 212, 216 (1970); *In re Church of St. James the Less*, 585 Pa. 428, 888 A.2d 795, 805–06 (2005); *All Saints Parish Waccamaw v. Protestant Epis. Church in Diocese of S.C.*, 385 S.C. 428, 685 S.E.2d 163, 171 (2009); *Foss v. Dykstra*, 342 N.W.2d 220, 222 (S.D.1983); *Jeffs v. Stubbs*, 970 P.2d 1234, 1250–51 (Utah 1998); *Reid v. Gholson*, 229 Va. 179, 327 S.E.2d 107, 112 (1985); *Wis. Conf. Bd. of Trs. v. Culver*, 243 Wis.2d 394, 627 N.W.2d 469, 475–76 (2001).

that have considered the matter. We hold that Texas courts should use the neutral principles methodology to determine property interests when religious organizations are involved. Further, to reduce confusion and increase predictability in this area of the law where the issues are difficult to begin with, Texas courts must use only the neutral principles construct.

## III. Discussion

### A. Summary Judgment

The Episcopal Leaders filed a traditional motion for summary judgment on the basis that (1) TEC is a hierarchical church; (2) when hierarchical churches split, Texas courts defer to the decisions of the superior organization in the church hierarchy as to which faction comprises the true church; (3) the members loyal to TEC have been recognized by the Diocese's Bishop as the "true and proper representatives of the Episcopal Church of the Good Shepard"; and (4) the Canons and rules of TEC and the Diocese provide that property of a parish is to be held in trust for use of TEC and the respective Diocese, thus the parish property is held in trust for TEC, the Diocese, and through them, the loyal faction. In both their motion and reply to the defendant's response, the Episcopal Leaders maintained that the Episcopal Church is hierarchical as a matter of law and the Anglican Leaders did not have authority to dissolve the relationship between Good Shepard and TEC and the Diocese.

**[9]** We review the trial court's grant of summary judgment de novo. *Exxon Corp. v. Emerald Oil & Gas Co.,* 331 S.W.3d 419, 422 (Tex.2010). To prevail on their motion, the Episcopal Leaders must have proved that, as a matter of law, they were entitled to judgment on the issues they pleaded and set out in their motion for summary judgment. *See* TEX.R. CIV. P. 166a(c).

**[10]** Civil courts are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted. *See Hosanna–Tabor,* —— U.S. ——, 132 S.Ct. at 705 (*citing Milivojevich,* 426 U.S. at 708, 96 S.Ct. 2372). So what happens to the relationship between a local congregation that is part of a hierarchical religious 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. *Milivojevich,* 426 U.S. at 713–14, 96 S.Ct. 2372. But what happens to the property is not, unless the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue.

**[11]** The Anglican Church Leaders contend that even if TEC is hierarchical, not all decisions by hierarchical religious organizations are entitled to deference regarding ecclesiastical governmental matters. They argue that in order to determine whether to defer to a church tribunal's decision, civil courts should examine the church's organizational documents and evaluate whether those documents expressly vest a church tribunal with authority to decide the specific issue in question. Citing *Milivojevich,* the Anglican Church Leaders urge that the Episcopal Church has not created hierarchical tribunals with authority to remove the vestry, exclude people from membership in the local church, or to adjudicate this property dispute. But nothing in *Milivojevich* requires a hierarchical religious entity to expressly establish which powers its religious tribunals may properly exercise. To the contrary, *Milivojevich* suggests that the First Amendment limits the jurisdiction of secular courts regarding the extent to which they may inquire into the form or type of decision-

making authority a religious entity chooses to utilize, the specific powers of that authority, or whether the entity has followed its own procedures regarding controversies within the exclusive jurisdiction of the ecclesiastical authorities. *See Milivojevich,* 426 U.S. at 720, 96 S.Ct. 2372. Further, courts are precluded from exercising jurisdiction over matters the First Amendment commits exclusively to the church, even where a hierarchical religious organization fails to establish tribunals or specify how its own rules and regulations will be enforced. *See Hosanna–Tabor,* —— U.S. at ——, 132 S.Ct. at 704 (*citing Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.,* 344 U.S. 94, 116, 73 S.Ct. 143, 97 L.Ed. 120 (1952)); *Watson,* 80 U.S. at 728–30.

**[12]** We agree with the court of appeals that the record conclusively shows TEC is a hierarchical organization. The Anglican Leaders do not dispute that Bishop Ohl is the highest ecclesiastical authority in the Diocese nor that he has recognized the new vestry aligned with the Episcopal Church Leaders as "the true and proper representatives of the Episcopal Church of the Good Shepherd." Whether Bishop Ohl was authorized to form a parish and recognize its membership, whether he could or did authorize that parish to establish a vestry, and whether he could or did properly recognize members of the vestry are ecclesiastical matters of church governance. The trial court lacked jurisdiction over and properly deferred to Bishop Ohl's exercise of ecclesiastical authority on those questions. *See Hosanna–Tabor,* —— U.S. at ——, 132 S.Ct. at 704; *Brown,* 116 S.W. at 363.

**[13]** But although we agree with the court of appeals as to these conclusions, we disagree with its determination that the question of who owns the property is inextricably linked to or determined by them. There is a difference between (1) the Bishop's determining which worshipers are loyal to the Diocese and TEC, whether those worshipers constituted a parish, and whether a parish properly established a vestry, and (2) whether the corporation's bylaws were complied with when the vote occurred to disassociate the corporation from the Diocese and TEC. After all, the Diocese required the Church to incorporate, and the corporation has a secular existence derived from applicable Texas law and the corporation's articles of incorporation and bylaws. The Diocese did not urge as grounds for summary judgment that amendment of the bylaws and articles of incorporation was ceded to the Diocese so that whether to amend them was an ecclesiastical decision and not a secular one. Rather, the Episcopal Leaders alleged that they are entitled to the property because Bishop Ohl—after the vote to change the corporation's status took place in 2006—decided the loyal faction was the true membership of Good Shepherd, and "[a]ccording deference to the Bishop, [the Episcopal Leaders] assert that they are entitled to title, possession and use of [the property]."

The Episcopal Leaders neither pleaded nor urged as grounds for summary judgment that they are entitled to the property on the basis of neutral principles. Because the deference methodology is not to be used to determine this type dispute, the Episcopal Leaders' pleadings and motion will not support summary judgment.

The same result is mandated as to Good Shepherd's personal property for the reasons expressed as to the real property.

The judgment of the court of appeals must be reversed and the case remanded to the trial court.[7]

**7.** Several amici supporting the deference approach contend that if the neutral principles

### B. Remand

The parties advance arguments that may be presented to the trial court upon remand. To assist the trial court in the event they are, we address some of them. *See MCI Sales & Serv. v. Hinton,* 329 S.W.3d 475, 495 n. 19 (Tex.2010) (addressing an issue that would "feature prominently on retrial" in order to "provide guidance to the trial court" even though the issue was not necessary to the ultimate resolution of the case); *Edinburg Hosp. Auth. v. Trevino,* 941 S.W.2d 76, 81 (Tex. 1997) ("Although resolution of this issue is not essential to our disposition of this case, we address it to provide the trial court with guidance in the retrial. . . .").

#### 1. Control of the Corporation

**[14]** We first address the Episcopal Leaders' argument that Good Shepherd's corporate powers were restricted by its affiliation with TEC. The Episcopal Leaders assert that TEC's structure, constitution, canons, and rules required parish corporations to remain part of and subject to TEC's authority. They point to the Good Shepherd corporate bylaws confirming that Good Shepherd "is a constituent part of the Diocese of Northwest Texas and of the Protestant Episcopal Church . . . [and Good Shepherd] accedes to, recognizes, and adopts the General Constitution and Canons of that Church." But the vote at the called meeting was in favor of amending the bylaws to delete or change provisions referring to and adopting the canons and constitutions of TEC and the Diocese, and revoking any trusts in the corporate property in favor of them.[8] Absent specific, lawful provisions in a corporation's articles of incorporation or bylaws otherwise, whether and how a corporation's directors or those entitled to control its affairs can change its articles of incorporation and bylaws are secular, not ecclesiastical, matters.

The Episcopal Leaders cite Texas Business Organizations Code § 3.009 and argue that Good Shepherd's articles of incorporation were required to expressly state that the corporation is a member-managed corporation in order for the corporation to be governed by its local members. This argument is unpersuasive to the extent it relates to whether an outside entity has authority to control the corporation. First, even if the corporation were not member managed, that would not mean that its management could be appointed by or was under the control of TEC, the

of law approach is adopted, fairness precludes its retroactive application and that retroactive application of that approach will violate the First Amendment's Free–Exercise clause. These amici cite a footnote in *Jones* wherein the Supreme Court noted that "a claim that retroactive application of a neutral-principles approach infringes free-exercise rights" was not involved in that case since the Georgia Supreme Court "clearly enunciated its intent to follow the neutral-principles analysis" in two prior cases. *Jones,* 443 U.S. at 606 n. 4, 99 S.Ct. 3020. The parties do not raise the issue except for the Anglican Leaders including it in their reply brief and asking that it be considered if we decide the case on the Episcopal Leaders' proposed legal theory that churches are public charitable trusts or that under the "identity" approach, those who remain part of the hierarchical church of which the congregation was a part before the dispute arose are entitled to possess and control the property. Based on our disposition of the appeal, we need not and do not address it. However, we note that our analysis in *Brown* substantively reflected the neutral principles methodology.

8. The Episcopal Leaders argued in their reply to the Anglican Leaders' response to the motion for summary judgment that the votes on the resolutions to amend the corporation's bylaws and articles of incorporation failed because the resolutions passed by only a majority and not a two-thirds vote. Because neither party addresses the argument in this Court and the court of appeals did not address it, we do not.

Diocese, or Bishop Ohl, absent corporate documents and law so providing. Second, when Good Shepherd incorporated in 1974 the Non–Profit Corporations Act provided that "[t]he power to alter, amend, or repeal the bylaws or to adopt new by-laws shall be vested in the members, if any, but such power may be delegated by the members to the board of directors." *See* TEX. REV.CIV. STAT. art. 1396–2.09. The current statutory scheme changes the default rule on who is authorized to amend the bylaws, but under neither the former nor the current statute is an external entity empowered to amend them absent specific, lawful provision in the corporate documents. *See* TEX. BUS. ORGS.CODE § 3.009; TEX.REV.CIV. STAT. art. 1396–2.09 (current version at TEX. BUS. ORGS. CODE § 22.102) ("The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members . . . .").

### 2. Control of the Property

**[15]** It is undisputed that title to the real property is in the name of the corporation. It is further undisputed that the language of the deeds does not provide for an express trust in favor of TEC or the Diocese. Three reasons are suggested for the proposition that TEC should have possession of the property. The first is that under deference principles Bishop Ohl's decision identifying the loyal faction as the continuing Parish of Good Shepherd settled the question of who was entitled to the property and the corporation had no rights in the property other than holding title as trustee for the loyal faction, the Diocese, and TEC. The second is that under neutral principles of law the initial adoption of the constitutions and canons of TEC and the Diocese by the corporation in its bylaws was irrevocable, so any action to revoke that part of the bylaws was void. The third is that because the corporation accepted donations of property and money based on its having subscribed and acceded to the Constitutions and canons of the Diocese and TEC, it cannot obtain the right to own and possess the property by unilaterally changing its articles of incorporation and bylaws.

In regard to the first question, we have held that Texas courts cannot simply use the deference or identity methodology principles to resolve this type of issue. Under neutral principles of law, the deeds conveying the property to Good Shepherd corporation "expressed no trust nor limitation upon the title," and therefore the corporation owns the property. *See Brown*, 116 S.W. at 364. Bishop Ohl could, as an ecclesiastical matter, determine which faction of believers was recognized by and was the "true" church loyal to the Diocese and TEC. Courts must defer to such ecclesiastical decisions. But under neutral principles, any decisions he made about the secular legal questions of whether the vote by the parish members to amend the bylaws and articles of incorporation was valid under Texas law and whether the bylaws and articles of incorporation were validly amended, are not entitled to deference. Nor does his decision identifying the loyal faction as the continuing Episcopal Parish operating Good Shepherd church determine the property ownership issue under this record, as it might under the deference or identity methodology.

As to the second and third reasons, the Episcopal Leaders and several *amici* argue that Good Shepherd's articles of incorporation and bylaws evidence the fact that the corporation is subordinate to TEC and the Diocese. They do not argue, however, that the articles of incorporation, bylaws, or statutory law precluded amendments revoking any relationship with TEC and the Diocese. A religious organization may choose to organize as a domestic non-profit organization and acquire, own, hold, mortgage, and dispose of or invest its funds in

property for the use and benefit of and in trust for a higher or other organization. *See, e.g.,* TEX. BUS. ORGS.CODE § 2.102. But whether a religious organization *can* acquire and hold property in trust for another person or entity is a different question from whether it *has done* so, and is also a different question from whether such a choice is irrevocable.

The Episcopal Leaders argue that the Supreme Court's pronouncement in *Jones* that a superior hierarchical church organization's amendment to its constitution to include a trust provision is sufficient to establish a trust in property held by its subordinate churches. The gravamen of this argument is that in *Jones* the Supreme Court established substantive property and trust law to be applied in church property disputes, and under such law a subordinate organization cannot revoke a trust on its property once the superior body imposes it. In support of their argument the Episcopal Church leaders point to the following passage in *Jones:*

> At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

*Jones,* 443 U.S. at 606, 99 S.Ct. 3020 (emphasis added) (footnote omitted). The Episcopal Leaders argue that TEC adopted canon I.7.4 in 1979 [9] in accordance with the *Jones* decision and thereby established a trust as to the property. Canon I.7.4 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.

The Episcopal Leaders cite other state courts for the proposition that an express trust canon like canon I.7.4 precludes the disassociating majority of a local congregation from retaining local parish property after voting to disaffiliate from the Church. *See The Episcopal Church in the Diocese of Conn. v. Gauss,* 302 Conn. 408, 28 A.3d 302 (2011); *In re Episcopal Church Cases,* 45 Cal.4th 467, 87 Cal. Rptr.3d 275, 198 P.3d 66 (2009); *Episcopal Diocese of Rochester v. Harnish,* 11 N.Y.3d 340, 870 N.Y.S.2d 814, 899 N.E.2d 920 (2008); *In re Church of St. James the Less,* 585 Pa. 428, 888 A.2d 795 (2005); *Bishop & Diocese of Colo. v. Mote,* 716 P.2d 85 (Colo.1986) (en banc).

The Missouri Court of Appeals recently addressed this issue in *Heartland Presbytery v. Gashland Presbyterian Church,* 364 S.W.3d 575 (Mo.Ct.App.2012). There the court explained that:

> The intent of the . . . passage [in *Jones* ] was to explain that, contrary to the dissent's characterization, a "neutral-principles" approach would not impose a particular property-rights regime on the parties, or infringe upon the rights of a denomination's adherents to order their

9. The Diocese incorporated this provision into its canons in 1982.

> affairs as they saw fit. Instead, like the discussion earlier in the Court's opinion, the quoted passage simply makes clear that, like "private-law systems in general," the application of neutral principles of state property and trust law would afford "flexibility in ordering private rights and obligations to reflect the intentions of the parties." [*Jones*, 443 U.S.] at 604, 99 S.Ct. 3020 (emphasis added). The recitation of the particular documents which might be employed to accomplish the parties' intentions can only be read as illustrative. We will not read the quoted passage as itself establishing the substantive property and trust law to be applied to church—property disputes, particularly where the very same passage contemplates (in its reference to "other neutral principles of state law") that the applicable law—like American property and trust law in general—would be state, rather than federal, law. Further, the statement that "the civil courts will be bound to give effect to" the parties' expressed intentions was explicitly conditioned on those intentions being "embodied in some legally cognizable form"—precisely the issue we address in this opinion.

*Id.* at 589.

Our view coincides with that of the Missouri court. We do not read *Jones* as purporting to establish substantive property and trust law that state courts must apply to church property disputes. *See Am. Elec. Power Co. v. Conn.*, —— U.S. ——, ——, 131 S.Ct. 2527, 2535, 180 L.Ed.2d 435 (2011) ("*Erie* 'le[ft] to the states what ought to be left to them,' and thus required 'federal courts [to] follow state decisions on matters of substantive law appropriately cognizable by the states.' " (citations omitted)); *Jones*, 443 U.S. at 609, 99 S.Ct. 3020 ("This Court, of course, does not declare what the law of Georgia is."). The Episcopal Leaders do not cite Texas law to support their argument that under the record before us Good Shepherd corporation was precluded from revoking any trusts actually or allegedly placed on its property.

### IV. Response to the Dissent

The dissent agrees that neutral principles is the proper methodology to apply in this type of case, but argues that summary judgment was properly granted for the Episcopal Leaders because (1) whether Good Shepherd can amend its articles of incorporation and bylaws to delete references to TEC and the Diocese and to revoke any trusts on the property, is at bottom an ecclesiastical matter that courts do not have jurisdiction to address; (2) Good Shepherd's bylaws agreeing to be bound by the Canons of TEC and the Diocese imposed a trust on the property that became irrevocable when Good Shepherd withdrew from TEC; and (3) Good Shepherd is estopped from revoking the trust in favor of TEC and the Diocese. The arguments do not persuade us.

As we have previously noted, the Episcopal Leaders' pleadings do not support summary judgment on the basis of neutral principles because they allege only that they are entitled to the property based on application of the deference methodology. Further, their only ground for summary judgment was that deference principles apply and the property goes to those members of the congregation recognized by Bishop Ohl as the true membership of Good Shepherd. But the deference methodology is inapplicable under our holding in this case. Moreover, going beyond the procedural issue, the dissent's arguments are not supported by the record.

The dissent's first argument, that Good Shepherd corporation could not amend its articles of incorporation and bylaws to omit references to TEC and the Diocese because doing so would circumvent "an

ecclesiastical decision made by a higher authority within a hierarchical church structure," is in substance application of the deference methodology. That position, if applied in this case, would subject the corporation's decision makers and the parish members who were qualified to vote under the bylaws to the dictates of persons not identified in corporate governing documents as having the right to make, control, or override corporate decisions. Despite agreeing that the neutral principles methodology applies, the dissent's argument ignores the fact that Good Shepherd was incorporated pursuant to secular Texas corporation law and Texas law dictates how the corporation can be operated, including how and when corporate articles and bylaws can be amended and the effect of the amendments. The dissent points to neither a requirement in the corporate documents that amendments are subject to approval by the Diocese or TEC, nor to any Texas law precluding the corporation from amending its articles and bylaws to exclude references to the Diocese and TEC. To the contrary, the articles of incorporation and bylaws specified that qualified parish members were entitled to elect the vestry and amend the bylaws.

Second, the dissent concludes that despite there being no trust language in either the deeds transferring property to Good Shepherd or in Good Shepherd's articles of incorporation or bylaws, the Dennis Canon, which provides in part that "all real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for TEC," and Good Shepherd's actions before the split conclusively establish Good Shepherd's intent to hold its property in trust for the benefit of TEC and the Diocese. The dissent then concludes that the trust is irrevocable because the Dennis Canon limits Good Shepherd's authority over its property to the period of time for which it remains a part of and subject to TEC. But the Episcopal Leaders did not move for summary judgment on this basis. *See* TEX.R. CIV. P. 166a(c); *G & H Towing Co. v. Magee,* 347 S.W.3d 293, 297 (Tex.2011) ("Summary judgments, however, may only be granted upon grounds expressly asserted in the summary judgment motion."). Further, even assuming a trust was created by the Dennis Canon and Good Shepherd's bylaws and actions, we disagree that the Canon's terms make the trust expressly irrevocable as Texas law requires. The dissent interprets the Dennis Canon as limiting Good Shepherd's authority over the property to the time Good Shepherd remained affiliated with TEC and the Diocese. Assuming the Dennis Canon imposed a trust on Good Shepherd's property and limited Good Shepherd's authority over the property as the dissent argues, and we expressly do not decide whether it did, the Canon simply does not contain language making the trust *expressly* irrevocable. *See* TEX. PROP. CODE § 112.051 ("A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it."). Even if the Canon could be read to *imply* the trust was irrevocable, that is not good enough under Texas law. The Texas statute requires *express* terms making it irrevocable. *See Vela v. GRC Land Holdings, Ltd.*, 383 S.W.3d 248, 252–53 (Tex.App.–San Antonio 2012, no pet.) ("Because section 112.051(a) requires express language of irrevocability, we conclude that the use of the term 'forever' in the special warranty deed did not cause the Trust to become irrevocable.").

Under its third argument, the dissent would hold that the doctrine of estoppel applies and requires that the judgment of the court of appeals be affirmed. But summary judgment may only be granted based on grounds pleaded and expressly presented in a motion for summary judg-

ment. TEX.R. CIV. P. 166a(c); *G & H Towing Co.*, 347 S.W.3d at 297. The Episcopal Leaders neither pleaded estoppel nor urged it as a ground for summary judgment.

### V. Conclusion

The judgment of the court of appeals is reversed. The case is remanded to the trial court for further proceedings consistent with this opinion.

Justice BOYD filed a concurring opinion, in which JUSTICE WILLETT joined.

Justice LEHRMANN filed a dissenting opinion, in which Chief Justice JEFFERSON joined.

Justice BOYD, joined by Justice WILLETT, concurring.

I join in the Court's adoption of the neutral-principles approach to deciding non-ecclesiastical issues, and in its disposition reversing and remanding this case for the trial court to decide under that approach. I do not, however, join in Part III.B. ("Remand") or Part IV ("Response to the Dissent") of the Court's opinion, addressing issues that I believe the Court decides prematurely.

As the Court explains, "[t]he Episcopal Leaders neither pleaded nor urged as grounds for summary judgment that they are entitled to the property on the basis of neutral-principles," *ante* at 608, which we hold today is the only basis on which they could be entitled to the property. Moreover, as the Court acknowledges, even under the neutral-principles approach, courts must still defer "to religious entities' decisions on ecclesiastical and church polity questions," *ante* at 596, and "[t]he Diocese did not urge as grounds for summary judgment that amendment of the bylaws and articles of incorporation was ceded to the Diocese so that whether to do so was an ecclesiastical decision and not a secular one." *Ante* at 608.

Despite the lack of pleadings and evidence addressing the standards we adopt today, the Court decides that the amendment of the bylaws and articles did not involve ecclesiastical decisions entitled to deference and that the local parish either did not place the property in a trust or, if it did, did not make that trust irrevocable. The Dissent disagrees, concluding that the Episcopal Church and the Diocese should prevail under the neutral-principles approach, either because the amendment of the bylaws and articles remains an ecclesiastical decision to which the courts must defer, or because, under neutral-principles, the parish placed the property in an irrevocable trust.

Both the Court and the Dissent make good arguments, but they are premature. Before we decide these fact-intensive issues, we should afford the parties an opportunity to fully develop their pleadings and the record under the neutral-principles approach that we have adopted today; and we would benefit by affording the courts below an opportunity to consider and decide these matters first. *See Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 862 (Tex.2000) ("On an appeal from summary judgment, we cannot consider issues that the movant did not present to the trial court.") (citing *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 625 (Tex.1996) and *Travis v. City of Mesquite*, 830 S.W.2d 94, 100 (Tex.1992)).

For these reasons, I join in the Court's disposition, reversing and remanding the case for further proceedings in the trial court, but not in its discussion and resolution of issues that the parties have not yet fully litigated.

Justice LEHRMANN, joined by Chief Justice JEFFERSON, dissenting.

Today the Court applies state law governing corporations to bar summary judgment for TEC [1] on an ecclesiastical matter

1. Unless otherwise noted, abbreviated terms shall have the meaning specified in the Court's opinion.

over which the Court has no jurisdiction. While I wholeheartedly agree with the Court that church property disputes should be resolved under the neutral-principles approach approved by the Supreme Court in *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), in my view, the Court has misapplied those principles in this case. In deciding that the secular law governing corporations controls the outcome of this matter, the Court places undue emphasis on the local church's incorporated status. Although a corporation is a separate entity with authority to amend its bylaws and articles of incorporation, it cannot do so when such an action results in the circumvention of an ecclesiastical decision made by a higher authority within a hierarchical church structure. In this case, the Court determines that Good Shepherd's incorporation allows it to disregard TEC's governing documents by withdrawing from TEC and taking church property with it—actions that go beyond the parish's authority. All the while, Good Shepherd has sought, agreed to, and received the benefits of association with TEC. Because the decision about whether a subordinate church entity can withdraw involves a matter of church polity, which is clearly an ecclesiastical issue, we have no jurisdiction over the subject under the First Amendment of the U.S. Constitution.

Moreover, even if this dispute could be resolved by conducting a purely secular analysis, summary judgment in favor of the Episcopal Leaders remains appropriate. Considering all the relevant statutes and documents, I would hold that a trust on the church property was created in favor of TEC and the Diocese, which became irrevocable upon Good Shepherd's vote to withdraw. Alternatively, I would hold that Good Shepherd was estopped from revoking the trust. Good Shepherd freely and eagerly chose to accept the use and benefit of the property at issue, paying nothing for the privilege. It cannot now unilaterally escape its part of the arrangement. Accordingly, I respectfully dissent.

## I. Background

### A. Good Shepherd Sought the Benefit of TEC Structure

As the Court notes, TEC is structured in three tiers, from the General Convention (at the highest level) to the regional dioceses (at the intermediate level) to the local congregations, divided into parishes, missions, and congregations (at the lower level). *See* 422 S.W.3d at 600. In turn, each subordinate Episcopal affiliate must accede and be subject to the Constitution and Canons of the higher entity or entities. *See id.* Good Shepherd expressed this agreement to be bound by the higher entities repeatedly and consistently until its vote to withdraw in 2006.

When the original members of Good Shepherd first applied to TEC to organize a mission in 1965, the applicants stated that they were "desirous of obtaining the services of the Church, and ready, according to our several abilities, to sustain the same." In accordance with diocesan Canon, the applicants further "promise[d] conformity to [TEC's] Doctrine, Discipline, and Worship" and "to the Constitution and Canons of the General Convention and the Diocese of Northwest Texas." In the 1972 Instrument of Donation declaring the church building and grounds free from debt or lien, Good Shepherd's Vicar and Bishop's Committee further stated "that the building and grounds are secured from the danger of alienation, either in whole or in part, from those who profess and practice the Doctrine, Discipline, and Worship

of this Church." Good Shepherd applied for and was granted parish status in 1974, reaffirming in its petition that the signatories thereto were "conscientiously attached to the Doctrine, Discipline and Worship of the Protestant Episcopal Church in the United States of America."

Upon being granted parish status, Good Shepherd incorporated in accordance with diocesan Canon. The Articles of Incorporation provided that "[t]he corporation is organized for religious purposes in order to provide a location for religious worship, education, and the furtherance of the Christian religion." The initial Bylaws, adopted in January 1975, state in Article I:

> The Church of the Good Shepherd is situated in San Angelo, Tom Green County, Texas. It is a constituent part of the Diocese of Northwest Texas and of the Protestant Episcopal Church in the United States of America. The Parish accedes to, recognizes, and adopts the General Constitution and Canons of that Church, and the Constitution and Canons of the Diocese of Northwest Texas and acknowledges the authority of the same.

Before the underlying dispute arose, Good Shepherd amended its Bylaws twice (once in 1994 and once in 1998), with no material changes made to Article I.

### B. Church Property Placed in Trust

As discussed by the Court, in 1979 TEC amended its Canons, adding Canon I.7.4 (often referred to as the "Dennis Canon") and I.7.5 for the purpose of placing church property in trust:

> **Sec. 4.** 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 Constitutions and Canons.*
>
> **Sec. 5.** The several Dioceses may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, *but no such action shall be necessary for the existence and validity of the trust.*

(Emphasis added).

In 1982, after TEC enacted the Dennis Canon, the Diocese conveyed the relevant property to Good Shepherd. As the Court notes, the deed itself contained no trust language or other limitation on the conveyance. Finally, in 2006, Good Shepherd's members passed several resolutions by majority vote, with full knowledge of the Dennis Canon to which Good Shepherd had agreed to be bound. Pursuant to these resolutions, Good Shepherd voted to "withdraw[ ] from, end its membership in, and dissolve[ ] its union with" TEC and the Diocese. It further voted to amend its Bylaws to remove any reference to TEC, as well as to revoke any trust placed on church property for the benefit of TEC or the Diocese.

## II. Analysis of Neutral–Principles Approach

In *Jones v. Wolf,* the United States Supreme Court recognized as constitutional the neutral-principles approach to resolving church property disputes. 443 U.S. at 602, 99 S.Ct. 3020. While courts remain prohibited under this approach "from resolving [such] disputes on the basis of religious doctrine or practice," they may apply "objective, well-established concepts of trust and property law" so long as it involves "no consideration of doctrinal matters." *Id.* at 602–03, 99 S.Ct. 3020. This approach, the Supreme Court concluded,

"promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Id.* at 603, 99 S.Ct. 3020. Further,

> the neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy.

*Id.* The Supreme Court cautioned, however, that in examining any religious documents to discern the intent of the parties, "a civil court must take care to [do so] in purely secular terms." *Id.* at 604, 99 S.Ct. 3020. Thus, if the interpretation of such documents "would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Id.* The Supreme Court stressed that "the outcome of a church property dispute is not foreordained" under a neutral-principles approach. *Id.* at 606, 99 S.Ct. 3020. Instead,

> [a]t any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.* The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

*Id.* (emphasis added).

Today, this Court adopts the neutral-principles approach for resolution of disputes involving religious organizations. *See* 422 S.W.3d at 606. I fully support this adoption and agree that this approach is the preferable method of resolving such controversies. However, the neutral-principles approach only allows courts to become involved in non-ecclesiastical decisions; it does not confer jurisdiction upon courts to decide matters over which they have no constitutional authority. In my view, the Court oversteps this boundary and ignores its constitutional mandate.

### A. Improper Resolution of Ecclesiastical Issues

In adopting the neutral-principles approach, the Court recognizes that "differences between ecclesiastical and non-ecclesiastical issues will not always be distinct" and that "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." *Id.* at 606. Unlike the Court, however, I believe proper deference with respect to such matters determines the property rights at issue in this case. When deciding whether a matter invokes constitutional protection, I believe that we should err on the side of caution, upholding constitutional mandates when in doubt.

The Court divides the questions of Good Shepherd *parish's* authority to withdraw from TEC and Good Shepherd *corporation's* authority to withdraw by amending its bylaws and articles of incorporation. *Id.* at 601. In my view, however, the two inquiries are inextricably linked. The Court goes on to conclude that, because the parish at issue was incorporated and

because there was no specific TEC or diocesan restriction on the corporation's authority to amend its bylaws and articles of incorporation, the validity of Good Shepherd's withdrawal by amendment of those documents was *not* an ecclesiastical question. *See id.* I am unconvinced that the incorporated status of the parish removes the issue from the realm of church polity. If Bishop Ohl's determination that the parish could not withdraw from TEC is a binding ecclesiastical decision,[2] it does not cease to be so because of the corporate form taken by the parish. Such a determination permits civil courts to conduct an end-run around the First Amendment's prohibition against inquiry into and resolution of religious issues by effectively allowing the lower church entity's unilateral decision to trump the higher entity's authority over matters of church polity.

Notably, the Court recognizes that "what happens to the relationship between a local congregation that is part of a hierarchical religious 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." *Id.* at 607 (citing *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713–14, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976)). "But what happens to the property is not," the Court continues, "unless the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue." *Id.* It follows that Bishop Ohl's determination regarding the parish's authority (or, more accurately, lack of authority) to withdraw from TEC is a binding ecclesiastical decision, irrespective of the corporate form taken by the parish. In turn, since Good Shepherd did not validly withdraw from TEC, Good Shepherd remained a constituent thereof and consequently remained subject to TEC's and the Diocese's Constitutions and Canons.

There appears to be no dispute that, as a TEC parish, Good Shepherd could not pick and choose those portions of the governing documents by which it wished to be bound. And the Dennis Cannon and its diocesan counterpart expressly state that the church property is held in trust for TEC and the Diocese. Thus, if Good Shepherd had no authority to withdraw, it had no authority to revoke its adherence to the Canons or to revoke the trust placed on the property by virtue thereof. Moreover, the Canons condition Good Shepherd's authority over the church property on its "remain[ing] a part of, and subject to, this Church and its Constitutions and Canons." By purporting to withdraw from TEC, then, Good Shepherd took the very action that would strip it of its rights in the property. Good Shepherd may not avoid the consequences of its actions—consequences to which it had freely agreed—simply by voting to no longer be subject to those consequences.

### B. Application of Secular Law

#### 1. Intent of Parties to Create Trust

Even if this dispute could be resolved in a purely secular manner and without interference with TEC's ecclesiastical determinations, I would still hold that the Episcopal Leaders met their summary judgment burden. The Anglican Leaders argue that no valid trust exists on the property and that, to the extent one did exist, it was revoked upon Good Shepherd's 2006 amendment of its Bylaws. I disagree.

Under the Texas Trust Code, "[a] trust is created only if the settlor manifests an intention to create a trust." TEX. PROP.

2. This determination is unrelated to the undisputed right of the individual members of any religious organization to withdraw their affiliation should they choose to do so.

CODE § 112.002. Further, the intent to create a trust must be expressed in writing. *Id.* § 112.004. As discussed above, neither the deed conveying the property at issue to Good Shepherd nor Good Shepherd's Articles of Incorporation and Bylaws reference the creation of a trust. Courts in other states with similar trust statutes have struggled to determine the issue of whether the Dennis Canon, or similarly worded provisions in the governing documents of other hierarchical churches, creates a trust under such circumstances. *See Jones,* 443 U.S. at 606, 99 S.Ct. 3020 (endorsing the means utilized by TEC to create a trust by noting that, as an alternative means of ensuring retention of the property by the higher entity, "the constitution of the general church can be made to recite an express trust in favor of the denominational church").

In *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc. (Timberridge),* the Georgia Supreme Court held that a local church (Timberridge) affiliated with the hierarchical Presbyterian Church (U.S.A.) (PCUSA) held property in trust for the national church based in part on an explicit trust provision in PCUSA's governing Book of Order, as well as on language in the local church's charter documents. 290 Ga. 272, 719 S.E.2d 446 (2011). Following a 1982 amendment to the Book of Order by PCUSA's predecessor to add the property trust provision,[3] Timberridge "functioned as a regular member of the national church" until a property dispute arose in 2007, leading to Timberridge's withdrawal from PCUSA. *Id.* at 449–50. In applying the neutral principles doctrine to the dispute, the court aptly noted:

> We review all of these materials [deeds, state statutes, and governing documents of the local and national churches], keeping in mind that the outcome of these church property disputes usually turns on the specific facts presented in the record, that the neutral principle factors are interrelated, and that our ultimate goal is to determine "the intentions of the parties" at the local and national level regarding beneficial ownership of the property at issue as expressed "before the dispute erupt[ed]" in a "legally cognizable form."

*Id.* at 450 (quoting *Jones,* 443 U.S. at 603, 99 S.Ct. 3020). The court found persuasive that Timberridge's Articles of Incorporation "proclaimed [its] allegiance to the PCUSA Book of Order" containing the trust provision and noted that "at no time during the more than two decades before this dispute erupted and the eight years after it was deeded the property at issue did [Timberridge] even seek to amend its Articles to demonstrate any different intent." *Id.* at 455.

By contrast, in *From the Heart Church Ministries, Inc. v. African Methodist Episcopal Zion Church,* the Maryland Court of Appeals held the evidence established that the local incorporated church "did not, in fact, consent to the trust provisions" in the national church's Book of Discipline. 370 Md. 152, 803 A.2d 548, 569 (2002). Key to the court's holding was the local church's deletion, many years before the property dispute arose, of a requirement in its charter documents to act in accordance with the Book of Discipline. The court also noted the church's addition of a provision in those documents addressing the disposition of church property upon dissolution of the corporation, as well as the absence of trust language in the deed. This omission was significant, the court noted, because the Book of Discipline re-

3. The northern and southern branches of the Presbyterian Church formally reunited as PCUSA in 1983, with the Book of Order retaining the trust provision. 719 S.E.2d at 448.

quired such language, but the national church had nevertheless acquiesced in the "deeding irregularity." *Id.*

Like the local church in *Timberridge,* Good Shepherd's corporate documents "proclaimed allegiance" to TEC's and the Diocese's Constitutions and Canons. 719 S.E.2d at 455. The property trust provision was added to the TEC Canons in 1979, before the church property was conveyed to Good Shepherd. Further, like the church in *Timberridge,* and notably in contrast to the church in *From the Heart Church Ministries,* "at no time during the more than two decades before this dispute erupted and the [twenty-four] years after it was deeded the property at issue did [Good Shepherd] even *seek* to amend its [corporate documents] to demonstrate any different intent." *Id.* In fact, Good Shepherd amended its Bylaws twice before the underlying dispute arose, leaving untouched the provision agreeing to be bound by the TEC and Diocesan Canons.[4] Moreover, the absence of trust language from the deed to the property at issue is not a departure from the requirements in the Canons and thus does not, in and of itself, raise suspicion about Good Shepherd's intent to hold the property in trust. *See From the Heart Church Ministries, Inc.,* 803 A.2d at 569.

The Court cites with approval the Missouri Court of Appeals' opinion in *Heartland Presbytery v. Gashland Presbyterian Church,* 364 S.W.3d 575 (Mo.Ct.App.2012), which further supports the conclusion that a trust was imposed on the church property in this case. In *Heartland Presbytery,* the court held that a local church corporation's Articles of Agreement, which stated that the local church was "connected with and ecclesiastically subject to" PCUSA's predecessor, "[did] not establish its agreement to be bound by the property provisions of the PCUSA's Constitution; instead, it suggests the opposite." *Id.* at 585, 587. Noting that "[t]he 'connected with' language ... cannot alone establish PCUSA's trust interest," the court went on to examine the statement that the local church "would be *'ecclesiastically* subject to' the denomination." *Id.* at 586. The latter statement, the court concluded, implied that the local church "would *not* be subject to the denomination's authority in *non*-ecclesiastical matters." *Id.* The Articles also provided that title to any property acquired "vests, without qualification, in [the local church] itself, in its corporate capacity," and that such property "can only be conveyed to others pursuant to specific authorization of its members ... and of its Board of Trustees." *Id.* at 587. These provisions, the court held, lent further credence to the conclusion that the local church did not consent to the PCUSA trust provision. *Id.*

In this case, Good Shepherd's corporate documents contained the kind of language that was conspicuously absent from the Articles of Agreement at issue in *Heartland Presbytery.* Prior to the split with TEC and the Diocese, Good Shepherd's Bylaws stated not only that the church "is a constituent part of the Diocese of Northwest Texas and of the Protestant Episcopal Church in the United States of America," but also that it "accedes to, recognizes, and adopts the General Constitution and Canons of that Church, and the Constitution and Canons of the Diocese of Northwest Texas and acknowledges the authority of the same."[5] This is consis-

4. Bishop Ohl also testified by affidavit that Good Shepherd participated in the annual Diocese Conventions each year from 1966 through 2006. This includes 1984, the year the Diocese added the property trust provision to its Canons.

5. The local church's Bylaws in *Heartland Presbytery* did state that PCUSA's Constitution was "obligatory upon it and its members" and that the Bylaws "shall be construed only in conformity" with the Constitution. 364 S.W.3d at 587. However, the court held that

tent with Good Shepherd's promise of "conformity to" TEC Doctrine when it originally applied for mission status and the declaration in its parish application that it was "conscientiously attached" to that Doctrine. Thus, unlike in *Heartland Presbytery,* Good Shepherd's corporate documents constitute an "effective expression of [Good Shepherd's] intent to be bound by [TEC's and the Diocese's Canons]," which have included the property trust provisions since 1979 and 1984, respectively.[6] *Id.* at 591.

In sum, under a neutral analysis of the relevant documents, I would hold that the Episcopal Leaders met their summary judgment burden with respect to the creation of a trust. In light of the property trust provisions in TEC's and the Diocese's Canons, Good Shepherd's corporate documents agreeing to be bound by those Canons, Good Shepherd's periodic amendment of its corporate documents without altering its allegiance to the Canons, and Good Shepherd's continued participation in Diocesan Conventions prior to the dispute, the Episcopal Leaders conclusively established an expression of intent by Good Shepherd to hold its property in trust for the benefit of TEC and the Diocese.

### 2. The Trust Is Expressly Irrevocable

The Court holds that, regardless of whether Good Shepherd agreed to hold the church property in trust, the trust was revocable under Texas law. 422 S.W.3d at 616. I disagree.

The Court correctly notes that, under Texas law, a trust is revocable unless expressly made irrevocable. TEX. PROP.CODE § 112.051. However, "[n]o specific words of art are required to create an irrevocable trust" so long as the instrument "reflect[s] the trustor's intent to make the trust irrevocable." *Vela v. GRC Land Holdings, Ltd.*, 383 S.W.3d 248, 250–51 (Tex.App.–San Antonio 2012, no pet.) (mem. op.) (citing *McCauley v. Simmer,* 336 S.W.2d 872, 881 (Tex.Civ.App.–Houston 1960, writ dism'd), and *Austin Lake Estates Recreation Club, Inc. v. Gilliam,* 493 S.W.2d 343, 347 (Tex.Civ.App.–Austin 1973, writ ref'd n.r.e.)). I would hold that the terms of the property trust provision in the Dennis Canon, to which Good Shepherd agreed to be bound, expressly rendered the trust irrevocable upon Good Shepherd's withdrawal from TEC.

As noted above, the property trust provision in TEC's Canons (with a substantially similar provision in the diocesan Canons) states:

> 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 Constitutions and Canons.*

(Emphasis added). This provision clearly limits a parish's authority over church

these provisions conflicted with the local church's Articles of Agreement and that, under state law, the Articles controlled. *Id.* Here, there is no conflict between Good Shepherd's Articles of Incorporation and its Bylaws; that is, nothing in the Articles of Incorporation is negated, or even affected, by the statement in the Bylaws that Good Shepherd acceded to TEC's and the Diocese's Constitutions and Canons.

6. This is consistent with the Texas Trust Code, which provides for creation of a trust by "a property owner's declaration that the owner holds the property as trustee for another person." TEX. PROP. CODE § 112.001(1).

property by requiring that the parish be "a part of, and subject to," TEC. Thus, if a parish withdraws from TEC, it necessarily loses such authority to the extent it is inconsistent with holding the property in trust for TEC and the Diocese. While the Dennis Canon does not use the term "irrevocable," it nevertheless reflects Good Shepherd's intent to make the trust irrevocable upon its withdrawal from TEC and was thus sufficient to create an irrevocable trust under Texas law.

The Dennis Canon's language distinguishes the property trust provision here from the national church's trust provision at issue in *From the Heart Church Ministries,* which did not address the situation in which "a local church disaffiliates from the denomination." 803 A.2d at 571. Without such language, the Maryland Court of Appeals declined to find that the trust was irrevocable, concluding that "[c]onsent to holding property in trust during the course of affiliation does not automatically constitute consent to relinquishing that property once the affiliation terminates." *Id.* Here, Good Shepherd did more than consent to holding the property in trust during the course of its affiliation with TEC; it also consented to its authority over the property being contingent on that affiliation. As a result, even if Good Shepherd had the authority to disaffiliate from TEC and the Diocese by proper vote under its Articles and Bylaws, I cannot agree with the Court that Good Shepherd could revoke the trust and maintain control of the property upon its withdrawal. *See Bishop & Diocese of Colo. v. Mote,* 716 P.2d 85, 108 (Colo.1986) (holding that a local church's articles of incorporation and bylaws that were similar to Good Shepherd's, along with the relevant provisions of TEC's Canons, "foreclose the possibility of the withdrawal of property from the parish simply because a majority of the members of the parish decide to end their association with [TEC]").

The Supreme Court confirmed in *Jones v. Wolf* that "before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property." 443 U.S. at 606, 99 S.Ct. 3020. That is exactly what the parties did in this case. Good Shepherd agreed to hold the church property in trust for TEC and the Diocese, and any authority it otherwise had over the property terminated when it withdrew from TEC.

### 3. Good Shepherd Is Estopped from Revoking the Trust

Alternatively, I believe the Episcopal Leaders prevail under the doctrine of quasi-estoppel. The Episcopal Leaders did not formally plead quasi-estoppel as an affirmative defense, though they did allege facts to support it.[7] The summary judgment evidence establishes the applicability of the doctrine and precludes Good Shepherd from claiming that it may revoke the trust in conjunction with its withdrawal from TEC. "Quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken. The doctrine applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit." *Lopez v. Muñoz, Hockema & Reed, L.L.P.,* 22 S.W.3d 857, 864 (Tex.2000) (citation omitted).

**7.** The Anglican Leaders counterclaimed for a declaratory judgment regarding ownership and possession of the church property. In their First Amended Petition, the Episcopal Leaders argued that they "relied on the promises and statements" of Good Shepherd in "provid[ing] financial support" thereto.

Prior to the 2006 dispute, Good Shepherd: had promised conformity to TEC Doctrine and to TEC's and the Diocese's Constitutions and Canons; had accepted grants as well as no-interest and low-interest loans from TEC and the Diocese to assist in building the church; had declared that the church property was "secured from the danger of alienation . . . from those who profess and practice the Doctrine, Discipline, and Worship of this [Episcopal] Church"; and had accepted the conveyance of the property from the Diocese after the property trust provisions were added to TEC's Canons. Having made these promises and accepted these benefits, Good Shepherd may not now contend it is free to disregard these positions because a majority of its members have voted to do so.

### III. Conclusion

In denying summary judgment, the Court oversteps its constitutional bounds to resolve ecclesiastical matters over which it has no authority. Further, the Court ignores language in the relevant documents clarifying that Good Shepherd's authority over the church property is contingent upon its affiliation with TEC and the Diocese. Finally, Good Shepherd is barred from revoking the trust on the property in conjunction with its withdrawal from TEC. For these reasons, I am compelled to respectfully express my dissent.

## In re The OFFICE OF the ATTORNEY GENERAL.

**No. 11–0255.**

Supreme Court of Texas.

Argued Feb. 27, 2012.

Decided March 8, 2013.

**Background:** Father was found in contempt for failure to pay child support. Father petitioned for writ of mandamus, arguing that trial court was precluded by statute from finding him in contempt. The Court of Appeals ordered the trial court to vacate its contempt order. Mother and the Office of the Attorney General appealed.

**Holdings:** The Supreme Court, Lehrmann, J., held that:

(1) purging provision of contempt statute required obligor to be current on all support payments, including those that became due after filing of motion to enforce, and

(2) this interpretation of purging provision did not violate obligor's rights to notice and due process.

Writ conditionally granted.

**1. Contempt ⚿30**

Contempt is an inherent power of the court.

**2. Child Support ⚿444**

"Civil contempt" is prospective, involving measures to encourage a contemnor to pay child support arrearages, while "criminal contempt" is punitive, usually imposing jail time for past failures to pay.

See publication Words and Phrases for other judicial constructions and definitions.

# Exhibit F

pay him through trial because Dynegy was acting for its own purposes and not merely as a guarantor of its employee's obligation.[13]

In conclusion, Dynegy has not asserted or argued that it intended to act as a guarantor of Olis' debt. Moreover, the jury agreed that Dynegy's promise to pay Yates through trial was not conditional, and thus its promise does not fall within the Statute of Frauds' suretyship provision. However, even were I to agree that the suretyship provision otherwise applies to this transaction, I would conclude that the main purpose exception takes Dynegy's promise out of the Statute. Because the Court holds the Statute of Frauds applies to bar Dynegy's oral contract with Yates, I respectfully dissent.


**The EPISCOPAL DIOCESE OF FORT WORTH, et al, Petitioners,**

**v.**

**The EPISCOPAL CHURCH, et al., Respondents.**

**No. 11–0265.**

Supreme Court of Texas.

Argued Oct. 16, 2012.

Decided Aug. 30, 2013.

Rehearing Denied March 21, 2014.

**Background:** Episcopal church filed suit against diocese that had left the church over doctrinal differences and others, seeking title and possession to property held in name of diocese and non-profit corporation. The 141st District Court, Tarrant County, John Parrish Chupp, J., granted summary judgment to church. Diocese appealed.

**Holdings:** The Supreme Court, Johnson, J., held that:

(1) Supreme Court had direct appeal jurisdiction over the case, and

(2) courts should use the "neutral principles of law" methodology for deciding property issues when religious organizations split.

Reversed and remanded.

Willett, J., dissented, with opinion, in which Lehrmann, Boyd, and Devine, JJ., joined.

**1. Courts ⚿247(1)**

The effect of the trial court's order is what determines the Supreme Court's direct appeal jurisdiction.

**2. Courts ⚿247(8)**

Trial court's injunction requiring church diocese to surrender to the church the control of non-profit corporation that held church property was a ruling that the Non-Profit Corporation Act would violate the First Amendment if it were applied in the case, and, thus, Supreme Court had jurisdiction to consider diocese's direct appeal of injunction, pursuant to statute permitting a direct appeal to Supreme Court from trial court order granting or denying an interlocutory or permanent injunction on ground of constitutionality of a statute. U.S.C.A. Const.Amend. 1; Vernon's Ann.Texas Civ.St. art. 1396–1.01 et seq. (Repealed); V.T.C.A., Government Code § 22.001(c).

**3. Religious Societies ⚿14, 24**

State courts should use the "neutral principles of law" methodology for decid-

**13.** *See Haas Drilling Co. v. First Nat'l Bank,* 456 S.W.2d 886, 890–91 (Tex.1970) (holding that main purpose doctrine was satisfied "as a matter of law" where prospect of maintaining value of oil-producing property was sufficient benefit to enforce bank's promise to pay jetting gas company the past-due debt of the former owner).

ing property issues when religious organizations split, pursuant to which, once courts determine where the religious organization has placed authority to make decisions about church property, courts defer to religious organizations' decisions on ecclesiastical and church polity issues, such as who may be members of the organizations and whether to remove a bishop or pastor, while courts 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 organizations.

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Justice JOHNSON delivered the opinion of the Court, in which Justice HECHT, Justice GREEN, and Justice GUZMAN joined, and in Parts I, II, III, and IV–A of which Chief Justice JEFFERSON joined.

This direct appeal involves the same principal issue we addressed in *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594, 2013 WL 4608632 (Tex.2013): what methodology is to be used when Texas courts decide which faction is entitled to a religious organization's property following a split or schism? In *Masterson* we held that the methodology referred to as "neutral principles of law" must be used. But, in this case the trial court granted summary judgment on the basis of the "deference" or "identity" methodology, and the record does not warrant rendition of judgment to either party based on neutral principles of law.

We reverse and remand to the trial court for further proceedings.

## I. Background

The Episcopal Church (TEC) is a religious organization founded in 1789. It has three structural tiers. The first and highest is the General Convention. The General Convention consists of representatives from each diocese and most of TEC's bishops. It adopts and amends TEC's constitution and canons. The second tier is comprised of regional, geographically defined dioceses. Dioceses are governed by their own conventions. Each diocese's convention adopts and amends its own constitution and canons, but must accede to

TEC's constitution and canons. The third tier is comprised of local congregations. Local congregations are classified as parishes, missions, or congregations. In order to be accepted into union with TEC, missions and congregations must subscribe to and accede to the constitutions and canons of both TEC and the Diocese in which they are located.

In 1982 the Episcopal Diocese of Fort Worth (the Diocese or Fort Worth Diocese) was formed after the Episcopal Diocese of Dallas voted to divide into two parts. The Fort Worth Diocese was organized "pursuant to the Constitution and Canons of the Episcopal Church" and its convention adopted a constitution and canons. The Diocese's constitution provided that all property acquired for the Church and the Diocese "shall be vested in [the] Corporation of the Episcopal Diocese of Fort Worth." The canons of the Diocese provided that management of the affairs of the corporation "shall be conducted and administered by a Board of Trustees of five (5) elected members, all of whom are either Lay persons in good standing of a parish or mission in the Diocese, or members of the Clergy canonically resident in the Diocese." The Bishop of the Diocese was designated to serve as chair of the board of the corporation. After adopting its constitution and canons the Diocese was admitted into union with TEC at TEC's December 1982 General Convention.

In February 1983, the Fort Worth Diocese filed articles of incorporation for the Fort Worth Corporation. That same year the Dallas and Fort Worth Dioceses filed suit in Dallas County and obtained a judgment transferring part of the Dallas Diocese's real and personal property to the Fort Worth Diocese. The 1984 judgment vested legal title of the transferred property in the Fort Worth Corporation, except for certain assets for which the presiding Bishop of the Dallas Diocese and his successors in office had been designated as trustee. The judgment transferred the latter assets to the Bishop of the Fort Worth Diocese and his successor in office as trustee.

Doctrinal controversy arose within TEC, leading the Fort Worth Corporation to file amendments to its articles of incorporation in 2006 to, in part, remove all references to TEC. The corporate bylaws were similarly amended. The 2007 and 2008 conventions of the Fort Worth Diocese voted to withdraw from TEC, enter into membership with the Anglican Province of the Southern Cone, and adopt amendments to the Diocese's constitution removing references to TEC.[1]

TEC responded. It accepted the renunciation of Jack Iker, Bishop of the Fort Worth Diocese, and TEC's Presiding Bishop removed Iker from all positions of authority within TEC. In February 2009, TEC's Presiding Bishop convened a "special meeting of Convention" for members of the Fort Worth Diocese who remained loyal to TEC. Those present at the meeting elected Edwin Gulick as Provisional Bishop of the Diocese and Chair of the Board of Trustees for the Fort Worth Corporation. The 2009 Convention also voted to reverse the constitutional amendments adopted at the 2007 and 2008 Conventions and declared all relevant offices of the Diocese to be vacant. Bishop Gulick then appointed replacements to the offices declared vacant, including the offices of the Trustees of the Corporation. TEC recognized the persons elected at the 2009 Convention as the duly constituted leadership of the Diocese.

1. Three parishes in the Diocese did not agree with the actions and withdrew from the Diocese. The Fort Worth Corporation transferred property used by the withdrawing parishes to them.

TEC, Rev. C. Wallis Ohls, who succeeded Bishop Gulick as Provisional Bishop of the Episcopal Diocese of Fort Worth, and clergy and lay individuals loyal to TEC (collectively, TEC) filed suit against The Episcopal Diocese of Fort Worth, the Fort Worth Corporation, Bishop Iker, the 2006 trustees of the corporation, and former TEC members (collectively, the Diocese), seeking title to and possession of the property held in the name of the Diocese and the Fort Worth Corporation.[2] Both TEC and the Diocese moved for summary judgment. A significant disagreement between the parties was whether the "deference" (also sometimes referred to as the "identity") or "neutral principles of law" methodology should be applied to resolve the property issue. TEC contended that pursuant to this Court's decision in *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909), the deference methodology has been applied in Texas for over a century and should continue to be applied. Under that methodology, it argued, TEC was entitled to summary judgment because it recognized Bishops Gulick and Ohls, the leaders elected at the 2009 convention, and the appointees of the Bishops as the true and continuing Episcopal Diocese. TEC also contended that even if the neutral principles methodology were applied, it would be entitled to summary judgment. The Diocese, on the other hand, contended that in *Brown* this Court effectively applied the neutral principles methodology without specifically calling it by that name, and Texas courts have continued to substantively apply that methodology to resolve property issues arising when churches split. Under the neutral principles methodology, the Diocese argued, it was entitled to summary judgment affirming its right to the property. The Diocese also maintained that even if the deference methodology were applied, it would still be entitled to summary judgment.[3]

The trial court agreed with TEC that deference principles should apply, applied them, and granted summary judgment for TEC. The Diocese sought direct appeal to this Court and we noted probable jurisdiction. We had previously granted the petition for review in *Masterson*, and we heard oral arguments for both cases on the same day.

## II. Jurisdiction

**[1, 2]** The Government Code provides that "[a]n 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." TEX. GOV'T CODE § 22.001(c). The trial court granted summary judgment and issued injunctions ordering the defendants to surrender all Diocesan property and control of the Diocesan Corporation to the Episcopal Diocese of Fort Worth, and ordering the defendants to desist from holding themselves out as leaders of the Diocese. While the trial court order did not

**2.** The defendants sought mandamus in the court of appeals regarding whether the attorneys for TEC had authority to file suit on behalf of the Corporation and the Diocese. *See In re Salazar*, 315 S.W.3d 279 (Tex.App.-Fort Worth 2010, orig. proceeding). The court of appeals conditionally granted mandamus relief, holding they did not. *Id.* at 285–86.

**3.** The Diocese also asserts that we should dismiss certain tort claims TEC brought against individual defendants. The Diocese moved for summary judgment to dismiss these claims and argues that if we conclude the trial court erred in determining who was entitled to the property at issue, we should render the judgment the trial court should have rendered and dismiss the tort claims. Because of our disposition of the issue regarding who is entitled to the property, we do not address those claims.

explicitly address the constitutionality of a statute, "[t]he effect of the trial court's order . . . is what determines this Court's direct appeal jurisdiction." *Tex. Workers' Compensation Comm'n v. Garcia,* 817 S.W.2d 60, 61 (Tex.1991).

In its motion for summary judgment TEC argued, in part, that the actions of the Board of Trustees in amending the Fort Worth Corporation's articles of incorporation were void because the actions went beyond the authority of the corporation, which was created and existed as an entity subordinate to a Diocese of TEC. TEC argued that "[t]he secular act of incorporation does not alter the relationship between a hierarchical church and one of its subordinate units" and that finding otherwise "would risk First Amendment implications." The Diocese, on the other hand, argued that the case was governed by the Texas Non–Profit Corporation Act [4] and the Texas Uniform Unincorporated Nonprofit Association Act [5]; under those statutes a corporation may amend its articles of incorporation and bylaws; and TEC had no power to limit or disregard amendments to the Corporation's articles and bylaws.

In its summary judgment order the trial court cited cases it said recognized "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 trial court substantively ruled that because the First Amendment to the United States Constitution deprived it of jurisdiction to apply Texas nonprofit corporation statutes, applying them to determine the parties' rights would violate Constitutional provisions. The court's injunction requiring defendants to surrender control of the Fort Worth Corporation to the Episcopal Diocese of Fort Worth was based on that determination. The effect of the trial court's order and injunction was a ruling that the Non–Profit Corporation Act would violate the First Amendment if it were applied in this case. Accordingly, we have jurisdiction to address the merits of the appeal.

## III. "Deference" and "Neutral Principles"

**[3]** In *Masterson* we addressed the deference and neutral principles methodologies for deciding property issues when religious organizations split. 422 S.W.3d at 647. Without repeating that discussion in full, suffice it to say that generally courts applying the deference approach to church property disputes utilize neutral principles of law to determine where the religious organization has placed authority to make decisions about church property. *See Jones v. Wolf,* 443 U.S. 595, 603–04, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). Once a court has made this determination, it defers to and enforces the decision of the religious authority if the dispute has been decided within that authority structure. *Id.* But 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. *See Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 708–09, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). We concluded in *Masterson* that the neutral principles methodology was the substantive basis of our decision in

**4.** TEX.REV.CIV. STAT. arts. 1396–1.01 to 1396–11.02

**5.** TEX.REV.CIV. STAT. art. 1396–70.01

*Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909), and that Texas courts should utilize that methodology in determining which faction of a religious organization is entitled to the property when the organization splits. 422 S.W.3d at 647. We also concluded that even though both the deference and neutral principles methodologies are constitutionally permissible, Texas courts should use only the neutral principles methodology in order to avoid confusion in deciding this type of controversy. *Id.*

## IV. Application

### A. Summary Judgment—Deference

Based on our decision in *Masterson*, we hold that the trial court erred by granting summary judgment to TEC on the basis of deference principles. 422 S.W.3d at 649.

### B. Summary Judgment—Neutral Principles

TEC asserts that application of neutral principles may violate free-exercise protections if, for example, the Diocese is permitted to void its commitments to church laws because the specific formalities of Texas law governing trusts were not followed or if they are applied retroactively. *See Jones*, 443 U.S. at 606, 99 S.Ct. 3020 (noting that the case did not "involve a claim that retroactive application of a neutral-principles approach infringes free exercise rights"). But TEC recognizes that whether application of the neutral principles approach is unconstitutional depends on how it is applied. *See id.* at 606, 99 S.Ct. 3020 ("It remains to be determined whether the Georgia neutral-principles analysis was constitutionally applied on the facts of this case."). Because neutral principles have yet to be applied in this case, we cannot determine the constitutionality of their application. Further, TEC does not argue that application of procedural matters such as summary judgment procedures and burdens of proof are unconstitutional. Thus, we address the arguments of the parties regarding who is entitled to summary judgment pursuant to neutral principles and conclude that neither TEC nor the Diocese is. *See Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 124 (Tex.2010) (noting that when both parties move for summary judgment and the trial court grants one motion and denies the other, appellate courts consider the summary-judgment evidence, determine all questions presented, and render the judgment the trial court should have rendered).

Under the neutral principles methodology, ownership of disputed property is to be determined by considering evidence such as deeds to the properties, terms of the local church charter (including articles of incorporation and bylaws, if any), and relevant provisions of governing documents of the general church. *E.g., Jones*, 443 U.S. at 602–03, 99 S.Ct. 3020; *see Presbyterian Church v. E. Heights*, 225 Ga. 259, 167 S.E.2d 658, 659–60 (1969). TEC points out that deeds to the properties involved were not part of the summary judgment record when the trial court ruled. Thus, TEC argues, if we do not sustain the summary judgment in its favor, we should remand the case so the trial court may consider the record on the basis of neutral principles and the four factors referenced in *Jones:* (1) governing documents of the general church, (2) governing documents of the local church entities, (3) deeds, and (4) state statutes governing church property. *See Jones*, 443 U.S. at 602–03, 99 S.Ct. 3020. We agree that the case must be remanded for further proceedings under neutral principles.

Although deeds to the numerous properties involved were not before the trial court when it granted summary judgment, the Diocese asserts that there is no dis-

pute about its holding title to and having control of the properties. But TEC disagrees with that position. And absent agreement or conclusive proof of title to the individual properties and the capacities in which the titles were taken, fact questions exist under neutral principles of law, at a minimum, about who holds title to each property and in what capacity.[6] Accordingly, we cannot render judgment on the basis of neutral principles.

### C. Remand

Because the trial court must apply neutral principles on remand, for its guidance we address certain arguments made by the parties relating to that methodology. *See Edinburg Hosp. Auth. v. Trevino,* 941 S.W.2d 76, 81 (Tex.1997) ("Although resolution of this issue is not essential to our disposition of this case, we address it to provide the trial court with guidance in the retrial. . . .").

We first note that on remand the trial court is not limited to considering only the four factors listed in *Jones.* As we said in *Masterson, Jones* did not purport to establish a federal common law of neutral principles to be applied in this type of case. 422 S.W.3d at 651. Rather, the elements listed in *Jones* are illustrative. If it were otherwise and courts were limited to applying some, but not all, of a state's neutral principles of law in resolving non-ecclesiastical questions, religious entities would not receive equal treatment with secular entities. We do not believe the Supreme Court intended to say or imply that should be the case.

Next we address the Diocese's argument that under neutral principles courts do not defer to TEC's decisions about non-ecclesiastical matters such as the identity of the trustees of the Fort Worth Corporation. The Diocese argues that under the Non–Profit Corporation Act the trustees are the 2006 trustees who are named as defendants in this suit. TEC responds that the trustees are required by the corporate bylaws to be lay persons in "good standing," the Diocese rules require them to be loyal Episcopalians, and the bylaws provide that trustees do not serve once they become disqualified. Those determinations, TEC argues, were made by Bishops Gulick and Ohls and the 2009 convention, and courts must defer to those determinations because they are ecclesiastical decisions.

While we agree that determination of who is or can be a member in good standing of TEC or a diocese is an ecclesiastical decision, the decisions by Bishops Gulick and Ohls and the 2009 convention do not necessarily determine whether the earlier actions of the corporate trustees were invalid under Texas law. The corporation was incorporated pursuant to Texas corporation law and that law dictates how the corporation can be operated, including determining the terms of office of corporate directors, the circumstances under which articles and bylaws can be amended, and the effect of the amendments. *See* TEX. BUS. ORG.CODE §§ 22.001–.409. We conclude that this record fails to show that, as a matter of law, the trustees had been disqualified from serving as corporate trustees at the relevant times. Nor does the record conclusively show whether the 2009 appointments to the corporation board by Bishop Ohl were valid or invalid under Texas law, or whether, under Texas law, the actions taken by the trustees ap-

**6.** Deeds filed after the trial court granted summary judgment were dated both before and after the 1984 judgment transferring properties from the Dallas Diocese. The deeds dated after the judgment reflect various grantees. Some properties were deeded to the Fort Worth Corporation or local entities, while others were deeded in trust to the Corporation, local entities, or various other persons and entities.

pointed by Bishop Ohl in 2009 were valid or invalid.

Third, the Diocese argues that TEC has no trust interest in the property. TEC Canon I.7.4, also known as the Dennis Canon, 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 this Church and its Constitution and Canons.

The Diocese asserts that this canon does not create a trust under Texas law, but that even if it does, it was revocable and the Diocese revoked it when the Diocesan canons were amended to state:

> Property held by the Corporation for the use of a Parish, Mission or Diocesan School belongs beneficially to such Parish, Mission or Diocesan School only. No adverse claim to such beneficial interest by the Corporation, by the Diocese, or by The Episcopal Church of the United States of America is acknowledged, but rather is expressly denied.

TEC counters that the Dennis Canon creates a trust because the corporation acceded to it and the Diocese could not have adopted a canon revoking the trust. TEC also asserts that the statutes applicable to charitable trusts apply, but if they do not, a resulting trust or other trust may be applied here because the history, organization, and governing documents of the Church, the Diocese, and the parish support implication of a trust. The Diocese responds to TEC's arguments by referencing Texas statutory law requiring a trust to be in writing and providing that trusts are revocable unless they are expressly made irrevocable. *See* TEX. PROP.CODE §§ 112.004, .051. These issues were not addressed by the trial court because it granted summary judgment based on deference principles. Upon remand the parties will have the opportunity to develop the record as necessary and present these arguments for the trial court to consider in determining the rights of the parties according to neutral principles of law. But regarding the trial court's consideration of the issue, we note that in *Masterson* we addressed the Dennis Canon and Texas law. There we said that even assuming a trust was created as to parish property by the Dennis Canon and the bylaws and actions of a parish non-profit corporation holding title to the property, the Dennis Canon "simply does not contain language making the trust *expressly* irrevocable . . . Even if the Canon could be read to imply the trust was irrevocable, that is not good enough under Texas law. [Texas Property Code § 112.051] requires *express* terms making it irrevocable." *Masterson*, 422 S.W.3d at 413.

Finally, as to the argument that application of neutral principles may pose constitutional questions if they are retroactively applied, we note that over a century ago in *Brown v. Clark*, 102 Tex. 323, 116 S.W. 360 (1909), our analysis and holding substantively reflected the neutral principles methodology.

## V. Conclusion

We reverse the judgment of the trial court and remand the case to that court for further proceedings consistent with this opinion.

Justice WILLETT filed a dissenting opinion, in which Justice LEHRMANN, Justice BOYD, and Justice DEVINE joined.

Justice WILLETT, joined by Justice LEHRMANN, Justice BOYD and Justice DEVINE, dissenting.

Until 1940, when Texans amended their constitution, the Supreme Court of Texas lacked any authority to decide direct appeals (i.e., appeals that leapfrog the court of appeals and pass directly to this Court). Four years later, the Legislature first exercised its new power to permit direct appeals, and in the sixty-nine years since, this Court has exercised that jurisdiction sparingly, only forty-three times. The reason is simply stated: Our direct-appeal jurisdiction is exceedingly narrow and only proper if the trial court granted or denied an injunction "on the ground of the constitutionality of a statute of this state." [1]

Today's direct appeal is directly unappealable. The trial court's order nowhere mentions any constitution or statute, much less the constitutionality of a statute. Indeed, the trial court stated verbally that it was not pivoting on the constitutionality of state law. This dispute undoubtedly has a First Amendment overlay, but for a direct appeal, constitutionality must exist not just in the ether, but in the order.

As the trial court did not determine "the constitutionality of a statute of this state," its injunction could hardly be issued "on the ground of the constitutionality of a statute of this state." Accordingly, we lack jurisdiction. As I have underscored before (albeit, like today, in a dissent):

> Ultimately, it falls to us, the courts, to police our own jurisdiction. It is a responsibility rooted in renunciation, a refusal to exert power over disputes not properly before us. Rare is a government official who disclaims power, but liberties are often secured best by studied inaction rather than hurried action.[2]

The merits in this case are unquestionably important—and thankfully they are resolved today in a companion case [3]—but here the Court can only reach them by overreaching. We have no jurisdiction to decide this case as a direct appeal. I would dismiss for want of jurisdiction, and because the Court does otherwise, I respectfully dissent.

## I. Background

The trial court in this case issued two injunctions, requiring the defendants (now styling themselves as the Episcopal Diocese of Fort Worth):

1. "to surrender all Diocesan property, as well as control of the Diocesan Corporation" to the Episcopal Church and other plaintiffs; and
2. "to desist from holding themselves out as leaders of the Diocese."

The court's reasons for granting the injunctions are laid out in paragraphs one through three of its order:

1. The Episcopal Church (the "Church") is a hierarchical church as a matter of law, and since its formation in 1983 the Episcopal Diocese of Fort Worth (the "Diocese") has been a constituent part of the Church. Because the Church is hierarchical, the 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. Under the

1. TEX. GOV'T CODE § 22.001(c).

2. *In re Allcat Claims Serv., L.P.,* 356 S.W.3d 455, 474 (Tex.2011) (Willett, J., concurring in part and dissenting in part).

3. *Masterson v. Diocese of N.W. Tex.,* 422 S.W.3d 594, 2013 WL 4608632 (Tex.2013).

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

2. As a further result of the principles set out by the Supreme Court in *Brown* and applied in Texas to hierarchical church property disputes since 1909, the Court also declares that, because The Episcopal Church is hierarchical, all property held by or for the Diocese may be used only for the mission of the Church, subject to the Church's Constitution and canons.
3. 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 the Defendants to the articles and bylaws of the Diocesan Corporation are *ultra vires* and void.

(citations omitted).

There are no findings of fact or conclusions of law attached. The order does not mention the United States Constitution, the Texas Constitution, or any particular state statute. The only possible allusion to a statute is to "nonprofit corporations law," which the trial court found the defendants could not "invok[e]" to "avoid [their] obligations to the larger church." The trial court's legal support for this conclusion was a string citation to a number of cases, not a citation to any constitutional provision.

What is more, the defendants asked the trial court to amend the order to specify that the court had held a statute unconstitutional. The court declined to do so, orally stating that its ruling was based not on constitutionality, but rather on its application of *Brown v. Clark* [4]:

> I still can't just craft something to make it go to the Supreme Court. I mean, it—my understanding was that the—the trust laws that you were talking about don't apply in this situation because of *Brown,* not because they're not constitutional.

Our decision in *Brown* relied heavily on *Watson v. Jones.*[5] *Watson,* in turn, "appl[ied] not the Constitution but a 'broad and sound view of the relations of church and state under our system of laws.' " [6]

Nonetheless, the defendants filed a direct appeal. We noted probable jurisdiction and heard oral argument. But jurisdictional defects do not heal with age, no matter how novel, pressing, or consequential the issues at stake or how many judicial and party resources have been expended. The most fundamental restraint on judicial power is jurisdiction—our very authority to decide cases in the first place—and if we lack it, we lack it.

## II. Discussion

### A. History of Direct Appellate Jurisdiction

A 1940 constitutional amendment gave the Legislature power to grant direct appeals to this Court.[7] Not until 1944, though, did the Legislature do so.[8] The original conferral allowed direct appeals from injunctions based on two grounds,

**4.** 116 S.W. 360 (Tex.1909).

**5.** 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 (1871).

**6.** *Hosanna–Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.,* —— U.S. ——, 132 S.Ct. 694, 704, 181 L.Ed.2d 650 (2012) (quoting *Watson,* 80 U.S. at 727).

**7.** *See R.R. Comm'n of Tex. v. Shell Oil Co.,* 146 Tex. 286, 206 S.W.2d 235, 238 (1947).

**8.** *Id.*

either (1) the constitutionality or unconstitutionality of a state statute, or (2) the validity or invalidity of certain state administrative orders.[9] Today, the statutory grant of direct-appeal jurisdiction covers just one situation: "[A]n 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." [10]

I have found only forty-three cases where we have exercised direct-appeal jurisdiction. That is, while such jurisdiction has existed for nearly seventy years, we have exercised it stintingly. In twenty-four of the forty-three cases, our opinion made clear that the trial court either made a direct holding about a statute's constitutionality or issued declaratory relief that a statute was or was not constitutional.[11] In eleven other cases, the trial court's order clearly must have been based on constitutional grounds, either because the opinion implies that only constitutional issues were raised to the trial court [12] or because the trial court granted an injunction enforcing a statute over constitutional objection, thus implicitly upholding the statute against

**9.** *Id.*

**10.** TEX. GOV'T CODE § 22.001(c). The Constitution still allows the Legislature to provide for direct appeal from injunctions based on the validity of administrative orders, however. TEX. CONST. art. V, § 3–b. But the express constitutional grant of direct-appeal jurisdiction in Article 5, Section 3–b of the Constitution is arguably now unnecessary given the broadened wording of the general jurisdictional provision in Article 5, Section 3. *See Perry v. Del Rio,* 67 S.W.3d 85, 98 n. 4 (Tex. 2001) (Phillips, C.J., dissenting) ("Since 1981, the Court's appellate jurisdiction has extended to all civil cases 'as ... provided ... by law,' TEX. CONST. art. V, § 3, so that the Legislature could now provide for direct appeals without a specific constitutional grant of authority."). Accordingly, the Legislature has now provided for direct appeal from certain trial court rulings that involve Public Utility Commission financing orders. TEX. UTIL.CODE § 39.303(f).

**11.** *See Neeley v. West Orange–Cove Consol. Indep. Sch. Dist.,* 176 S.W.3d 746, 753–54 (Tex. 2005); *State v. Hodges,* 92 S.W.3d 489, 493 (Tex.2002); *FM Props. Operating Co. v. City of Austin,* 22 S.W.3d 868, 872 (Tex.2000); *Owens Corning v. Carter,* 997 S.W.2d 560, 567–68 (Tex.1999); *Maple Run at Austin Mun. Util. Dist. v. Monaghan,* 931 S.W.2d 941, 945 (Tex. 1996); *Barshop v. Medina Cnty. Underground Water Conservation Dist.,* 925 S.W.2d 618, 623, 625 (Tex.1996); *Edgewood Indep. Sch. Dist. v. Meno,* 917 S.W.2d 717, 727 (Tex. 1995); *Richards v. League of United Latin Am. Citizens,* 868 S.W.2d 306, 308 (Tex.1993); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.,* 852 S.W.2d 440, 442 (Tex.1993); *Orange Cnty. v. Ware,* 819 S.W.2d 472, 473 (Tex.1991); *O'Quinn v. State Bar of Tex.,* 763 S.W.2d 397, 398 (Tex.1988); *LeCroy v. Hanlon,* 713 S.W.2d 335, 336 (Tex.1986); *Wilson v. Galveston Cnty. Cent. Appraisal Dist.,* 713 S.W.2d 98, 99 (Tex.1986); *Spring Branch Indep. Sch. Dist. v. Stamos,* 695 S.W.2d 556, 558 (Tex. 1985); *Shaw v. Phillips Crane & Rigging of San Antonio, Inc.,* 636 S.W.2d 186, 187 (Tex. 1982); *Gibson Distrib. Co. v. Downtown Dev. Ass'n of El Paso, Inc.,* 572 S.W.2d 334, 334 (Tex.1978); *Tex. Antiquities Comm. v. Dallas Cnty. Cmty. Coll. Dist.,* 554 S.W.2d 924, 925–27 (Tex.1977) (plurality opinion); *Smith v. Craddick,* 471 S.W.2d 375, 375–76 (Tex.1971); *State v. Scott,* 460 S.W.2d 103, 105 (Tex. 1970); *State v. Spartan's Indus., Inc.,* 447 S.W.2d 407, 409 (Tex.1969); *Jordan v. State Bd. of Ins.,* 160 Tex. 506, 334 S.W.2d 278, 278–80 (1960); *Smith v. Decker,* 158 Tex. 416, 312 S.W.2d 632, 633 (1958); *Rodriguez v. Gonzales,* 148 Tex. 537, 227 S.W.2d 791, 792–93 (1950); *Dodgen v. Depuglio,* 146 Tex. 538, 209 S.W.2d 588, 591–92 (1948).

**12.** *See Conlen Grain & Mercantile, Inc. v. Tex. Grain Sorghum Producers Bd.,* 519 S.W.2d 620, 621–22 (Tex.1975); *Robinson v. Hill,* 507 S.W.2d 521, 523 (Tex.1974); *Itz v. Penick,* 493 S.W.2d 506, 508 (Tex.1973); *Smith v. Davis,* 426 S.W.2d 827, 829 (Tex.1968); *Shepherd v. San Jacinto Junior Coll. Dist.,* 363 S.W.2d 742, 742–43 (Tex.1962); *King v. Carlton Indep. School Dist.,* 156 Tex. 365, 295 S.W.2d 408, 409 (1956); *Dallas Cnty. Water Control & Improvement Dist. No. 3 v. City of Dallas,* 149 Tex. 362, 233 S.W.2d 291, 292 (1950).

constitutional attack.[13] In two other cases, we summarily stated that the trial court granted or denied the injunction on the ground of a statute's constitutionality.[14] But in at least six direct-appeal cases, we did not make it clear why we thought the trial court's injunction was based on constitutional grounds.[15] These cases address jurisdiction rather cursorily, and only one of the opinions garnered a dissent on the jurisdictional issue,[16] to which the majority opinion declined to respond.[17]

But in the vast majority of cases where we have exercised direct-appeal jurisdiction, it has been abundantly clear that the trial court issued or denied an injunction on the ground of a statute's constitutionality.

We have also issued at least eleven opinions in which we *dismissed* attempted direct appeals for want of jurisdiction because the statutory test was not met.[18] We have variously explained that our direct-appeal jurisdiction "is a limited one," [19] that we have been "strict in applying" or have "strictly applied" direct-appeal jurisdictional requirements,[20] and that "[w]e have strictly construed our direct appeal jurisdiction." [21] Therefore, we have held that to meet the jurisdictional prerequisites, a trial court must actually "pass upon the constitutionality of [a] statute," [22] "determin[e]" a statute's constitutionality,[23] or "base its decision" on constitutional grounds.[24] Indeed, "[i]t 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." [25]

**13.** *See Gibson Prods. Co. v. State,* 545 S.W.2d 128, 129 (Tex.1976); *Dancetown, U.S.A., Inc. v. State,* 439 S.W.2d 333, 334 (Tex.1969); *Schlichting v. Tex. State Bd. of Med. Exam'rs,* 158 Tex. 279, 310 S.W.2d 557, 558–59 (1958); *H. Rouw Co. v. Tex. Citrus Comm'n,* 151 Tex. 182, 247 S.W.2d 231, 231–32 (1952).

**14.** *See State v. Project Principle, Inc.,* 724 S.W.2d 387, 389 (Tex.1987); *Duncan v. Gabler,* 147 Tex. 229, 215 S.W.2d 155, 156–57 (1948).

**15.** *See Del Rio,* 67 S.W.3d 85 (majority opinion); *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen,* 952 S.W.2d 454 (Tex.1997); *Carrollton–Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.,* 826 S.W.2d 489 (Tex.1992); *Ass'n of Tex. Prof'l Educators v. Kirby,* 788 S.W.2d 827 (Tex.1990); *Parker v. Nobles,* 496 S.W.2d 921 (Tex.1973); *Dobard v. State,* 149 Tex. 332, 233 S.W.2d 435 (1950).

**16.** *Del Rio,* 67 S.W.3d at 98–100 (Phillips, C.J., dissenting).

**17.** *Id.* at 89, 95 (majority opinion).

**18.** *See Tex. Workers' Comp. Comm'n v. Garcia,* 817 S.W.2d 60 (Tex.1991); *Querner Truck Lines, Inc. v. State,* 652 S.W.2d 367, 368 (Tex. 1983); *Mitchell v. Purolator Sec., Inc.,* 515 S.W.2d 101 (Tex.1974); *Holmes v. Steger,* 161 Tex. 242, 339 S.W.2d 663 (1960); *Standard Sec. Serv. Corp. v. King,* 161 Tex. 448, 341 S.W.2d 423 (1960); *Gardner v. R.R. Comm'n of Tex.,* 160 Tex. 467, 333 S.W.2d 585 (1960); *Bryson v. High Plains Underground Water Conservation Dist. No. 1,* 156 Tex. 405, 297 S.W.2d 117 (1956); *Corona v. Garrison,* 154 Tex. 124, 274 S.W.2d 541 (1955); *Lipscomb v. Flaherty,* 153 Tex. 151, 264 S.W.2d 691 (1954); *Boston v. Garrison,* 152 Tex. 253, 256 S.W.2d 67 (1953); *McGraw v. Teichman,* 147 Tex. 142, 214 S.W.2d 282 (1948).

**19.** *Gardner,* 333 S.W.2d at 588.

**20.** *Querner Truck,* 652 S.W.2d at 368; *Mitchell,* 515 S.W.2d at 103.

**21.** *Garcia,* 817 S.W.2d at 61.

**22.** *Corona,* 274 S.W.2d at 541–42.

**23.** *King,* 341 S.W.2d at 425; *Bryson,* 297 S.W.2d at 119.

**24.** *Holmes,* 339 S.W.2d at 663–64.

**25.** *Mitchell,* 515 S.W.2d at 103 (emphasis in original).

A close examination of the eleven cases where we dismissed for want of jurisdiction reveals strict adherence to the Legislature's restricted framework. For example, we held "no jurisdiction" where the trial court made the injunction decision based on res judicata [26] or where the trial court was directed to do so by a writ of prohibition by the court of civil appeals.[27] That is, because the trial court did not decide the merits of the constitutional issue, we lacked direct-appeal jurisdiction.[28] Similarly, we held that we did not have such jurisdiction where the trial court denied an injunction because the plaintiffs lacked "the necessary justiciable interest" to sue.[29] We even held that we lacked jurisdiction over a direct appeal of a temporary injunction involving a "serious question" of the constitutionality of a statute, because the real purpose of the temporary injunction was merely to preserve the status quo, and the trial court did not make any holdings finally determining the constitutional issue.[30]

### B. Application

Given our long, consistent history of cautiously and narrowly construing our direct-appeal jurisdiction, the outcome of this case seems essentially predetermined: We lack jurisdiction. The Legislature allows parties to skip the court of appeals in one extraordinarily limited circumstance: where the trial court's injunction turned "on the ground of the constitutionality of a [state] statute." [31] The crux and rationale of the trial court's order is dispositive. Here, the trial court did not "pass upon the constitutionality of a statute" [32] "determin[e]" a statute's constitutionality,[33] or "base its decision" on constitutional grounds.[34] While the constitutional issues may have been *raised* in the trial court, that alone is "not enough." [35]

At most, the trial court's order only vaguely alludes to nonprofit-related statutes, and there is certainly no indication in the order that the trial court was making a constitutional determination. The trial court order refers generally to nonprofit law and says the defendants cannot rely on this law to escape the deference principle, providing a string citation as support. But only one of the cases in the string citation even refers to constitutional principles, and that case does not hold that only the deference approach is constitutional.[36] Moreover, that case was decided two years before the United States Supreme Court clarified in *Jones v. Wolf* that the "deference" rule is not mandated by the First Amendment.[37]

A diaphanous hint that a statute was viewed through a constitutional prism is not enough to justify exercising our "limited" [38] and "strictly construed" [39] direct-ap-

**26.** *Lipscomb,* 264 S.W.2d at 691–92.

**27.** *Gardner,* 333 S.W.2d at 589.

**28.** *Corona,* 274 S.W.2d at 541–42.

**29.** *Holmes,* 339 S.W.2d at 664.

**30.** *Mitchell,* 515 S.W.2d at 103–04.

**31.** TEX. GOV'T CODE § 22.001(c).

**32.** *Corona,* 274 S.W.2d at 541–42.

**33.** *King,* 341 S.W.2d at 425; *Bryson,* 297 S.W.2d at 119.

**34.** *Holmes,* 339 S.W.2d at 663–64.

**35.** *Mitchell,* 515 S.W.2d at 103.

**36.** *See Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.,* 552 S.W.2d 865, 870–71 (Tex.Civ.App.-Texarkana 1977, no writ).

**37.** 443 U.S. 595, 605, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).

**38.** *Gardner,* 333 S.W.2d at 588.

**39.** *Garcia,* 817 S.W.2d at 61.

peal jurisdiction. And here, the trial judge orally eschewed such a ruling, making it doubly clear that its order was not based on constitutional grounds. In light of *Jones* (that the deference approach is *not* constitutionally required) and the trial court's comments (that it was holding the statutes inapplicable but not unconstitutional), it seems an impressive stretch to transform the trial court's citation to an ambiguous pre-*Jones* case into a constitutional holding striking down state law.

Perhaps the order's silence and the judge's disavowal are beside the point if unconstitutionality was the inescapable basis for the trial court's ruling, as the majority concludes. Indeed, the defendants contend the order makes no sense unless it turned on a constitutional holding. As the defendants interpret the order, the trial court effectively held certain statutes unconstitutional if applied to local churches of hierarchical religions. In their Statement of Jurisdiction, the defendants argue that a court can only reject statutes like this on "constitutional grounds." This assertion rests on the faulty premise that any time a court deems a statute inapplicable, it's because the statute would be unconstitutional if applied. Not true.

A court can refuse to apply a statute for various non-constitutional reasons. For example, if a statute purports to change long-standing common law, a court closely examines whether the Legislature truly intended to supplant the settled rule.[40] The trial court in this case may have applied (or misapplied) this kind of analysis, finding that pertinent statutes did not indicate legislative intent to abandon the common-law deference principle that we declared in *Brown.* Perhaps the trial court looked at a century of legislative inaction after *Brown* and took it as legislative acquiescence. There are other non-constitutional reasons to deem a statute ineffective, like the absurdity doctrine.[41] So even if a trial court implicitly invalidates a statute or finds it inapplicable, its reason for doing so is not necessarily because the Constitution demands it.

Thus, it cannot be true that by following *Brown v. Clark,* the trial court implicitly held that any statute that might apply under neutral principles is necessarily unconstitutional if applied to a church-property dispute in a hierarchical setting. This argument is foreclosed by *Jones v. Wolf.* If states are free, consistent with the First Amendment, to choose either approach, then choosing the deference test cannot equate to an implicit holding that applying statutes relevant under neutral principles would be unconstitutional. Nobody can argue that Texas courts are *required* to adopt neutral principles—*Jones* precludes that argument.

Tellingly, the defendants do not attempt to analogize this case to any other in which the Court has exercised direct-appeal jurisdiction. None is comparable. No constitutional question was presented (or decided) in the trial court, and none is presented (or decided) here.[42]

**40.** *See Energy Serv. Co. of Bowie v. Superior Snubbing Servs., Inc.,* 236 S.W.3d 190, 194 (Tex.2007) ("Of course, statutes can modify common law rules, but before we construe one to do so, we must look carefully to be sure that was what the Legislature intended.").

**41.** *See, e.g., TGS–NOPEC Geophysical Co. v. Combs,* 340 S.W.3d 432, 439 (Tex.2011).

**42.** The Rules of Civil Procedure previously specified that we could not accept such jurisdiction unless the case presented a constitutional question to *this* Court. *Lipscomb,* 264 S.W.2d at 691–92, quotes the former rule (TEX.R. CIV. P. 499a(b)) as providing (emphasis added):

> An appeal to the Supreme Court directly from such a trial court may present only the constitutionality or unconstitutionality of a statute of this State, or the validity or invalidity of an administrative order issued by a state board or commission under a statute of this State, *when the same shall have*

Undoubtedly, we have already noted probable jurisdiction, heard argument on the merits, and committed substantial judicial resources to resolving the issues—to say nothing of the effort and cost expended by the parties. But to assert jurisdiction simply because it would be inconvenient to do otherwise betrays the deeply rooted constitutional principle that our jurisdiction is conferred ultimately from the People, directly through our Constitution and indirectly through our elected representatives.

Dismissing this case for want of jurisdiction would be sure to furrow brows, but there is no more principled reason to dismiss a case than to decide, even belatedly, that you lack the power to decide. Besides, and this is some consolation, the core merits issue presented—deciding which legal test should govern church-property disputes—is squarely resolved in today's companion case,[43] so a dismissal here would not unduly delay authoritative resolution or work any irreparable harm.

### III. Conclusion

Our characterizations of direct-appeal jurisdiction, something we have "strictly construed," are not ambiguous:

- "rare"
- "restricted"
- "very limited"

In light of this consistent clarity, the Court's exercise of jurisdiction has an unfortunate *ipse dixit* quality to it. The statutory test for direct-appeal jurisdiction is whether the trial court made its decision "on the ground of the constitutionality of a [state] statute." A statute, for example, must be invalidated, not just implicated. Direct-appeal jurisdiction is a rare (as it should be) short-circuiting of the usual rules, and I respectfully take exception to broadening the exception.

The power of judicial review—the authority to declare laws unconstitutional—is a genuinely stunning one, and one that judges exercise with surpassing trepidation. Given the stakes, it is difficult to imagine a judge striking down a legislative enactment stealthily, using gauzy language that requires reading between the lines. This judge certainly didn't believe he had declared anything unconstitutional, and he said as much—on the record and unequivocally.

Today marks the second time this Court has stretched our direct-appeal jurisdiction beyond its statutory bounds.[44] The objective in both cases has apparently been to let the Court fast-forward to the merits of an important case. But an issue's importance and our commendable desire to resolve it swiftly does not give us license to enlarge our jurisdictional powers by fiat. In language that could have been written with today's case in mind, Chief Justice Phillips wrote in dissent over a decade ago:

> Dismissing a case on jurisdictional grounds may be frustrating to judges

*arisen by reason of the order of a trial court granting or denying an interlocutory or permanent injunction.*

Accordingly, we said that one of the prerequisites for direct-appeal jurisdiction was that a constitutional "question is presented to this Court for decision." *Bryson,* 297 S.W.2d at 119. Admittedly, our Rules (which have since migrated to the Rules of Appellate Procedure) no longer specify that a direct appeal must present an actual constitutional question to this Court. TEX. R. APP. P. 57; *see also Del Rio,* 67 S.W.3d at 98–99 (Phillips, C.J., dissenting). But the Legislature's limited grant of such jurisdiction has not wavered, and we simply cannot accept a direct appeal unless a statute has been declared constitutional or unconstitutional. That did not happen here.

**43.** *Masterson,* 422 S.W.3d 594.

**44.** *See Del Rio,* 67 S.W.3d at 89 (majority opinion).

> and litigants alike, particularly when issues of statewide import are involved.... However, the Legislature has chosen to make direct appeal an uncommon remedy, available only in rare and specific situations. Regardless of the day's exigencies, our highest and only duty is to respect the appropriate limits of our power.... I fear that our Court has allowed a hard case to make bad law today.[45]

The Court may come to rue its decision to assert direct-appeal jurisdiction in this case. Our rules seem to *mandate* our exercise of such jurisdiction in cases where a *permanent* injunction is based on the constitutionality of a statute (because our rules make direct-appeal jurisdiction discretionary only in *temporary* injunction cases).[46] Therefore, in addition to encroaching on the Legislature's constitutional prerogative to define our direct-appeal jurisdiction, the Court's decision may perversely *require* this Court to immediately hear all direct appeals of permanent injunctions that even vaguely implicate a statute's constitutionality.

I would dismiss this case for want of jurisdiction, and because the Court does otherwise, I respectfully dissent.


**Christopher James WADE, Appellant**

**v.**

**The STATE of Texas.**

**No. PD–1710–12.**

Court of Criminal Appeals of Texas.

Sept. 11, 2013.

**Background:** Defendant entered a negotiated plea of guilty in the 54th District Court, McLennan County, Matt Johnson, J., to possession of a controlled substance. He appealed a pretrial suppression ruling. The Waco Court of Appeals, 2012 WL 3055279, affirmed. Defendant petitioned for discretionary review.

**Holdings:** The Court of Criminal Appeals, Cochran, J., held that:

(1) consensual encounter between defendant and game warden escalated into a detention when defendant complied with warden's order to exit his truck for a frisk for weapons; and

(2) warden did not have a reasonable suspicion that defendant was engaged in criminal activity or an objectively reasonable concern for warden's safety.

Reversed and remanded.

**1. Criminal Law ⚿1158.12**

When reviewing a ruling on a suppression motion, an appellate court affords almost total deference to the trial judge's determination of historical facts if supported by the record.

**2. Criminal Law ⚿1144.12**

Regardless of whether a trial court granted or denied a suppression motion, appellate courts view the evidence in the light most favorable to the ruling.

**3. Criminal Law ⚿1144.12**

When reviewing a ruling on a suppression motion, the prevailing party is afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from it.

**4. Criminal Law ⚿1139**

An appellate court reviews de novo a trial judge's application of the law of search and seizure to the facts. U.S.C.A. Const.Amend. 4.

**45.** *Id.* at 100 (Phillips, C.J., dissenting).

**46.** *See* TEX.R.APP. P. 57.2.

# Exhibit G

lar parcels or claims from the referendum requirement, and since the record contains no justification for the use of the procedure in this case, I am persuaded that we should respect the state judiciary's appraisal of the fundamental fairness of this decisionmaking process in this case.[16]

I therefore conclude that the Ohio Supreme Court correctly held that Art. VIII, § 3, of the Eastlake charter violates the Due Process Clause of the Fourteenth Amendment, and that its judgment should be affirmed.


426 U.S. 696, 49 L.Ed.2d 151

**The SERBIAN EASTERN ORTHODOX DIOCESE FOR the UNITED STATES OF AMERICA AND CANADA et al., Petitioners,**

**v.**

**Dionisije MILIVOJEVICH et al.**

**No. 75–292.**

Argued March 22, 1976.

Decided June 21, 1976.

Rehearing Denied Oct. 4, 1976.

See 429 U.S. 873, 97 S.Ct. 191.

A Circuit Court in Illinois entered judgment determining that a bishop's defrockment was proper, that division of the American-Canadian diocese of a hierarchical church into three new dioceses was illegal and unenforceable, and that amendments to the constitution of the dioceses were without force or effect. The Illinois Supreme Court, 60 Ill.2d 477, 328 N.E.2d 268, affirmed in part and reversed in part and remanded, holding that the proceedings of the mother church respecting the bishop were procedurally and substantively defective under the internal regulations of the mother church and were therefore arbitrary and invalid. The Illinois Supreme Court also invalidated the diocesan reorganization. On grant of certiorari, the Supreme Court, Mr. Justice Brennan, held that the state court's "detailed review" of the evidence was impermissible under the First and Fourteenth Amendments, and the court's error was compounded by error in evaluating evidence, error in delving into various church constitutional provisions and error in sanctioning circumvention of tribunals set up to resolve internal church disputes. Although the defrocked diocesan bishop controlled a monastery and was the principal officer of property-holding corporations, the civil courts were required to accept that consequence as the incidental effect of an ecclesiastical determination which was not subject to judicial abrogation, having been reached by the final church judicatory in which authority to make the decision resided.

16. The final footnote in the Court's opinion identifies two reasons why the referendum procedure is not fundamentally unfair. Both reasons are consistent with my assumption that there is virtually no possibility that an individual property owner could be expected to have his application for a proposed land use change decided on the merits.

The first of the Court's reasons is that if "hardship" is shown, "*administrative* relief is potentially available"; that "potential" relief, however, applies only to some undefined class of claims that does not include this respondent's. A procedure in one case does not become constitutionally sufficient because some other procedure might be available in some other case.

The second of the Court's reasons is that there is a judicial remedy available if the zoning ordinance is so arbitrary that it is invalid on substantive due process grounds. This reason is also inapplicable to this case. There is no claim that the city's zoning plan is arbitrary or unconstitutional, even as applied to respondent's parcel. But if there is a constitutional right to fundamental fairness in the procedure applicable to an ordinary request for an amendment to the zoning applicable to an individual parcel, that right is not vindicated by the opportunity to make a substantive due process attack on the ordinance itself.

Opinion on remand, 6 Ill.Dec. 792, 363 N.E.2d 606.

Reversed.

Mr. Chief Justice Burger concurred in the judgment.

Mr. Justice White filed a concurring opinion.

Mr. Justice Rehnquist dissented and filed opinion in which Mr. Justice Stevens joined.

**1. Constitutional Law ⇐84, 274(3)**

Consistently with First and Fourteenth Amendments, civil courts do not inquire whether relevant hierarchical church governing body has power under religious law to decide religious disputes; to permit civil courts to probe deeply enough into allocation of power within hierarchical church so as to decide religious law governing church polity would violate First Amendment in much same manner as civil determination of religious doctrine. U.S.C.A.Const. Amends. 1, 14.

**2. Constitutional Law ⇐84, 274(3)**

Where resolution of religious disputes cannot be made without extensive inquiry by civil courts into religious law and polity, First and Fourteenth Amendments mandate that civil courts not disturb decisions of highest ecclesiastical tribunal within church of hierarchical polity but, rather, accept such decisions as binding on them, in their application to religious issues of doctrine or polity before them. U.S.C.A.Const. Amends. 1, 14.

**3. Constitutional Law ⇐84**

Even when rival church factions seek resolution of church property dispute in civil courts there is substantial danger that state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs, and First Amendment therefore severely circumscribes role that civil courts may play in resolving church property disputes. U.S.C.A.Const. Amend. 1.

**4. Constitutional Law ⇐84**

Principle that First Amendment commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine applies with equal force to church disputes over church polity and church administration. U.S.C.A.Const. Amend. 1.

**5. Constitutional Law ⇐84**

Whether or not there is room for "marginal civil court review" under narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception, in sense of inquiry whether decisions of highest ecclesiastical tribunal of hierarchical church complied with church laws and regulations is consistent with constitutional mandate that civil courts are bound to accept decisions of highest judicatory of religious organization of hierarchical polity on matters of discipline, faith, internal organization or ecclesiastical custom or law. U.S.C.A. Const. Amends. 1, 14.

**6. Religious Societies ⇐14**

General rule is that religious controversies are not proper subject of civil court inquiry, and that civil court must accept ecclesiastical decisions of church tribunals as it finds them. U.S.C.A.Const. Amends. 1, 14.

**7. Constitutional Law ⇐84, 274(3)**

State court's "detailed review" of evidence in challenge to proceedings resulting in removal and defrockment of bishop of hierarchical church by religious bodies in whose sole discretion the authority to make such ecclesiastical decisions was vested was impermissible under First and Fourteenth Amendments, and court's error was compounded by error in evaluating evidence, error in delving into various church constitutional provisions and error in sanctioning circumvention of tribunals set up to resolve internal church disputes; in summary, state court unconstitutionally undertook resolution of quintessentially religious controversies committed by First Amendment exclusively to highest ecclesiastical tribunals of

the hierarchical church. U.S.C.A.Const. Amends. 1, 14.

**8. Religious Societies ⇐14**

Although diocesan bishop controlled monastery and was principal officer of property-holding corporations, civil courts were required to accept that consequence as incidental effect of ecclesiastical determination which resulted in defrocking of diocesan bishop but which was not subject to judicial abrogation, having been reached by final judicatory in which authority to make the decision resided. U.S.C.A.Const. Amends. 1, 14.

**9. Constitutional Law ⇐84, 274(3)**

First and Fourteenth Amendments forbade action of state court, asked to pass upon validity of action of mother church in hierarchical organization in separating one diocese into three, in substituting court's own interpretation of diocesan and mother church constitutions for that of highest ecclesiastical tribunals in which church law vested authority to make such interpretation. U.S.C.A.Const. Amends. 1, 14.

**10. Religious Societies ⇐14**

Constitutional provisions of American-Canadian diocese of hierarchical church were not so express that civil courts could enforce them, even on purported "neutral principles" for resolving property disputes, without engaging in searching, and therefore impermissible, inquiry into church polity. U.S.C.A.Const. Amends. 1, 14.

**11. Constitutional Law ⇐84, 274(3)**

First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters; when this choice is exercised and ecclesiastical tribunals are created to decide disputes over government and direction of subordinate bodies, Constitution requires that civil courts accept their decisions as binding upon them. U.S.C.A. Const. Amends. 1, 14.

*Syllabus* *

During the course of a protracted dispute over the control of the Serbian Eastern Orthodox Diocese for the United States and Canada, the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (Mother Church) suspended and ultimately removed and defrocked the Bishop, respondent Dionisije, and appointed petitioner Firmilian as Administrator of the Diocese, which the Mother Church then reorganized into three Dioceses. The Serbian Orthodox Church is a hierarchical church, and the sole power to appoint and remove its Bishops rests in the Holy Assembly and Holy Synod. Dionisije filed suit in the Illinois courts seeking to enjoin petitioners from interfering with Diocesan assets of respondent not-for-profit Illinois corporations and to have himself declared the true Diocesan Bishop. After a lengthy trial, the trial court resolved most of the disputed issues in favor of petitioners. The Supreme Court of Illinois affirmed in part and reversed in part, holding that Dionisije's removal and defrockment had to be set aside as "arbitrary" because the proceedings against him had not in its view been conducted in accordance with the Church's constitution and penal code, and that the Diocesan reorganization was invalid because it exceeded the scope of the Mother Church's authority to effectuate such changes without Diocesan approval. *Held*:

1. The holding of the Illinois Supreme Court constituted improper judicial interference with the decisions of a hierarchical church and in thus interposing its judgment into matters of ecclesiastical cognizance and polity, the court contravened the First and Fourteenth Amendments. Pp. 2380–2387.

(a) "[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

matter has been carried, the legal tribunals must accept such decisions as final, and as binding . . . ." *Watson v. Jones,* 13 Wall. 679, 727, 20 L.Ed. 666. Pp. 2380–2381.

(b) Under the guise of "minimal" review of the Mother Church's decisions that the Illinois Supreme Court deemed "arbitrary" that court has unconstitutionally undertaken the adjudication of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church. Pp. 2382–2385.

2. Though it did not rely on the "fraud, collusion, or arbitrariness" exception to the rule requiring recognition by civil courts of decisions by hierarchical tribunals, but rather on purported "neutral principles" for resolving property disputes in reaching its conclusion that the Mother Church's reorganization of the American-Canadian Diocese into three Dioceses was invalid, that conclusion also contravened the First and Fourteenth Amendments. The reorganization of the Diocese involves solely a matter of internal church government, an issue at the core of ecclesiastical affairs. Religious freedom encompasses the "power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L.Ed. 120. Pp. 2385–2387.

60 Ill.2d 477, 328 N.E.2d 268, reversed.

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Albert E. Jenner, Jr., Chicago, Ill., for petitioners.

Leo J. Sullivan, III, Waukegan, Ill., for respondents.

Mr. Justice BRENNAN delivered the opinion of the Court.

In 1963, the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (Mother Church) suspended and ultimately removed respondent Dionisije Milivojevich (Dionisije) as Bishop of the American-Canadian Diocese of that Church, and appointed petitioner Bishop Firmilian Ocokoljich (Firmilian) as Administrator of the Diocese, which the Mother Church then reorganized into three Dioceses. In 1964 the Holy Assembly and Holy Synod defrocked Dionisije as a Bishop and cleric of the Mother Church. In this civil action brought by Dionisije and the other respondents in Illinois Circuit Court, the Supreme Court of Illinois held that the proceedings of the Mother Church respecting Dionisije were procedurally and substantively defective under the internal regulations of the Mother Church and were therefore arbitrary and invalid. The State Supreme Court also invalidated the Diocesan reorganization into three Dioceses. 60 Ill.2d 477, 328 N.E.2d 268 (1975).[1] We granted certiorari to determine whether the actions of the Illinois Supreme Court constituted improper judicial interference with decisions of the highest authorities of a hierarchical church in violation of the First and Fourteenth Amendments. 423 U.S. 911, 96 S.Ct. 770, 46 L.Ed.2d 634 (1975). We hold that the inquiries made by the Illinois Supreme Court into matters of ecclesiastical cognizance and polity and the court's actions pursuant thereto contravened the First and Fourteenth Amendments. We therefore reverse.

I

The basic dispute is over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada (American-Canadian Diocese), its property and assets. Petitioners are Bishops Firmilian, Gregory Udicki, and Sava Vukovich, and the Serbian Eastern Orthodox Diocese for the United States of America and Canada (the religious body in this country). Respondents are Bishop Dionisije, the Serbian Orthodox Monastery of St. Sava, and the Serbian Eastern Orthodox Diocese for the United States of America and Canada, an

1. The opinion of the Illinois Appellate Court in an earlier appeal is reported *sub nom. Serbian Orthodox Diocese v. Ocokoljich,* 72 Ill.App.2d 444, 219 N.E.2d 343 (1966).

Illinois religious corporation. A proper perspective on the relationship of these parties and the nature of this dispute requires some background discussion.

The Serbian Orthodox Church, one of the 14 autocephalous, hierarchical churches which came into existence following the schism of the universal Christian church in 1054, is an episcopal church whose seat is the Patriarchate in Belgrade, Yugoslavia. Its highest legislative, judicial, ecclesiastical, and administrative authority resides in the Holy Assembly of Bishops, a body composed of all Diocesan Bishops presided over by a Bishop designated by the Assembly to be Patriarch. The Church's highest executive body, the Holy Synod of Bishops, is composed of the Patriarch and four Diocesan Bishops selected by the Holy Assembly. The Holy Synod and the Holy Assembly have the exclusive power to remove, suspend, defrock, or appoint Diocesan Bishops. The Mother Church is governed according to the Holy Scriptures, Holy Tradition, Rules of the Ecumenical Councils, the Holy Apostles, the Holy Faiths of the Church, the Mother Church Constitution adopted in 1931, and a "penal code" adopted in 1961. These sources of law are sometimes ambiguous and seemingly inconsistent. Pertinent provisions of the Mother Church Constitution provide that the Church's "main administrative division is composed of dioceses, both in regard to church hierarchical and church administrative aspect," Art. 12, and that "[d]ecisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and establishing or eliminating
700 of position of vicar bishpps, is decided upon by the [Holy Assembly], in agreement with the Patriarchal Council," Art. 16.

During the late 19th century, migrants to North America of Serbian descent formed autonomous religious congregations throughout this country and Canada. These congregations were then under the jurisdiction of the Russian Orthodox Church, but that Church was unable to care for their needs and the congregations sought permission to bring themselves under the jurisdiction of the Serbian Orthodox Church.

In 1913 and 1916, Serbian priests and laymen organized a Serbian Orthodox Church in North America. The 32 Serbian Orthodox congregations were divided into 4 presbyteries, each presided over by a Bishop's Aide, and constitutions were adopted. In 1917, the Russian Orthodox Church commissioned a Serbian priest, Father Mardary, to organize an independent Serbian Diocese in America. Four years later, as a result of Father Mardary's efforts, the Holy Assembly of Bishops of the Mother Church created the Eastern Orthodox Diocese for the United States of America and Canada and designated a Serbian Bishop to complete the formal organization of a Diocese. From that time until 1963, each bishop who governed the American-Canadian Diocese was a Yugoslav citizen appointed by the Mother Church without consultation with Diocesan officials.

In 1927, Father Mardary called a Church National Assembly embracing all of the known Serbian Orthodox congregations in the United States and Canada. The Assembly drafted and adopted the constitution of the Serbian Orthodox Diocese for the United States of America and Canada, and submitted the constitution to the Mother Church for approval. The Holy Assembly made changes to provide for appointment of the Diocesan Bishop by the Holy Assembly and to require Holy Assembly approval 701
for any amendments to the constitution, and with these changes approved the constitution. The American-Canadian Diocese was the only diocese of the Mother Church with its own constitution.

Article 1 of the constitution provides that the American-Canadian Diocese "is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia," and Art. 2 provides that all "statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for" the American-Canadi-

an Diocese. Article 3 states that the "jurisdiction of the . . . Diocese . . . includes the entire political territory of the United States of America and Canada, which as such by its geographical location enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficiencies, through its organs . . . ." Article 9 provides that the Bishop of the Diocese "is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate"; various provisions of the constitution accord that Bishop extensive powers with respect to both religious matters and control of Diocesan property. The constitution also provides for such Diocesan organs as a Diocesan National Assembly, which exercises considerable legislative and administrative authority within the Diocese.

In 1927, Father Mardary also organized a not-for-profit corporation, the Serbian Eastern Orthodox Council for the United States and Canada, under the laws of Illinois. The corporation was to hold title to 30 acres of land in Libertyville, Ill., that Father Mardary had personally purchased in 1924. The charter of that corporation was allowed to lapse, and Father Mardary
[702] organized another Illinois not-for-profit corporation, respondent Serbian Eastern Orthodox Diocese for the United States and Canada, under Illinois laws governing incorporation of hierarchical religious organizations. In 1945, respondent not-for-profit monastery corporation, the Monastery of St. Sava, was organized under these same Illinois laws, and title to the Libertyville property was transferred to it. Similar secular property-holding corporations were subsequently organized in New York, California, and Pennsylvania.

Respondent Bishop Dionisije was elected Bishop of the American-Canadian Diocese by the Holy Assembly of Bishops in 1939. He became a controversial figure; during the years before 1963, the Holy Assembly received numerous complaints challenging his fitness to serve as Bishop and his administration of the Diocese.

During his tenure, however, the Diocese grew so substantially that Dionisije requested that the Patriarch and Holy Assembly appoint bishops to assist him but to serve under his supervision. Eventually, the Diocese sought its elevation by the Holy Assembly to the rank of Metropolia, that South America be added to the Diocese, and that several assistant bishops be appointed under Dionisije. Dionisije specifically recommended that petitioners Firmilian and Gregory Udicki, and one Stefan Lastavica be named assistant bishops. A delegation from the Diocese was sent to the May 1962 meeting of the Holy Assembly in Belgrade to urge adoption of these reorganization proposals, and on June 12, 1962, the Holy Synod appointed a delegation to visit the United States and study the proposals. The delegation was also directed to confer with Dionisije concerning the complaints made against him and his administration over the years.

The delegation remained in the United States for three months, visiting parishes [703] throughout the Diocese and discussing both the reorganization proposals and the complaints against Dionisije. After completion of its survey, the delegation suggested to the Holy Synod the assignment of vicar bishops to the Diocese and recommended that a commission be appointed to conduct a thorough investigation into the complaints against Dionisije. However, the Holy Assembly on May 10, 1963, instead recommended that the Holy Synod institute disciplinary proceedings against Dionisije. The Holy Synod thereupon met immediately and suspended Dionisije pending investigation and disposition of the complaints. The Holy Synod appointed petitioner Firmilian, Dionisije's chief episcopal deputy since 1955 and one of Dionisije's candidates for assistant bishop, as Administrator of the Diocese pending completion of the proceedings.

The Holy Assembly thereafter reconvened and, acting under Art. 16 of the constitution of the Mother Church, reorga-

nized the American-Canadian Diocese into three new dioceses—the Middle Western, the Western and the Eastern—whose boundaries were roughly those of the episcopal districts previously created by Dionisije.[2] The final fixing of boundaries for the new dioceses and all other organizational and administrative matters were left to be determined by the officials of the old American-Canadian Diocese. Dionisije was appointed Bishop of the Middle Western Diocese and, seven days later, petitioners Archimandrites Firmilian, Gregory, and Stefan [3] were appointed temporary administrators for the new Dioceses.

[704] Dionisije's immediate reaction to these decisions of the Mother Church was to refuse to accept the reorganization on the ground that it contravened the administrative autonomy of the Diocese guaranteed by the Diocesan constitution, and to refuse to accept his suspension on the ground that it was not effectuated in compliance with the constitution and laws of the Mother Church. On May 25, 1963, he prepared and mailed a circular to all American-Canadian parishes stating his refusal to recognize these actions, and on May 27 he issued a press release stating his refusal to recognize his suspension and his intent to litigate it in the civil courts. This refusal to recognize the Diocesan reorganization and his suspension as Bishop was again stated by Dionisije in a circular issued on June 3 and addressed to the Patriarch, the Holy Assembly, the Holy Synod, all clergy, congregations, Diocesan committees, and all Serbians in North America. He also continued to officiate as Bishop, refusing to turn administration of the Diocese over to Firmilian; in a May 30 letter to Firmilian, Dionisije repeated this refusal, asserted that he no longer recognized the decisions of the Holy Assembly and Holy Synod, and charged those bodies with being "communistic."

2. The Mother Church decided against creation of a "Metropolia" because it had not employed that organizational system and had not required one Bishop to serve under another.

The Diocesan Council met on June 6, and Dionisije reaffirmed his refusal to turn over administration of the Diocese to Firmilian; he also announced that he had discharged two of his vicars general because of their loyalty to the Mother Church. The Council resolved at the meeting to advise the Holy Synod that the proposal to reorganize the Diocese into three dioceses would be submitted to the Diocesan National Assembly in August for acceptance or rejection. The Council also requested that the Holy Assembly promptly send a committee to investigate the complaints against Dionisije.

On June 13, the Holy Synod appointed such a commission, composed of two Bishops and the Secretary of the Holy Synod. [705] On July 5, the commission met with Dionisije, who reiterated his refusal to recognize his suspension or the Diocesan reorganization, and who demanded all accusations in writing. The commission refused to give Dionisije the written accusations on the ground that defiance of decisions of higher church authorities itself established wrongful conduct, and advised him that the Holy Synod would appoint a Bishop as court prosecutor to prepare an indictment against him.

On the basis of the commission's report and recommendations, which recited Dionisije's refusal to accept the decisions of the Holy Synod and Holy Assembly and his refusal to recognize the court of the Holy Synod or its competence to try him, the Holy Assembly met on July 27, 1963, and voted to remove Dionisije as Bishop. The minutes of the Holy Assembly meeting and the Patriarch's letter to Dionisije informing him of the Holy Assembly's actions made clear that the removal was based solely on his acts of defiance subsequent to his May 10, 1963, suspension, and his violation of his oath and loss of certain qualifications for Bishop under Art. 104 of the constitution of the Mother Church.

3. Stefan has since died, and the Holy Assembly appointed petitioner Sava Vukovich in his place.

The Diocesan National Assembly, with Dionisije presiding despite his removal, met in August 1963 and issued a resolution repudiating the division of the Diocese into three Dioceses and demanding a revocation by the Mother Church of the decisions concerning that division. When the Holy Assembly refused to reconsider, the Diocesan National Assembly in November 1963 declared the Diocese completely autonomous and reinstated the provisions of the Diocesan constitution that provided for election of the Bishop of the Diocese itself and for amendments without the approval of the Holy Assembly.

Meanwhile, the Holy Synod in October
[706] 1963 forwarded to Dionisije a formal written indictment based on the charges of canonical misconduct. In November 1963, Dionisije responded with a demand for the verified reports and complaints referred to in the indictment and for a six-month extension to answer the indictment. The Holy Assembly granted a 30-day extension in which to answer, but declined to furnish verified charges on the grounds that they were described in the indictment, that additional details would be evidentiary in nature, and that there was no legal or canonical basis for forwarding such material to an accused Bishop.

Dionisije returned the indictment in January, refusing to answer without the verified charges, denouncing the Holy Assembly and Holy Synod as schismatic and pro-Communist, and asserting that the Mother Church was proceeding in violation of its penal code and constitution.

The Holy Synod, on February 25, 1964, declared that it could not proceed further without Dionisije and referred the matter to the Holy Assembly, which tried Dionisije as a default case on March 5, 1964, because of his refusal to participate. The indictment was also amended at that time to include charges based on Dionisije's acts of rebellion such as those committed at the November meeting of the National Assembly which had declared the Diocese separate from the Mother Church. Considering the original and amended indictments, the Holy Assembly unanimously found Dionisije guilty of all charges and divested him of his episcopal and monastic ranks.

Even before the Holy Assembly had removed Dionisije as Bishop, he had commenced what eventually became this protracted litigation, now carried on for almost 13 years. Acting upon the threat contained in his May 27, 1963, press release, Dionisije filed suit in the Circuit Court of Lake [707] County, Ill., on July 26, 1963, seeking to enjoin petitioners from interfering with the assets of respondent corporations and to have himself declared the true Diocesan Bishop. Petitioners countered with a separate complaint, which was consolidated with the original action, seeking declaratory relief that Dionisije had been removed as Bishop of the Diocese and that the Diocese had been properly reorganized into three Dioceses, and injunctive relief granting petitioner Bishops control of the reorganized Dioceses and their property. After the trial court granted summary judgment for respondents and dismissed petitioners' countercomplaint, the Illinois Appellate Court reversed and remanded for a hearing on the merits. *Serbian Orthodox Diocese v. Ocokoljich,* 72 Ill.App.2d 444, 219 N.E.2d 343, appeal denied, 34 Ill.2d 631 (1966).[4]

Following a lengthy trial, the trial court filed an unreported memorandum opinion and entered a final decree which concluded that "no substantial evidence was produced . . . that fraud, collusion or arbitrariness existed in any of the actions or decisions preliminary to or during the final proceedings of the decision to defrock Bishop Dionisije made by the highest Hierarchical bodies of the Mother Church," Pet. for Cert., App. 44; that the property held by

4. The Appellate Court initially held that the suspension, removal, and defrockment of Dionisije were valid and binding upon the civil courts but on rehearing directed that Dionisije should be afforded the opportunity at trial to prove that these were the result of fraud, collusion, or arbitrariness.

respondent corporations is held in trust for all members of the American-Canadian Diocese; that it was "improper and beyond the power of the Mother Church to take its action in dividing the whole American Diocese into three new Dioceses, changing its boundaries, and in appointing new bishops
[1708] for [said so-called new Dioceses," *id.*, at 46; and that "Firmilian was validly appointed by the Holy Episcopal Synod as temporary Administrator of the whole American Diocese in place of the defrocked Bishop Dionisije," *ibid.*

On appeal, the Supreme Court of Illinois affirmed in part and reversed in part, essentially holding that Dionisije's removal and defrockment had to be set aside as "arbitrary" because the proceedings resulting in those actions were not conducted according to the Illinois Supreme Court's interpretation of the Church's constitution and penal code, and that the Diocesan reorganization was invalid because it was beyond the scope of the Mother Church's authority to effectuate such changes without Diocesan approval. 60 Ill.2d 477, 328 N.E.2d 268 (1975). Although the court denied rehearing, it amended its original opinion to hold that, although Dionisije had been properly suspended, that suspension terminated by operation of church law when he was not validly tried within one year of his indictment. Thus, the court purported in effect to reinstate Dionisije as Diocesan Bishop.

II

**[1, 2]** The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes. Consistently with the First and Fourteenth Amendments "civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide such disputes]. . . . Such a determination . . . frequently necessitates the interpretation of ambiguous religious law and usage. [1709] To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide . . . religious law [governing church polity] . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine." *Md. & Va. Churches v. Sharpsburg Church,* 396 U.S. 367, 369, 90 S.Ct. 499, 500, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring). For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them. *Ibid.*

**[3, 4]** Resolution of the religious disputes at issue here affects the control of church property in addition to the structure and administration of the American-Canadian Diocese. This is because the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations. Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. Thus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals. Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, "the First Amendment 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, 606, 21 L.Ed.2d 658 (1969). "First

[710] Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Ibid.* This principle applies with equal force to church disputes over church polity and church administration.

The principles limiting the role of civil courts in the resolution of religious controversies that incidentally affect civil rights were initially fashioned in *Watson v. Jones,* 13 Wall. 679, 20 L.Ed. 666 (1872), a diversity case decided before the First Amendment had been rendered applicable to the States through the Fourteenth Amendment.[5] With respect to hierarchical churches, *Watson* held:

> "[T]he rule of action which should govern the civil courts . . . is, that, 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." *Id.,* at 727, 20 L.Ed. 666.

In language having "a clear constitutional ring," *Presbyterian Church v. Hull Church, supra,* 393 U.S. at 446, 89 S.Ct. 601, *Watson* reasoned:

> "The law knows no heresy, and is com-
> [711] mitted to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. *It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."* 13 Wall., at 728–729, 20 L.Ed. 666 (emphasis supplied).

*Gonzalez v. Archbishop,* 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929), applied this principle in a case involving dispute over entitlement to certain income under a will that turned upon an ecclesiastical determination as to whether an individual would be appointed to a chaplaincy in the Roman Catholic Church. The Court, speaking through Mr. Justice Brandeis, observed:

> "Because the appointment [to the chaplaincy] is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters [712] purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." *Id.,* at 16, 50 S.Ct. at 7.

5. Since *Watson* predated *Erie R. Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), it was based on general federal law rather than the state law of the forum in which it was brought.

Thus, although *Watson* had left civil courts no role to play in reviewing ecclesiastical decisions during the course of resolving church property disputes, *Gonzalez* first adverted to the possibility of "marginal civil court review," *Presbyterian Churgh v. Hull Church, supra,* 393 U.S. at 447, 89 S.Ct. at 605, in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion, or arbitrariness." However, since there was "not even a suggestion that [the Archbishop] exercised his authority [in making the chaplaincy decision] arbitrarily," 280 U.S., at 18, 50 S.Ct., at 8, the suggested "fraud, collusion, or arbitrariness" exception to the *Watson* rule was dictum only. And although references to the suggested exceptions appear in opinions in cases decided since the *Watson* rule has been held to be mandated by the First Amendment,[6] no decision of this Court has given concrete content to or applied the "exception." However, it was the predicate for the Illinois Supreme Court's decision in this case, and we therefore turn to the question whether reliance upon it in the circumstances of this case was consistent with the prohibition of the First and Fourteenth Amendments against rejection of the decisions of the Mother Church upon the religious disputes in issue.

**[5, 6]** The conclusion of the Illinois Supreme Court that the decisions of the Mother Church were "arbitrary" was grounded upon an inquiry that persuaded the Illinois
713 Supreme Court that the Mother Church had not followed its own laws and procedures in arriving at those decisions. We have concluded that whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes,[7] no "arbitrariness" exception—in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations—is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them. *Watson* itself requires our conclusion in its rejection of the analogous argument that ecclesiastical decisions of the highest church judicatories need only be accepted if the subject matter of the dispute is within their "jurisdiction."

> "But it is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character,—a matter over which the civil courts
> 714 exercise no jurisdiction,—*a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,*—becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and, in a

6. See *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 115–116, 73 S.Ct. 143, 154, 97 L.Ed. 120, and n. 23 (1952); *Presbyterian Church v. Hull Church,* 393 U.S. 440, 447, 450–451, 89 S.Ct. 601, 605, 606–607, 21 L.Ed.2d 658, and n. 7 (1969); *Md. & Va. Churches v. Sharpsburg Church,* 396 U.S. 367, 369 n. 3, 90 S.Ct. 499, 501, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring).

7. No issue of "fraud" or "collusion" is involved in this case.

sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to see that *if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws,* would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, *and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.*" 13 Wall., at 733–734, 20 L.Ed. 666. (Emphasis supplied.)

Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith [8] whether or not rational or measurable by objective criteria. Constitutional concepts 715
of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.

The constitutional evils that attend upon any "arbitrariness" exception in the sense applied by the Illinois Supreme Court to justify civil court review of ecclesiastical decisions of final church tribunals are manifest in the instant case. The Supreme Court of Illinois recognized that all parties agree that the Serbian Orthodox Church is a hierarchical church, and that the sole power to appoint and remove Bishops of the Church resides in its highest ranking organs, the Holy Assembly and the Holy Synod.[9] Indeed, final authority with respect to

8. Civil judges obviously do not have the competence of ecclesiastical tribunals in applying the "law" that governs ecclesiastical disputes, as *Watson* cogently remarked, 13 Wall., at 729, 20 L.Ed. 666:

"Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so."

9. "Plaintiffs argue and defendant Bishop Dionisije does not dispute that the Serbian Orthodox Church is a hierarchical and episcopal church. Moreover, the parties agree that in cases involving hierarchical churches the decisions of the proper church tribunals on questions of discipline, faith or ecclesiastical rule, though affecting civil rights, are accepted as conclusive in disputes before the civil courts. . . . All parties maintain that the sole limitation on this rule, when civil courts may entertain the 'narrowest kind of review,' occurs when the decision of the church tribunal is claimed to have resulted from fraud, collusion or arbitrariness." 60 Ill.2d 477, 501, 328 N.E.2d 268, 280 (1975). Respondents conceded as much at oral argument. Tr. of Oral Arg. 24–25, 39–40. The hierarchical nature of the relationship between the American-Canadian Diocese and the Mother Church is confirmed by the fact that respondent corporations were organized under the provisions of the Illinois Religious Corporations Act governing the incorporation of religious societies that are subordinate parts of larger church organizations. Similarly, the Diocese's subordinate nature was manifested in resolutions of the Diocese which Dionisije supported, and by Dionisije's submission of corporate bylaws, proposed constitutional changes, and final judgments of the Diocesan Ecclesiastical Court to the Holy Synod or Holy Assembly for approval. Moreover, when Dionisije was originally elevated to Bishop, he signed an Episcopal-Hierarchical Oath by which he swore that he would "always be obedient to the Most Holy Assembly" and:

"Should I transgress against whatever I promised here, or should I be disobedient to the Divine Ordinances and Order of the Eastern Orthodox Church, or to the Most Holy Assembly (of Bishops) I, personally, will become a schismatic and should I make the Diocese entrusted to me in any manner to become diso-

716 the promulgation and interpretation of *all* matters of church discipline and internal organization rests with the Holy Assembly, and even the written constitution of the Mother Church expressly provides:

"The Holy Assembly of Bishops, as the highest hierarchical body, is legislative authority in the matters of faith, officiation, church order (discipline) and internal organization of the Church, as well as the highest church juridical authority within its jurisdiction (Article 69 sec. 28)." Art. 57.

"All the decisions of the Holy Assembly
717 of Bishops and of the Holy Synod of Bishops of canonical and church nature, in regard to faith, officiation, church order and internal organization of the church, are valid and final." Art. 64.

"The Holy Assembly of Bishops, whose purpose is noted in Article 57 of this Constitution:

. . . . .

"9) interprets canonical-ecclesiastical rules, those which are general and obligatory, and particular ones, and publishes their collections;

. . . . .

"12) prescribes the ecclesiastical-judicial procedure for all Ecclesiastical Courts;

. . . . .

"26) settles disputes of jurisdiction between hierarchical and church-self governing organs;

"27) ADJUDGES:

"A) In first and in final instances:

"a) disagreements between bishops and the Holy Synod, and between the bishops and the Patriarch;

"b) canonical offenses of the Patriarch;

"B) In the second and final instance:

"All matters which the Holy Synod of Bishops judged in the first instance." Art. 69.

Nor is there any dispute that questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern; the bishop of a church is clearly one of the central figures in such a hierarchy and the embodiment of the church within his Diocese, and the Mother Church constitution states that "[h]e is, according to the church canonical regulations, chief representative and guiding leader of all church spiritual life and church order in the diocese." Art. 13.

[7, 8] Yet having recognized that the Serbian Orthodox Church is hierarchical and that the decisions to suspend and de- 718
frock respondent Dionisije were made by the religious bodies in whose sole discretion the authority to make those ecclesiastical decisions was vested, the Supreme Court of Illinois nevertheless invalidated the decision to defrock Dionisije on the ground that it was "arbitrary" because a "detailed review of the evidence discloses that the proceedings resulting in Bishop Dionisije's removal and defrockment were not in accordance with the prescribed procedure of the constitution and the penal code of the Serbian Orthodox Church." 60 Ill.2d, at 503, 328 N.E.2d at 281. Not only was this "detailed review" impermissible under the First and Fourteenth Amendments, but in reaching this conclusion, the court evaluated conflicting testimony concerning internal church procedures and rejected the interpretations of relevant procedural provisions by the Mother Church's highest tribunals. *Id.*, at 492–500, 328 N.E.2d at 276–280. The court also failed to take cognizance of the fact that the church judicatories were also guided by other sources of law, such as canon law, which are admittedly not always consistent, and it rejected the testimony of

bedient to the most Holy Assembly (of Bishops), may I, in that case, be defrocked of my rank and divested of the (episcopal) authority without any excuse or gainsay, and (may I) become an alien to the heavenly gift which is being given unto me by the Holy Spirit through the Consecration of the Laying of Hands." App. 1088.

Finally, the hierarchical relationship was confirmed by provisions in the constitutions of both the Diocese and the Mother Church.

petitioners' five expert witnesses [10] that church procedures were properly followed, denigrating the testimony of one witness as "contradictory" and discounting that of another on the ground that it was "premised upon an assumption which did not consider the penal code," even though there was some question whether that code even applied to discipline of Bishops.[11] The court
[719] accepted, on the other hand, the testimony of respondents' sole expert witness that the Church's procedures had been contravened in various specifics. We need not, and under the First Amendment cannot, demonstrate the propriety or impropriety of each of Dionisije's procedural claims, but we can note that the state court even rejected petitioners' contention that Dionisije's failure to participate in the proceedings undermined all procedural contentions because Arts. 66 and 70 of the penal code specify that if a person charged with a violation fails to participate or answer the indictment, the allegations are admitted and due process will be concluded without his participation; the court merely asserted that "application of this provision . . . must be viewed from the perspective that Bishop Dionisije refused to participate because he maintained that the proceedings against him were in violation of the constitution and the penal code of the Serbian Orthodox Church." 60 Ill.2d, at 502, 328 N.E.2d, at 281. The court found no support in any church dogma for this judicial rewriting of church law, and compounded further the error of this intrusion into a religious thicket by declaring that although Dionisije had, even under the court's analysis, been properly suspended and replaced by Firmilian as temporary administrator, he had to be reinstated as Bishop because church law mandated a trial on ecclesiastical charges within one year of the indictment. Yet the only reason more time then that had expired was due to Dionisije's decision to resort to the civil courts for redress without attempting to vindicate himself by pursuing available
remedies within the church. Indeed, the [720]
Illinois Supreme Court overlooked the clear substantive canonical violations for which the Church disciplined Dionisije, violations based on Dionisije's conceded open defiance and rebellion against the church hierarchy immediately after the Holy Assembly's decision to suspend him (a decision which even the Illinois courts deemed to be proper) and Dionisije's decision to litigate the Mother Church's authority in the civil courts rather than participate in the disciplinary proceedings before the Holy Synod and the Holy Assembly. Instead, the Illinois Supreme Court would sanction this circumvention of the tribunals set up to resolve internal church disputes and has ordered the Mother Church to reinstate as Bishop one who espoused views regarded by the church hierarchy to be schismatic and which the proper church tribunals have already determined merit severe sanctions. In short, under the guise of "minimal" review under the umbrella of "arbitrariness," the Illinois Supreme Court has unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church. And although the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations, the civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject

10. Three of these witnesses, including the author of the Church penal code, were members of the Holy Assembly of Bishops, one was the Secretary of the Holy Synod, and one was a recognized expert in the field of ecclesiastical law.

11. Indeed Dionisije, who does not dispute the power of the Holy Assembly to discipline him for the substantive charges in his indictment, nevertheless inconsistently insists that the Holy Assembly must be bound by procedures which were not extant when he executed his Episcopal-Hierarchical Oath, see n. 9, *supra*, and which were promulgated within a year of the beginning of this controversy, although at the same time he agrees that the Holy Assembly could formalize and promulgate any procedures it desired for the conduct of disciplinary action.

to judicial abrogation, having been reached by the final church judicatory in which authority to make the decision resides.

III

Similar considerations inform our resolution of the second question we must address—the constitutionality of the Supreme Court of Illinois' holding that the Mother Church's reorganization of the American-
1721 Canadian Diocese into three Dioceses was invalid because it was " 'in clear and palpable excess of its own jurisdiction.' " Essentially, the court premised this determination on its view that the early history of the Diocese "manifested a clear intention to retain independence and autonomy in its administrative affairs while at the same time becoming ecclesiastically and judicially an organic part of the Serbian Orthodox Church," and its interpretation of the constitution of the American-Canadian Diocese as confirming this intention. It also interpreted the constitution of the Serbian Orthodox Church, which was adopted after the Diocesan constitution, in a manner consistent with this conclusion. 60 Ill.2d, at 506–507, 328 N.E.2d, at 283–284.

[9] This conclusion was not, however, explicitly based on the "fraud, collusion, or arbitrariness" exception. Rather, the Illinois Supreme Court relied on purported "neutral principles" for resolving property disputes which would "not in any way entangle this court in the determination of theological or doctrinal matters." *Id.*, at 505, 328 N.E.2d, at 282. Nevertheless the Supreme Court of Illinois substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation. This the First and Fourteenth Amendments forbid.

[10] We will not delve into the various church constitutional provisions relevant to this conclusion, for that would repeat the error of the Illinois Supreme Court. It suffices to note that the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs; Arts. 57 and 64 of the Mother Church constitution commit such questions of church polity to the final province of the Holy Assembly. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L.Ed. 120 (1952), stated that religious freedom encompasses the
1722 "power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." The subordination of the Diocese to the Mother Church in such matters, which are not only "administrative" but also "hierarchical," [12] was provided, and the power of the Holy Assembly to reorganize the Diocese is expressed in the Mother Church constitution.[13] Contrary to the interpretation of the Illinois court, the church judicatories interpreted the provisions of the Diocesan constitution

12. See Art. 12, quoted *supra*, at 2376. Various provisions of the Diocesan constitution reaffirm the subordinate status of the Diocese. *E. g.*, Arts. 1, 2, 10, 12, 23, 53. Moreover, the Mother Church exerts almost complete authority over most Diocesan matters through the Diocesan Bishop, and there is no question that the Diocese has no voice whatever in the appointment of the Bishop.

13. See Art. 16, quoted *supra*, at 2376. In rejecting the Holy Assembly's interpretation of this provision, the Illinois court treated the creation and reorganization of dioceses as purely administrative, without recognizing the central role of a diocese in the hierarchical structure of the Church. In particular, the Illinois court noted that Art. 14 of the Mother Church constitution states "[t]hese are the Dioceses in the Serbian Orthodox Church," and lists only the Dioceses within Yugoslavia. In Art. 15, on the other hand, were listed Dioceses "under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect," including the American-Canadian Diocese. Although nothing in the constitution restricted the Mother Church's power with respect to reorganizing the Dioceses listed in Art. 15, the Illinois courts simply asserted that Art. 16 was only intended to apply to Dioceses named in Art. 14. Yet even the Diocese itself recognized the Holy Assembly's powers when it sought approval for institution of the "Metropolia" system.

not to interdict or govern this action, but only to relate to the day-to-day administra-
723 tion of Diocesan property.[14] The constitutional provisions of the American-Canadian Diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity. See *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. at 368–370, 90 S.Ct., at 500–501 (Brennan, J., concurring).[15]

The control of Diocesan property may be little affected by the changes; respondents' allegation that the reorganization was a fraudulent subterfuge to divert Diocesan property from its intended beneficiaries has been rejected by the Illinois courts. Formal title to the property remains in respondent property-holding corporations, to be held in trust for all members of the new Dioceses. The boundaries of the reorganized Dioceses generally conform to the episcopal districts which the American-Canadian Diocese had already employed for its internal government, and the appointed administrators of the new Dioceses were the same individuals nominated by Dionisije as assistant bishops to govern similar divisions under him. Indeed, even the Illinois courts' rationale that the reorganization would effectuate an abrogation of the Diocesan constitution has no support in the record, which establishes rather that the details of the reorganization and any decisions pertaining to a distribu-
724 tion of the property among the three Dioceses were expressly left for the Diocesan National Assembly to determine. In response to inquiries from the Diocese, the Holy Assembly assured Bishop Firmilian:

"1. That all the rights of the former American-Canadian Diocese, as they relate to the autonomy in the administrative sense, remain unchanged. The only exception is the forming of three dioceses and

"2. That the Constitution of the former American-Canadian Diocese remains the same and that the Dioceses in America and Canada will not, in an administrative sense (the management (*or direction*) of the properties) be managed (*or directed*) in the same manner as those in Yugoslavia." App. 1446.

As a practical matter the effect of the reorganization is a tripling of the Diocesan representational strength in the Holy Assembly and a decentralization of hierarchical authority to permit closer attention to the needs of individual congregations within each of the new Dioceses, a result which Dionisije and Diocesan representatives had already concluded was necessary. Whether corporate bylaws or other documents governing the individual property-holding corporations may affect any desired disposition of the Diocesan property is a question not before us.

IV

[11] In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes
725 over the government and direction of subordinate bodies, the Constitution requires

14. The Illinois court, in refusing to follow the Holy Assembly's interpretation of these religious documents, relied primarily on Art. 3 of the Diocesan constitution, quoted *supra*, at 2376. However, the Holy Assembly's construction of that provision limits its application to administration of property within the Diocese, and as not restricting alterations in the Diocese itself.

15. No claim is made that the "formal title" doctrine by which church property disputes may be decided in civil courts is to be applied in this case. See *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. at 370, 90 S.Ct., at 501 (Brennan, J., concurring). Indeed, the Mother Church decisions defrocking Dionisije and reorganizing the Diocese in no way change formal title to all Diocesan property, which continues to be in the respondent property-holding corporations in trust for all members of the reorganized Dioceses; only the identity of the trustees is altered by the Mother Church's ecclesiastical determinations.

that civil courts accept their decisions as binding upon them.

*Reversed.*

THE CHIEF JUSTICE concurs in the judgment.

Mr. Justice WHITE, concurring.

Major predicates for the Court's opinion are that the Serbian Orthodox Church is a hierarchical church and the American-Canadian Diocese, involved here, is part of that Church. These basic issues are for the courts' ultimate decision, and the fact that church authorities may render their opinions on them does not foreclose the courts from coming to their independent judgment. I do not understand the Court's opinion to suggest otherwise and join the views expressed therein.

Mr. Justice REHNQUIST, with whom Mr. Justice STEVENS joins, dissenting.

The Court's opinion, while long on the ecclesiastical history of the Serbian Orthodox Church, is somewhat short on the procedural history of this case. A casual reader of some of the passages in the Court's opinion could easily gain the impression that the State of Illinois had commenced a proceeding designed to brand Bishop Dionisije as a heretic, with appropriate pains and penalties. But the state trial judge in the Circuit Court of Lake County was not the Bishop of Beauvais, trying Joan of Arc for heresy; the jurisdiction of his court was invoked by petitioners themselves, who sought an injunction establishing their control over property of the American-Canadian Diocese of the church located in Lake County.

The jurisdiction of that court having been
[726] invoked for such a purpose by both petitioners and respondents, contesting claimants to Diocesan authority, it was entitled to ask if the real Bishop of the American-Canadian Diocese would please stand up. The protracted proceedings in the Illinois courts were devoted to the ascertainment of who that individual was, a question which the Illinois courts sought to answer by application of the canon law of the church, just as they would have attempted to decide a similar dispute among the members of any other voluntary association. The Illinois courts did not in the remotest sense inject their doctrinal preference into the dispute. They were forced to decide between two competing sets of claimants to church office in order that they might resolve a dispute over real property located within the State. Each of the claimants had requested them to decide the issue. Unless the First Amendment requires control of disputed church property to be awarded solely on the basis of ecclesiastical paper title, I can find no constitutional infirmity in the judgment of the Supreme Court of Illinois.

Unless civil courts are to be wholly divested of authority to resolve conflicting claims to real property owned by a hierarchical church, and such claims are to be resolved by brute force, civil courts must of necessity make some factual inquiry even under the rules the Court purports to apply in this case. We are told that "a civil court must accept the ecclesiastical decisions of church tribunals as it finds them," *ante*, at 2382. But even this rule requires that proof be made as to what these decisions are, and if proofs on that issue conflict the civil court will inevitably have to choose one over the other. In so choosing, if the choice is to be a rational one, reasons must be adduced as to why one proffered decision is to prevail over another. Such reasons will
obviously be based on the canon law by [727]
which the disputants have agreed to bind themselves, but they must also represent a preference for one view of that law over another.

If civil courts, consistently with the First Amendment, may do that much, the question arises why they may not do what the Illinois courts did here regarding the defrockment of Bishop Dionisije, and conclude, on the basis of testimony from experts on the canon law at issue, that the decision of the religious tribunal involved

was rendered in violation of its own stated rules of procedure. Suppose the Holy Assembly in this case had a membership of 100; its rules provided that a bishop could be defrocked by a majority vote of any session at which a quorum was present, and also provided that a quorum was not to be less than 40. Would a decision of the Holy Assembly attended by 30 members, 16 of whom voted to defrock Bishop Dionisije, be binding on civil courts in a dispute such as this? The hypothetical example is a clearer case than the one involved here, but the principle is the same. If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of arbitrary lawlessness.

The cases upon which the Court relies are not a uniform line of authorities leading inexorably to reversal of the Illinois judgment. On the contrary, they embody two distinct doctrines which have quite separate origins. The first is a common-law doctrine regarding the appropriate roles for civil courts called upon to adjudicate church property disputes—a doctrine which found general application in federal courts prior to *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), but which has never had any application to our review
|728 of a state-court |decision. The other is derived from the First Amendment to the Federal Constitution, and is of course applicable to this case; it, however, lends no more support to the Court's decision than does the common-law doctrine.

The first decision of this Court regarding the role of civil courts in adjudicating church property disputes was *Watson v. Jones*, 13 Wall. 679, 20 L.Ed. 666 (1872). There the Court canvassed the American authorities and concluded that where people had chosen to organize themselves into voluntary religious associations, and had agreed to be bound by the decisions of the hierarchy created to govern such associations, the civil courts could not be availed of to hear appeals from otherwise final decisions of such hierarchical authorities. The bases from which this principle was derived clearly had no constitutional dimension; there was not the slightest suggestion that the First Amendment or any other provision of the Constitution was relevant to the decision in that case. Instead the Court was merely recognizing and applying general rules as to the limited role which civil courts must have in settling private intraorganizational disputes. While those rules, and the reasons behind them, may seem especially relevant to intrachurch disputes, adherence or nonadherence to such principles was certainly not thought to present any First Amendment issues. For as the Court in *Watson* observed:

> "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." *Id.*, at 714, 20 L.Ed. 666.

The Court's equation of religious bodies with other private voluntary associations makes it clear that the principles discussed |729 in that case were not dependent upon those embodied in the First Amendment.

Less than a year later *Watson*'s observations about the roles of civil courts were followed in *Bouldin v. Alexander*, 15 Wall. 131, 21 L.Ed. 69 (1872), where the Court held that the appointed trustees of the property of a congregational church

> "cannot be removed from their trusteeship by a minority of the church society or meeting, without warning, and acting without charges, without citation or trial, and in direct contravention of the church rules." *Id.*, at 140, 21 L.Ed. 69.

Again, there was nothing to suggest that this was based upon anything but commonsense rules for deciding an intraorganizational dispute: in an organization which has provided for majority rule through certain procedures, a minority's attempt to usurp that rule and those procedures need be given no effect by civil courts.

In *Gonzalez v. Archbishop*, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929), the Court again recognized the principles underlying *Watson* in upholding a decision of the Supreme Court of the Philippine Islands that the petitioner was not entitled to the chaplaincy which he claimed because the decision as to whether he possessed the necessary qualifications for that post was one committed to the appropriate church authorities. In dicta which the Court today conveniently truncates, Mr. Justice Brandeis observed:

> "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, *because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations.*" *Id.*, at 16–17, 50 S.Ct., at 7–8 (emphasis supplied; footnotes omitted).

[730]

*Gonzalez* clearly has no more relevance to the meaning of the First Amendment than do its two predecessors.

The year 1952 was the first occasion on which this Court examined what limits the First and Fourteenth Amendments might place upon the ability of the States to entertain and resolve disputes over church property. In *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952), the Court reversed a decision of the New York Court of Appeals which had upheld a statute awarding control of the New York property of the Russian Orthodox Church to an American group seeking to terminate its relationships with the hierarchical Mother Church in Russia. The New York Legislature had concluded that the Communist government of Russia was actually in control of the Mother Church and that "'the Moscow Patriarchate was no longer capable of functioning as a true religious body, but had become a tool of the Soviet Government primarily designed to implement its foreign policy,'" *id.*, at 107 n. 10, 73 S.Ct., at 150, quoting from 302 N.Y. 1, 32–33, 96 N.E.2d 56, 73–74 (1950), and the New York Court of Appeals sustained the statute against the constitutional attack. This Court, however, held the statute was a violation of the Free Exercise Clause, noting:

> "By fiat it displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." 344 U.S., at 119, 73 S.Ct., at 156.

On remand from the decision in *Kedroff*, the New York Court of Appeals again held that the American group was entitled to [731] the church property at issue. This time relying upon the common law of the State, the Court of Appeals ruled that the Patriarch of Moscow was so dominated by the secular government of Russia that his appointee could not validly occupy the Church's property. On appeal, this Court reversed summarily, *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960), noting in its *per curiam* opinion that

> "the decision now under review rests on the same premises which were found to have underlain the enactment of the statute struck down in *Kedroff*." *Id.*, at 191, 80 S.Ct., at 1038.

Nine years later, in *Presbyterian Church v. Hull Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), the Court held that Georgia's common law, which implied a trust upon local church property for the benefit of the general church only on the condition that the general church adhere to its tenets of faith and practice existing at the time of affiliation by the local churches, was inconsistent with the First and Fourteenth Amendments and therefore could not be utilized to resolve church property disputes. The Georgia law was held impermissible because

"[u]nder [the Georgia] approach, property rights do not turn on a church decision as to church doctrine. The standard of departure-from-doctrine, though it calls for resolution of ecclesiastical questions, is a creation of state, not church, law." *Id.*, at 451, 89 S.Ct., at 607.

Finally, in *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970), the Court considered an appeal from a judgment of the Court of Appeals of Maryland upholding the dismissal of two actions brought by the Eldership seeking to prevent two of its local churches from withdrawing from that general religious association. The Eldership had also
[732] claimed the rights to select the clergy and to control the property of the two local churches, but the Maryland courts, relying "upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, *and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property*," *ibid.* (emphasis supplied; footnote omitted), concluded that the Eldership had no right to invoke the State's authority to compel their local churches to remain within the fold or to succeed to control of their property. This Court dismissed the Eldership's contention that this judgment violated the First Amendment for want of a substantial federal question.

Despite the Court's failure to do so, it does not seem very difficult to derive the operative constitutional principle from this line of decisions. As should be clear from even this cursory study, *Watson, Bouldin,* and *Gonzalez* have no direct relevance * to the question before us today: whether the [733] First Amendment, as made applicable to the States by the Fourteenth, prohibits Illinois from permitting its civil courts to settle religious property disputes in the manner presented to us on this record. I think it equally clear that the only cases which *are* relevant to that question—*Kedroff, Kreshik, Hull,* and *Md. & Va. Churches* —require that this question be answered in the negative. The rule of those cases, one which seems fairly implicit in the history of our First Amendment, is that the government may not displace the free religious choices of its citizens by placing its weight behind a particular religious belief, tenet, or sect. That is what New York attempted to do in *Kedroff* and *Kreshik*, albeit perhaps for nonreligious reasons, and the Court refused to permit it. In *Hull*, the State transgressed the line drawn by the First Amendment when it applied a state-created rule of law based upon "departure from doctrine" to prevent the national hierarchy of the Presbyterian Church in the United States from seeking to reclaim possession and use of two local churches. When the Georgia courts themselves required an examination into whether there had been a departure from the doctrine of the church in order to apply this state-created rule, they went beyond mere application of neutral principles of law to such a dispute.

There is nothing in this record to indicate that the Illinois courts have been instru-

* I am far from persuaded, moreover, that these decisions would require the result reached today even if we were reviewing a federal decision rather than that of a state court. As demonstrated in the text, *supra*, these cases were applications of the general principle that persons who have contractually bound themselves to adhere to the decisions of the ruling hierarchy in a private association may not obtain relief from those decisions in a civil court. Here the underlying question addressed by the Illinois courts is the one assumed in *Watson et al.*: whether the members of the American-Canadian Diocese *had* bound themselves to abide by the decisions of the Mother Church in the matters at issue here. The Illinois courts concluded that in regard to some of these matters they had agreed to be bound only if certain procedures were followed and that as to others there had been no agreement to submit to the authority of the Belgrade Patriarchate at all. If these conclusions are correct, and there is little to indicate they are not, then the "*Watson* rule" which the Court brandishes so freely today properly would have no application to these facts even if this case had arisen in federal court.

ments of any such impermissible intrusion by the State on one side or the other of a religious dispute. There is nothing in the Supreme Court of Illinois' opinion indicating that it placed its thumb on the scale in favor of the respondents. Instead that opinion appears to be precisely what it
1734 purports to be: an application of neutral principles of law consistent with the decisions of this Court. Indeed, petitioners make absolutely no claim to the contrary. They agree that the Illinois courts *should* have decided the issues which *they* presented; but they contend that in doing so those courts should have deferred entirely to the representations of the announced representatives of the Mother Church. Such blind deference, however, is counseled neither by logic nor by the First Amendment. To make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchical religious associations, when such deference is not accorded similar acts of secular voluntary associations, would, in avoiding the free exercise problems petitioners envision, itself create far more serious problems under the Establishment Clause.

In any event the Court's decision in *Md. & Va. Churches* demonstrates that petitioners' position in this regard is untenable. And as I read that decision, it seems to me to compel affirmance of at least that portion of the Illinois court's decision which denied petitioners' request for the aid of the civil courts in enforcing its desire to divide the American-Canadian Diocese. See *ante*, at 2385–2387 (Part III). I see no distinction between the Illinois courts' refusal to place their weight behind the representatives of the Serbian Mother Church who sought to prevent portions of their American congregation from splitting off from that body and the Maryland courts' refusal to do the same thing for the Eldership of the Church of God. The Court today expressly eschews any explanation for its failure to follow *Md. & Va. Churches*, see *ante*, at 2386, contenting itself with this conclusory statement:

> "The constitutional provisions of the American-Canadian Diocese were not so express that the civil courts could en- 1735
> force them without engaging in a searching and therefore impermissible inquiry into church polity." *Ante*, at 2386.

But comparison of the relevant discussions by the state tribunals regarding their consideration of church documents makes this claimed distinction seem quite specious. Compare *Md. & Va. Churches v. Sharpsburg Church*, 254 Md. 162, 170, 254 A.2d 162, 168 (1969), with *Serbian Orthodox Diocese v. Ocokoljich*, 72 Ill.App.2d 444, 458–462, 219 N.E.2d 343, 350–353 (1966).

In conclusion, while there may be a number of good arguments that civil courts of a State should, as a matter of the wisest use of their authority, avoid adjudicating religious disputes to the maximum extent possible, they obviously cannot avoid all such adjudications. And while common-law principles like those discussed in *Watson*, *Bouldin*, and *Gonzalez* may offer some sound principles for those occasions when such adjudications are required, they are certainly not rules to which state courts are required to adhere by virtue of the Fourteenth Amendment. The principles which that Amendment, through its incorporation of the First, *does* enjoin upon the state courts—that they remain neutral on matters of religious doctrine—have not been transgressed by the Supreme Court of Illinois.


427 U.S. 97, 49 L.Ed.2d 342

**UNITED STATES, Petitioner,**

**v.**

**Linda AGURS.**

**No. 75–491.**

Argued April 28, 1976.

Decided June 24, 1976.

Defendant's conviction of second-degree murder was reversed by the United