

THE EPISCOPAL CHURCH, THE RT. )  
REV. C. WALLIS OHL, ROBERT HICKS )  
FLOYD MCKNEELY, SHANNON SHIPP, )  
DAVID SKELTON AND WHIT SMITH )  
Plaintiffs, )

AND )

ANNE T. BASS, MARGARET MIEULI, )  
WALT CABE, THE REV. CHRISTOPHER )  
JAMBOR, THE REV. FREDERICK BARBER, )  
THE REV. DAVID MADISON, )  
ROBERT M. BASS, CHERIE SHIPP, )  
DR. TRACE WORRELL, THE REV. JAMES )  
HAZEL, AND THE REV. JOHN STANLEY, )

Third-Party Defendants and )  
Counterclaimants, )

v. )

FRANKLIN SALAZAR, JO ANN PATTON, )  
WALTER VIRDEN, III, ROD BARBER, )  
CHAD BATES, JACK LEO IKER, JUDY MAYO, )  
JULIA SMEAD, THE REV. CHRISTOPHER )  
CANTRELL, THE REV. TIMOTHY PERKINS, )  
AND THE REV. RYAN REED, )

Defendants and Counter-Defendants, )

AND )

THE ANGLICAN PROVINCE OF THE )  
SOUTHERN CONE'S "DIOCESE OF )  
FORT WORTH," )

Defendant and Third-Party )  
Plaintiff and Counter-Defendant. )

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

141ST DISTRICT COURT

FILED  
TARRANT COUNTY  
2019 AUG 13 PM 4:43  
THOMAS A. WILDER  
DISTRICT CLERK

**PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION AND  
THIRD-PARTY DEFENDANTS' COUNTERCLAIM**

TO THE HONORABLE COURT:

Plaintiff The Episcopal Church, the remaining plaintiffs and the third-party defendants and counter-claimants named in the caption hereby file this second amended petition and counterclaim for declaratory and injunctive relief and other related claims against Defendants and Counter-Defendants.

**DISCOVERY CONTROL PLAN**

1. Discovery in this matter is requested to be conducted pursuant to Texas Rule of Civil Procedure 190.4.

**PARTIES**

2. Plaintiff The Episcopal Church, also known as the Protestant Episcopal Church in the United States of America ("The Episcopal Church" or "the Church"), is a religious denomination and a non-profit unincorporated association with its principal office in New York, New York.

3. Plaintiff the Rt. Rev. C. Wallis Ohl appears in his capacity as the Provisional Bishop of the Episcopal Diocese of Fort Worth ("Diocese of Forth Worth" or "Diocese"), a non-profit unincorporated association with its principal office in Fort Worth, Texas and a subordinate unit of the Church comprised of the Church's worshipping congregations located in all or part of 24 Texas counties, including Tarrant County, and also as the Chairman of the Board of Trustees of the Corporation of the Episcopal Diocese of Fort Worth.

4. Third-party defendants and counterclaimants Anne T. Bass, Margaret Mieuli, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, and the Rev. David Madison are lay members or clergy of the Church in the Diocese and appear in their official

capacity as the members of the Standing Committee of the Diocese, an elected body that shares authority with the bishop of the Diocese with respect to certain property and other matters.

5. Third-party defendants and counterclaimants, Robert M. Bass, Cherie Shipp, Dr. Trace Worrell, the Rev. James Hazel, and the Rev. John Stanley are lay members or clergy of the Church in the Diocese and appear in their official capacity as the Trustees of the Corporation of The Episcopal Diocese of Fort Worth (“Diocesan Corporation” or “Corporation”), a Texas non-profit corporation with its principal office in Fort Worth, Texas, formed pursuant to the Constitution and canons of the Diocese to hold and manage the property of the Diocese subject to the Constitutions and canons of the Church and the Diocese.

6. Plaintiffs Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, and third-party defendants and counterclaimants the Rev. James Hazel and Anne T. Bass, are lay members or clergy of the Church in the Diocese and appear in their capacity as the Trustees of the Fund for the Endowment of the Episcopate (The “Endowment Fund”), an institution of the Diocese that holds and manages certain property of the Diocese.

7. Plaintiffs, and third-party defendants and counterclaimants (together the “counterclaimants”), are informed and believe that defendants and counter-defendants Judy Mayo, Franklin Salazar, Julia Smead, the Rev. Christopher Cantrell, the Rev. Timothy Perkins, and the Rev. Ryan Reed are former members of the Church and are holding themselves out as being members of the Standing Committee of the Diocese. Plaintiffs and counterclaimants assert claims against these defendants and counter-defendants, respectively, in their individual capacities and in their purported official capacities as members of the Standing Committee of the Diocese. Plaintiffs and counterclaimants are informed and believe that defendants and counter-defendants Mayo, Smead, Cantrell, Perkins, and Reed are residents of Tarrant County and may

be served at their respective residences or their places of employment in Tarrant County as follows:

The Rev. Christopher Cantrell  
3900 Longvue  
Fort Worth, Texas 76126

The Rev. Timothy P. Perkins  
2024 S. Collins  
Arlington, Texas 76010

The Rev. Ryan S. Reed  
1300 Forest Ridge Drive  
Bedford, TX 76022

Judy Mayo  
3862 Tamworth  
Fort Worth, Texas 76116

Julia Smead  
2900 Alameda Street  
Fort Worth, Texas 76108

8. Plaintiffs and counterclaimants are informed and believe that defendants and counter-defendants Franklin Salazar, Jo Ann Patton, Walter Virden, III, Rod Barber, and Chad Bates are former members of the Church and are holding themselves out as Trustees of the Diocesan Corporation and as Trustees of the Endowment Fund, and that they reside in Tarrant County. Plaintiffs and counterclaimants assert claims against these defendants and counter-defendants, respectively, in their individual capacities and in their purported official capacities as Trustees of the Diocesan Corporation and as Trustees of the Endowment Fund.

9. Defendant and counter-defendant Jack Leo Iker was formerly an ordained member of the clergy of the Church and formerly Bishop of the Diocese. Plaintiffs and counterclaimants are informed and believe that defendant and counter-defendant holds himself out as the Bishop of the Diocese and as a Trustee and Chair of the Diocesan Corporation. Plaintiffs and counterclaimants assert claims against defendant and counter-defendant Iker in his individual capacity and in his purported official capacity as bishop of the Diocese and Chair of the Diocesan Corporation.

10. Plaintiffs and counterclaimants are informed and believe that the defendant and third-party plaintiff and counter-defendant identified as The Anglican Province of the Southern

Cone's "Diocese of Fort Worth" (hereinafter the "Southern Cone Diocese") is an entity of unknown form which has no relation to the Church or Diocese and purports to be affiliated with the Anglican Province of the Southern Cone. The Southern Cone Diocese holds itself out and is doing business as "The Episcopal Diocese of Fort Worth."

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this matter, because it involves real property located in part in Tarrant County, Texas, and the matter in controversy is within the jurisdictional limits of this Court. Venue is appropriate because one or more of the defendants resides in Tarrant County, Texas.

### **FIRST CAUSE OF ACTION (Declaratory and Injunctive Relief)**

#### Structure and Governance of The Episcopal Church

12. Plaintiff Episcopal Church is a hierarchical religious denomination whose governing documents are its Constitution, bylaws called "canons," and its Book of Common Prayer ("Prayer Book"). These documents were initially adopted in 1789. The provisions of these documents, as they are amended over time by the Church's governing body, are binding on every subordinate unit and member of the Church. The Church is comprised of 111 geographically-defined, subordinate entities known as "dioceses" and more than 7,600 worshipping congregations, usually "parishes" or "missions," in the United States and other countries.

13. The Church has a three-tiered, democratic form of governance that is prescribed by its Constitution and canons, under which dioceses belong to, are subordinate to, and are under the jurisdiction of the international body, and under which local worshipping congregations

belong to, are subordinate to, and are under the jurisdiction of the Church and the individual dioceses in which the congregations are located.

14. At the international level, the Church is governed by a legislative body called its “General Convention,” which establishes the general policies, rules, and programs of the Church. The General Convention is comprised of a House of Bishops, consisting of most of the Church’s active and resigned bishops, and a House of Deputies, consisting of lay and clergy representatives elected by each of the Church’s dioceses. The General Convention has adopted and from time to time amends the Church’s Constitution, canons, and Prayer Book.

15. The “Presiding Bishop” is the “Chief Pastor and Primate” of the Church. The Presiding Bishop is elected by the General Convention and is charged with responsibility for leadership in initiating, developing, and implementing policy and strategy in the Church and speaking for the Church as to the policies, strategies, and programs authorized by the General Convention.

16. The Church has an Executive Council comprised of elected bishops, priests, and lay persons who, under the leadership of the Presiding Bishop have oversight over the fiscal and programmatic affairs of the Church between meetings of the General Convention.

17. The Church is a member of the Anglican Communion, a worldwide fellowship of 38 autonomous regional churches generally known as “Provinces.” The historic tradition of the Anglican Communion is that each Province forms its own constituent units and exercises jurisdiction within its own geographic territory, and not within the geographic territory of any other Province.

18. The next level of the Church’s organization and governance is the diocese. A diocese may be formed only by action of the General Convention, and only with an unqualified

accession to the Church's Constitution and canons. Each diocese exercise jurisdiction over the parishes and other congregations within its geographical area. The governing body of each diocese, generally called its "Convention," is a legislative body comprised of clergy of the diocese and laity elected by their congregations. The governing body of the Diocese is its "Convention." Each diocesan Convention adopts and from time to time amends its own diocesan Constitution and canons that supplement and may not conflict with the Church's Constitution or canons.

19. Each diocese is under the authority of a bishop elected by the diocesan Convention and "ordained" and installed with the consent of the leadership of a majority of the other dioceses. The Bishop is in charge of both ecclesiastical and temporal affairs within that diocese. The Bishop is advised by and as to certain matters, including those relating to property, shares authority with a "Standing Committee" of clergy and lay persons elected by the diocesan Convention.

20. At the third level of governance, the Church's more than 7,600 parishes and other worshipping congregations are located in and are under the ecclesiastical and temporal authority of the Church and the diocese thereof in which they are located.

21. Each Episcopal parish has an ordained priest as its "rector," who has charge of the spiritual and certain temporal affairs of the parish. The rector is elected by the parish's governing body, called a "vestry," which is comprised of the rector and lay persons elected by the parish.

22. The Church's hierarchical structure provides for representative participation in each level of governance. Parishes and other congregations send representatives to the diocesan

Convention, and dioceses send bishops, other clergy, and lay representatives to the Church's General Convention.

23. Canon I.17(8) of the Church, "Fiduciary Responsibility," applies to all officers at each level of the Church's governance and provides that "[a]ny person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of [the] Church and of the Diocese in which the office is being exercised."

24. Article VIII of the Church's Constitution and the Ordination services of its Prayer Book require all clergy of the Church, as a condition of ordination, to subscribe to the following written declaration:

"I do believe the Holy Scriptures of the Old and New Testaments to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church."

This oath is generally referred to as the "Declaration of Conformity."

25. Under the Church's Constitution, canons, and polity, no diocese or parish may unilaterally divide or separate or otherwise disaffiliate from the Church.

#### Dioceses of The Episcopal Church

26. The Church's Constitution and canons prescribe the methods by which a new diocese of the Church may be formed. Since its founding, the Church has required that a diocese of the Church be formed only with the consent of the General Convention and only if the new diocese accedes to the legislative authority of the General Convention as expressed in the Church's Constitution, canons, or both.

27. Once formed, a diocese becomes a subordinate unit of the Church, bound by the provisions of the Church's Constitution, canons, and Prayer Book, which govern both temporal



and ecclesiastical matters. The Constitution and canons, as well as in some instances the Prayer Book:

- a. govern the ordination, installation, spiritual and temporal duties, discipline, and retirement of bishops;
- b. require dioceses and parishes to adopt prescribed business methods, including submission of annual reports to the Church's Executive Council, annual audits by certified public accountants, and adequate insurance of all buildings and their contents;
- c. set forth requirements and conditions for the formation and operation of parishes and other worshipping congregations under the oversight of the dioceses;
- d. provide requirements for the care, control, use, and disposition of church property; and
- e. provide rules under which dioceses may select, train, ordain, deploy, and supervise the clergy of parishes and other worshipping congregations.

28. The Church's canons permit and set forth the process by which a "Missionary Diocese" of the Church, with the consent of the General Convention, may leave the jurisdiction of the Church and join another Province of the Anglican Communion. A "Missionary Diocese" is a defined geographic area outside of any of the Church's established dioceses that is entrusted to the pastoral care of a bishop elected by the Church's House of Bishops under Article VI of the Church's Constitution.

29. The Diocese of Fort Worth is not a Missionary Diocese. The Constitution and canons of the Church do not provide for or permit the release, withdrawal, or transfer of any diocese that is not a Missionary Diocese.

### Ordination and Discipline of Bishops by The Episcopal Church

30. Article VIII of the Church's Constitution and the Ordination services of the Prayer Book provide that an individual may not be ordained deacon, priest, or bishop unless he or she subscribes to the Declaration of Conformity described in Paragraph 22 above. The Ordination Service for a bishop in the Prayer Book also requires that an individual being ordained as a bishop of the Church promise to "guard the faith, unity, and discipline of the Church" and to "share with [his or her] fellow bishops in the government of the whole Church."

31. Article II.2 of the Church's Constitution provides that a bishop may be ordained and take office in a diocese only after obtaining the consent of the leadership of a majority of the other dioceses of the Church.

32. Article II.6 of the Church's Constitution and Church Canon III.12(8) provide that a bishop may not resign his or her office and remain a bishop in good standing in the Church without the consent of a majority of the House of Bishops.

33. Church Canons IV.1 and IV.9 provide that grounds for the discipline, including the involuntary removal or "deposition," of a bishop include a violation of the Constitutions or canons of the Church or of the diocese in which he or she is resident, violations of the vows required of a bishop by the Church at ordination, and "abandonment of the Communion" of the Church.

### History of the Episcopal Diocese of Fort Worth

34. Since the mid-19th Century, long before the Diocese was formed, its geographic territory was part of other missionary districts or dioceses of the Church, including most recently the Episcopal Diocese of Dallas. In 1982, the Diocese of Dallas sought the division of its own territory into two dioceses. In 1982, Article V.1 of the Church's Constitution provided that a

“new Diocese may be formed, with the consent of the General Convention and under such conditions as the General Convention shall prescribe by General Canon or canons” and when the Convention is satisfied that the new diocese “has acceded to the Constitution and canons of [the] Church.” Effective January 1, 1983, Article V provided, as it does today, that “[a]fter consent of the General Convention, the Constitution of the New Diocese” must “include[e] an unqualified accession to the Constitution and canons of [the] Church.”

35. At its September 1982 meeting, the Church’s General Convention approved the division of the Diocese of Dallas into two dioceses, with all or part of 24 counties in Texas, including Tarrant County, to become the “Western Diocese,” conditioned upon receipt of assurances “that all of the appropriate and pertinent provisions of the Constitution and canons of the General Convention ... have been fully complied with....” The name ultimately selected for the “Western Diocese” was the “Episcopal Diocese of Fort Worth.”

36. In November 1982, the Bishop of the Diocese of Dallas called a “Primary Convention” to permit the new Episcopal Diocese of Fort Worth to organize. At that meeting, the Convention unanimously adopted a resolution stating that the “Diocese of Fort Worth ..., pursuant to approval of the 67th General Convention of the Episcopal Church, does hereby subscribe to and accedes to the Constitution and Canons of the Episcopal Church.” The Convention at that meeting adopted its first diocesan Constitution and canons, to be effective on January 1, 1983. To comply with Article V.1 of the Church’s Constitution and with the General Convention’s September 1982 action conditionally approving formation of the new diocese, Article I of the new diocesan Constitution, “Authority of the General Convention,” provided:

“The Church in this Diocese accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and recognizes the authority of the General Convention of said Church.”

37. Article 18 of the first Diocesan Constitution provided that canons “may be adopted, altered, amended, or repealed” only if they were “not inconsistent with [the diocesan] Constitution, or the Constitution and Canons of the General Convention.”

38. Canon 22 of the new Diocese provided that every new parish shall “promise to abide by and conform to the Constitution and Canons of the General Convention and of the Diocese of Fort Worth.”

39. At its formation, the Diocese received from the Diocese of Dallas 30 parishes and 24 missions, along with all of their associated real and personal property; an apportioned share of numerous funds, including an endowment fund, and accounts of the Diocese of Dallas; and the right to the joint use of other real property, assets, and programs of the Diocese of Dallas. The Diocese of Dallas pledged to support the new Diocese with additional funds in the amount of \$100,000 from the Diocese of Dallas’ own operating funds.

40. Article 13 of the Diocese’s first Constitution (now Article 14) provided that title to all real estate acquired “for the use of the Church in this Diocese, including the real property of all parishes and missions as well as Diocesan Institutions, shall be held subject to control of the Church in the Episcopal Diocese of Fort Worth acting by and through [the Diocesan Corporation].” The Diocesan Corporation was also to hold title to “[a]ll other property belonging to the Diocese, as such,” including trust and endowment accounts.

41. Diocesan Canon 11 (now Canon 17) provided that the Diocesan Corporation would be governed by a “Board of Trustees” of five elected members, all lay members or clergy of the Church in the Diocese, and the Bishop as Chair.

42. In February 1983, the Bishop and two lay members in good standing of the Diocese formed the Corporation in accordance with the foregoing constitutional and canonical

requirements. On August 22, 1984, the District Court of Dallas County, Texas, issued a declaratory judgment approving the transfer of substantial assets of the Episcopal Diocese of Dallas to the Diocesan Corporation. The court noted that “Plaintiff, The Episcopal Diocese of Fort Worth ... is a duly constituted religious organization, organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America,” and that “Plaintiff, Corporation of the Episcopal Diocese of Fort Worth ... is a Texas non-profit corporation, duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth.”

43. The Diocesan Corporation holds title to substantial real and personal property of the Diocese acquired pursuant to the judgment described in Paragraph 40 and subsequently, including but not limited to numerous parcels of real property, the Endowment Fund, the E.D. Farmer Fund, the Anne S. and John S. Brown Trust, the Betty Ann Montgomery Farley Fund, and the Reverend Efrain Huerta Fund benefiting Hispanic Ministries, Memorial Scholarship Fund out of Common Trust (Growth Fund and Income Fund), St. Paul’s Memorial Fund, E.D. Farmer Foundation, and the Revolving Fund.

44. Pursuant to Article 15 of the original Constitution of the Diocese (now Article 16), the Endowment Fund was created to be governed by a board of at least five lay and clergy trustees to assist in the compensation of the Episcopate of the Diocese.

45. Throughout its history and at least until the present dispute arose, the Diocese has consistently participated in the life of the Church as a subordinate unit and has generally complied with the requirements imposed on it by the Church’s Constitution, canons, and Prayer Book.

a. The Diocese until 2006 has consistently sent representatives to meetings of both houses of the Church's General Convention;

b. The Diocese and the clergy of the Diocese, including defendant and counter-defendant Iker, have participated in and accepted the valuable benefits of the Church Pension Fund, reserved solely for clergy and institutions of the Church, as required by Church's canons;

c. All Bishops of the Diocese have been elected and ordained as bishops pursuant to the requirements of the Church's Constitution, canons, and Prayer Book;

d. The clergy of the Diocese have been ordained or received, and parish rectors and other ordained clergy have been elected and installed, pursuant to the requirements of the Church's Constitution, canons, and Prayer Book;

e. The Diocese has adopted and implemented business methods prescribed by the Church's canons, submitted annual reports to the Church's Executive Council, conducted audits, and maintained adequate insurance of buildings and their contents, in compliance with the Church's requirements;

f. The Diocese has overseen the formation and operation of parishes and other worshipping congregations of the Diocese according to the Church's requirements;  
and

g. The Diocese has provided for the care, control, use, and disposition of property according to the Church's requirements.

46. Prior to his ordination as deacon, priest, and bishop of the Church, defendant and counter-defendant Iker signed the Declaration of Conformity described in Paragraph 22 above, as required by the Church's Constitution and Prayer Book, was ordained Bishop Coadjutor of the

Diocese in 1993 with the consents of the leadership of a majority of the other dioceses of the Church, and became Bishop of the Diocese in 1994, all pursuant to the constitutional, canonical, and liturgical requirements of the Church.

47. At all relevant times, the Diocesan Bishop, the members of the Standing Committee, the members of the Executive Council, the deputies to the Diocesan Convention, and the Trustees of the Diocesan Corporation and of the Endowment Fund have all been required by the Constitution and/or canons of the Church and/or the Diocese to be lay members or clergy of the Church in the Diocese; the foregoing persons have been bound by Church Canon I.17(8) to faithfully execute their offices in accordance with the Constitutions and canons of the Church and the Diocese; and the clergy, including the Diocesan Bishop, have been bound to obey the Constitution and canons of the Church by the Declaration of Conformity, as described in Paragraph 22 above, that each signed prior to and as a condition of ordination.

#### The Current Dispute

48. On or about September 5, 2006, in anticipation of the current dispute, and again on April 21, 2009 after leaving the Church and their offices, the defendants and counter-defendants identified in Paragraphs 7 and 8 above, purporting to act as Trustees of the Diocesan Corporation, caused to be filed with the Secretary of State “Amended and Restated Articles of Incorporation of [the] Corporation of the Episcopal Diocese of Fort Worth” and “Certificate of Correction.” The “Amended and Restated Articles” and “Certificate of Correction” purported to:

- a. delete provisions of the 1983 Articles describing the property held by the Diocesan Corporation as property “acquired for the use of the Episcopal Diocese of Fort Worth”;

b. delete provisions of the 1983 Articles stating that the aforesaid property “shall be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth”;

c. insert provisions purporting to give the Trustees of the Diocesan Corporation the “sole authority to determine the identity and authority of the Bishop [of the Episcopal Diocese of Fort Worth]” and, in the event of a vacancy in the office of Diocesan Bishop, “appoint ... a Chairman of the Board” for the Diocesan Corporation; and

d. provide for election of Trustees by the Board itself, instead of by the Annual Diocesan Convention as required by Diocesan Canon 17.3.

49. The actions described in Paragraph 48 violated these defendants’ and counter-defendants’ constitutional and canonical obligations described in Paragraphs 23, 24, and 47 above; conflict with the Church’s requirements and authority regarding the recognition of a Diocesan Bishop; they were *ultra vires* and void and therefore could not and did not affect the status of the Diocesan Corporation as an instrument of the Diocese subject to the Constitutions and canons of the Church and the Diocese, the legal and canonical obligations of these Trustees to the Diocese and the Church, or the status of and restrictions on the use and control of the property acquired by the Diocesan Corporation as an instrument of the Diocese.

50. At the November 2008 meeting of the Convention of the Diocese, with the support and leadership of defendant and counter-defendant Iker, a majority of delegates present voted for various resolutions that purported to amend the Diocese’s Constitution and canons to remove references to the Church and to permit the Diocese to affiliate with the Anglican Province of the Southern Cone, a denomination located in South America.



51. The actions described in Paragraphs 48 and 50 above violated the respective constitutional and canonical obligations and prior commitments of the Diocese and of the members of Convention, were invalid, and did not affect the status or continuing existence of the Church's Diocese of Fort Worth.

52. On December 5, 2008, following a public statement by defendant and counter-defendant Iker on November 24, 2008 that he no longer had any connection with the Church, the Presiding Bishop of the Church declared that defendant and counter-defendant Iker had voluntarily renounced his ordained ministry in the Church and that he was "therefore, removed from the Ordained Ministry of [the] Church and released from the obligations of Ministerial offices" in the Church. Defendant and counter-defendant Iker thereby ceased to be a bishop of the Church or the Diocese.

53. Those individuals comprising the former leadership of the Diocese, including each of the individual defendants who now claim leadership roles and who supported the purported withdrawal of the Diocese from the Church and the purported affiliation of the Diocese with a different denomination, by those acts left the Church, violated their obligations under the Church's Declaration of Conformity and/or Church Canon I.17(8), and ceased to be eligible to hold any office in the Church, the Diocese, or any of the Church's or the Diocese's other subordinate units, including but not limited to the Standing Committee, the Diocesan Corporation and the Endowment Fund; and their offices became vacant. On December 15, 2009 the Presiding Bishop informed the members of the Diocesan Standing Committee that in these circumstances she could no longer recognize them as members of the Standing Committee in carrying out her canonical duties with respect to a diocese that no longer had a bishop.

54. The Diocese held a special meeting of its Convention on February 7, 2009. At that meeting, a Provisional Bishop of the Diocese was elected pursuant to Church Canon III.13; other vacant offices in the Diocese, including the Standing Committee, the Executive Council, and the Trustees of the Diocesan Corporation and the Endowment Fund, were filled; resolutions declaring certain diocesan offices vacant and declaring the constitutional and canonical amendments described in Paragraph 48 as well as the purported amendments of the Articles of Incorporation of the Diocese Corporation as described in Paragraph 48 to be void and of no effect were passed; and the Diocese's clergy and lay Deputies to the Church's 2009 meeting of the General Convention were elected.

55. On November 13 - 14, 2009, the Diocese held the 27<sup>th</sup> Annual meeting of its Convention at which, plaintiff Ohl was elected the Diocese's second Provisional Bishop and the Convention ratified the numerous resolutions and other actions taken by the special meeting of the Convention in February 2009 as described in Paragraph 54 above and the Convention changed the status of certain parishes to missions.

56. The Church recognizes the Diocese as the continuing Episcopal Diocese of Fort Worth under the leadership of plaintiffs and counterclaimants. The Church and the Diocese recognize the bishop described in Paragraph 55 above as the bishop with Episcopal oversight of the Diocese, the persons elected to the Standing Committee described in Paragraph 54 and 55 above as the Standing Committee of the Diocese, the persons described in Paragraph 54 and 55 above as the Trustees of the Diocesan Corporation and the Trustees of the Endowment Fund, and the persons described in Paragraph 54 above as the elected Deputies of the Diocese to the Church's General Convention.

57. Although the defendants and counter-defendants have left the Church and the Diocese for a different and unrelated denomination, defendants and counter-defendants continue to use the names, seal, and other symbols of the Diocese and the Diocesan Corporation, and hold the entity affiliated with that denomination out as the continuing Episcopal Diocese of Fort Worth. The defendants and counter-defendants have asserted authority and exclusive control over Episcopal parishes, congregations, and other organizations in the Diocese and are asserting exclusive possession and control of the Diocesan Corporation, the Endowment Fund, and substantially all of the real and personal property, including other funds, of the Diocese.

58. A number of the leaders of the Diocese and their attorneys have demanded that defendants and counter-defendants relinquish control of and return the foregoing property, but the demand has been refused.

59. Plaintiffs and counterclaimants take the position that the actions described in Paragraphs 48, 50, and 57 above are contrary to the Constitutions and canons of the Church and the Diocese and to the Prayer Book of the Church and are otherwise contrary to law and without any effect; that all property held by or for the Diocese is held and may only be used for the mission and benefit of the Church and its subordinate Diocese, subject to the Constitutions and canons of the Church and the Diocese; that the Diocese remains a subordinate part of the Church for all purposes; that well established Texas law recognizes that a constituent part of a hierarchical church is represented by those individuals who remain part of and loyal to the hierarchical church; and that the persons now in the leadership of the Diocese and the Diocesan Corporation and Endowment, as recognized by the Church, are the proper authorities entitled to the use and control of the real and personal property of the Diocese.

60. Plaintiffs and counterclaimants are informed and believe that defendants and counter-defendants take the position that they are properly in control of the governance of the Diocese, the Diocesan Corporation, and the Endowment Fund; that they and other former members of the Church have withdrawn the Diocese from the Church to join a different denomination; that they are entitled to the use and control of the real and personal property of the Diocese; and that their actions are not in conflict with the Constitutions and canons of the Church or the Diocese or Texas law.

61. An actual controversy exists, therefore, between the parties regarding the legal issues identified in Paragraphs 58, 59, and 60 above. A declaratory judgment is therefore necessary and proper to determine the parties' rights and duties with respect to those issues.

62. As a result of the defendants' and counter-defendants' continued use, possession, and control of the property of the Diocese for purposes other than the mission of the Church and the Diocese, in derogation of the Constitutions and canons of the Church and the Diocese, and in disregard of the rights of the Church and the Diocese, plaintiffs and counterclaimants have suffered and will continue to suffer irreparable injury. Injunctive relief is necessary and proper to enforce the parties' rights and duties with respect to the issues described above.

63. The exact nature and extent of the Diocesan accounts, including endowed funds, income, and disbursements, are unknown to plaintiffs and counterclaimants and cannot be determined without an accounting of the transactions and transfers of Diocesan property and an investigation of all financial accounts and funds in the name of or for the benefit of the Diocese, which accounts and funds have been in control of the defendants and counter-defendants.

**SECOND CAUSE OF ACTION**  
**(Conversion)**

64. Plaintiffs and counterclaimants incorporate by reference the allegations of Paragraphs 11 - 63.

65. The Diocese owns or has the duty to administer valuable personal property, sacramental and liturgical instruments and materials, bank and brokerage accounts, monies, valuable chattels, personnel records, financial records, real property records and deeds, and historical records of the Diocese, some of which is titled in the name of and controlled by the Diocesan Corporation or Endowment Fund.

66. Defendants and counter-defendants have converted the foregoing property of the Diocese by wrongfully claiming it, wrongfully asserting control over it, wrongfully transferring it or using it in the name of non-Episcopal Church entities, and wrongfully applying it for their own uses and purposes.

67. A number of leaders of the Diocese and their attorneys have demanded that defendants and counter-defendants relinquish control of and return the foregoing property, but the demand has been refused.

**THIRD CAUSE OF ACTION**  
**(Texas Bus. & Commerce Code § 16.29)**

68. Plaintiffs and counterclaimants incorporate by reference the allegations of Paragraphs 11 - 63.

69. The trade names "Episcopal Diocese of Fort Worth" and "The Corporation of the Episcopal Diocese of Fort Worth" and the distinctive shield of the Diocese have been in continuous use by the Diocese and the Diocesan Corporation since 1983 to carry out the mission of the Church in the Diocese, and are valid trade names and marks under the common law.

70. Defendants and counter-defendants are using the foregoing trade names and marks in connection with an entity unrelated to the plaintiffs and counterclaimants and without their permission, and in a manner likely to dilute the distinctive quality of the foregoing trade names and marks.

**RELIEF REQUESTED**

71. Plaintiffs and counterclaimants respectfully request that this Court issue the following:

a. A declaration that the Diocese is the continuing Episcopal Diocese of Fort Worth that has been a constituent entity of the Church since its formation effective January 1, 1983 and continuing to the present day;

b. A declaration that the plaintiffs and counterclaimants and their duly elected successors are the proper authorities of the Diocese, the Bishop, the Standing Committee, the Diocesan Corporation, and the Endowment Fund, respectively, and are entitled to the use and control of the real and personal property of the Diocese, including the property held by the Diocesan Corporation and the Endowment Fund, and that defendants and counter-defendants and their successors do not hold those offices and are not entitled to the use or control of said property;

c. A declaration that the bishops, members of the Standing Committee of the Diocese, and Trustees, respectively, selected at or immediately after the meetings of the Special Convention of February 7, 2009 and the 27<sup>th</sup> Annual Convention of November 13-14, 2009, and their successors comprise the Bishop, Standing Committee of the Diocese and are the Trustees of the Diocesan Corporation and Endowment Fund,

respectively, and that the defendants and counter-defendants and their successors do not hold any of those offices;

d. A declaration that the plaintiffs and counterclaimants and their successors are entitled to the exclusive use of the name, seal, and other intellectual property of the Diocese, including the name of the Diocesan Corporation, and that defendants and counter-defendants and their successors may not use said name, seal, and other intellectual property;

e. A declaration that all property held by or for the Diocese is held for and may be used only for the mission of the Church and the Diocese, subject to the Constitutions and canons of the Church and the Diocese;

f. A declaration that the August 15, 2006 and April 21, 2009 changes to the articles and bylaws of the Diocesan Corporation were *ultra vires* and void.

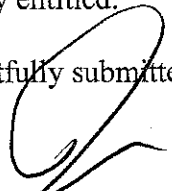
g. An injunction requiring defendants and counter-defendants and their successors to vacate and surrender possession of the real property of the Diocese and/or the Diocesan Corporation, including but not limited to property located at 2900 Alameda Street, Fort Worth, Tarrant County, Texas, and at Camp Crucis in Hood County, Texas, and to relinquish to plaintiffs and counterclaimants the possession and control of all real and personal property, including funds and records, of the Diocese;

h. An injunction prohibiting defendants and counter-defendants and their successors from holding themselves out as officers and other leaders of the Diocese, or using the name, seal, symbols, and other trademarks of the Diocese and Diocesan Corporation;

- i. An order requiring defendants and counter-defendants and their duly elected successors to provide an accounting of all real and personal property held or controlled by the Diocese, the Diocesan Corporation, or the Endowment Fund;
- j. A judgment against the defendants and counter-defendants awarding all damages to which plaintiffs and counterclaimants are entitled, with prejudgment and post judgment interest as allowed by law;
- k. A judgment awarding the plaintiffs and counterclaimants their reasonable and necessary attorneys fees, costs and expenses.
- l. Other and further relief to which the plaintiffs and counterclaimants may be entitled.

WHEREFORE, plaintiffs and counterclaimants respectfully request that defendants and counter-defendants who have not appeared in this action be cited to appear and answer herein, that the Court enter the declarations specified above; that the Court issue the orders requested above; that plaintiffs and counterclaimants have judgment against defendants and counter-defendants for actual damages, and for any and all other relief to which plaintiffs and counterclaimants may show themselves justly entitled.

Respectfully submitted,

By:   
Jonathan D.F. Nelson  
State Bar No. 14900700

Jonathan D.F. Nelson, P.C.  
1400 W. Abrams Street  
Arlington, Texas 76013-1705  
(817) 261-2222  
(817) 861-4685 (fax)  
[jnelson@hillgilstrap.com](mailto:jnelson@hillgilstrap.com)

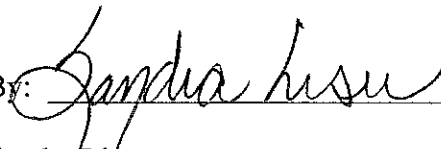


Kathleen Wells  
State Bar No. 02317300  
P.O. Box 101174  
Fort Worth, Texas 76185-0174  
(817) 332-2580 voice  
(817) 332-4740 fax  
[chancellor@episcopaldiocesefortworth.org](mailto:chancellor@episcopaldiocesefortworth.org)

William D. Sims, Jr.  
State Bar No. 18429500  
Thomas S. Leatherbury  
State Bar No. 12095275  
**VINSON & ELKINS LLP**  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975  
Telephone: 214-220-7792  
Facsimile: 214-999-7792

Attorneys for Plaintiffs and Third-Party Defendants and  
Counterclaimants

By: \_\_\_\_\_



Sandra Liser  
State Bar No. 17072250

Naman, Howell, Smith & Lee, PLLC  
Fort Worth Club Building  
306 West 7<sup>th</sup> Street, Suite 405  
Fort Worth, Texas 76102  
Tel: (817) 509-2025  
Fax: (817) 509-2060  
[sliser@namanhowell.com](mailto:sliser@namanhowell.com)

David Booth Beers  
Adam Chud

Goodwin Procter, LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20001  
Tel: (202) 346-4000  
Fax: (202) 346-4444  
[dbeers@goodwinprocter.com](mailto:dbeers@goodwinprocter.com)

Mary E. Kostel

Special Counsel for Property Litigation and Discipline  
The Episcopal Church  
Suite 309  
110 Maryland Avenue, N.E.  
Washington, D.C. 20002  
Tel: (646) 287-1973  
Fax: (202) 346-4444  
[mkostel@episcopalchurch.org](mailto:mkostel@episcopalchurch.org)

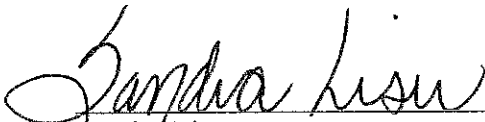
Attorneys for Plaintiff  
The Episcopal Church

**Certificate of Service**

This is to certify that a true and correct copy of the foregoing document has been served  
this 13<sup>th</sup> day of August, 2010, as follows:

J. Shelby Sharpe      *Via Certified Mail, Return Receipt Requested*  
Sharpe Tillman & Melton  
6100 Western Place, Suite 1000  
Fort Worth, Texas 76107

R. David Weaver      *Via Certified Mail, Return Receipt Requested*  
The Weaver Law Firm, P.C.  
1521 N. Cooper Street, Suite 710  
Arlington, Texas 76011

  
Sandra Liser