CAUSE NO. 141-237105-09

THE EPISCOPAL CHURCH, THE RT. REV. C. WALLIS OHL, ROBERT HICKS, FLOYD MCKNEELY, SHANNON SHIPP, DAVID SKELTON, and WHIT SMITH Plaintiffs **VS.** 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, and THE REV. RYAN REED Defendants/Counter-Defendants THE ANGLICAN PROVINCE OF THE SOUTHERN CONE'S "DIOCESE OF FORT WORTH" Defendant/Third-Party Plaintiff/Counter-Defendant THE ANGLICAN PROVINCE OF THE SOUTHERN CONE'S "CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH" Intervenor/Third-Party Plaintiff/ Defendant/Counter-Defendant 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),	IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

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) Intervenors/Third-Party Plaintiffs/ Defendants/Counter-Defendants **VS.** MARGARET MIEULI, ANNE T. BASS, 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, THE REV. JOHN STANLEY, THE RT. REV. EDWIN F. GULICK, JR. and KATHLEEN WELLS, Third-Party Defendants/Counterclaimants THE EPISCOPAL CHURCH, Third-Party Defendant	)	141ST DISTRICT COURT

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LOCAL EPISCOPAL PARTIES' MOTION FOR PARTIAL SUMMARY JUDGMENT

TO THE HONORABLE COURT:

Pursuant to Texas Rule of Civil Procedure 166a, Plaintiffs and Third-Party Defendants/Counter-claimants (the "Local Episcopal Parties"),[1] all aligned with The Episcopal Church, file this motion for partial summary judgment against the parties listed at footnote 2 who left The Episcopal Church but claim its property (hereafter, the "breakaway faction")[2] and would respectfully show the Court:[3]

I. INTRODUCTION & SUMMARY OF ARGUMENT

> "The [local church] was but a member of and under the control of the larger and more important Christian organization...and the local church was bound by the orders and judgments of the courts of the church. . . . [T]hose members who recognize the authority of the [mother church] are entitled to the possession and use of the property sued for." – **The Texas Supreme Court**[4]

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

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[1] This motion is specifically brought by Plaintiffs the Rt. Rev. C. Wallis Ohl, Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, and Whit Smith and by Third-Party Defendants/Counterclaimants Margaret Mieuli, Anne T. Bass, Walt Cabe, the Rev. Christopher Jambor, the Rev. Frederick Barber, the Rev. David Madison, Robert M. Bass, the Rev. James Hazel, Cherie Shipp, the Rev. John Stanley, Dr. Trace Worrell, the Rt. Rev. Edwin F. Gulick, Jr., and Kathleen Wells.

[2] This motion is specifically brought against Defendants/Counter-Defendants 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, and The Rev. Ryan Reed; to any extent necessary, this motion is brought against Defendant/Third-Party Plaintiff/Counter-Defendant The Anglican Province Of The Southern Cone's "Diocese Of Fort Worth," which has wrongfully appeared as "The Episcopal Diocese of Fort Worth," and Intervenor/Third-Party Plaintiff/Defendant/Counter-Defendant The Anglican Province Of The Southern Cone's "Corporation Of The Episcopal Diocese Of Fort Worth," which has wrongfully appeared as "The Corporation of the Episcopal Diocese of Fort Worth." This motion is not asserted against the Intervening Congregations.

[3] This motion is for partial summary judgment as it seeks only declaratory relief and does not move on Plaintiffs' legal claims such as breach of fiduciary duty, nor do Plaintiffs move here against the Intervening Congregations.

[4] *Brown v. Clark*, 116 S.W. 360, 363-65 (Tex. 1909) (citing *Watson v. Jones*, 80 U.S. 679, 727 (1871)).

breakaway faction, testifying under oath about a prior breakaway faction.[5]

A local faction within the Episcopal Diocese of Fort Worth, led by Defendant Iker, has abandoned communion with The Episcopal Church and affiliated with another denomination that is not part of the Episcopal Church – but they continue to hold themselves out as the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth ("Corporation"), and its Board of the Fund for the Endowment of the Episcopate ("Endowment Fund") and wrongly take and occupy property that The Episcopal Church has acquired for its mission since 1838.[6] This breakaway faction violates a century of Texas and First Amendment law and contradicts Iker's own prior court testimony. In this Motion, the local Episcopal leadership recognized by The Episcopal Church (the "Local Episcopal Parties") moves for summary judgment against the breakaway faction.

Summary judgment is proper because, for over 100 years, Texas courts have held that when two factions claim control of a local unit of a hierarchical church, courts defer to the hierarchical church's decision of who represents the local church and who controls its property as core ecclesiastical issues. **As a matter of law, the leadership recognized by the hierarchical church *is* the leadership of the local church and controls its property.**

Here, there is no dispute that The Episcopal Church recognizes the Local Episcopal Parties, and not the breakaway faction, as the leadership of the Episcopal Diocese of Fort Worth, its Corporation, and its Endowment Fund and as the rightful holders of property the Church has acquired over the last century-and-a-half. And here, the breakaway faction has already represented to prior courts that The Episcopal Church is hierarchical and that breakaway factions cannot take Church property. The breakaway faction is estopped from contradicting itself now.

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[5] A1015 (Ex. G-2, Iker Aff. at 4).

[6] In this Motion, "property" shall refer to real, personal, and intellectual property.

Courts around the nation routinely grant summary judgment against breakaway factions in similar cases, allowing the parties to return their time and resources to ministry.

II. CORE UNDISPUTED FACTS

Like similar cases across the country, this case may be resolved by summary judgment on simple undisputed facts.[7]

1. The Episcopal Church (the "Church") has a three-tiered structure composed of a national General Convention, 111 regional dioceses below the General Convention, and over 7,000 local congregations.[8] As a condition of formation, each diocese is required to pledge "unqualified accession to the Constitution and Canons of this Church."[9] Defendant Iker has told a prior court that dioceses are organized "below" the General Convention, that "a national body leads the overall church," and that dioceses cannot have canons inconsistent with national canons.[10] Each diocese's bishop pledges, as a condition of ordination, to "conform to the Doctrine, Discipline, and Worship of the Episcopal Church."[11]

2. In November 2008, a faction within The Episcopal Diocese of Fort Worth, led by then-bishop Defendant Jack Leo Iker, purported to sever ties with The Episcopal Church and join a religious organization located in South America.[12]

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[7] Section VII *infra* contains an exhaustive list of undisputed facts on which Movants rely. Movants also incorporate as if fully stated herein the facts and arguments set forth in The Episcopal Church's Motion for Partial Summary Judgment filed on Monday, October 18, 2010.

[8] A53, 54, 56 (Ex. C-1, Statement of Robert Bruce Mullin at ¶¶ 24, 29, and 35); *see also* Sections VII(A)-(C) *infra.*

[9] A625, 665 (Ex. D-36, Church Art. V.1 and Church Canon I.10.4); *see also* Sections VII(A)-(C) *infra.*

[10] *See, e.g.*, Section VII(D) *infra* and A1062-63 (Ex. G-5, Iker Amicus Brief at 10-11) ("ECUSA has a national body that leads the overall church through its General Conventions, with the first national convention in 1789 and the most recent in 2000. Among other things, the General Convention is the body which alters and revises the Canons of the Church. Below that are various dioceses which are generally geographical in nature. The national church is governed by the Constitution and Canons of ECUSA, as Revised by the Convention of 2000. The dioceses have canons that cannot be inconsistent with national canons.") (footnotes omitted).

[11] A627-28 (Ex. D-36, Church Art. VIII);); *see also* Sections VII(A)-(C) *infra.*

[12] A883-85 (Ex. F, Wells Aff. at ¶ 4-7); A896-97 (Ex. F-5, "As We Realign"); A898-99 (Ex. F-6, Responses to Attempted Inhibition of the Bishop);); *see also* Section VII(E) *infra.*

3. The Church's Presiding Bishop, acting under the Church's highest authority, the General Convention, removed Iker from authority within the Church.[13]

4. The Episcopal Church recognizes the Local Episcopal Parties, led by Bishop Gulick and now Bishop Ohl, as the leadership of The Episcopal Diocese of Fort Worth and its Corporation and institutions.[14]

5. Despite requests to stop, the breakaway faction continues to hold itself out as The Episcopal Diocese of Fort Worth, its Corporation, and the Board of its Endowment Fund and to use these entities' property.[15]

III. SUMMARY JUDGMENT STANDARD

Summary judgment is proper where there are no genuine issues of material fact and judgment is proper as a matter of law.[16] Once the Movant's summary judgment proof facially establishes its right to judgment as a matter of law, the burden shifts to the nonmovant to raise a fact issue precluding summary judgment.[17] To raise a genuine issue of material fact, the nonmovant must present more than a scintilla of probative evidence.[18] Less than a scintilla of

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[13] A608 (Ex. D-33, Renunciation of Ordained Ministry and Declaration of Removal and Release of Rt. Rev. Jack Leo Iker); A900 (Ex. F-7, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth from the Presiding Bishop of the Episcopal Church (acknowledging that there was, at the time, "no Bishop of the Episcopal Diocese of Fort Worth, or any qualified members of the Standing Committee of the Diocese")) *see also* Section VII(F) *infra.*

[14] A5-7 (Ex. A, Ohl Aff. at ¶ 5); A30-31 (Ex. B, Gulick Aff. at ¶ 7); A867, 869-871, 876 (Ex. E-1, Excerpts from the 2009 Journal of the General Convention); A613-614 (Ex. D-35, Excerpt from The Episcopal Church Annual for 2009); A23-25 (Ex. A-2, Letters of Congratulations and Commendation); A363, 365-366 (Ex. D-3, Excerpts from the Episcopal Church Annual, 2010); *see also* Sections VII(E)-(F) *infra.*

[15] A8 (Ex. A, Ohl Aff. at ¶ 6); *see also* Sections VII(E)-(G) *infra.*

[16] TEX. R. CIV. P. 166a(c); *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995).

[17] *Randall's*, 891 S.W.2d at 644.

[18] *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003).

evidence exists where the evidence is so weak as to do no more than create a mere surmise or suspicion of fact.[19]

IV. SUMMARY JUDGMENT GROUNDS

1. Under Texas law and the First Amendment, the Local Episcopal Parties, *see* note 1, *supra*, are the legally-recognized leadership of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, and other Diocesan institutions, because the hierarchical Episcopal Church recognizes the Local Episcopal Parties as the authorized officials of the Diocese, its Corporation, its Endowment Fund, and other Diocesan institutions. Accordingly:

- The Bishop of the Episcopal Diocese of Fort Worth is Local Episcopal Party The Rt. Rev. C. Wallis Ohl or his successor(s) recognized by and in communion with The Episcopal Church. Before Bishop Ohl, the Rt. Rev. Edwin F. Gulick, Jr. was the Bishop of the Episcopal Diocese of Fort Worth recognized by and in communion with The Episcopal Church.

- The Standing Committee of the Episcopal Diocese of Fort Worth is composed of Local Episcopal Parties Margaret Mieuli, Walt Cabe, Anne T. Bass, The Rev. J. Frederick Barber, The Rev. Christopher Jambor, and The Rev. David Madison or their successors recognized by and in communion with The Episcopal Church.

- The Trustees of the Corporation of the Episcopal Diocese of Fort Worth are Local Episcopal Parties The Rev. James Hazel, Cherie Shipp, Trace Worrell, Robert M. Bass, The Rev. John Stanley, and The Rt. Rev. C. Wallis Ohl or their successors recognized by and in communion with The Episcopal Church.

- The Trustees and/or Board of the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth is comprised of Local Episcopal Parties Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, the Rev. James Hazel, and Anne T. Bass or their successors recognized by and in communion with The Episcopal Church.

- Because he abandoned communion with, and is not recognized by, The Episcopal Church, breakaway faction leader Defendant Jack Iker is <u>not</u> the Bishop of the Episcopal Diocese of Fort Worth.

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[19] *Id.*

- Because they abandoned communion with, and are not recognized by, The Episcopal Church, breakaway faction members Judy Mayo, Franklin Salazar, Julia Smead, the Rev. Christopher Cantrell, the Rev. Timothy Perkins, and the Rev. Ryan Reed are not the Standing Committee of the Episcopal Diocese of Fort Worth.

- Because they abandoned communion with, and are not recognized by, The Episcopal Church, breakaway faction members Franklin Salazar, Jo Ann Patton, Walter Virden, III, Rod Barber, and Chad Bates, and Jack Iker are not the Trustees and/or Board of the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth.

2. Under Texas law and the First Amendment, the Local Episcopal Parties, *see* note 1, *supra*, are entitled to control any property of any character or kind of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions, because the hierarchical Episcopal Church recognizes the Local Episcopal Parties as the rightful authorized officials of the Diocese, its Corporation, its Endowment Fund, and other Diocesan institutions. Accordingly, the members of the breakaway faction, identified *supra* at note 2, may not divert, alienate, or use any property of any character or kind of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions.

3. The Local Episcopal Parties, *see* note 1, *supra*, are entitled to control this property, in the alternative, under the neutral principles analysis applied by some states. Accordingly, the members of the breakaway faction, identified *supra* at note 2, may not divert, alienate, or use any property of any character or kind of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions.

4. The actions of the members of the breakaway faction, identified *supra* at note 2, seeking to withdraw the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions or any property of any character or kind from The Episcopal Church were and are unauthorized, void, and without effect. The actions of the members of the

breakaway faction, identified *supra* at note 2, since November 15, 2008 purportedly in the name of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions were and are unauthorized, void, and without effect. The actions of the members of the breakaway faction, identified *supra* at note 2, in August and September 2006, and again in April 2009, purporting to amend or alter the Articles of Incorporation of the Corporation of the Episcopal Diocese of Fort Worth with the Secretary of State were and are unauthorized, void, and without effect.

5. The breakaway faction, *see* note 2, *supra*, has maintained the position in prior court proceedings that The Episcopal Church is hierarchical from the General Convention down and that breakaway factions abandoning communion with The Episcopal Church have no right to take property with them. All factual statements made by the breakaway faction, its agents, or its leaders in support of these positions are conclusively proved against the breakaway faction as judicial admissions; as a matter of law, these judicial admissions satisfy the Local Episcopal Parties' burden to show such facts here and cannot be disputed by the breakaway faction. And, separately and independently, under judicial estoppel and quasi-estoppel, the breakaway faction is estopped from contradicting these prior positions before this Court. For these additional and independent reasons, the Local Episcopal Parties, *see* note 1, *supra*, are the leaders of the Diocese, the Corporation, the Endowment Fund, and other Diocesan institutions, and the leaders of the breakaway faction, *see* note 2, *supra*, are not. The Local Episcopal Parties, *see* note 1, *supra*, are entitled to control and use the property of the Diocese, the Corporation, the Endowment Fund, and other Diocesan institutions, and the leaders of the breakaway faction, *see* note 2, *supra*, are not.

V. SUMMARY JUDGMENT EVIDENCE

The following summary judgment evidence is filed herewith as an Appendix and is incorporated as if fully set forth in this brief. Citations to this Appendix will follow the format A[start page]-[end page] (Ex. [letter]-[tab], [description]).

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TAB 2	Deposition of the Right Rev'd John-David M. Schofield dated March 12, 2008 (A1249)
TAB 3	Letter to The Most Rev'd Katharine Jefferts Schori from the Rt. Rev'd Dorsey F. Henderson, Jr. dated December 17, 2007, and regarding the Rt. Rev'd Robert W. Duncan (with attachment) (A1250-1261)
TAB 4	Forms signed by Bishop Wallis C. Ohl (June 14, 2010 & July 17, 2010) consenting to the ordination and consecration of bishops (A1262)
TAB 5	Letter to six former members of the Standing Committee of the Diocese of Fort Worth from The Most Rev'd Katharine Jefferts Schori dated December 15, 2008 (A1263-1264)

VI. ARGUMENTS & AUTHORITIES

In Texas, when there are two competing factions within a local unit of a hierarchical church, the faction recognized by the hierarchical church is the legally-recognized leadership of the local church and controls local church property. This argument proceeds in three parts:

(1) **Hierarchy**: Because of its indisputable three-tier structure, with levels of authority from the General Convention down to the local officers, and with regional dioceses and local parishes beneath the General Convention pledging unqualified accession to the Church in their Constitutions, Canons, and Declarations of Conformity, courts universally acknowledge that The Episcopal Church is a hierarchical church.

(2) **Identity**: Under the First Amendment, Texas courts and courts around the country defer as a matter of constitutional law to a hierarchical church's decisions on local

church identity, governance, discipline, and control, because these are core ecclesiastical questions. Here, it is undisputed that The Episcopal Church recognizes the Local Episcopal Parties, not the breakaway faction, as the local church leadership in control of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, and other Diocesan institutions. Under Texas's deference principle, the Church's determinations are dispositive as a matter of law.

(3) **Property**: For over a century, the Texas Supreme Court, Texas courts of appeal, and the Fifth Circuit Court of Appeals, applying Texas law, have consistently held, following the United States Supreme Court's *Watson* decision, that in church property disputes involving a schism within a local unit of a hierarchical church, *the identity question answers the property question*, and the local church members recognized by the hierarchical church control the local church property. And, under the alternative 'neutral principles' approach used in some states, the Local Episcopal Parties rightfully control the local property under relevant national and local constitutions and canons.

A. The Episcopal Church is a hierarchical church.

As a matter of law, The Episcopal Church is a hierarchical church. The Episcopal Church meets the United States Supreme Court's definition of a hierarchical church, and it does not meet the definition of a non-hierarchical or "congregational" church. Every court in the nation to consider the issue has ruled that The Episcopal Church is a hierarchical church. And Defendants have already testified and pled to prior courts that The Episcopal Church is hierarchical; as a matter of law, they cannot contradict themselves now to this Court. Finally, while the United States Supreme Court definitions are likely controlling, The Episcopal Church is also clearly hierarchical under the Texas appellate courts' definitions.

1. The Episcopal Church is hierarchical under the United States Supreme Court's definition.

The United States Supreme Court recognizes two types of churches: congregational and hierarchical. A congregational church is a church that is "strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority."[20] A hierarchical church, in contrast, is one in which local churches are "organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head."[21] In a hierarchical church, the local church is "a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization."[22]

Based on the core undisputed facts in Section II above, Defendant Iker's admissions in Section VI(A)(4) below, and the extensive undisputed facts set forth in Section VII, The Episcopal Church is plainly hierarchical as a matter of law. The Episcopal Church has an uncontested three-tiered structure, with authority ranging from the General Convention down through regional dioceses to local parishes. Each level is subordinate to the levels above. As a condition of formation, each diocese is required to pledge "unqualified accession to the Constitution and Canons of this Church."[23] Defendant Iker has told a prior court that dioceses are "below" the General Convention and cannot have canons inconsistent with the national canons.[24] Each diocese's bishop pledges, as a condition of ordination, to "conform to the

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[20] *Watson*, 80 U.S. at 722-23; *accord Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

[21] *Kedroff*, 344 U.S. at 110 & n.15.

[22] *Watson*, 80 U.S. at 722-23; *accord Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

[23] A625, 665 (Ex. D-36, Church Art. V.1 and Church Canon I.10.4).

Doctrine, Discipline, and Worship of the Episcopal Church."[25]

There is simply no way a breakaway faction can claim, genuinely, that local dioceses or parishes within The Episcopal Church are "**strictly independent of other ecclesiastical associations, and so far as church government is concerned, owe[] no fealty or obligation to any higher authority.**" As shown below, no court has found this. Every court considering the issue has held that The Episcopal Church is hierarchical, and the breakaway faction here has admitted this in prior court proceedings.

2. Every court to consider the issue has found that The Episcopal Church is hierarchical.

Courts across the nation faced with this same question have routinely found that The Episcopal Church is a hierarchical church. *See, e.g.*, *Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002) ("[T]he Canons of the Episcopal Church clearly establish that it is a hierarchy."); *In re Episcopal Church Cases*, 198 P.3d 66, 81-82 (Cal. 2009); *New v. Kroeger*, 84 Cal. Rptr. 3d 464, 469-71 (Cal. Ct. App. 2008) ("The Episcopal Church is a hierarchical church with a three-tiered organizational structure."); *Diocese of San Joaquin v. Schofield*, No. 08 CECG 01425, Order on Plaintiffs' Motion for Summary Adjudication at 5-6 (Cal. Super. Ct. July 21, 2009) ("[I]t is beyond dispute that the Episcopal Church is a hierarchical church."); *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280, 1285-86 (Conn. 1993); *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Ga., Inc.*, -- S.E.2d --, 2010 WL 2683934, at *1 (Ga. Ct.

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[24] *See, e.g.*, Section VII (D) *infra* and A1062-63 (Ex. G-5, Iker Amicus Brief at 10-11) ("[T]he General Convention is the body which alters and revises the Canons of the Church. Below that are various dioceses which are generally geographical in nature. The national church is governed by the Constitution and Canons of ECUSA, as Revised by the Convention of 2000. The dioceses have canons that cannot be inconsistent with national canons.") (footnotes omitted).

[25] A627-28 (Ex. D-36, Church Art. VIII).

App. July 8, 2010) ("[C]areful consideration of the National Episcopal Church's structure and history persuades us that the National Episcopal Church is hierarchical."); *Parish of the Advent v. Protestant Episcopal Diocese of Mass.*, 688 N.E.2d 923, 931-32 (Mass. 1997); *Episcopal Diocese of Mass. v. Devine*, 797 N.E.2d 916, 920-21 (Mass. App. Ct. 2003); *Bennison v. Sharp*, 329 N.W.2d 466, 472-73 (Mich. Ct. App. 1982) ("[T]he undisputed facts show the Protestant Episcopal Church to be hierarchical with regard to property, as well as spiritual matters."); *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980) ("The Protestant Episcopal Church in the United States of America is a hierarchically structured organization which by virtue of its constitution and canons exercises pervasive control over its constituent parishes and missions."); *Trs. of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 684 N.Y.S.2d 76, 78 n.2 (N.Y. App. Div. 1999); *Tea v. Protestant Episcopal Church in the Diocese of Nev.*, 610 P.2d 182, 183-84 (Nev. 1980); *In re Church of St. James the Less*, No. 953NP, 2003 WL 22053337, at *6-7 (Pa. Ct. Com. Pl. Mar. 10, 2003), *aff'd in relevant part*, 888 A.2d 795 (Pa. 2005) ("[T]he Church is . . . hierarchical because it functions under a National Constitution and Canons that grant the General Convention and the individual bishops of the diocese broad authority over the affairs of the individual parishes, and because each tier of the Episcopal Church's polity is bound by, and may not take actions that conflict with, the decisions of a higher tier.").

3. Courts routinely rule that The Episcopal Church is hierarchical as a matter of law on summary judgment.

Because The Episcopal Church has an indisputable three-tier constitutional and canonical structure, with levels of authority from the General Convention down to the local officers, and with regional dioceses and parishes pledging unqualified accession in plain language in their recorded Constitutions, Canons, and Declarations of Conformity, courts routinely resolve this

question at the summary judgment stage, because there is no genuine issue of material fact as to the Church's hierarchical structure.[26] *See, e.g.*, *Dixon*, 290 F.3d at 703, 716; *Diocese of San Joaquin*, No. 08 CECG 01425, Order on Plaintiffs' Motion for Summary Adjudication at 5-6 (Cal. Super. Ct. July 21, 2009) ("The hierarchical nature of the [Episcopal] Church is apparent from its governing documents as a matter of law."); *Rector, Wardens & Vestrymen of Christ Church in Savannah*, 2010 WL 2683934, at *1; *Episcopal Diocese of Mass.*, 797 N.E.2d at 920-21; *Trs. of the Diocese of Albany*, 684 N.Y.S.2d at 78 & n.2; *Bennison*, 329 N.W.2d at 472-73 (affirming summary judgment because "[t]he trial court correctly found that the Protestant Episcopal Church is hierarchically structured as a matter of law" and, therefore, "that control of the property should remain with the minority, who were determined by higher authority within the hierarchical church to properly represent the congregation for which the property was purchased."); *Protestant Episcopal Church in the Diocese of N.J.*, 417 A.2d at 21-22, 24.[27]

4. The breakaway faction has admitted that The Episcopal Church is hierarchical and cannot contradict itself now.

In their very statement *withdrawing* from The Episcopal Church in 2008, the breakaway faction acknowledges the hierarchical structure of the Church:

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[26] *See* Section VI.A *infra*.

[27] Of the cases that did not decide the issue of The Episcopal Church's hierarchical structure on summary judgment, one case decided the issue prior to summary judgment, *see In re Episcopal Church Cases*, 198 P.3d at 70-71, 81-82 (reversing dismissal of plaintiffs' complaints and rendering judgment for plaintiffs), one case decided the issue in dismissing for lack of jurisdiction, *see Parish of the Advent*, 688 N.E.2d at 931-32, 934, and one case decided the issue on an unspecified "motion hearing," which in all probability was a motion for summary judgment, *see Kroeger*, 84 Cal. Rptr. 3d at 468-71, 474 ("Because this is an issue of law on undisputed facts, and we are determining questions of constitutional law, we review the trial court's decision de novo."). Of the few cases that actually went to trial, one court concluded that the Episcopal Church is hierarchical, *In re Church of St. James the Less*, 2003 WL 22053337, at *20, one court found that the evidence was "uncontroverted" that The Episcopal Church is hierarchical, *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc.*, 620 A.2d at 1285-86, and one case noted that the trial court determined that The Episcopal Church is hierarchical based on the "regulations of the Episcopal church polity," *Tea*, 610 P.2d at 184.

> By voting to change our diocesan Constitution and Canons, *we have withdrawn from the General Convention, dissociating ourselves from...The Episcopal Church.*[28]

And when Defendant Iker was still a bishop within The Episcopal Church, and when his breakaway faction was still a part of that Church, Iker and his agents made numerous representations to courts, in sworn testimony and pleadings, that The Episcopal Church is a hierarchical church:

- "ECUSA has a national body that leads the overall church through its General Conventions, with the first national convention in 1789 and the most recent in 2000. Among other things, the General Convention is the body which alters and revises the Canons of the Church. *Below that are the various dioceses* which are generally geographical in nature. The national church is governed by the Constitution and Canons of ECUSA, as Revised by the Convention of 2000. *The dioceses have canons that cannot be inconsistent with national canons.*"[29]

- "[E]ach Parish within The Episcopal Diocese of Fort Worth 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.*"[30]

- "The Diocese is an *hierarchical church*, meaning . . . each parish consists of *members of The Episcopal Church* confirmed in or transferred to that parish . . . . Under the Constitution of the Diocese and under Canon law, *no person may be a member of a parish who is not a member of The Episcopal Church.*"[31]

- "The Rt. Rev. Jack Leo Iker is the Bishop of the Diocese of Fort Worth (Texas) *of the Episcopal Church USA...*"[32]

- An "Episcopal bishop, unlike perhaps a bishop of the Roman Catholic Church, *is governed by the constitution and canons of the Church.*"[33]

- "A bishop *must adhere to the constitution and canons of the Church or be subject*

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[28] A896-97 (Ex. F-5, "As We Realign" (emphasis added)).

[29] A1062-63 (Ex. G-5, Iker Amicus Brief at 10-11 (footnotes omitted) (emphasis added)).

[30] A1037 (Ex. G-3, Boyd Aff. at 2 (emphasis added)).

[31] A1012-13 (Ex. G-2, Iker Aff. at 1, 2 (emphasis added)).

[32] A1053 (Ex. G-5, Iker Amicus Brief at 1 (emphasis added)).

[33] A1054 (Ex. G-5, Iker Amicus Brief at 2 (emphasis added)).

to discipline."[34]

- "[I]n a *constitutionally ordered church such as ECUSA* that freely permits movement of its clergy between dioceses, the decision of a bishop must be governed by a more objective standard."[35]

- "*To allow each diocesan bishop absolute freedom to determine who is and is not duly qualified would, in part, render ECUSA a loose association of independent regional church bodies. There must be some national standard* by which 'duly qualified' can be determined."[36]

- "[The breakaway clergy and members of the vestry calling themselves the Church of the Holy Apostles] are not members of the true Church of the Holy Apostles because they have joined the Antiochean Orthodox Church and thereby *have abandoned communion with The Episcopal Church…*"[37]

- "The lower court *misunderstood the polity of the Episcopal Church USA* hereinafter "Episcopal Church", "ECUSA" or "the Church"), *specifically in reference to the nature, power and role of a bishop within the Episcopal Church.* The court's *misunderstanding led to at least three reversible errors* in the court's ruling."[38]

Each of these admissions made by Iker and his agents is inherently *inconsistent* with a non-hierarchical or "congregational" church, in which "the congregation itself is the highest authority."[39] Iker consistently describes The Episcopal Church as a hierarchical church, where local dioceses and parishes are subordinate members of a general authority, the General Convention.[40] Iker's admissions nullify any later claim that his faction left a non-hierarchical church and was "strictly independent of other ecclesiastical associations, and so far as church

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[34] A1056 (Ex. G-5, Iker Amicus Brief at 4 (emphasis added)).

[35] A1065 (Ex. G-5, Iker Amicus Brief at 13 (emphasis added)).

[36] A1063 (Ex. G-5, Iker Amicus Brief at 11 (emphasis added)).

[37] A1015 (Ex. G-2, Iker Aff. at 4 (emphasis added)).

[38] A1054 (Ex. G-5, Iker Amicus Brief at 2 (emphasis added)).

[39] *Hawkins v. Friendship Missionary Baptist Church*, 69 S.W.3d 756, 758 n.2, 761-62 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

[40] *See Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

government is concerned, owes no fealty or obligation to any higher authority."[41]

a. The breakaway faction has judicially admitted facts showing hierarchy, satisfying Plaintiffs' burden in this case.

"A judicial admission is conclusive upon the party making it, and it relieves the opposing party's burden of proving the admitted fact, and bars the admitting party from disputing it."[42] "A judicial admission results when a party makes a statement of fact which conclusively disproves a right of recovery or defense currently asserted."[43] Pleadings in previous actions "which contain statements inconsistent with the party's present position are receivable as admissions."[44] Statements in the pleadings in previous actions are *judicial admissions* and therefore conclusive if the declaration was:

> (1) made in the course of a judicial proceeding; (2) contrary to an essential fact for the party's defense; (3) deliberate, clear, and unequivocal; (4) related to a fact upon which judgment for the opposing party could be based; and (5) the enforcement of the admission would be consistent with public policy.[45]

Statements made in affidavits and briefs (including appellate briefs) may contain judicial admissions.[46] A party may seek summary judgment based on another party's judicial admissions.[47] The judicial admissions of a party's agent can bind the party.[48]

The factual statements made in Iker and his colleagues' *Holy Apostles* affidavits and in

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[41] *Watson*, 80 U.S. at 722-23; *accord Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

[42] *Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980).

[43] *Brown v. Lanier Worldwide, Inc.*, 124 S.W.3d 883, 900 (Tex. App.—Houston [14th Dist.] 2004, no pet.) .

[44] *St. Paul Fire & Marine Ins. Co. v. Murphree*, 357 S.W.2d 744, 747 (Tex. 1962).

[45] *Brown*, 124 S.W.3d at 900; *see also DeWoody v. Rippley*, 951 S.W.2d 935, 946 (Tex. App.—Fort Worth 1997, pet. dism'd) (using same test for judicial admissions).

[46] *See Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 568 (Tex. 2001) (judicial admission made during summary judgment briefing and even in appellate brief); *Caddel v. Caddel*, 486 S.W.2d 141, 145 (Tex. Civ. App.—Amarillo 1972, no writ) (judicial admission made by affidavit).

[47] *See DeWoody*, 951 S.W.2d at 946.

[48] *See Miller v. First State Bank*, 551 S.W.2d 89, 102 (Tex. Civ. App.—Fort Worth 1977), *aff'd as modified*, 563 S.W.2d 572 (Tex. 1978).

Iker's *amicus* brief are judicial admissions—they (1) were made in the course of a judicial proceeding (the *Holy Apostles* litigation and *Dixon v. Edwards*, respectively); (2) are contrary to a fact that is essential to the breakaway faction's current position, that they are not bound by a governing authority; (3) were deliberate, clear, and unequivocal; (4) are related to a fact upon which judgment for the Local Episcopal Parties could be based, as set forth in Sections V.(C)-(E) *infra*; and (5) enforcement of the admissions would be consistent with public policy, which is the case here, as clergy and church officers should not be permitted to engage in overt contradictions to gain an advantage in property disputes.

For instance, in the *Dixon* case, then-bishop Iker described the structure of The Episcopal Church to the Fourth Circuit Court of Appeals, noting, *inter alia*, that the Church is governed from the General Convention down, that dioceses are organized "below" the General Convention, that a "national body leads the overall church," and that dioceses are prohibited from adopting canons inconsistent with the General Convention's governing canons.[49] These deliberate, clear, and unequivocal statements are conclusively admitted, demonstrate hierarchy, and satisfy Plaintiffs' burden. As the Fourth Circuit noted, adopting Iker's representations, "the Canons of the Episcopal Church clearly establish that it is a hierarchy."[50]

Nor can the breakaway faction contradict or dispute these admissions. The judicial admissions of a party's agent can bind the party. Iker made these statements as then-bishop of the Diocese, when his breakaway faction was still a part of that Diocese under The Episcopal Church. His statements were made as their agent on their behalf; in Iker's own words, "[a]

[49] *See* A1062-63 (Ex. G-5, Iker Amicus Brief at, e.g., 10-11) ("ECUSA has *a national body that leads the overall church* through its General Conventions, with the first national convention in 1789 and the most recent in 2000. Among other things, the General Convention is the body which alters and revises the Canons of the Church. *Below that are various dioceses* which are generally geographical in nature. The national church is governed by the Constitution and Canons of ECUSA, as Revised by the Convention of 2000. *The dioceses have canons that cannot be inconsistent with national canons*") (emphases added) (footnotes omitted)).

[50] *Dixon*, 290 F.3d at 716.

bishop of the Church...is a leader and representative of the people he serves. Although [he or she] may act in an individual capacity, their public acts can only be in their official capacity . . . . [A] bishop speaking and acting as a bishop does so for his diocese."[51] And, while it is not required under the law of judicial admissions, his statements were also made for their benefit, such as for the recovery of Diocesan property in the Holy Apostles matter. The breakaway faction cannot disavow these judicial admissions now that its interests have changed and it has purported to leave The Episcopal Church. Then and now, Iker was their leader and agent, and his judicial admissions are binding.[52]

b. The breakaway faction is estopped from arguing that The Episcopal Church is not hierarchical under judicial estoppel.

In addition, separately and independently, the breakaway faction is judicially estopped from contradicting the position taken by Iker and Iker's agents in the *Holy Apostles* affidavits and by Iker in his *amicus* brief.

"The doctrine of judicial estoppel precludes a party from adopting a position inconsistent with one that it maintained successfully in an earlier proceeding."[53] "The doctrine is designed to protect the integrity of the judicial process by preventing a party from playing 'fast and loose' with the courts to suit its own purposes."[54] "Although the doctrine is most commonly applied to the sworn statements of witnesses, it also applies to the statements of attorneys explaining their

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[51] A1056-57 (Ex. G-5, Iker Amicus Brief at 4-5).

[52] Out of an abundance of caution, the Local Episcopal Parties hereby reiterate that in no way does the assertion of judicial admissions or estoppel anywhere in this motion suggest that Iker and his faction currently represent the Episcopal Diocese of Fort Worth or any of its institutions. Under clear law, they do not. Rather, Iker's statements when he and his followers were formerly a part of the Episcopal Diocese of Fort Worth continue to bind them now that they are not. The breakaway faction was once a part of the Episcopal Diocese of Fort Worth, under Iker's then leadership, and benefited from his statements. Iker and his breakaway cohorts cannot contradict themselves in court now.

[53] *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 6 (Tex. 2008) (internal quotation marks omitted), *cert. denied*, 129 S. Ct. 1003 (2009).

[54] *Webb v. City of Dallas*, 211 S.W.3d 808, 820 (Tex. App.—Dallas 2006, pet. denied) (internal citations omitted).

clients' position in the litigation."[55] Judicial estoppel can be used offensively (and during summary judgment) to negate a defendant's purported defense.[56] The statements of a party's agents or employees can operate to judicially estop the party on whose behalf such statements were made.[57]

When Iker and his faction were still part of the Episcopal Diocese of Fort Worth, they were successful in recovering The Church of the Holy Apostles for The Episcopal Church and the Diocese from that earlier breakaway faction.[58] The positions Iker and his followers took in those affidavits in the *Holy Apostles* case have the power of judicial estoppel.

Separately, in his amicus brief to the Fourth Circuit Court of Appeals, Iker successfully maintained the position that The Episcopal Church is hierarchical from the General Convention down,[59] and while certain of his positions were not adopted by that court, the Fourth Circuit expressly adopted and agreed with Iker's position that The Episcopal Church is hierarchical.[60]

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[55] *Id.* (citing, *inter alia*, *Goldman v. White Rose Distrib. Co.*, 936 S.W.2d 393, 397 (Tex. App.—Fort Worth 1996), *vacated pursuant to settlement*, 949 S.W.2d 707 (Tex.1997) ("White Rose claims that the statements made by its attorney during the first trial cannot be considered in determining judicial estoppel because that doctrine only applies to statements made under oath. However, an attorney is an officer of the court and, as such, is an instrument or agency to advance the ends of justice. An attorney may bind a party to a particular position") (internal quotations omitted).

[56] *See Goldman*, 936 S.W.2d at 397-99 (holding that defendants were judicially estopped from asserting a res judicata defense and granting partial summary judgment in favor of plaintiff); *Van Deusen v. Conn. Gen. Life Ins. Co.*, 514 S.W.2d 951, 954-57 (Tex. Civ. App.—Fort Worth 1974, no writ) (holding that plaintiff was judicially estopped from asserting its defense against defendant's cross-action).

[57] *See Horizon Offshore Contractors, Inc. v. Aon Risk Servs. of Tex., Inc.*, 283 S.W.3d 53, 70 (Tex. App.—Houston [14th Dist.] 2009, pet. denied).

[58] A978 (Ex. G, Nelson Aff. at ¶ 3).

[59] *See* A1062-63 (Ex. G-5, Iker Amicus Brief at, e.g., 10-11) ("ECUSA has *a national body that leads the overall church* through its General Conventions, with the first national convention in 1789 and the most recent in 2000. Among other things, the General Convention is the body which alters and revises the Canons of the Church. *Below that are various dioceses* which are generally geographical in nature. The national church is governed by the Constitution and Canons of ECUSA, as Revised by the Convention of 2000. *The dioceses have canons that cannot be inconsistent with national canons*") (emphases added) (footnotes omitted)).

[60] *Dixon*, 290 F.3d at 716 ("[T]he Canons of the Episcopal Church clearly establish that it is a hierarchy.")

The amicus brief is a statement of Iker's positions in the *Dixon* case by his attorney and thus has the power of judicial estoppel to prevent an unfair, direct contradiction here before this Court.

The breakaway faction is thus judicially estopped from making statements or arguments inconsistent with the statements made in the *Holy Apostles* affidavits and amicus brief—that is, they are estopped from asserting that The Episcopal Church is not hierarchical in structure.[61] Such assertions were made by the then-Bishop of the Diocese and by his own admission on behalf of the Diocese, and the breakaway faction was then part of the Episcopal Diocese of Fort Worth and The Episcopal Church when the statements were made. The breakaway faction cannot simply pretend that Iker and his agents did not make such sworn statements on their behalf and for their benefit in prior suits. The breakaway faction cannot contradict itself to this Court now.

c. The breakaway faction is estopped from arguing that The Episcopal Church is not hierarchical under quasi-estoppel.

In addition, separately and independently, the breakaway faction is estopped from contradicting the position taken by Iker and his colleagues in the *Holy Apostles* affidavits, by Iker in his *amicus* brief, and by Iker and the breakaway faction as former Church clergy and officers under the doctrine of quasi-estoppel, reaffirmed by the Texas Supreme Court in 2000 and the Fort Worth Court of Appeals in 2009.

"Quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken."[62] "The doctrine applies when it would be

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[61] Judicial estoppel applies to the *Holy Apostles* affidavits because, although the *Holy Apostles* case ultimately settled, the Diocesan Corporation obtained a favorable settlement in which the breakaway parish vacated the property at issue. A978 (Ex. G, Nelson Aff. at ¶ 3). Such a successful result may serve as the basis for judicial estoppel. *See Long v. Knox*, 291 S.W.2d 292, 295 (Tex. 1956) (stating that, although the underlying suit was dismissed by the opposing party, "the purpose of the affiant was accomplished as thoroughly as if a judgment had been entered in favor of the plaintiffs in that suit.")

[62] *Lopez v. Munoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 864 (Tex. 2000).

unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit."[63] Quasi-estoppel may be used offensively (and on summary judgment) by a plaintiff to nullify one of the defendant's defenses.[64]

The breakaway faction is thus estopped from asserting any claim or defense based on the position that The Episcopal Church is not hierarchical. Such a position is absolutely inconsistent with the position taken by Iker and Iker's cohorts in the *Holy Apostles* affidavits and Iker's *amicus* brief, and Iker, Iker's cohorts, the Diocese, and the Diocesan institutions acquiesced to such positions at the time they were made. Moreover, Iker's acquiescence to Church hierarchy was a condition of his very Ordination,[65] just as each breakaway faction member acquiesced to Church hierarchy under Church Canon I.17.8 when they originally accepted office within the Church ("Any person accepting any office of this Church shall well and faithfully perform the duties of that office *in accordance with the Constitution and Canons of this Church...*").[66] It would be patently unfair and unconscionable to allow the current breakaway faction, now that they purport to leave the Church, to take the diametrically opposite position in the present litigation.

Under the doctrines of judicial admission, judicial estoppel, and quasi-estoppel, the positions taken in prior courts by the breakaway faction conclusively prove the Church's hierarchy and prevent them from contradicting it here.

5. The Episcopal Church is hierarchical under Texas law.

As shown, The Episcopal Church is hierarchical under the United States Supreme Court's

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[63] *Id.*

[64] *See Doe v. Tex. Ass'n of Sch. Bds., Inc.*, 283 S.W.3d 451, 464 (Tex. App.—Fort Worth 2009, pet. denied) (upholding summary judgment on defendant's counterclaim because plaintiff was estopped from arguing an inconsistent position as a defense).

[65] A627-28 (Ex. D-36, Church Art. VIII).

[66] A675-76 (Ex. D-36).

definition of hierarchy. And, in addition and wholly separately, because the breakaway faction has told other courts that The Episcopal Church is hierarchical, the issue is conclusively proved, and the breakaway faction is estopped from contradicting itself now.

It is therefore unnecessary to proceed further on this point. Nonetheless, out of completeness, the hierarchy of The Episcopal Church is further clear as a matter of law under various definitions used in the past by Texas courts.

Texas courts have recognized the distinction between hierarchical and congregational churches, without always using those exact terms, beginning with the Texas Supreme Court's opinion in *Brown v. Clark.*[67] The Fort Worth Court of Appeals has cited *Watson v. Jones*, the United States Supreme Court case giving rise to the "strictly independent" (congregational) and "subordinate member" (hierarchical) definitions above.[68] The Dallas Court of Appeals has also employed these *Watson* definitions.[69]

Other Texas courts have used consistent but mildly varying definitions. The Houston Court of Appeals, Fourteenth District, has said: "Churches which are governed primarily by their members are described as 'congregational' whereas those which are governed primarily by a larger religious institution are described as 'hierarchical' . . . . *[I]n a congregational church, the congregation itself is the highest authority.*"[70] Similarly, the Houston Court of Appeals, First

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[67] 116 S.W.360, 363, 365.

[68] *Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

[69] *Schismatic & Purported Casa Linda Presbyterian Church in Am. v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 703 n.1 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (citing *Watson*, 80 U.S. at 722); *see also Martinez v. Primera Asemblea de Dios, Inc.*, No. 05-96-01458-CV, 1998 WL 242412, at *2 (Tex. App.—Dallas May 15, 1998, no pet.) (not designated for publication) (hierarchical church "one where the religious ecclesiastical body is but a subordinate member of some general church organization.... A congregational church is a religious congregation which, by the nature of its organization is strictly independent of other ecclesiastic organizations, as far as church government is concerned, and owes no fealty or obligation to any higher authority") (citing *Mangum v. Swearingen*, 565 S.W.2d 957, 958 (Tex. Civ. App.—San Antonio 1978, writ ref'd n.r.e.)).

[70] *Hawkins*, 69 S.W.3d at 758 n.2, 761-72.

District, has said: "A hierarchical religion is one in which the local organization is affiliated with and subject to the control of a parent organization."[71]

At least two Texas courts of appeal, Austin and Amarillo, have listed factors that can help a court determine whether a church is hierarchical or congregational.[72] None of these factors is essential or necessary; these factors "merely aid the judiciary" in this determination.[73] Factors indicating a hierarchical church are:

> (1) affiliation of the local church with a parent church; (2) an ascending order of ecclesiastical judicatories in which the government of the local church is subject to review and control by higher authorities; (3) subjugation of the local church to the jurisdiction of a parent church or to a constitution promulgated by the parent church; (4) a charter from the parent church governing the affairs of the local church and specifying ownership of local church property; (5) the repository of legal title; and (6) the licensing or ordination of local ministers by the parent church.[74]

Since this hierarchical/congregational distinction was developed by the Supreme Court in First Amendment jurisprudence dating back to *Watson*, and since the Fort Worth Court of Appeals has cited *Watson* in relevant discussions without proposing its own definitions, the *Watson* definitions are likely the best ones to apply here. But, as shown below, the particular definition used is irrelevant, because The Episcopal Church is plainly hierarchical under every definition discussed.

Under the definitions set forth in *Watson* and controlling here as demonstrated by the Fort Worth Court of Appeals' citation to *Watson*, it is indisputable that The Episcopal Church is one

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[71] *Chen v. Tseng*, No. 01-02-01005-CV, 2004 WL 35989, at *6 n.11 (Tex. App.—Houston [1st Dist.] Jan. 8, 2004, no pet.) (unpublished opinion) (citing *Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 551 (Tex. App.—Austin 1991, writ denied)).

[72] *Green*, 808 S.W.2d at 551; *Templo Ebenezer, Inc. v. Evangelical Assemblies, Inc.*, 752 S.W.2d 197, 198-99 (Tex. App.—Amarillo 1988, no writ).

[73] *Green*, 808 S.W.2d at 551.

[74] *Id.* (discussing *Templo Ebenezer*, 752 S.W.2d at 198-99.)

where local congregations are not "strictly independent of other ecclesiastical associations, and so far as church government is concerned, owe[] no fealty or obligation to any higher authority."[75] In contrast, every diocese, parish, bishop, officer, and so forth is bound by the three-tiered hierarchical structure, the Church's Constitutions and Canons and their accession to them, and the relevant vows and requirements of allegiance and acceptance of the General Convention's authority.[76]

The Episcopal Church is clearly "organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head,"[77] where all local congregations and dioceses are governed by and acknowledge the authority of the General Convention, the Book of Common Prayer, and the Church's Constitution and Canons, as conditions of creation and continued participation as a part of the Church. These local entities are clearly "subordinate member[s] of some general church organization [the General Convention] in which there are superior ecclesiastical tribunals [the bicameral General Convention, the Presiding Bishop acting under its authority, the Church's ecclesiastical trial and appellate courts, and so forth] with a general and ultimate power of control more or less complete, in some supreme judicatory [the General Convention and its Constitutions, Canons, and Book of Common Prayer] over the whole membership of that general organization [all dioceses must pledge unqualified accession and cannot adopt rules contradicting the Church's Constitution and Canons]."[78]

Under any of the other relevant definitions, the outcome is the same. Here, the local

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[75] *Watson*, 80 U.S. at 722-23; *accord Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

[76] *See* extended discussion of facts in Section VI.A-E, *infra.*

[77] *Kedroff*, 344 U.S. at 110 & n.15.

[78] *Watson*, 80 U.S. at 722-23; *accord Dean*, 994 S.W.2d at 395 n.1 (citing *Watson*, 80 U.S. at 722-23).

congregation is not "itself . . . the highest authority."[79] Here, the local organization is "affiliated with and subject to the control of a parent organization."[80] A review of the Austin Court of Appeals' "helpful" but not "essential" factors yields the identical result: (1) the local church is affiliated with a parent church; (2) there is an ascending order of ecclesiastical judicatories in which the government of the local church is subject to review and control by higher authorities; (3) there is subjugation of the local church to the jurisdiction of a parent church and to a constitution promulgated by the parent church; (4) there are numerous charters from the parent church governing the affairs of the local church and specifying ownership of local church property; (5) legal title to property held by local entities is in express trust for, and for the use of, and subject only to uses authorized by, the parent church, and (6) the licensing or ordination of local bishops is highly regulated, and those bishops must be approved and ordained by the parent church.[81]

While the *Watson* factors likely control here, as they are the federal standard in a First Amendment analysis and as *Watson* is the case cited by this jurisdiction, The Episcopal Church is hierarchical under every analysis. The Local Episcopal Parties respectfully submit that they are entitled to summary judgment on this point as a matter of law.

B. As a matter of law, the Local Episcopal Parties, aligned with The Episcopal Church, are the rightful leadership of The Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, and other Diocesan institutions.

Under Texas law, the fact that The Episcopal Church is hierarchical determines the identity of Diocesan leadership and the control of Diocesan property as a matter of law. The Texas Supreme Court, four Texas appellate courts, and the Fifth Circuit Court of Appeals,

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[79] *Hawkins*, 69 S.W.3d at 758 n.2, 761-62.

[80] *Chen*, 2004 WL 35989, at *6 n.11 (citing *Green*, 808 S.W.2d at 551).

[81] *Green*, 808 S.W.2d at 551 (discussing *Templo Ebenezer*, 752 S.W.2d at 198-99).

applying Texas law, have all settled church identity and property disputes where a faction within a hierarchical church purported to break away from the authority of the hierarchical church. Each court resolved disputes between the rival factions by deferring to the views of the hierarchical church.[82] As explained below in this section, application of this "deference rule" here conclusively determines that the Local Episcopal Parties are the true leaders of the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth, the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth, and other Diocesan institutions, because they are recognized as such by The Episcopal Church. For the same reason, as shown in Section IV.C *infra*, the Local Episcopal Parties are entitled to use, control, possess, and otherwise own all of the property belonging to the Episcopal Diocese of Fort Worth.

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[82] *Brown*, 116 S.W. at 363 (quoting *Watson*, 80 U.S. at 727) (where two factions claimed local church property when mother church endorsed controversial action, one siding with mother church and the other rejecting mother church's action, Texas Supreme Court held local faction loyal to hierarchical church entitled to possession and use of local church property sued for), *cited with approval in Westbrook v. Penley*, 231 S.W.3d 389, 398 (Tex. 2007); *Green*, 808 S.W.2d at 551 ("Appellate courts have consistently followed the deference rule in deciding hierarchical church property disputes . . . . The deference rule imputes to members 'implied consent' to the governing bylaws of their church."); *Templo*, 752 S.W.2d at 199 ("[A]s the parent church, Evangelical Assemblies owns and is entitled to possession of the property under the mutually binding constitution. . . . [A] dissenting group[] has no rights in the church property."); *Schismatic*, 710 S.W.2d at 707 ("Our state law requires deference to the Presbytery's identity of appellees, the loyal group, as the representative of the local church; consequently, it follows that appellees are entitled to possession and use of all church property."); *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865, 871 (Tex. Civ. App.—Texarkana 1977, no writ) ("When a division occurs in a local church affiliated with a hierarchical religious body, and a dispute arises between rival groups as to the ownership or control of the local church property, the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions adheres to or is sanctioned by the appropriate governing body of the organization. It is a simple question of identity[,] . . . which in turn necessarily settles a dispute involving property rights."); *Church of God in Christ, Inc. v. Cawthon*, 507 F.2d 599, 602 (5th Cir. 1975) (Texas law) ("Having concluded on what we have held to be adequate evidence that the local church was a member of and subservient to the national church, the District Court was correct in enjoining the dissident faction from attempting to exercise acts of possessory control over the local church property and from interfering with the local church property and with the conduct of services therein by the local faction loyal to the national church, and in holding that the deed to the newly created corporation was void.").

1. The Deference Rule - Under Texas law and the First Amendment as applied by the United States Supreme Court, courts must defer to the hierarchical church on questions of local church identity, leadership, and control.

For over 100 years, Texas courts have consistently held, in accordance with the United States Supreme Court, that civil courts defer to hierarchical churches on questions of internal leadership, governance, discipline, identity, and control. As the Fort Worth Court of Appeals affirmed: "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."[83] And the Supreme Court of Texas held in 1909, and reaffirmed in 2007, 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."[84]

This principle is based on the United States Supreme Court's First Amendment doctrine dating back to *Watson* in 1871:

> [T]he 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 the government and direction of subordinate bodies*, the Constitution *requires* that civil courts accept their decisions as binding upon them.[85]

The First Amendment and Texas law require deference to hierarchical church decisions

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[83] *Patterson v. Sw. Baptist Theological Seminary*, 858 S.W.2d 602, 605-06 (Tex. App.—Fort Worth 1993, no writ) (emphasis added) (citing *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976)).

[84] *Brown*, 116 S.W. at 363 (quoting *Watson*, 80 U.S. at 727) (internal quotation marks omitted), *cited with approval in Westbrook v. Penley*, 231 S.W.3d 389, 398 (Tex. 2007).

[85] *Milivojevich*, 426 U.S. at 724-25 (emphasis added); *accord Kedroff*, 344 U.S. at 113-14; *Watson*, 80 U.S. at 727.

regarding leadership, identity, and control, because these are core ecclesiastical issues. The United States Supreme Court has held that "*questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern.*"[86] The Dallas Court of Appeals, citing the United States Supreme Court, similarly affirmed: The free exercise clause of the First Amendment "bars government involvement in disputes concerning the structure, leadership, or internal policies of a religious institution."[87] The Fourteenth Court of Appeals, likewise, recently reaffirmed:

> [U]nder the ecclesiastical abstention doctrine, civil courts may not intrude into the church's governance of religious or ecclesiastical matters, such as theological controversy, church discipline, ecclesiastical government, or the conformity of members to standards of morality. *In addition, courts should not involve themselves in matters relating to the hiring, firing, discipline, or administration of clergy. The relationships between an organized church and its ministers are considered a church's "lifeblood" and matters involving those relationships are recognized as "of prime ecclesiastical concern."*[88]

The United States Supreme Court similarly held, in a case where a clergyman sued a hierarchical church for his appointment as chaplain under an unambiguous civil will:

> Because the *appointment 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.... [T]he decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive....*[89]

And where a hierarchical church defrocked a sitting bishop, dividing his diocese into three parts, and the bishop sued "to have himself declared the true Diocesan Bishop" entitled to control of

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[86] *Milivojevich*, 426 U.S. at 709, 717 (emphasis added).

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

[88] *Lacy v. Bassett*, 132 S.W.3d 119, 123 (Tex. App.–Houston [14th Dist.] 2004, no pet.) (emphasis added) (citations omitted).

[89] *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929) (emphasis added).

the property at issue,[90] the United States Supreme Court held that "civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity."[91] Accordingly, judicial deference extends to the related question of which faction represents the "true" identity or leadership of a hierarchical church's subordinate entity. "Our state law requires deference to the Presbytery's [*i.e.*, the hierarchical church's] identity of appellees, the loyal group, as the representative of the local church."[92] Similar holdings have been consistently reached and applied by courts across the nation.[93]

2. It is indisputable that The Episcopal Church recognizes the Local Episcopal Parties as the leadership of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, and other Diocesan institutions.

Here, there are two factions claiming leadership, identity, and control of the Episcopal

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[90] *Milivojevich*, 426 U.S. at 703-07.

[91] *Id.* at 713.

[92] *Casa Linda Presbyterian Church*, 710 S.W.2d at 707.

[93] *Kroeger*, 84 Cal. Rptr. 3d at 485 (courts are required to defer to diocese's determination concerning the qualifications and identity of individuals entitled to serve as leaders of an Episcopal parish), *ordered published by* 202 P.3d 1089 (Cal. 2009); *Episcopal Diocese of Mass.*, 797 N.E.2d at 921-22 (where dispute involved "question of which individuals hold authority to act on behalf of [the church] . . . we consider the matter to be inappropriate for determination by application of neutral principles of law"); *St. Mary of Egypt Orthodox Church, Inc. v. Townsend*, 532 S.E.2d 731, 736 (Ga. Ct. App. 2000) (trial court had erred in determining whether dissident group were "members in good standing with the power to participate in the affairs of the [church] corporation"); *Metro. Philip v. Steiger*, 98 Cal. Rptr. 2d 605, 609 (Cal. Ct. App. 2000) ("[C]ivil courts are 'ill-equipped' to resolve disputes over which faction represents the 'true' church."); *Protestant Episcopal Church in the Diocese of N.J.*, 417 A.2d at 24-25 (the "individual defendants have disaffiliated themselves from The Protestant Episcopal Church and thereby automatically terminated their eligibility to hold office as Wardens and Vestrymen of [the parish]."); *Church of God of Madison v. Noel*, 318 S.E.2d 920, 924 (W. Va. 1984) (where "the proper church authorities had already determined who were the proper trustees of the Church of God of Madison, the civil courts were bound to abide by that decision"). A trial court in California has recently applied this bedrock principle to another case involving another diocese of The Episcopal Church whose leaders also sought unsuccessfully to take that other diocese out of The Episcopal Church and into the Anglican Province of the Southern Cone, and accordingly held that "since the Episcopal Church has seen fit to recognize [Bishop] Lamb [the bishop who had not broken away and who remained loyal to The Episcopal Church] as the new Bishop of the Diocese of San Joaquin, we must do so as well." *Diocese of San Joaquin v. Schofield*, No. 08 CECG 01425, Order on Plaintiffs' Motion for Summary Adjudication at 10. The court lacked authority to "look into the propriety of the election and deposition of church officers according to church regulations and rules," because "[a]s the Episcopal Church has seen fit to recognize Lamb as the true Bishop of the Diocese of San Joaquin, this court is without the power to countermand that decision." *Id.* at 12-13. The court thus held that Bishop Lamb, and not the prior bishop who had attempted to lead his diocese out of The Episcopal Church and had begun functioning as a bishop of another denomination, was the individual entitled to control of the corporation and other legal entities holding title to diocesan property. *Id.* at 10-13.

Diocese of Fort Worth, its Corporation, its Endowment Fund, and other diocesan institutions. It is undisputed that only one of these groups, Movants the Local Episcopal Parties, is recognized by The Episcopal Church as the true leadership, identity, and persons meriting control of these entities. It is undisputed that this is the finding of the highest authorities of the hierarchical church to which the matter has been carried: the General Convention, the Presiding Bishop acting under its authority, and so forth, as set forth in indisputable detail in the fact sections below.[94] It is also indisputable that Iker has been removed from power by The Episcopal Church.[95]

As a matter of law, therefore, summary judgment is proper that Movants, the Local Episcopal Parties, are the true leadership, identity, and persons in control of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, and other Diocesan institutions, and all of the officers recognized by The Episcopal Church are the true officers of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, and other Diocesan institutions. This court should defer to the hierarchical Episcopal Church's clear determinations on these core ecclesiastical questions of church identity, leadership, governance, and discipline.

3. Courts reject breakaway-faction arguments to the contrary.

Courts have considered and consistently rejected numerous common arguments made by breakaway factions. **For instance, a breakaway faction cannot attempt to justify its actions by claiming that the hierarchical church has departed from or abandoned church tenets.** The Supreme Court squarely rejected this "departure-from-doctrine" approach, holding that such a legal position would "require[] the civil court to determine matters at the very core of a religion – the interpretation of particular church doctrines and the importance of those doctrines to the

[94] *See* Section VII.F *infra.*

[95] *Id.*

religion. Plainly, the First Amendment forbids civil courts from playing such a role."[96]

Similarly, a breakaway faction cannot justify its actions by claiming that the hierarchical church failed to abide by its internal laws or procedures. It is the hierarchical church's choice of leadership, identity, and control, and not its decision-making process, that is dispositive as a matter of law; in fact, as Texas courts and the United States Supreme Court hold, inquiry into whether a church complied with its laws and procedures violates the First Amendment.[97] The Fort Worth Court of Appeals found, quoting the United States Supreme Court:

> In *Milivojevich*, the Supreme Court held that the inquiry into whether the church laws and procedures had been complied with violated the First Amendment .... [I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.[98]

And the United States Supreme Court held (rejecting the Illinois Supreme Court's finding that a bishop's defrocking was invalid as "arbitrary"):

> [C]ivil 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. 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.[99]

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[96] *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969).

[97] *Patterson*, 858 S.W.2d at 605-06 (citing *Milivojevich*, 426 U.S. at 713).

[98] *Patterson*, 858 S.W.2d at 605-06 (quoting *Milivojevich*, 426 U.S. at 714-15).

[99] *Milivojevich*, 426 U.S. at 708-09 (parentheticals in original) (citation omitted); *quoted with approval in Hawkins*, 69 S.W.3d at 758.

Similarly, a breakaway faction cannot justify its actions by claiming that it constituted a local majority. Indeed, even if the breakaway faction constituted a *unanimous* local action (which is not the case here, where loyal Local Episcopal Parties are worshiping in Fort Worth to this day and bring this motion), such local unanimity would be irrelevant under the controlling doctrine of deference:

> [U]nanimous or not, the members of a church organization which is hierarchical as to church government cannot dissolve a local church in contravention of the governing rules or edicts of the mother church, and then re-establish themselves as an independent church or one associated with a schismatic group and take the church property with them.[100]

Finally, a breakaway faction cannot use secular statutes to undermine deference to hierarchical churches on questions of leadership and control. For instance, one breakaway faction attempted to replace the hierarchical church's loyal corporate officers, board members, and trustees, in violation of church bylaws, by citing its general corporate rights under the Texas Non-Profit Corporation Act. The court of appeals rejected this approach under the deference doctrine, holding: "[W]e affirm the trial court's determination that [the local church was] affiliated with a hierarchical church organization. In a conflict between the general procedures outlined in the Texas Non-Profit Corporation Act and the specific procedures contained in the church bylaws, we must defer to the church bylaws. The trial court properly found that the members could not invoke the Texas Non-Profit Corporation Act to remove the board of trustees."[101]

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[100] *Presbytery*, 552 S.W.2d at 871-72 (citing *Cumberland Presbyterian Church v. North Red Bank Cumberland Presbyterian Church*, 430 S.W.2d 879 (Tenn. Ct. App. 1968)); *St. John's Presbytery v. Cent. Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958); *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston of Presbyterian Church*, 531 S.W.2d 301 (Tenn. Ct. App. 1975)).

[101] *Green*, 808 S.W.2d at 552 (citing *Casa Linda Presbyterian Church*, 710 S.W.2d at 703; *Cawthon*, 507 F.2d at 602).

4. The breakaway faction here has judicially admitted that parties abandoning communion with The Episcopal Church cannot claim leadership or control; these admissions conclusively prove the issue, and the breakaway faction is estopped from taking a contrary position here.

Once again, the breakaway faction has already conceded the issue of identity and control to the Local Episcopal Parties in its prior court statements. As Iker testified to the Fort Worth District Court, speaking of an earlier breakaway parish: "[The breakaway clergy calling themselves the Church of the Holy Apostles] are not members of the true Church of the Holy Apostles because they have joined the Antiochean Orthodox Church and thereby *have abandoned communion with The Episcopal Church.*"[102] Iker further testified: "The Diocese is an hierarchical church, meaning . . . each parish consists of members of The Episcopal Church confirmed in or transferred to that parish . . . . Under the Constitution of the Diocese and under Canon law, no person may be a member of a parish who is not a member of The Episcopal Church."[103]

Iker has already told a Fort Worth court, under oath, that a breakaway faction that has "abandoned communion with The Episcopal Church" and "joined" another hierarchical church "are not members of the true" local entity affiliated with the hierarchical church.[104] As a matter of law, this conclusively proves the identity issue of who the "true" Episcopal Diocese of Fort Worth is here. Iker, leading a breakaway faction that has expressly abandoned communion with The Episcopal Church and joined with another hierarchical church, cannot represent the "true" Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions, and his breakaway faction "are not members of the true" Diocese and Corporation.

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[102] A1015 (Ex. G-2, Iker Aff. at 4 (emphasis added)).

[103] A1012-13 (Ex. G-2, Iker Aff. at 1-2).

[104] A1015 (Ex. G-2, Iker Aff. at 4).

Under the doctrine of judicial admissions, this fact is proven conclusively on behalf of Movants, and summary judgment is proper.

Under the doctrine of estoppel, Iker and his cohorts are estopped, judicially and under quasi-estoppel, from claiming to be the "true" Episcopal Diocese of Fort Worth or its Corporation here.

C. As a matter of law, the Local Episcopal Parties, aligned with The Episcopal Church, are the rightful holders of local church property.

1. Under a century of Texas law, the identity question answers the property question.

Under Texas law, once the identity question is settled, the property question is also answered as a matter of law. This holding has remained constant for over 100 years. As the Dallas Court of Appeals noted: "Our intermediate appellate courts have consistently followed the deference rule in deciding hierarchical church property disputes since the [1909] Texas Supreme Court ruling in *Brown v. Clark*."[105] There, the Texas Supreme Court held, citing the United States Supreme Court in *Watson*:

> In *Watson v. Jones* the Supreme Court of the United States stated that the property in question was not charged with any special trust, but was purchased in the ordinary way for the use of a local church, and said: "In the case of an independent congregation we have pointed out how this identity or succession is to be ascertained, *but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments . . . . In this class of cases, we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority, is that, whenever the questions of discipline or of faith*

[105] *Casa Linda Presbyterian Church*, 710 S.W.2d at 705 (citing *Brown*, 116 S.W. 360); *accord Green*, 808 S.W.2d at 551 ("Appellate courts have consistently followed the deference rule in deciding hierarchical church property disputes since the Texas Supreme Court adopted the rule in *Brown*") (citing *Brown*, 116 S.W. at 363; *Casa Linda Presbyterian Church*, 710 S.W.2d at 705).

> *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.*" . . . . [Here,] the local church was bound by the orders and judgments of the courts of the church. . . . [T]hose 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.[106]

In accord, the Austin Court of Appeals held: "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."[107] The Dallas and Texarkana Courts of Appeals have both held:

> When a division occurs in a local church affiliated with a hierarchical religious body, and a dispute arises between rival groups as to the ownership or control of the local church property, *the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions adheres to or is sanctioned by the appropriate governing body of the organization.* It is a simple question of identity. In making such a determination, the civil court exercises no role in determining ecclesiastical questions. It merely settles a dispute as to identity, which in turn necessarily settles a dispute involving property rights.[108]

The Court of Appeals for the Fifth Circuit, applying Texas law, reached the same result:

> Having concluded on what we have held to be adequate evidence that the local church was a member of and subservient to the

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[106] *Brown*, 116 S.W. at 363-65 (citing *Watson*, 80 U.S. at 727).

[107] *Green*, 808 S.W.2d at 552 (citing *Presbytery of the Covenant*, 552 S.W.2d at 871 (citing *Norton v. Green*, 304 S.W.2d 420, 424 (Tex. Civ. App.—Waco 1957, writ ref'd n.r.e.))).

[108] *Presbytery of the Covenant*, 552 S.W.2d at 871 (citing *Norton*, 304 S.W.2d at 424; *Bramlett v. Young*, 93 S.E.2d 873 (S.C. 1956); *St. John's Presbytery*, 102 So.2d 714; *Adickes v. Adkins*, 215 S.E.2d 442 (S.C. 1975)) (emphasis added); *see also Casa Linda Presbyterian Church*, 710 S.W.2d at 705 (citing *Presbytery of the Covenant*, 552 S.W.2d at 871 (citing *Norton*, 304 S.W.2d at 424; *Bramlett*, 93 S.E.2d 873; *St. John's Presbytery*, 102 So. 2d 714; *Adickes v. Adkins*, 215 S.E. 442)).

> national church, the District Court was correct in enjoining the dissident faction from attempting to exercise acts of possessory control over the local church property and from interfering with the local church property and with the conduct of services therein by the local faction loyal to the national church, and in holding that the deed to the newly created corporation was void.[109]

Under Texas's controlling deference doctrine, the hierarchical church's determination of identity controls; it is irrelevant whether the local church or national church holds title to the property, and it is irrelevant whether the local church held the property in express trust for the larger church.[110] (Of course, in the present case, all such property is held in express trust[111] and may only be used for purposes "either authorized or approved by this Church, and for no other use"[112]).

Here, it is indisputable that (1) The Episcopal Church is a hierarchical church (*see* Section V.A *supra*) and (2) Movants, the Local Episcopal Parties, are the only leadership recognized by The Episcopal Church of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, and other Diocesan institutions (*see* Section V(B) *supra* and VII(F) *infra*).

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[109] *Church of God in Christ, Inc.*, 507 F.2d at 602 (citing *Watson*, 80 U.S. at 722, 726; *Kedroff*, 344 U.S. at 118; *Presbyterian Church in U.S.*, 393 U.S. at 448; *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970); *Northside Bible Church v. Goodson*, 387 F.2d 534, 547 (5th Cir. 1967)).

[110] *Casa Linda Presbyterian Church*, 710 S.W.2d at 706 ("'The deed of the property was made to the trustees of the Cumberland Presbyterian Church at Jefferson, Tex. It expressed no trust nor limitations 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'") (quoting *Brown*, 116 S.W. at 365).

[111] Church Canon I.7.4 (2006) ("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 to, this Church and its Constitution and Canons.*" A660 (Ex. D-36) (emphasis added).

[112] A539.1 (Ex. D-21, Diocesan Canon 25). Note: in the Diocesan Constitution and Canons, the term "Church" refers to The Episcopal Church. *See* A533 (Ex. D-21, Diocesan Constitution, Preamble).

The identity question is resolved under a century of Texas law.

2. The breakaway faction has testified that parties abandoning communion with The Episcopal Church cannot take church property with them; the breakaway faction is estopped from reversing itself here to claim property.

The breakaway faction has already conceded, under oath, that it has no right to claim church property. As Iker testified to the Fort Worth District Court, speaking against an earlier breakaway faction: "Having been informed that the unlawfully constituted Vestry of Holy Apostles had abandoned communion *with The Episcopal Church*...the Bishop sorrowfully ... pronounced each lay member of the Vestry excommunicate."[113] Iker continued:

> Those persons acting in concord with the Defendants *have constituted themselves as the Schismatic and Purported Church of the Holy Apostles. Such persons are not members of the true Church of the Holy Apostles because they have joined the Antiochean Orthodox Church, and such Schismatic and Purported Holy Apostles is not in union with the Diocese, all as required by canon law.* ***The Schismatic and Purported Church of the Holy Apostles is a new creation, having no relation to Holy Apostles and no right to its property.***[114]

Iker confirms long-standing Texas doctrine that the identity question answers the property question, and that a breakaway faction has "no relation" to the true church and "no right" to the true church's property. Now that Iker leads a breakaway faction, he and his followers cannot reverse themselves now, to claim property they seek to take from the mission of The Episcopal Church. The breakaway faction is estopped, judicially and under quasi-estoppel, from claiming local church property, and its judicial admissions are conclusively proven in satisfaction of Movants' burden.

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[113] A1015 (Ex. G-2, Iker Aff. at 3 (emphasis added)).

[114] A1015 (Ex. G-2, Iker Aff. at 4 (emphasis added)).

3. As a matter of law, the Local Episcopal Parties, aligned with The Episcopal Church, would also control the property under the alternative "neutral principles" approach applied by some states.

a. The Supreme Court endorsed state choice in church property disputes.

In *Jones v. Wolf*, the United States Supreme Court held that states were entitled to follow their own law in resolving church property disputes, as long as that law was consistent with First Amendment limitations. The "First Amendment does not dictate that a State must follow a particular method of resolving church property disputes ... a State may adopt any one of various approaches for settling church property disputes."[115]

That case involved Georgia's so-called "neutral principles" approach, which the Supreme Court found was constitutional "[a]t least in general outline."[116] However, the Court also found that it "remains to be determined whether the Georgia neutral-principles analysis was constitutionally applied on the facts of this case" and remanded for further proceedings not inconsistent with the opinion.[117]

Notably, on the *identity* question, of which local rival faction represents the "true" local church entity, the Supreme Court reaffirmed that the First Amendment "*requires* that civil courts *defer* to the resolution of issues of religious doctrine *or polity* by the highest court of a hierarchical church organization."[118]

The question in *Jones* was whether states *had to* follow a compulsory deference doctrine set forth in *Watson* on the property question, as Texas does, or whether states like Georgia could follow their own alternate approach. "The question for decision is whether civil courts,

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[115] *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (internal quotation marks omitted).

[116] *Id.*

[117] *Id.* at 606, 610.

[118] *Id.* at 602 (emphasis added).

consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church."[119]

Some breakaway factions have tried to cast *Jones* as suggesting Texas must adopt a "neutral principles" approach, but the case says nothing of the sort, and in fact stands for the opposite: state choice within the controlling First Amendment framework. As Justice Blackmun, who authored *Jones*, said in another church property case discussing the "neutral principles" approach: "States may adopt the approach of *Watson v. Jones*, and enforce the property decisions...within a church of hierarchical polity by the highest authority that has ruled on the dispute at issue, unless 'express terms' in the 'instrument by which the property is held' condition the property's use or control in a specified manner."[120] And as the Dallas Court of Appeals held:

> [A]ppellants interpret the *Jones* decision as requiring a state to adopt the neutral principles of law approach. We disagree . . . . "Indeed, 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 ritual or liturgy of worship or the tenets of faith." It is clear that in *Jones* the Supreme Court held that states may constitutionally also follow the deference rule.[121]

In 2007, the Texas Supreme Court acknowledged the *Jones* holding that "states *may* adopt neutral principles of law as a means of adjudicating such disputes," but noted that even so, "if interpretation of the instruments of ownership would require the court's resolution of a

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[119] *Id.* at 597.

[120] *Md. & Va. Eldership of Churches of God*, 396 U.S. at 368-69 (Brennan, J., concurring) (quoting *Watson*, 80 U.S. at 722).

[121] *Casa Linda Presbyterian Church*, 710 S.W.2d at 704-05 (quoting *Jones*, 443 U.S. at 604).

religious controversy, the court must defer to ecclesiastical resolution of the doctrinal issue."[122] The Texas Supreme Court there declined to apply a "neutral principles" approach in Texas to that church professional negligence case, not a church property case, holding "we disagree that free-exercise concerns would not be implicated."[123] Deference is controlling Texas law.

b. The vast majority of courts around the nation in "neutral principles" states have held that The Episcopal Church and its loyal membership are entitled to local church property under "neutral principles" analysis.

Because local Episcopal entities hold their property expressly, in controlling documents, in trust for, for the use of, and subject only to uses authorized by the parent church, the overwhelming majority of courts applying neutral principles find for the parties aligned with The Episcopal Church. *See, e.g., Rector, Wardens & Vestrymen of Christ Church in Savannah*, 2010 WL 2683934, at *1-2, 8; *In re Episcopal Church Cases*, 198 P.3d at 70-71; *Kroeger*, 84 Cal. Rptr. 3d at 479-82, 485-86; *Diocese of San Joaquin*, No. 08 CECG 01425, Order on Plaintiffs' Motion for Summary Adjudication at 4, 7-9, 14-15; *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 96, 103 (Colo. 1986); *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc.*, 620 A.2d at 1282-85, 1292-93; *Bennison*, 329 N.W.2d at 475 (noting that, even under the neutral principles approach, the breakaway parish had no entitlement to the property at issue); *Protestant Episcopal Church in the Diocese of N.J.*, 417 A.2d at 24 (same); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 923-25 (N.Y. 2008); *Trs. of the Diocese of Albany*, 684 N.Y.S.2d at 79-82.

c. Here, an alternative "neutral principles" analysis would also grant local property to the Local Episcopal Parties.

A neutral principles approach allows the court to resolve church property disputes by

[122] *Westbrook*, 231 S.W.3d at 399.

[123] *Id.*

analyzing (1) deeds to the disputed property, (2) the governing documents of the local church body, (3) the governing documents and rules of the general church body, and (4) any applicable state statutes, to see if the disputed property is impressed with a trust or similar restriction in the general church's favor.[124] For instance, *Jones* cites with approval a Georgia Supreme Court case involving a property dispute between The United Methodist Church and a local congregation that had withdrawn from that church, where the court found no basis for a trust in favor of the general church in the deeds, the corporate charter, or the state statutes dealing with implied trusts; but, the court observed, the constitution of The United Methodist Church, its Book of Discipline, contained an express trust provision in favor of the general church, and on this basis, the church property was awarded to the hierarchical church.[125]

Here, the case is even stronger that the hierarchical Episcopal Church and its loyal Episcopal Parties own the local property under a neutral principles approach. As in the Georgia case approved by the United States Supreme Court, there is an express trust provision in the national governing documents of the Church. Here, Church Canon I.7.4 ("the Dennis Canon"), adopted in 1979, before the formation of the Fort Worth Diocese and that Diocese's accession to Church 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 Constitution and Canons.*[126]

This alone answers the simple "neutral principles" question of whether the disputed

[124] *Jones*, 443 U.S. at 600.

[125] *Id.* at 600-01 (citing *Carnes v. Smith*, 222 S.E.2d 322 (Ga. 1976)).

[126] A660 (Ex. D-36, Church Canon I.7.4).

property is impressed with a trust or similar restriction in favor of The Episcopal Church and the Diocese.[127] But here there are additional useful facts. The governing documents of the local entities explicitly state, for instance in Article 13 of the Episcopal Diocese of Fort Worth's first Constitution (now Article 14), 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 a corporation known as "Corporation of the Episcopal Diocese of Fort Worth." All such property *as well as all property hereafter acquired for the use of the Church and the Diocese*, including parishes and missions, shall be vested in Corporation of the Episcopal Diocese of Fort Worth.[128]

Diocesan Canon 12.1 (now Canon 18.1) specified that property held by the Diocesan Corporation "may only be conveyed or encumbered with the approval of the Board of Trustees and in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth," including that Constitution and Canon's unqualified accession to the Church Constitution impressing an express trust on local property.[129] Diocesan Canon 25 (now Canon 30) provided that "[t]he dedicated and consecrated Churches and Chapels of the several Parishes and Missions of the Diocese may be opened only for the services, rites and ceremonies, or other purposes, *either authorized or approved by this Church, and for no other use.*"[130]

As to deeds, which Black's Law Dictionary defines as a "written instrument by which land is conveyed,"[131] the August 22, 1984 District Court of Dallas County's declaratory

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[127] *Jones*, 443 U.S. at 600.

[128] A534 (Ex. D-21, Diocesan Art. 13 (emphasis added)). Article 13 further provided that the Diocesan Corporation was to hold title to "other property belonging to the Diocese, as such," including trust and endowment accounts. *Id.*

[129] A538 (Ex. D-21, Diocesan Canon 12.1); A660 (Ex. D-36, Church Canon I.7.4).

[130] A539.1 (Ex. D-21, Diocesan Canon 25 (emphasis added)).

[131] BLACK'S LAW DICTIONARY (9th ed. 2009).

judgment transferring property to the Episcopal Diocese of Fort Worth from The Episcopal Church's Diocese of Dallas states: "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*," including the unqualified Article I accession to national Church Canons and its express trust.[132]

And as to state statutes, Texas statutes governing nonprofit religious corporations confirm that property held by the Diocesan Corporation is held "in trust for any convention, conference or association ... which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution."[133] The Texas Business Organizations Code provides that "[a] religious society . . . or a church may incorporate as a corporation governed by this chapter with the consent of a majority of its members. Those members shall authorize the organizers to execute the certificate of formation."[134] When the constituent entity incorporates, the Business Organizations Code provides that the incorporated entity will hold property for the benefit of the general church:

> To effect its purposes, a domestic nonprofit entity or institution formed for a religious . . . purpose may acquire, own, hold, mortgage, and dispose of and invest its funds in property *for the use and benefit of, under the discretion of, and in trust for any convention, conference, or association . . . with which it is affiliated or by which it is controlled.*[135]

Likewise, "[t]he board of directors of a religious . . . corporation may be affiliated with,

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[132] A1140 (Ex. G-7, Judgment in *The Episcopal Diocese of Dallas v. Mattox* at p. 2).

[133] TEX. BUS. ORG. CODE § 2.102.

[134] *Id.* at § 22.101.

[135] *Id.* at §2.102 (emphasis added).

elected, and controlled by an incorporated or unincorporated convention, conference, or association organized under the laws of this or another state, the membership of which is composed of representatives, delegates, or messengers from a church or other religious association."[136] The Texas Business Organizations Code itself thus recognizes that religious corporations are subordinate to, and hold property in trust for, the religious organizations that formed them.[137]

Like the overwhelming majority of courts in "neutral principles" states, a Texas court applying, *arguendo*, "neutral principles" should conclude that the local faction aligned with The Episcopal Church is the rightful owner of disputed church property.

d. As a matter of law, the breakaway faction's unauthorized actions do not change this analysis.

It is again indisputable that the breakaway faction's actions were outside their authority as officers and clergy of the Episcopal Diocese of Fort Worth and its Corporation.[138] Among other violations, these parties violated their oath "to 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,"[139] the Declaration of Conformity ("I do solemnly engage to

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[136] *Id.* at § 22.207 (emphasis added).

[137] To the extent the predecessor statute applies to this action under TEX. BUS. ORG. CODE § 402.014, substantially the same language appears at TEX. REV. CIV. STAT. ANN. art. 1396, § 3.01(B) ("Any religious society . . . or church . . . may incorporate under this Act with the consent of a majority of its members, who shall authorize the incorporators to execute the articles of incorporation."), § 2.02(A)(16) ("Any religious ... institution organized under the laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association . . . which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution."), and § 2.14(B) ("Boards of directors of religious . . . institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State ... whose membership is composed of representatives, delegates, or messengers from any church or other religious association.").

[138] *See* extended facts in section VII (E) *infra.*

[139] A675-76 (Ex. D-36, Church Canon I.17.8 (emphasis added)).

conform to the Doctrine, Discipline, and Worship of the Episcopal Church"),[140] and their unqualified accession to the Church Constitution and Canons and recognition of the authority of the General Convention.[141] As a matter of law, the purported amendments to the Corporate Articles on August 15, 2006 and again on April 21, 2009 were thus *ultra vires* and void, and could not serve to sever the Corporation or its property or the Diocese or Diocesan property or institutions from The Episcopal Church as a matter of law.[142]

Accordingly, under a neutral principles analysis, as well as a deference analysis, control of local property vests in the Local Episcopal Parties and The Episcopal Church.

VII. COMPLETE STATEMENT OF UNDISPUTED FACTS

A. Facts Showing The Episcopal Church is a Hierarchical Church

1. The Episcopal Church ("the Church") is a religious denomination founded in 1789, with thousands of worshiping congregations in the United States and abroad. The Church

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[140] A627-28 (Ex. D-36, Church Art. VIII).

[141] A533 (Ex. D-21, Diocesan Art. 1).

[142] *See, e.g., Diocese of San Joaquin*, No. 08 CECG 01425, Order on Plaintiffs' Motion for Summary Adjudication at 8-9, 14-15 (holding that similar efforts to amend the Constitution and corporate articles of the Episcopal Church's Diocese of San Joaquin were *ultra vires* and void); *see also, e.g., Norton*, 304 S.W.2d at 423-24 (rejecting argument that the incorporation of the local church meant "that a majority of the corporation could secede from" the hierarchical church under general principles of corporations law, because the general church's governing documents required that the local church's corporate "Charter and By-laws must always be in accord with the standards of the [general] Church"); TEX. BUS. ORG. CODE § 2.102 ("To effect its purposes, a domestic nonprofit entity or institution formed for a religious . . . purpose may acquire, own, hold, mortgage, and dispose of and invest its funds in property *for the use and benefit of, under the discretion of, and in trust for any convention, conference, or association . . . with which it is affiliated or by which it is controlled*")(emphasis added); *Gray v. Saint Matthews Cathedral Endowment Fund, Inc.*, 544 S.W.2d 488, 489 (Tex. Civ. App.—Texarkana 1976, writ ref'd. n.r.e.) (The Episcopal Church's "Canon Law also authorizes the Vestry to organize a corporation, *as an adjunct or instrumentality of the parish,* to use in connection with the administration of the parish and its funds and properties") (emphasis added); *Green*, 808 S.W.2d at 552 ("In a conflict between the general procedures outlined in the Texas Non-Profit Corporation Act and the specific procedures contained in the church bylaws, [civil courts] must defer to the church bylaws."); *Wheelock v. First Presbyterian Church of L.A.*, 51 P. 841, 843 (Cal. 1897) ("[I]ncorporation is only permitted as a convenience to assist in the conduct of the temporalities of the Church. Notwithstanding incorporation, the ecclesiastical body is still all important.... A religious corporation's ... function and object is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church."); *Kroeger*, 84 Cal. Rptr. 3d at 479 ("[R]eligious corporations are, in their basic sense, different from ordinary corporations."); *see also* Moore Aff. at 16-17 (District Court of Dallas County, Texas transferred property from the Diocese of Dallas to the Diocesan Corporation only after affirming that the Corporation had been duly formed under the Constitution and canons of the Diocese).

is organized into three tiers: the General Church, which operates at the national level and is governed by a General Convention; its 111 regional, geographically-defined dioceses; and its over 7,000 local worshiping congregations, usually parishes.[143]

2. At the national level, the General Church is governed by a General Convention, which adopted the Church's Constitution, Canons, and Book of Common Prayer in 1789 and has the sole authority to amend these documents.[144] The General Convention elects the Church's Chief Pastor and Primate, the Presiding Bishop.[145] The General Church also has an Executive Council comprised of elected bishops, priests, and lay persons that, under the leadership of the Presiding Bishop, manages the fiscal and programmatic affairs of the Church between meetings of the General Convention.[146]

3. At the next level, the Church has 111 regional dioceses, which are formed by the General Church and must pledge unqualified accession to the Constitution and Canons of this Church.[147] Specifically, a diocese 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."[148] A diocese may not become a constituent part of the Church until it has duly adopted a Constitution "including an unqualified accession to the Constitution and Canons of this Church" and its Constitution is "approved by the Executive Council of [the] Church."[149]

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[143] A53, 54, 56 (Ex. C-1, Statement of Robert Bruce Mullin at ¶¶ 24, 29, and 35).

[144] A621-23, 629-30 (Ex. D-36, Church Preamble and Art. I and XII).

[145] A621-22 (Ex. D-36, Church Art. I.3)

[146] A650-55 (Ex. D-36, Church Canon I.4).

[147] A54 (Ex. C-1, Statement of Robert Bruce Mullin at ¶ 29); A625, 665 (Ex. D-36, Church Art. V.1 and Church Canon I.10.4).

[148] A625 (Ex. D-36, Church Art. V.1).

[149] A625, 665 (Ex. D-36, Church Art. V.1 and Church Canon I.10.4).

A diocese may enact a Constitution and Canons that are subordinate to and cannot conflict with the Church's Constitution and Canons.[150]

4. Dioceses are led by diocesan bishops and a diocesan convention.[151] The General Church, through its Constitution and Canons, establishes the rules for approval, ordination, discipline, and removal of diocesan bishops. Specifically, a bishop must be approved by the leadership of a majority of the other dioceses of the General Church[152] and must be ordained by at least three other bishops designated by the Presiding Bishop of the General Church.[153] Before ordination, each bishop must affirm the General Church's written Declaration of Conformity, which states: "I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church."[154] The General Church can discipline or remove a bishop, including for "abandonment of the communion" of the General Church; violation of the Church's Constitutions or canons; or violation of the vows required of a bishop-elect in the Ordination Service for a bishop.[155]

5. Each diocese must regularly report to the Church concerning its activities and official actions. Church Canon I.6.5(a) requires dioceses to forward to the Secretary of the House of Deputies and to the Archives of the Church "immediately upon publication, two copies of the Journals of the Convention of the jurisdiction, together with Episcopal charges, statements, and such other papers as may show the state of the Church in that jurisdiction," while Canon I.6.4 requires dioceses to file annual reports "in the form authorized by the Executive Council" to that

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[150] *Id.*; *see also* A1062-63 (Ex. G-5, Iker Amicus Brief at 10-11 ("The dioceses have canons that cannot be inconsistent with national canons.")))

[151] A623-24 (Ex. D-36, Church Art. II).

[152] A623 (Ex. D-36, Church Art. II.2).

[153] *Id.*; A722 (Ex. D-36, Church Canon III.11.6).

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

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

body.[156] The Church's canons also require dioceses (and parishes) to adopt prescribed business methods for the protection of property, including annual audits by certified public accountants and adequate insurance of all buildings and their contents[157] and set forth numerous requirements for the care, control, use, and disposition of property acquired and used for the Church's mission.[158]

6. At the local level, the Church has over 7000 worshiping congregations, usually parishes.[159] The Church's Constitution and Canons state the rules for the formation and operation of parishes and other worshiping congregations under the oversight of the regional dioceses,[160] as well as the rules and procedures under which dioceses must select, train, ordain, deploy, and supervise the clergy of parishes and other worshiping congregations.[161] Church Canon I.17.8 states that "[a]ny person accepting any office of this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised."[162]

B. Facts Showing The Episcopal Diocese of Fort Worth is a Subordinate Unit of The Hierarchical Episcopal Church

7. On November 13, 1982, after obtaining approval of the General Convention,[163] the Bishop of the Episcopal Diocese of Dallas called the "Primary Convention of the Episcopal

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[156] A658 (Ex. D-36, Church Canons I.6.4 and I.6.5(a)).

[157] A658-59 (Ex. D-36, Church Canon I.7.1).

[158] A658-60, 682, 704-06 (Ex. D-36, Church Canons I.7, II.6, III.9.5).

[159] A56 (Ex. C-1, Statement of Robert Bruce Mullin at ¶ 35).

[160] A669-70 (Ex. D-36, Church Canon I.13).

[161] A627-28, 628-29, 660-62, 669-70, 679-81, 685-733, 735-37 (Ex. D-36, Church Art. VIII and X and Church Canons I.8, 12, 13, II.3; III.5-12, 15).

[162] A675-76 (Ex. D-36).

[163] A434-35 (Ex. D-17, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982) at pp. C-169-170).

Diocese of Fort Worth" to form a new diocese from within The Episcopal Church.[164] The Episcopal Church granted this permission contingent upon certification that "all of the appropriate and pertinent provisions of the Constitution and Canons of the General Convention of the Episcopal Church in the USA and the Constitution and Canons of the Diocese of Dallas have been fully complied with."[165]

8. The Primary Convention of the Episcopal Diocese of Fort Worth unanimously approved the following resolution pledging full subscription and accession to the General Church's Constitution and Canons:

> WHEREAS, the Primary Convention of the Diocese of Fort Worth, meeting at All Saints Episcopal Day School, in Fort Worth, Tarrant County, Texas, on Saturday, 13 November 1982, pursuant to approval of the 67th General Convention of The Episcopal Church, does hereby fully subscribe to and accede to the Constitution and Canons of The Episcopal Church, and
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> IN SO DOING, we unanimously hereunto set our hand this 13th day of November in the year of our lord, One Thousand Nine Hundred Eighty-Two; and the Secretary of Convention is hereby instructed to promptly inform the Secretary of General Convention by copy of this Resolution with all signatures, in accordance with Canon 1.9(4) of General Convention; and with copies of the Constitution and Canons of the Diocese of Fort Worth adopted this day.[166]

The Primary Convention also adopted the Episcopal Diocese of Fort Worth's governing Constitution, effective January 1, 1983,[167] which reaffirms the church hierarchy:

- Article 1: "The Church in this Diocese accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and recognizes the

[164] A516 (Ex. D-19, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth (1982) at p. 11).

[165] A434-35 (Ex. D-17, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982) at pp. C-169-170).

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

[167] A536 (Ex. D-21, Enabling Clause, Constitution and Canons of the Episcopal Diocese of Fort Worth (1982) at p. 18).

authority of the General Convention of said Church."[168]

- Article 18: "Canons not inconsistent with this Constitution, or the Constitution and Canons of the General Convention, may be adopted."[169]

The Episcopal Diocese of Fort Worth also adopted canons, including Canon 22 requiring every new parish under its auspices to "promise to abide by and conform to the Constitution and Canons of the General Convention and of the Diocese of Fort Worth."[170]

9. Historically, The Episcopal Church first established its ministry in the geographic territory now covered by the Episcopal Diocese of Fort Worth in 1838 with the establishment of what would be known as its "Missionary District of the Southwest."[171] In 1849, a portion of the Missionary District of the Southwest petitioned the General Convention for admission as a diocese of the Church, and the Diocese of Texas was formed and admitted by the General Convention after it acceded to the Constitutions and Canons of the Church.[172] In 1874, the Diocese of Texas petitioned the General Convention to accept cession of portions of its territory, along with all Episcopal congregations and property located therein.[173] The General Convention thereupon formed the Missionary Districts of Northern Texas and West Texas out of the ceded territory.[174] In 1878, the Missionary District of Northern Texas adopted canons that required each parish in the District to accede to the Constitution and Canons of both the Church and District and each mission in the District to promise conformity to the Constitution and Canons of

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[168] A533 (Ex. D-21, Diocesan Art. 1).

[169] A536 (Ex. D-21, Diocesan Art. 18).

[170] A539 (Ex. D-21, Diocesan Canon 22).

[171] A418 (Ex. D-12, Excerpts from the 1838 Journal of the General Convention).

[172] A806-08 (Ex. D-38, Excerpts from Proceedings of a Convention of the Clergy and Laity of the Protestant Episcopal Church in the State of Texas, 1849); A813-21 (Ex. D-39, Excerpts from the 1850 Journal of the General Convention).

[173] A823-24 (Ex. D-40, Excerpts from the Journal of the Diocese of Texas, 1874); A825-59 (Ex. D-41, Excerpts from the 1874 Journal of the General Convention).

[174] A825-59 (Ex. D-41, Excerpts from the 1874 Journal of the General Convention).

both the General Convention and the District.[175] In 1895, the General Convention gave permission to the Missionary District of Northern Texas to organize the Diocese of Dallas.[176] From the division of the Diocese of Dallas, the Episcopal Diocese of Fort Worth was formed in 1982.[177]

10. The Diocese of Dallas's Constitution, adopted in 1895, states, as the Episcopal Diocese of Fort Worth's Constitution would later state: "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,"[178] and "Canons not inconsistent with this Constitution, or the Constitution and Canons of the General Convention may be adopted."[179] In 1896, the Diocese of Dallas adopted canons, which required that each of its parishes' constitutions state:

> This Parish, as a constituent part of the Protestant Episcopal Church in the Diocese of Dallas, expressly accedes to, recognizes and adopts the Constitution, Canons, Doctrines, Discipline, and Worship of the Protestant Episcopal Church in the United States of America, and the Constitution and Canons of the Protestant Episcopal Church in this Diocese, and acknowledges their authority accordingly.[180]

11. In 1989, the Episcopal Diocese of Fort Worth adopted an amended Constitution that again included the provisions acceding to The Episcopal Church's Constitution, Canons, and

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[175] A862-63 (Ex. D-42, Excerpts from the Journal of the Fourth Annual Convocation of the Missionary District of Northern Texas, 1878).

[176] A420-21 (Ex. D-13, Excerpts from the 1895 Journal of the General Convention).

[177] A434-35 (Ex. D-17, Excerpts from the 1982 Journal of the General Convention at pp. C-169-170); A431-32 (Ex. D-16, Minutes of the Special Convention of the Diocese of Dallas (1982) at pp. 1-3).

[178] A423 (Ex. D-14, Art. II, 1895 Constitution of the Diocese of Dallas).

[179] A424 (Ex. D-14, Article XXII, 1895 Constitution of the Diocese of Dallas).

[180] A426 (Ex. D-15, Canon XIII, 1896 Canons of the Diocese of Dallas).

authority and describing Diocesan property as property "acquired for the use of the Episcopal Church in this Diocese."[181]

12. Defendant Jack Leo Iker became the Bishop of the Diocese and, thus, the Chairman of the Board of Trustees of the Diocesan Corporation, in 1994, after 1) he was elected by the Convention of the Diocese, 2) the leadership of a majority of the other dioceses of The Episcopal Church consented to his ordination as a bishop, 3) he promised in writing to "conform to the Doctrine, Discipline, and Worship of The Episcopal Church," and 4) he was ordained and consecrated as a Bishop of The Episcopal Church by the Presiding Bishop and other bishops of the Church, all in accordance with the Constitutions and canons of The Episcopal Church and of the Diocese.[182]

13. The other individual defendants (Salazar, Patton, Virden, Barber, and Bates) assumed their respective positions as Trustees of the Diocesan Corporation and of the Fund for the Endowment of the Episcopate at various times prior to November 15, 2008, by virtue of their qualification under diocesan canons as lay persons in good standing of a parish or mission in the Diocese, or members of the Clergy canonically resident in the Diocese, and their election to those offices by the Diocesan Convention.[183]

14. The Diocese has consistently sent representatives to meetings of both houses of the Church's General Convention, including to its most recent meetings in 2006 and 2009.[184] The Diocese and the clergy of the Diocese, including defendant Iker, have participated in and

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[181] A544-46 (Ex. D-25, Excerpts from Proceedings of the Seventh Annual Convention of the Episcopal Diocese of Fort Worth, 1989 at p. 21 and App. B at pp. 45, 57).

[182] A542 (Ex. D-24, Declaration of Conformity signed by Jack L. Iker); A602-05 (Ex. D-31, Order of Service for the Ordination and Consecration of the Rev. Jack Leo Iker).

[183] A885-86 (Ex. F, Wells Aff. at ¶ 9); A537 (Ex. D-21, Diocesan Canon 11).

[184] A886 (Ex. F, Wells Aff. at ¶ 10).

accepted the valuable benefits of the Church Pension Fund, reserved solely for clergy and institutions of the Church, as required by the Church's canons.[185]

C. Facts Relating to the Acquisition of Property by the Subordinate Episcopal Diocese of Fort Worth and its Congregations

15. Several provisions of the General Church's Constitution and Canons and the Diocesan Constitution and Canons concern the acquisition of property. Church Canon 1.7.4 ("the Dennis Canon"), Section 4, adopted in 1979, before the formation of the Fort Worth Diocese and that Diocese's accession to Church 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 Constitution and Canons.*[186]

16. Article 13 of the Episcopal Diocese of Fort Worth'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 a corporation known as "Corporation of the Episcopal Diocese of Fort Worth." All such property *as well as all property hereafter acquired for the use of the Church and the Diocese*, including parishes and missions, shall be vested in Corporation of the Episcopal Diocese of Fort Worth.[187]

Diocesan Canon 12.1 (now Canon 18.1) specified that property held by the Diocesan

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[185] A577 (Ex. D-28, Excerpts from the Journal of the Twelfth Annual Meeting of the Diocese of Fort Worth, 1994, at p. 41); A592, 596 (Ex. D-29, Excerpts from the Journal of the Episcopal Diocese of Fort Worth, 2006, at pp. 96, 113); A660-62 (Ex. D-36, Church Canon I.8); A539.2-3 (Ex. D-21, Diocesan Canon 39).

[186] A660 (Ex. D-36, Church Canon I.7.4 (emphasis added)).

[187] A534 (Ex. D-21, Diocesan Art. 13 (emphasis added)). Article 13 further provided that the Diocesan Corporation was to hold title to "other property belonging to the Diocese, as such," including trust and endowment accounts. *Id.*

Corporation "may only be conveyed or encumbered with the approval of the Board of Trustees and in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth."[188] Diocesan Canon 25 (now Canon 30) provided that "[t]he dedicated and consecrated Churches and Chapels of the several Parishes and Missions of the Diocese may be opened only for the services, rites and ceremonies, or other purposes, *either authorized or approved by this Church, and for no other use.*"[189]

17. As part of the creation of The Episcopal Diocese of Fort Worth in 1982, the Diocese received a transfer of all real property formerly held by the Diocese of Dallas in the 24 Texas counties that comprise the area of the Diocese of Fort Worth, as well as substantial personal property held by or for the Diocese of Dallas.[190] This property had been acquired by the Church in the preceding 144 years for its mission in this area of Texas.[191] In the court proceedings affecting this transfer, the Episcopal Diocese of Fort Worth represented to the court that it was 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 the Diocesan Corporation was, in turn, "a Texas nonprofit corporation, duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth."[192] The Diocese and Corporation requested a declaration that the Diocesan Corporation "shall henceforth own and

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[188] A538 (Ex. D-21, Diocesan Canon 12.1).

[189] A539.1 (Ex. D-21, Diocesan Canon 25 (emphasis added)).

[190] A529-30 (Ex. D-20, Journal of the Eighty-Seventh Annual Meeting of the Diocese of Dallas (1982) at pp. 14-16); A1142, 1154-58 (Ex. G-7, Judgment in *The Episcopal Diocese of Dallas v. Mattox* at p. 4 and Ex. A thereto).

[191] A418 (Ex. D-12, Excerpts from the 1838 Journal of the General Convention); A806-08 (Ex. D-38, Excerpts from Proceedings of a Convention of the Clergy and Laity of the Protestant Episcopal Church in the State of Texas, 1849); A813-21 (Ex. D-39, Excerpts from the 1850 Journal of the General Convention); A823-24 (Ex. D-40, Excerpts from the Journal of the Diocese of Texas, 1874); A825-59 (Ex. D-41, Excerpts from the 1874 Journal of the General Convention); A862-63 (Ex. D-42, Excerpts from the Journal of the Fourth Annual Convocation of the Missionary District of Northern Texas, 1878).

[192] A1075 (Ex. G-6, Plaintiff's Original Petition in *The Episcopal Diocese of Dallas v. Mattox* at p. 2).

control" this property "pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth."[193]

18. On August 22, 1984, the District Court of Dallas County issued a declaratory judgment approving the transfer.[194] 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."[195]

19. In addition to this real and personal property in 23 counties, the Episcopal Diocese of Fort Worth also received an initial $100,000 from the operating funds of The Episcopal Church's Diocese of Dallas.[196]

D. Facts Showing the Breakaway Faction's Material Admissions in Prior Court Proceedings

20. Defendant Jack Leo Iker ("Iker") is one of the leaders of the breakaway faction.[197] In the 1990's, while Iker was still the Bishop of the Episcopal Diocese of Fort Worth, a parish within the Diocese, The Church of the Holy Apostles, purported to leave The Episcopal Church and join an unrelated hierarchical religious entity, but continued to occupy the Church's local

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[193] A1086-88 (Ex. G-6, Plaintiff's Original Petition in *The Episcopal Diocese of Dallas v. Mattox* at pp. 13-15).

[194] A1139-1206 (Ex. G-7, Judgment in *The Episcopal Diocese of Dallas v. Mattox*).

[195] A1140 (Ex. G-7, Judgment in *The Episcopal Diocese of Dallas v. Mattox* at p. 2).

[196] A529-30 (Ex. D-20, Journal of the Eighty-Seventh Annual Meeting of the Diocese of Dallas (1982) at pp. 14-16).

[197] A883-84 (Ex. F, Wells Aff. at ¶ 4).

property.[198] Iker testified by affidavit in support of a motion for summary judgment to recover the property from the breakaway group.[199] Iker averred that the breakaway parties:

> are not members of the true Church of the Holy Apostles because they have joined the Antiochean Orthodox Church and thereby have abandoned communion with The Episcopal Church, and such Schismatic and Purported Holy Apostles is not in union with the Diocese, all as required by canon law.[200]

In support of this conclusion, Iker averred:

> The Diocese is an *hierarchical church*, meaning . . . each parish consists of members of The Episcopal Church confirmed in or transferred to that parish . . . . Under the Constitution of the Diocese and under Canon law, no person may be a member of a parish who is not a member of The Episcopal Church.[201]

Iker's Canons (or assistants), Reverend Canon Billie Boyd and Reverend Canon Charles A. Hough, III, also submitted affidavits in the litigation. Boyd quoted in his testimony the Diocesan Article 1 accession to the Church and testified:

> [E]ach Parish within The Episcopal Diocese of Fort Worth 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.[202]

Hough confirmed the Diocese's view that the rules of The Episcopal Church, including the Church's property rules, are applicable to the Diocese, as the affidavit quotes from and attached a copy of the Church's express trust canon, Canon I.6.4 (now I.7.4).[203] The Holy Apostles litigation resulted in a settlement by which the Corporation recovered the real and personal

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[198] A982-1001 (Ex. G-1, Second Amended Original Petition in *Corp. of the Episcopal Diocese of Fort Worth v. McCauley*); A1012-16 (Ex. G-2, Iker Aff.).

[199] A1002-33 (Ex. G-2, Motion for Summary Judgment, including Iker Aff.).

[200] A1015 (Ex. G-2, Iker Aff. at 4).

[201] A1012-13 (Ex. G-2, Iker Aff. at 1-2 (emphasis added)).

[202] A1036-37 (Ex. G-3, Boyd Aff. at 1-2).

[203] A1039 (Ex. G-3, Hough Aff. at 2).

property of the Church of the Holy Apostles for that parish, the Corporation, and the Episcopal Diocese of Fort Worth.[204]

21. In 2002, Iker, at that time still an Episcopal Bishop, filed "BRIEF OF AMICI CURIAE RT. REV. JACK LEO IKER, BISHOP OF THE EPISCOPAL DIOCESE OF FORT WORTH [and another diocesan bishop]" in the United States Court of Appeals for the Fourth Circuit, in a case involving another Episcopal Diocese.[205] There, Iker told the court through counsel:

- "The Rt. Rev. Jack Leo Iker is the Bishop of the Diocese of Fort Worth (Texas) of the Episcopal Church USA..."[206]
- "As Bishops of the Church, they have a vital interest in the correct interpretation of church polity, doctrine and faith..."[207]
- "The lower court misunderstood the polity of the Episcopal Church USA (hereinafter 'Episcopal Church', 'ECUSA' or 'the Church'), specifically in reference to the nature, power and role of a bishop within the Episcopal Church. The court's misunderstanding led to at least three reversible errors in the court's ruling."[208]
- An "Episcopal bishop, unlike perhaps a bishop of the Roman Catholic Church, is governed by the constitution and canons of the Church."[209]
- "A bishop must adhere to the constitution and canons of the Church or be subject to discipline."[210]
- "ECUSA has a national body that leads the overall church through its General Conventions, with the first national convention in 1789 and the most recent in 2000. Among other things, the General Convention is the body which alters and revises the Canons of the Church. Below that are various dioceses which are generally geographical in nature. The national church is governed by the

[204] A978 (Ex. G, Nelson Aff. at ¶ 3).

[205] A1047-73 (Ex. G-5, Iker Amicus Brief).

[206] A1053 (Ex. G-5, Iker Amicus Brief at 1).

[207] *Id.*

[208] A1054 (Ex. G-5, Iker Amicus Brief at 2).

[209] *Id.*

[210] A1056 (Ex. G-5, Iker Amicus Brief at 4.

Constitution and Canons of ECUSA, as Revised by the Convention of 2000. *The dioceses have canons that cannot be inconsistent with national canons.*"[211]

- "To allow each diocesan bishop absolute freedom to determine who is and is not duly qualified would, in part, render ECUSA a loose association of independent regional church bodies. There must be some national standard by which 'duly qualified' can be determined."[212]

- "[I]n a constitutionally ordered church such as ECUSA that freely permits movement of its clergy between dioceses, the decision of a bishop must be governed by a more objective standard."[213]

E. Facts Showing the *Ultra Vires* Conduct of the Breakaway Faction

22. Church Canon I.17.8, entitled "Fiduciary Responsibility," states: "*Any person* accepting *any office* of this Church shall well and faithfully perform the duties of that office *in accordance with the Constitution and Canons of this Church and of the Diocese* in which the office is being exercised."[214]

23. Under Article VIII of the Church's Constitution and the Ordination services of its Prayer Book, all clergy of the Church must vow in a written Declaration of Conformity: "I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church."[215]

24. Under Church Canons IV.1 and IV.9, abandonment of the communion of the General Church,[216] violation of the Church's Constitutions or canons,[217] and violation of the

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[211] A1062-63 (Ex. G-5, Iker Amicus Brief at 10-11 (footnotes omitted) (emphasis added)).

[212] A1063 (Ex. G-5, Iker Amicus Brief at 11).

[213] A1065 (Ex. G-5, Iker Amicus Brief at 13).

[214] A675-76 (Ex. D-36, Church Canon I.17.8 (emphasis added)).

[215] A627-28 (Ex. D-36, Church Art. VIII).

[216] A773-74 (Ex. D-36, Church Canon IV.9).

[217] A738 (Ex. D-36, Church Canon IV.1.1(e)).

vows required of a bishop-elect in the Ordination Service for a bishop[218] are all grounds for discipline and removal.

25. Under Diocesan Canon 11 (now Canon 17), Trustees of the Corporation must be lay persons "*in good standing* of a parish or mission in the Diocese" or members of the Clergy "*canonically resident* in the Diocese," and must conduct themselves "*in accordance with the Constitution and Canons of the Diocese*," which includes its Article 1 accession to the Constitution and Canons of The Episcopal Church.[219]

26. On or about September 5, 2006, Iker's faction filed with the Texas Secretary of State "Amended and Restated Articles of Incorporation of Corporation of the Episcopal Diocese of Fort Worth," which purported to:

- delete provisions describing the property authorized to be held by the Diocesan Corporation as property "acquired for the use of the Episcopal Diocese of Fort Worth as well as the real property of all parishes, missions and diocesan institutions";
- delete provisions stating that this property "shall be administered in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth"; and
- 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]" in the event of a dispute or challenge regarding the identity of the Bishop, and "the sole authority to appoint, as provided in the Bylaws of the Corporation a Chairman of the Board" in the event the Diocese is without a Bishop.[220]

27. In September 2008, Iker produced various written statements urging the congregations and members of the Episcopal Diocese of Fort Worth to separate from The

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[218] A738-39 (Ex. D-36, Church Canon IV.1.1(h)).

[219] A537 (Ex. D-21, Diocesan Canon 11 (now Canon 17) (emphasis added)).

[220] *Compare* A1209-12 (Ex. G-8, Original Articles IV(1), IV(2), and VI) *with* A1222-25 (Ex. G-11, Amended and Restated Articles filed by Iker's faction).

Episcopal Church and "realign" with the Anglican Province of the Southern Cone, a church based in South America.[221]

28. On November 14-15, 2008, Iker's faction purported, by local majority vote, to break away from The Episcopal Church, delete its Article I unqualified accession to the Church, and pledge allegiance to the Southern Cone entity.[222] On November 16, 2008, Iker and his subordinates distributed a written public statement entitled "As We Realign," stating:

> By voting to change our diocesan Constitution and Canons, we have withdrawn from the General Convention, dissociating ourselves from . . . The Episcopal Church. We have realigned with another Province of the Anglican Communion . . . . Our Bishop, clergy, and congregations have been received into the fellowship of the Anglican Province of the Southern Cone.[223]

29. Since at least November 15, 2008, Iker, the former members of the Diocesan Standing Committee, and the former Trustees of the Diocesan Corporation and the Fund for the Endowment of the Episcopate, defendants Salazar, Patton, Virden, Barber, Bates, and Iker, have continued to use the identity, trademarks, property, and assets of The Episcopal Diocese of Fort Worth and its Corporation, as an instrument of the Southern Cone church, which is not affiliated with or part of The Episcopal Church.[224] On April 21, 2009, defendant Iker caused to be filed with the Secretary of State a purported "correction" to the Diocesan Corporation's articles, still

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[221] A883 (Ex. F, Wells Aff. at ¶ 3); A889 (Ex. F-1, Third Report from the Bishop and Standing Committee concerning The Anglican Province of the Southern Cone); A890-92 (Ex. F-2, "10 Reasons Why Now is the Time to Realign").

[222] A883-84 (Ex. F, Wells Aff. at ¶ 4); A893-94 (Ex. F-3, Report from the Constitution and Canons Committee, showing amendments to Diocesan Constitution); A895 (Ex. F-4, Proposed Resolution for Admission to the Anglican Province of the Southern Cone); A896-97 (Ex. F-5, "As We Realign").

[223] A896-97 (Ex. F-5).

[224] A8 (Ex. A, Ohl Aff. at ¶ 6); A33 (Ex. B, Gulick Aff. at ¶¶ 15-16); A887 (Ex. F, Wells Aff. at ¶ 13); A905-16 (Ex. F-9, Examples of Unauthorized use of Diocesan Name and Shield).

claiming that he and the other individual defendants are the current trustees of the Diocesan Corporation.[225]

30. The Diocesan Corporation holds title to substantial real and personal property of the Diocese acquired by it as an instrument and constituent part of the Church, pursuant to the declaratory judgment described above and subsequently.[226] Other property, including operating accounts of the Diocese and restricted and unrestricted funds of the Diocese, including the Fund for the Endowment of the Episcopate, is to be and historically has been held and controlled by the Episcopal Diocese of Fort Worth and its officers directly.[227] Since November 15, 2008, defendant Iker and the other defendants have used such property, even though they no longer have any connection with The Episcopal Church or with the Episcopal Diocese of Fort Worth.[228]

31. During this entire time, the continuing local members of The Episcopal Church, the Local Episcopal Parties, have continued to worship in Fort Worth, as a part of The Episcopal Church's Episcopal Diocese of Fort Worth.[229] The Local Episcopal Parties have requested that such property be returned for use in support of the mission of The Episcopal Church and its Diocese of Fort Worth to no avail, necessitating this action.[230]

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[225] A32 (Ex. B, Gulick Aff. at ¶ 10); A1231-36 (Ex. G-13, Certificate of Correction to Amended and Restated Articles of Incorporation of Corporation of the Episcopal Diocese of Fort Worth).

[226] A32 (Ex. B, Gulick Aff. at ¶ 11); A1139-1206 (Ex. G-7, Judgment in *The Episcopal Diocese of Dallas v. Mattox*).

[227] A32 (Ex. B, Gulick Aff. at ¶ 12).

[228] A8 (Ex. A, Ohl Aff. at ¶ 6); A33 (Ex. B, Gulick Aff. at ¶¶ 15-16); A887 (Ex. F, Wells Aff. at ¶ 13); A905-16 (Ex. F-9, Examples of Unauthorized use of Diocesan Name and Shield).

[229] A9-10 (Ex. A, Ohl Aff. at ¶ 13); A885-86 (Ex. F, Wells Aff. at ¶ 9).

[230] A8 (Ex. A, Ohl Aff. at ¶ 6); A33 (Ex. B, Gulick Aff. at ¶ 14); A40-41 (Ex. B-2, Demand Letter from Kathleen Wells, Chancellor of the Diocese).

F. Facts Showing TEC's Discipline and Removal of the Breakaway Faction

32. On December 5, 2008, the Presiding Bishop, with the advice and consent of a majority of the members of her Advisory Council, declared that Iker had voluntarily renounced his ordained ministry in the Church and that, pursuant to Church Canon III.12.7(a), he was "therefore, removed from the Ordained Ministry of [the] Church and released from the obligations of Ministerial offices" in the Church.[231] Under Church law, Iker thereby ceased to be a bishop of the Church or the Diocese,[232] and Iker's positions as Bishop of The Episcopal Church's Diocese of Fort Worth and Chair of the Board of Trustees of the Diocesan Corporation terminated under the Church's and the Diocese's canons.[233]

33. On December 15, 2008, the Presiding Bishop wrote the former members of the Standing Committee of the Diocese (The Rev. Christopher Cantrell, The Rev. Thomas Hightower, Judy Mayo, The Rev. Timothy Perkins, Franklin Salazar, and Walter Virden) and stated that "[y]our recent actions demonstrate that you have been and are unable to well and faithfully fulfill your duties as members of the Standing Committee of the Episcopal Diocese of Fort Worth under Canon I.17.8. Accordingly, with this letter I inform you that I do not recognize you as the Standing Committee of the Episcopal Diocese of Fort Worth."[234]

34. On February 7, 2009, after determining that, at that time, there was "no Bishop of the Episcopal Diocese of Fort Worth, or any qualified members of the Standing Committee of that Diocese,"[235] the Presiding Bishop called to order a special meeting of the Convention of The Episcopal Church's Diocese of Fort Worth at which the Diocese, in consultation with the

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[231] A608 (Ex. D-33, Renunciation of Ordained Ministry and Declaration of Removal and Release).

[232] A730 (Ex. D-36, Church Canon III.12.7(a).

[233] *Id.*; A537 (Ex. D-21, Diocesan Canon 11).

[234] A1263-64 (Ex. H-5, Letter from the Presiding Bishop to six former members of the Standing Committee).

[235] A900 (Ex. F-7, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth).

Presiding Bishop, elected the Rt. Rev. Edwin F. Gulick, Jr. "to exercise all the duties and offices of the Bishop of the Diocese."[236] Bishop Gulick began serving as the Bishop of the Episcopal Diocese of Fort Worth and the Chair of the Board of the Diocesan Corporation.[237]

35. On February 7, 2009, the Diocesan Convention also recognized and declared that numerous leadership positions within the Diocese were vacant, including members of the Standing Committee, Executive Council, and the Board of Trustees of the Diocesan Corporation.[238] Bishop Gulick, as Chairman of and only director on the Board of the Corporation, then appointed five clergy and laity of the Diocese (Robert M. Bass, The Rev. James Hazel, Cherie Shipp, The Rev. John Stanley, and Trace Worrell) to serve as Trustees of the Diocesan Corporation, pursuant to Article II.9 of the 2006 Diocesan Corporation's bylaws and Diocesan Canon 17, and with the advice of the Convention.[239] The Convention also elected members of the Standing Committee of the Diocese (Margaret Mieuli, Anne T. Bass, Walt Cabe, The Rev. Fred Barber, The Rev. Chris Jambor, and the Rev. David Madison), as well as Deputies to the forthcoming meeting of the Church's General Convention in July 2009.[240] Vacant seats on the Executive Council were filled either by the Convention on February 7, 2009, or shortly after

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[236] A28 (Ex. B, Gulick Aff. at ¶ 3); A900 (Ex. F-7, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth); A939-40 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 19-20).

[237] A28 (Ex. B, Gulick Aff. at ¶¶ 2-3); A939-40 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 19-20).

[238] A29 (Ex. B, Gulick Aff. at ¶ 4); A941-43 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 21-23).

[239] A29 (Ex. B, Gulick Aff. at ¶ 5); A948 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at p. 33).

[240] A29 (Ex. B, Gulick Aff. at ¶ 4); A948-50 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 33-35)

the meeting of the Convention by various Diocesan entities entitled under the canons of the Diocese to fill particular seats on the Executive Council.[241]

36. The February 2009 Diocesan Convention passed a resolution recognizing and declaring that the 2008 purported amendment to the Diocesan Constitution to eliminate the accession clause, as well as certain other constitutional and canonical amendments, were *ultra vires* and void.[242]

37. At a meeting held on April 4, 2009, Bishop Gulick and the other trustees of the Diocesan Corporation passed a resolution recognizing and declaring that the 2006 purported amendments to the Diocesan Corporation's Articles and bylaws were *ultra vires* and void, and approved "Amended and Restated Articles of Incorporation," which include the original provisions linking the Diocesan Corporation with the Episcopal Diocese of Fort Worth and which accurately identify the current Trustees of the Corporation as the persons currently serving as Bishop of the Episcopal Diocese of Fort Worth and the other trustees recognized and approved by that body.[243] These Amended and Restated Articles were filed with the Texas Secretary of State on April 14, 2009.[244]

38. On November 14, 2009, at the 27th Annual Meeting of the Diocesan Convention of the Episcopal Diocese of Fort Worth, the Convention elected and installed Bishop Ohl as the provisional bishop of the Episcopal Diocese of Fort Worth.[245] Since November 14, 2009, Bishop Ohl has served as the provisional bishop of The Episcopal Church's Diocese of Fort Worth,

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[241] A29 (Ex. B, Gulick Aff. at ¶ 4).

[242] A29 (Ex. B, Gulick Aff. at ¶ 6); A943-47 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 23-27).

[243] A31 (Ex. B, Gulick Aff. at ¶ 9); A35-39 (Ex. B-1, Amended and Restated Articles of Incorporation).

[244] A1226-30 (Ex. G-12, Amended and Restated Articles of Incorporation).

[245] A3-5 (Ex. A, Ohl Aff. at ¶ 4); A967, 971 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 77, 86).

exercising "all the duties and offices" of the Bishop of the Diocese as authorized under Episcopal Church Canon III.13.[246] The Episcopal Church recognizes the election and leadership of Bishop Ohl.[247]

39. The current members of the Standing Committee of the Episcopal Diocese of Fort Worth under Bishop Ohl (Margaret Mieuli, Walt Cabe, Anne T. Bass, The Rev. J. Frederick Barber, The Rev. Christopher Jambor, and The Rev. David Madison) were elected on February 7, 2009 at the Special Meeting of the Diocesan Convention.[248] The current Trustees of the Corporation of the Episcopal Diocese of Fort Worth under Bishop Ohl (The Rev. James Hazel, Cherie Shipp, Trace Worrell, Robert M. Bass, and The Rev. John Stanley) were appointed by Bishop Gulick on February 7, 2009, elected on the same day at the Special Meeting of the Diocesan Convention,[249] and re-elected at the Annual Meeting of the Diocesan Convention on November 14, 2009.[250] The Rt. Rev. C. Wallis Ohl automatically assumed his position as Chair of the Board of Trustees of the Corporation of the Episcopal Diocese of Fort Worth when he became Provisional Bishop at the November 2009 Diocesan Convention.[251] The current members of the Board of the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth under Bishop Ohl (Robert Hicks, Floyd McKneely, Shannon Shipp,

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[246] A3-5 (Ex. A, Ohl Aff. at ¶ 4).

[247] A5-7 (Ex. A, Ohl Aff. at ¶ 5); A23-25 (Ex. A-2, Letters of Congratulations and Commendation); A365-66 (Ex. D-3, Excerpts from the Episcopal Church Annual, 2010).

[248] A948-49 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 33-34).

[249] A948 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at p. 33).

[250] A3-4 (Ex. A, Ohl Aff. at ¶ 4).

[251] A967 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at p. 77); A537 (Ex. D-21, Diocesan Canon 11.2 (now Canon 17.2)).

David Skelton, Whit Smith, The Rev. James Hazel, and Anne T. Bass) were appointed on February 7, 2009 by Bishop Gulick and re-appointed by Bishop Ohl on November 14, 2009.[252]

40. The Episcopal Church, at its highest levels of authority, recognizes the clergy, Trustees, Standing Committee Members, and other officers aligned with Bishops Gulick and now with Bishop Ohl and The Episcopal Church as the true, authorized leadership of the Episcopal Diocese of Fort Worth and its Corporation:

- The February 7, 2009 special meeting electing Bishop Gulick was called to order by the Presiding Bishop of The Episcopal Church.[253]
- Bishop Gulick and his Standing Committee have been asked to give their canonical consents to the ordination of new bishops who have been elected by other dioceses of the Church since February 7, 2009.[254]
- The *Episcopal Church Annual* for 2009, a publication listing the Church's clergy, dioceses, parishes and missions based on data provided by the Church's General Convention Office, includes the Diocese of Fort Worth formed in 1983 as a constituent diocese and identifies Bishop Gulick as the provisional Bishop of the Diocese.[255]
- Bishop Gulick and the Deputies elected on February 7, 2009 were invited to, and participated as, representatives of the Episcopal Diocese of Fort Worth at The Episcopal Church's meeting of the General Convention in July 2009.[256]
- The Diocese's annual report that Episcopal Church Canon I.6 requires each diocese to file has been accepted by The Episcopal Church's Executive Council.[257]
- At its July 2009 meeting, the General Convention adopted a resolution which explicitly commended Episcopalians in the Diocese of Fort Worth and three other

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[252] A953 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at pp. 39, 84).

[253] A28 (Ex. B, Gulick Aff. at ¶ 3; A939 (Ex. F-11, Excerpts from 2009 Journal of Special Convention and Diocesan Convention at p. 19); A900 (Ex. F-7, Notice of Special Meeting).

[254] A30 (Ex. B, Gulick Aff. at ¶ 7); A609-10 (Ex. D-34, Consent forms signed by Bishop Gulick and the Standing Committee).

[255] A31 (Ex. B, Gulick Aff. at ¶ 7); A613-14 (Ex. D-35, Excerpt from The Episcopal Church Annual for 2009).

[256] A30-31 (Ex. B, Gulick Aff. at ¶ 7); A869 (Ex. E-1, Excerpts from the 2009 Journal of the General Convention at p. 50).

[257] A31 (Ex. B, Gulick Aff. at ¶ 7); A877-80 (Ex. E-2, 2009 Annual Report of the Episcopal Diocese of Fort Worth).

dioceses "for their unflagging efforts to continue to live as witnesses to the mission of The Episcopal Church during recent difficult times as they reorganize their continuing dioceses," and further resolved that "the leadership in each of those four continuing dioceses be commended for their similar efforts, including in particular the Rt. Rev. Edwin F. Gulick, Provisional Bishop of the Diocese of Fort Worth... and especially the strong lay leadership of each diocese;" and that "the deputations from those four continuing dioceses be extended a special welcome to this 76th General Convention of The Episcopal Church."[258]

- The Episcopal Church has recognized Bishop Ohl as the new Bishop of The Episcopal Church's Diocese of Fort Worth and has recognized the current leadership of the Diocese as the persons authorized to govern the Diocese.[259] For example:

- As the person serving as the Bishop of the Diocese, Bishop Ohl has been asked to give canonical consent to the ordination of new bishops who have been elected by other dioceses of the Church.[260]

- Bishop Ohl's Standing Committee, elected by the Conventions of the Diocese on February 7, 2009 and November 14, 2009, has been asked to give its canonical consent to the ordination of new bishops who have been elected by other dioceses of the Church.[261]

- Bishop Ohl has been recognized and accepted by the Church's House of Bishops as the person holding the office of the Bishop of Fort Worth and attended the March 2010 and September 2010 meetings of the House of Bishops of The Episcopal Church in that capacity.[262]

- The Episcopal Church's Executive Council has accepted the annual report of the Diocese that Episcopal Church Canon I.6 requires each diocese to file, which the Diocese, under Bishop Ohl's supervision, completed.[263]

- The Episcopal Church Annual for 2010, the standard directory of clergy, dioceses, parishes, and congregations of The Episcopal Church, continues to include the Episcopal Diocese of Fort Worth and identifies Bishop Ohl as the Provisional Bishop of that Diocese.[264]

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[258] A871, 875-76 (Ex. E-1, Excerpts from the 2009 Journal of the General Convention at pp. 354, 734-35).

[259] A5-7(Ex. A, Ohl Aff. at ¶ 5).

[260] A6 (Ex. A, Ohl Aff. at ¶ 5); A1262 (Ex. H-4, Consent forms signed by Bishop Ohl).

[261] A6 (Ex. A, Ohl Aff. at ¶ 5); A610 (Ex. D-34, Consent form signed by the Standing Committee).

[262] A6 (Ex. A, Ohl Aff. at ¶ 5).

[263] *Id.*; A877-80 (Ex. E-2, 2009 Annual Report of the Episcopal Diocese of Fort Worth).

[264] A6 (Ex. A, Ohl Aff. at ¶ 5); A363, 365-66 (Ex. D-3, Excerpts from the Episcopal Church Annual, 2010).

- The Diocese was the host diocese for the triennial National Chancellors' Conference in Fort Worth of the Episcopal Chancellors' Conference on May 6-8, 2010, where over 75 chancellors (the chief legal officer of each diocese) from across the other 110 dioceses of The Episcopal Church have registered, and the diocesan chancellor, Kathleen Wells, served on several panels making presentations at the conference.[265]

- The Diocese was the host diocese for a regional and Province VII training on 2009 revisions to the Title IV ecclesiastical disciplinary canons on May 5, 2010, with church officials from numerous other dioceses attending.[266]

- The Executive Council of the Episcopal Church has scheduled its quarterly meeting in Fort Worth on February 16-18, 2011. Katie Sherrod, the Communications Director of the Diocese, was elected as a member of the Executive Council at the 2009 meeting of General Convention and continues to serve on that body of the Church.[267]

- The Church's CREDO program led a seminar entitled "Strength for the Journey," on September 24-25, 2010 in Arlington, Texas, for more than 150 clergy and lay leaders of the Diocese of Fort Worth to encourage and to instruct in means to continue the reorganization of the ministry of the continuing Diocese, despite the disruptions caused by former leaders who left the Church and the Diocese and continue to possess temporarily its property and funds.[268]

- Four of the deputies from the Episcopal Diocese of Fort Worth to the Church's 2009 General Convention were appointed by Church authorities to various committees, commissions, agencies, and boards of The Episcopal Church: Katie Sherrod to the Communications Committee; The Rev. Canon Courtland Moore to the Social and Urban Concerns Committee; Kathleen Wells to the Standing Commission on Constitution and Canons; and The Rev. David Madison to the Program Budget and Finance Committee.[269]

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[265] A6-7 (Ex. A, Ohl Aff. at ¶ 5).

[266] A7 (Ex. A, Ohl Aff. at ¶ 5).

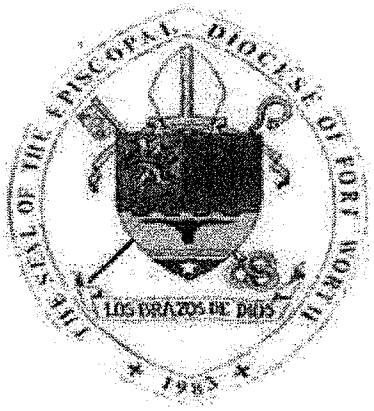
[267] *Id.*

[268] *Id.*

[269] *Id.*

G. Facts Relating to the Breakaway Faction's Use of the Local Episcopal Parties' Trademarks After Leaving The Episcopal Church

41. Since at least June 1983, The Episcopal Church has been providing religious services in the north-central Texas area using the name "Episcopal Diocese of Fort Worth" and the seal below:[270]



42. Through this use, the Episcopal Diocese of Fort Worth, as an instrument of The Episcopal Church, has established substantial goodwill and protectable rights in the service marks.[271] Those rights have been recognized by the United States Patent and Trademark Office, which granted Federal Registration Nos. 3,820,400 (name) and 3,826,996 (seal) for the service marks.[272]

43. The breakaway faction formally severed ties with The Episcopal Church on November 15, 2008.[273] The Episcopal Church officially deposed, inhibited, and removed all authority from these persons in November and December of 2008.[274] After those dates, the

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[270] A886 (Ex. F, Wells Aff. at ¶ 11); A804 (Ex D-37, Excerpt from the Episcopal Church Annual for 1984).

[271] A886-87 (Ex. F, Wells Aff. at ¶ 12).

[272] *Id.*; A901-04 (Ex. F-8, Certificates of Registration for Diocesan Name and Seal).

[273] *Supra* at n. 222.

[274] A608 (Ex. D-33, Renunciation of Ordained Ministry and Declaration of Removal and Release of the Rt. Rev. Jack Leo Iker, December 5, 2008); A1263-64 (Ex. H-5, Letter to six former members of the Standing Committee of

breakaway faction continued to use the Episcopal Diocese of Fort Worth's service marks in connection with their provision of religious services.[275] This includes the use and display of the service marks in "official" communications and on the breakaway faction's website http://www.fwepiscopal.org.[276]

44. On March 3, 2009, Kathleen Wells, on behalf of the Episcopal Diocese of Fort Worth aligned with The Episcopal Church, sent a letter to William McGee, counsel for the breakaway faction, requesting, among other things, that the breakaway faction cease its use of the service marks.[277] Despite this request, the breakaway faction continues to use the Episcopal Diocese of Fort Worth's service marks.[278]

VIII. CONCLUSION AND PRAYER

Under indisputable facts and century-old Texas and United States Supreme Court law:

- The Episcopal Church is a hierarchical church.
- The Local Episcopal Parties are the legally-recognized leaders of the Episcopal Diocese of Fort Worth, the Corporation of the Episcopal Diocese of Fort Worth, the Board of the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth, and the Diocese's subordinate institutions.
- The Local Episcopal Parties are the legal owners of local church property, which must be used for the mission of The Episcopal Church.

Movants, the Local Episcopal Parties, pray that the Court grant their Motion for Partial Summary Judgment and enter by summary judgment a declaration that:

1. There is only one Episcopal Diocese of Fort Worth.

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the Diocese from the Presiding Bishop, December 15, 2008); A900 (Ex. F-7, Notice of Special Meeting from Presiding Bishop recognizing vacancies in Diocesan leadership positions).

[275] A8 (Ex. A, Ohl Aff. at ¶ 6); A33 (Ex. B, Gulick Aff. at ¶¶ 15-16); A887 (Ex. F, Wells Aff. at ¶ 13); A905-16 (Ex. F-9, Examples of Unauthorized use of Diocesan Name and Shield).

[276] A887 (Ex. F, Wells Aff. at ¶ 13.

[277] A33 (Ex. B, Gulick Aff. at ¶ 14); A40-41 (Ex. B-2, Demand Letter from Kathleen Wells).

[278] A8 (Ex. A, Ohl Aff. at ¶ 6); A33 (Ex. B, Gulick Aff. at ¶¶ 15-16); A887 (Ex. F, Wells Aff. at ¶ 13).

2. The Episcopal Diocese of Fort Worth is the same continuing Episcopal Diocese of Fort Worth established by The Episcopal Church in 1983 as a constituent part of The Episcopal Church.

3. There is only one Bishop of the Episcopal Diocese of Fort Worth. From February 7, 2009 to November 14, 2009, The Rt. Rev. Edwin F. Gulick was the Bishop of the Episcopal Diocese of Fort Worth. Since November 14, 2009, The Rt. Rev. C. Wallis Ohl has been and is the Bishop of the Episcopal Diocese of Fort Worth. The Bishop of the Episcopal Diocese of Fort Worth is Bishop Ohl or his successor(s) recognized by and in communion with The Episcopal Church.

4. There is only one Standing Committee of the Episcopal Diocese of Fort Worth. Margaret Mieuli, Walt Cabe, Anne T. Bass, The Rev. J. Frederick Barber, The Rev. Christopher Jambor, and The Rev. David Madison (or their successors recognized by and in communion with The Episcopal Church) are the Standing Committee of the Episcopal Diocese of Fort Worth.

5. There is only one Corporation of the Episcopal Diocese of Fort Worth. The Rev. James Hazel, Cherie Shipp, Trace Worrell, Robert M. Bass, The Rev. John Stanley, and The Rt. Rev. C. Wallis Ohl (or their successors recognized by and in communion with The Episcopal Church) are the Trustees of the Corporation of the Episcopal Diocese of Fort Worth.

6. There is only one Endowment of the Episcopate of the Episcopal Diocese of Fort Worth. Robert Hicks, Floyd McKneely, Shannon Shipp, David Skelton, Whit Smith, the Rev. James Hazel, and Anne T. Bass (or their successors recognized by and in communion with The Episcopal Church) are the members of the Board of

the Fund for the Endowment of the Episcopate of the Episcopal Diocese of Fort Worth.

7. All property of any character or kind of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or its other Diocesan institutions must be used for the mission of The Episcopal Church.

8. The members of the breakaway faction, identified *supra* at note 2, may not divert, alienate, or use any property of any character or kind of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions.

9. The actions of the members of the breakaway faction, identified *supra* at note 2, seeking to withdraw the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions or any property of any character or kind from The Episcopal Church were and are unauthorized, void, and without effect.

10. The actions of the members of the breakaway faction, identified *supra* at note 2, since November 15, 2008 purportedly in the name of the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions were and are unauthorized, void, and without effect.

11. The actions of the members of the breakaway faction, identified *supra* at note 2, in August and September 2006, and again in April 2009, purporting to amend or alter the Articles of Incorporation of the Corporation of the Episcopal Diocese of Fort Worth with the Secretary of State were and are unauthorized, void, and without effect.

In addition, Movants, the Local Episcopal Parties, pray that the Court grant their Motion for Partial Summary Judgment and enter by summary judgment an order that the members of the breakaway faction, identified *supra* at note 2, relinquish control of any property of any character or kind of The Episcopal Church, The Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions within one (1) week of the signing of this Order and deliver said property to the Local Episcopal Parties acting for the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, or other Diocesan institutions, as well as for such other and further relief, including costs, to which the Local Episcopal Parties are justly entitled.

Respectfully submitted,

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NOTICE OF HEARING

Plaintiffs' and Third-Party Defendants'/Counterclaimants' Motion for Partial Summary Judgment will be heard on _____, 2010 at _____.m.

_____
PRESIDING JUDGE

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Partial Summary Judgment has been sent this 18th day of October, 2010, by hand-delivery or Federal Express, to:

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