

Bishop asks legal team to respond to misinformation

August 8, 2017

As you may know, last week [the Supreme Court of South Carolina](#) ruled against the former bishop and others attempting to take a diocese out of The Episcopal Church while claiming Episcopal Church property. And while we rejoice with the Episcopalians there, we also hold all involved in our prayers. We, better than most, understand that all litigation takes a toll on all involved.

Our legal team notes that South Carolina was one of the few states cited by the breakaways to justify their actions. But as one South Carolina justice wrote, South Carolina's new ruling is "consistent with the majority of state court decisions." The Episcopal Church has prevailed in case after case.

The Fort Worth Court of Appeals will decide our case based on the law and facts. Recently, however, there has been some misleading information put out about how the South Carolina ruling might affect our case here in Fort Worth. So I asked our legal team to address the misstated legal implications in a statement we could share with those interested. They sent the information below in response to my request. They have also [filed a detailed filing with the Second Court of Appeals](#). I am sharing it with you knowing you will read it carefully. As always, please remember that speculation and public comment on litigation are discouraged.

Faithfully in Christ,

Scott Mayer
Provisional Bishop
Episcopal Diocese of Fort Worth

Legal Team Response

Churches, not courts, decide religious questions

Just like in our case, the South Carolina breakaways claimed to take an Episcopal diocese and congregations from The Episcopal Church. The South Carolina Supreme Court made clear: only The Episcopal Church can decide who controls an Episcopal diocese and congregations, even in a case about property. The Texas Supreme Court said the same thing. So did the U.S. Supreme Court.ⁱ

This is critical. The breakaways in our case admit that the property they took is in trust for the Episcopal diocese and congregations.ⁱⁱ Only The Episcopal Church can decide who controls the Episcopal diocese and congregations.ⁱⁱⁱ The breakaways must return the property to the only authorized representatives of the Episcopal diocese and congregations: the Episcopal Plaintiffs.

Property disputes don't erase the First Amendment

The South Carolina court rejected the same arguments that the breakaways make in our Fort Worth case. As in South Carolina, the breakaways in our case claim that, if property is involved, a court can *override* the Church on who controls a diocese or congregation.^{iv} South Carolina rejected that view and called it a "distorted" approach – just like the U.S. and Texas Supreme Courts rejected that view.^v

Why it matters

South Carolina law applies to South Carolina, not Texas, but the opinion is still noteworthy. In the past, breakaway groups often cited to outlier positions from South Carolina to justify taking property from their churches. Now they cannot. In the words of one South Carolina justice, the new ruling from South Carolina is “consistent with the majority of state court decisions.”^{vi}

The First Amendment is clear: only the loyal Episcopalians authorized by The Episcopal Church can control the Episcopal diocese and congregations. And since, in our case, it is undisputed that the property taken by the breakaways is in trust for the Episcopal diocese and congregations, the property should be returned to those Episcopal entities without further inquiry.

Other issues

In a recent statement, the breakaways in our case downplayed the South Carolina ruling by pointing to side issues and misleading information. While our case should be resolved on the straightforward law above, we address those other bits of misinformation from the breakaways now:

Revocability. The breakaways in our case claim that South Carolina’s ruling does not matter because the trusts in South Carolina were irrevocable, while our trusts were purportedly revoked by the breakaways. That is false.

- a. *Trust for the Episcopal diocese and congregations.* The breakaways in our case admit that the trust in favor of the Episcopal diocese and congregations has never been revoked. And the breakaways could not revoke it now if they wanted to – they have no role or authority in the Episcopal diocese or congregations.
- b. *Trusts in the Deeds.* The breakaways in our case wholly ignore the fifty-five deeds reciting a trust for “the Protestant Episcopal Church.” The breakaways do not claim to be the Protestant Episcopal Church. Those trusts are irrevocable, and the parties who created them are long deceased.
- c. *Trust in the Dennis Canon.* In our case, the diocese and every congregation agreed to hold the property in trust for the Church in exchange for the diocese’s creation and the transfer of over \$100 million in property from another Episcopal diocese. Under controlling law, that agreement made the trust irrevocable. The breakaways want to ignore that law, but as the South Carolina court aptly warned: “What we cannot do is pick and choose which state laws to apply in order to justify a desired result.”^{vii}

Corporations law. Citing corporations law is a red herring; the only corporation in our case is a mere trustee, holding the property in trust for the Episcopal diocese and congregations. Who controls the trustee is irrelevant. What matters is who controls the *beneficiary* of the trust – in other words, who controls the diocese and congregations entitled to the property.

Minimal burden. This is another red herring. The South Carolina court was right on this issue: courts should not burden a church's constitution and canons by forcing them to incorporate the formalities of every state's trust law. That was never what the U.S. Supreme Court intended in *Jones v. Wolf*. But Texas has already taken another view on this issue, and as required, we argued our case under the Texas view. Ultimately, the U.S. Supreme Court may decide which approach is correct, but we showed that the loyal Episcopalians are entitled to the property either way.

Full accession. The breakaways claim in our case that they "qualified" their promises to The Episcopal Church. But those promises were in writing: the Episcopal diocese and congregations "**fully**" and "**unanimously**" acceded to the Constitution and Canons of The Episcopal Church. There was no asterisk qualifying the accession.

The U.S. Constitution. We addressed this point above. Texas, South Carolina, and the U.S. Supreme Court all agree: only The Episcopal Church can decide who controls the Episcopal diocese and congregations, even in a case involving property. The First Amendment requires this result, and under our facts, that should resolve the case for the Episcopal Plaintiffs.

ⁱ *Serbian E. Orthodox Diocese v. Milivojenich*, 426 U.S. 696, 720 (1976) ("[T]he civil courts must accept that consequence [the control of property] as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation, having been reached by the final church judicatory in which authority to make the decision resides."); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 120-21 (1952) ("Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls."); *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 650 (Tex. 2013) ("[C]ourts applying the neutral principles methodology defer to religious entities' decisions on ecclesiastical and church polity issues such as who may be members of the entities and whether to remove a bishop or pastor . . ."); *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 602 (Tex. 2013) ("[D]eference' is not a choice where ecclesiastical questions are at issue; as to such questions, deference is compulsory because courts lack jurisdiction to decide ecclesiastical questions. . . . Further, deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question. Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist." (citation omitted)); *Protestant Episcopal Church in the Diocese of South Carolina v. Episcopal Church*, No. 2015-000622, 2017 WL 3274123, at *9 (S.C. Aug. 2, 2017) (Pleicones, J., lead opinion) ("[T]he civil courts in South Carolina cannot decide disputes which are governed by church polity and governance concerning property ownership."); *id.* at *12 (Hearn, J., concurring) ("Because the National Church has recognized the remaining diocese to be the true Lower Diocese of South Carolina with Bishop vonRosenburg at its head, we cannot inject ourselves into this dispute in such a manner as to overrule that determination."); *id.* at *20 n.29 (Beatty, C.J., concurring in part and dissenting in part) ("In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.").

ⁱⁱ *See, e.g.*, CR29:10134 ("The Corporation holds real property in an express trust for the use and benefit of the congregations that use them, and all other property in an express trust for the use and benefit of the Diocese."); CR35:12584 ("The Corporation holds property in an express trust for the use and benefit of the parishes, missions, and diocesan organizations that have been using them for 32 years.").

ⁱⁱⁱ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650 ("[C]ourts applying the neutral principles methodology defer to religious entities' decisions on ecclesiastical and church polity issues such as who may be members of the entities and whether to remove a bishop or pastor . . ."); *Masterson*, 422 S.W.3d at 594 ("[D]eference' is not a choice where ecclesiastical questions are at issue; as to such questions, deference is compulsory because courts lack jurisdiction to decide ecclesiastical

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^{iv} CR36:12790 (breakaways claimed “a church’s identity should be decided using neutral principles of state law”); CR29:10096-97 (breakaways claimed “[t]he Episcopal Diocese of Fort Worth (‘the Diocese’) is an unincorporated association formed and operating in Texas, so issues concerning its officers and control are governed by the Texas Uniform Unincorporated Nonprofit Association Act”).

^v *Milivojevic*, 426 U.S. at 720 (“[T]he civil courts must accept that consequence [the control of property] as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation, having been reached by the final church judicatory in which authority to make the decision resides.”); *Kedroff*, 344 U.S. at 120-21 (“Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls.”); *Masterson*, 422 S.W.3d at 602 (“[D]eference’ is not a choice where ecclesiastical questions are at issue; as to such questions, deference is compulsory because courts lack jurisdiction to decide ecclesiastical questions. . . . Further, deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question.” (citation omitted)); *Diocese of South Carolina*, 2017 WL 3274123, at *9 (Pleicones, J., lead opinion) (“[T]he civil courts in South Carolina cannot decide disputes which are governed by church polity and governance concerning property ownership.”); *id.* at *12 (Hearn, J., concurring) (“Because the National Church has recognized the remaining diocese to be the true Lower Diocese of South Carolina with Bishop vonRosenburg at its head, we cannot inject ourselves into this dispute in such a manner as to overrule that determination.”); *id.* at *20 n.29 (Beatty, C.J., concurring in part and dissenting in part) (“In my view, the disassociated diocese can make no claim to being the successor to the Protestant Episcopal Church in the Diocese of South Carolina.”).

^{vi} *Diocese of South Carolina*, 2017 WL 3274123, at *10 (Hearn, J., concurring).

^{vii} *Id.* at *15.