

CAUSE NO. 141-252083-11

THE EPISCOPAL CHURCH, et al.	)	IN THE DISTRICT COURT OF
	)	
VS.	)	TARRANT COUNTY, TEXAS
	)	
FRANKLIN SALAZAR, et al.	)	141 <sup>ST</sup> DISTRICT COURT

**PLAINTIFFS’ SUPPLEMENTAL MOTION FOR PARTIAL SUMMARY JUDGMENT ON CLAIMS RELATING TO ALL SAINTS’ EPISCOPAL CHURCH**

Plaintiff All Saints’ Episcopal Church (Fort Worth) (“All Saints”), together with all Plaintiffs, file this supplemental motion and would respectfully show:

**I. INTRODUCTION**

All Saints’ Episcopal Church is an Episcopal Parish of The Protestant Episcopal Church. Its founding charters require it always to be in accordance with The Episcopal Church. The recorded deed for its historic sanctuary, on file in Tarrant County, recites an express trust for the Protestant Episcopal Church. Plaintiff All Saints did not join Defendants in their alleged defection from The Episcopal Church. And Defendants have repeatedly testified under oath in this case that All Saints, acting appropriately through its authorized vestry—the duly-elected leadership of the Parish under the governing rules—remained with The Episcopal Church.

Before this brief sets out the deed-by-deed analysis under neutral principles showing Defendants have no claim to any of All Saints’ property, the following section sets forth Defendants’ repeated admissions in this case. Going no further than that, the Court can see that Defendants have no claim to All Saints’ property, where around 1,700 loyal Episcopalians worship to this day, just as they have for the last sixty years.

**II. OVERVIEW**

The Court is well familiar with the history in this case to date; accordingly, this section will highlight for the Court the following pertinent facts and testimony:

A. Plaintiff All Saints, acting through its vestry and following the canons and rules of The Episcopal Church, decided to remain loyal to The Episcopal Church prior to and at the time of Defendants' departure from The Episcopal Church. Defendant Iker has acknowledged this fact in his deposition testimony:

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

**A. Yes.<sup>1</sup>**

B. Defendants have admitted that the duly-elected vestry of Plaintiff All Saints acted legitimately in determining that Plaintiff All Saints would remain a part of The Episcopal Church. Indeed, Defendant Iker testified on deposition as follows:

**Q. And – accordingly, you have no – no challenge to the legality of the action of the vestry of All Saints', do you?**

**A. On what?**

**Q. On any of the property issues we're here about.**

**A. Well, I have no objection to their vote to remain in The Episcopal Church.**

**Q. Okay. Let's take it one bite at a time, then. So as for purposes of this lawsuit, you've always conceded that All Saints' Episcopal Church stayed with the national church and opted not to go with your diocese, true?**

**A. Yes.**

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

**A. Yes.<sup>2</sup>**

Again, later in this deposition, Defendant Iker testified as follows:

**Q. Well, I'm not talking about that letter. I'm just asking**

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<sup>1</sup> A4320, Dep. of Def. Diocese at 233:3-233:9.

<sup>2</sup> A4320, Dep. of Def. Diocese at 232:18-233:9.

**you. I understood you to say twice earlier today that – you might not like it, but that you respected and – and – and didn’t challenge the decision of the vestry of All Saints to stay with the national church. Is that true?**

**A. I mean, I – I respect the right of the vestry to make their own decisions, yes. . . .<sup>3</sup>**

The Texas Supreme Court in the *Masterson* decision made clear that, in applying a neutral principles approach, this Court should consider the Church’s canons, rules and regulations. In doing so, the above-quoted testimony establishes beyond dispute that Defendant Iker has acknowledged the legitimacy and propriety of the decision of All Saints Episcopal Church to remain a part of The Episcopal Church.

Under the Church law that Defendants concede applied at the time, “The Vestry shall be the legal representatives of the Parish in all matters concerning its corporate property and all relations of the Parish to its clergy.”<sup>4</sup> And as Defendant Iker himself explained, “vestry members act on behalf of the congregation,” and “[t]here’s nothing in our Constitution or Canons that would require a parish-wide vote on anything except the election of vestry members.”<sup>5</sup>

Defendant Iker knew of the vestry’s decision prior to or during his departure from The Episcopal Church. On deposition, he said the following:

**Q. Did you learn sometime just prior to or during the split that the vestry at All Saints’ had decided not to go with your departure or your diocese’s departure?**

**A. Yes sir, they wrote me a letter.<sup>6</sup>**

<sup>3</sup> A4337, Dep. of Def. Diocese at 300:7-14.

<sup>4</sup> JA00221, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25.9 (2006); *see also* JA00495, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. I, canon 14, § 2.

<sup>5</sup> A4542, Jambor Aff. ¶ 6.

<sup>6</sup> A4320, Dep. of Def. Diocese at 231:13-17.

Defendant Iker testified that he had “no objection to their vote to remain in The Episcopal Church.”<sup>7</sup> Though not required, the Vestry’s position was supported by 82% of respondents to a congregation-wide survey just before the Vestry’s action.<sup>8</sup>

C. It is now undisputed that, whoever controls the Corporation of the Episcopal Diocese of Fort Worth, that entity claims to own only the legal title for the real property here involved. Defendant Iker admitted that the Diocesan Corporation would hold the title in trust for All Saints’ Episcopal Church. He testified as follows:

**Q. Well, you’re telling me, I take it, that you’re – the [Diocesan] Corporation is holding in trust for All Saints’ the All Saints’ real estate, aren’t you?**

**A. Yes.**

**Q. Now, you understand All Saints’, and you don’t challenge it, stayed with The Episcopal Church; you remember that?**

**A. Yes, the vestry did.<sup>9</sup>**

Nor can it now be argued that the Diocesan Corporation is holding the property in trust for some entity other than Plaintiff All Saints, such as the former All Saints parishioners who left The Episcopal Church well after the split. That Defendant Iker was admitting that the diocese would be holding the real estate in trust for Plaintiff All Saints was made clear in the following deposition testimony:

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

**A. Yes.<sup>10</sup>**

<sup>7</sup> A4320, Dep. of Def. Diocese at 232:24–25.

<sup>8</sup> A4541, Jambor Aff. ¶ 4.

<sup>9</sup> A4321, Dep. of Def. Diocese at 236:25-237:7.

Thus, Defendant Iker cannot now contend that he really meant that the Diocesan Corporation was holding the real estate in trust for some other “congregation.”

To be absolutely certain that Defendant Iker was admitting that the Diocesan Corporation would be holding title for the benefit of Plaintiff All Saints, he testified again as follows:

**Q. 18 (reference to an exhibit), that it would – legal title would be in the name of the [Diocesan] Corporation, but it’s holding it for the use and benefit of the All Saints’ Church entity that was controlled by the vestry we talked about earlier.**

**A. Yes.<sup>11</sup>**

Given this testimony, it is far too late for Defendants now to claim that the Diocesan Corporation is really holding the property in trust for the small “congregation” formed by those who left Plaintiff All Saints well after the split. And even Defendant All Saints admitted that when it comes to its new trust theory, “Those words are -- are not there.”<sup>12</sup>

D. In the present posture of this case, this Court has ruled that The Episcopal Diocese of Fort Worth is controlled by Defendant Iker (and the other Defendants). Plaintiffs will continue to challenge that ruling; however, for the purposes of this Motion, we will assume those conclusions *arguendo* and show:

First, Defendant Iker has admitted that he and his interests are antithetical to those of The Episcopal Church. On deposition he said the following:

**Q. All right. I’ll ask it this way: Do you perceive that your duties are to The Episcopal Church?**

**A. I’m not related to The Episcopal Church.**

**Q. Is the answer no, you don’t perceive you have duties to The Episcopal Church?**

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<sup>10</sup> A4326, Dep. of Def. Diocese at 254:13-18 (emphasis added).

<sup>11</sup> A4325, Dep. of Def. Diocese at 253:10-15 (emphasis added).

<sup>12</sup> JA02720, Dep. of Def. All Saints at 118:4-7.

**A. I have no duties to The Episcopal Church.**

**Q. Do you have duties to All Saints' Episcopal Church Corporation, as you see it?**

**A. Not that I see it, no.**<sup>13</sup>

Indeed, Defendant Iker's own testimony establishes the conflict of interest which would result from Defendants' holding title in trust for The Episcopal Church or All Saints' Episcopal Church. He testified:

**Q. Because you're purporting – your [Diocesan] Corporation is purporting to be trustee for a church [All Saints] that not – is not even a member of your organization, right?**

**A. That is correct.**<sup>14</sup>

Perhaps even more tellingly, the deposition testimony of Walter Virden establishes the impermissible conflict of interest which would result. Mr. Virden was the chairman of the board of trustees of the Corporation of the Episcopal Diocese of Fort Worth, at least until the split occurred. Indeed, he began in that office in 1983.

He candidly admitted the impermissible conflict of interest as follows:

**Q. So you think this corporate board could hold legal title to and administer real estate for the benefit of The Episcopal Church?**

**A. I didn't say that.**

**Q. Do you think it?**

**A. No.**

**Q. Okay. Because there would be a conflict of interest?**

**A. Yes.**<sup>15</sup>

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<sup>13</sup> A4323, Dep. of Def. Diocese at 242:4-10.

<sup>14</sup> A4324, Dep. of Def. Diocese at 248:4-8.

<sup>15</sup> A4395, Dep. of Def. Corp. at 202:15-23.

It is undisputed that the very deed to the church building of All Saints' Episcopal Church located at 5001 Crestline Road, Fort Worth, Texas expressly states that it is held in trust for The Episcopal Church and, remembering that Defendant Iker has admitted that he has no dispute with the legitimacy of Plaintiff All Saints and its vestry's decision to remain a part of The Episcopal Church, it inevitably follows that a diocesan corporate board controlled by Defendant Iker would have to be removed as trustee because of the obvious conflict of interest.

E. The Defendants have now conceded that they have no claim to four of the six pieces of real estate which, at one time, were in question. The designated representative of the Defendant All Saints congregation, Will Brackett, testified as follows:

**Q. Is it defendant All Saints' Episcopal Church's sworn position in this case that it is disclaiming an interest in all properties at suit other than the ones held by the Diocesan Corporation in trust for All Saints' Episcopal Church?**

**A. As I stated, all our claims are based on our relationship with the diocese.**

**Q. Okay. So any properties that are not held legally by the Diocesan Corporation are not disputed in this lawsuit, those go with plaintiff All Saints' Episcopal Church?**

**A. I would say that's correct, yes.<sup>16</sup>**

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**Q. Defendant All Saints' Episcopal Church disclaims any interest for the purposes of this litigation in the property reflected in the deeds in Exhibits 2, 4, 5, and 6 of this deposition, correct?**

**A. Yes.<sup>17</sup>**

The Defendants had previously admitted that they have no claim to the All Saints' Episcopal School or to the All Saints corporate entities. Thus, only two pieces of property

<sup>16</sup> JA02710, Dep. of Def. All Saints at 81:9-20.

<sup>17</sup> JA02717, Dep. of Def. All Saints at 107:24-108:3.

remain in dispute: the All Saints' Episcopal Church building itself and the old rectory located at 5003 Dexter, Fort Worth, Texas. The very deed to the church building located at 5001 Crestline Road reflects that it must be held in trust for The Episcopal Church, something that Defendants cannot permissibly do. And even Defendants concede that the Diocesan Corporation at most holds legal title to the sanctuary and rectory in trust for All Saints.<sup>18</sup>

F. Mr. Brackett's deposition testimony for Defendant All Saints also established further the legitimacy of the vestry's action in deciding to remain with The Episcopal Church. Mr. Brackett had been a member of Plaintiff All Saints for a very long time, and he was serving on its vestry at the time of the split in November 2008. In December 2008 and January 2009, Mr. Brackett and four other members of the vestry voluntarily resigned from the vestry and left membership in Plaintiff All Saints' Episcopal Church.<sup>19</sup>

As Will Brackett testified, he resigned because "the majority of the vestry wanted to remain loyal to The Episcopal Church," further stating:

**Q. Okay. Did someone demand that you resign?**

**A. No, sir, they did not.**

**Q. Did someone request that you resign?**

**A. No, sir, they did not.**

**Q. That was purely your voluntary decision?**

**A. Yes, sir, I would agree with that statement.<sup>20</sup>**

The number of parishioners who remained loyal to The Episcopal Church and have remained at Plaintiff All Saints is approximately 1,700.<sup>21</sup> According to Mr. Brackett's

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<sup>18</sup> A4316, 319, Dep. of Def. Diocese at 217:6-8, 229:1-12; A4321, Dep. of Def. Diocese at 236:2-5; JA02714-15, Dep. of Def. All Saints at 95:22-99:12.

<sup>19</sup> A4541, Jambor Aff. ¶ 5.

<sup>20</sup> JA02694, Dep. of Def. All Saints at 16:1-23.

<sup>21</sup> A4541, Jambor Aff. ¶ 3.



deposition testimony, approximately 100 persons who left Plaintiff All Saints currently are members of Defendant Iker's new church.<sup>22</sup> As Mr. Brackett testified, Defendant "All Saints" is a new entity:

**Q. Okay. Have you been with Defendant All Saints' Episcopal Church since its formation?**

**A. In 2009, yes.**<sup>23</sup>

That new entity has never claimed to replace or supersede the authorized leadership or governing documents of Plaintiff All Saints Episcopal Church in any way.<sup>24</sup> It has "full use of [another church's] property."<sup>25</sup> As recently as this Court's summary judgment hearing of February 20, 2015, no Defendants even claimed to represent any entity called "All Saints":

**DEFENDANTS: May I, Your Honor? I represent the 47 intervening parishes and missions. I never have appeared on behalf of All Saints, either side of All Saints**

....

**Your Honor, I never did claim to represent All Saints. I did not appear on behalf of All Saints.**

**THE COURT: Does anybody -- is anybody appearing on behalf of All Saints over there? Okay. None of them represent All Saints.**<sup>26</sup>

Even Mr. Brackett, the designated representative of the congregation wanting to call itself All Saints' Episcopal Church, acknowledges that Plaintiff All Saints' vestry acts as the agent for its congregation in making decisions.<sup>27</sup> He acknowledged that was and is the appropriate method for such decision making in All Saints' Episcopal Church, just as Defendant Iker did in his

<sup>22</sup> JA02707, Dep. of Def. All Saints at 69:15-19.

<sup>23</sup> JA02707, Dep. of Def. All Saints at 68:7-9; *see also* JA02711-12, Dep. of Def. All Saints at 84:15-86:9.

<sup>24</sup> JA02711-12, Dep. of Def. All Saints at 84:15-86:14.

<sup>25</sup> JA02699, Dep. of Def. All Saints at 36:16-18.

<sup>26</sup> Hr'g Tr. at 50:24-51:19 (Feb. 20, 2015).

<sup>27</sup> JA02698, JA02702 Dep. of Def. All Saints at 32:13-17, 47:5-9.

deposition testimony quoted above.

Accordingly, it is clear that the Defendant “All Saints,” *i.e.*, that group of approximately 100 persons who want to be denominated as such, left All Saints only after the split and after Plaintiff All Saints’ Episcopal Church had quite properly followed all of its rules, regulations, canons and procedures in determining to remain loyal to The Episcopal Church.

G. We respectfully submit this introduction as something more than the usual summary of a case’s procedural history inasmuch as we believe the dispute has been greatly narrowed by the Defendants’ admissions and the determinative testimony, much of which is quoted above. That testimony clearly establishes the right of Plaintiff All Saints to be declared the owner of at least the equitable title of all of the real estate in question and the necessity of the removal of Defendant Iker and Defendants as legal owners/trustees (regardless of the disposition of the other issues in the case).

The following discussion addresses all of these matters and the other grounds in detail.

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## **V. PROCEDURAL BACKGROUND**

On March 2, 2015, this Court granted Defendants' second motion for partial summary judgment, and denied Plaintiffs' motion for partial summary judgment, "except with respect to claims relating to All Saints' Episcopal Church (Fort Worth)."<sup>28</sup>

On March 20, 2015, the Court instructed the parties to file supplemental summary judgment briefs on claims relating to All Saints.<sup>29</sup>

On April 16, 2015, the parties filed a Rule 11 Agreement agreeing that all other claims in this cause number (i.e., those not relating to the initial or supplemental partial summary judgment motions) should be severed and stayed, so that the Court's March 2, 2015 order and forthcoming supplemental order will resolve this case for final judgment and appeal.<sup>30</sup>

## **VI. FACTS RELATING TO ALL SAINTS**

All Saints is an Episcopal Parish. Defendants admit that All Saints stayed with The Episcopal Church. Defendants admit that their so-called "All Saints" is a newly-formed 2009 entity with no relation to the All Saints' Episcopal Church that has worshipped continuously as an Episcopal congregation at 5001 Crestline from 1947 to today or to the Episcopal Church.

### **A. All Saints is an Episcopal Parish**

Plaintiff All Saints' Episcopal Church was founded in 1947 as a mission, and later parish, of the Protestant Episcopal Church in the United States ("The Episcopal Church" or "the Church"). All Saints' loyal Episcopalians have worshipped continuously from 1947 to present in a sanctuary at 5001 Crestline, whose recorded warranty deed conveyed that property "in trust for the use and benefit of the Protestant Episcopal Church" in this region.<sup>31</sup>

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<sup>28</sup> Order on Mots. for Partial Summ. J. (Mar. 2, 2015).

<sup>29</sup> Hr'g Tr. at 19:9–23, 33:2–25 (Mar. 20, 2015).

<sup>30</sup> The remaining claims to be severed and stayed are for attorneys' fees, Conversion, Texas Business & Commerce Code § 16.29, damages for Breach of Fiduciary Duty (as opposed to as a predicate of constructive trust), Action to Quiet Title, and an Accounting. Am. Rule 11 Agreement on Supp. Summ. J. Mots. ¶ 4.

<sup>31</sup> JA02524, Warranty Deed (May 8, 1947).

All Saints' request for organization reads, "being desirous of obtaining the services of the Protestant Episcopal Church, and being ready, according to our ability, to sustain the same, . . . we do promise conformity to its doctrine, discipline, liturgy, rites, and usages."<sup>32</sup> The document concludes: "In accordance with these obligations and rules, we now ask the privilege of being organized as a mission under the name of ALL SAINTS."<sup>33</sup> Defendants agreed that these commitments were exchanged for permission to form and "give rise to the obligations and duties . . . of the officers of that religious body going forward."<sup>34</sup>

In 1953, All Saints formed a corporation. All Saints' vestry passed a resolution authorizing the incorporation on the condition that the "religious corporation shall *always* be subject to the Constitution and Canons of the Protestant Episcopal Church in the United States of America as promulgated by its General Convention . . . ."<sup>35</sup> The corporation's founding bylaws required: "The affairs of this corporation shall be conducted in conformity to the Constitution and Canons of the General Convention and of the Diocese of Dallas of the Protestant Episcopal Church in the United States of America."<sup>36</sup>

The 2001 bylaws, in effect when this suit was filed, state:

The affairs of the Corporation shall be conducted in conformity to the Constitution and Canons of the General Convention of the Episcopal Church in the United States of America (hereinafter referred to as "General Convention Canons" and "The Episcopal Church", respectively). The affairs of the Corporation shall likewise be conducted in conformity with the Constitution and Canons of the Diocese of Fort Worth (hereinafter referred to as the "Diocesan Canons"); **provided in the event of any conflict between the General Convention Canons and either the Diocesan Canons or these Bylaws, as they relate to the affairs**

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<sup>32</sup> JA02545 Request for Organization, All Saints' Episcopal Church (Jan. 10, 1947).

<sup>33</sup> JA02545, *id.*

<sup>34</sup> JA02718, Dep. Def. All Saints at 111:4-14.

<sup>35</sup> JA02553, Minutes of First Meeting of Incorporators (Jan. 6, 1953) (emphasis added).

<sup>36</sup> JA02550, Bylaws of All Saints' Episcopal Church art. I (Mar. 30, 1953).

**of the Corporation, the General Convention Canons shall prevail, to the extent of such conflict.**<sup>37</sup>

**B. Defendants admit All Saints stayed with The Episcopal Church**

In 2008, when Defendant Iker left The Episcopal Church, All Saints remained with The Episcopal Church. As Defendant Iker testified, on behalf of his Defendant Diocese:

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

A. Yes.<sup>38</sup>

In 2008, the rules of both The Episcopal Church and the Episcopal Diocese of Fort Worth provided that "[t]he Vestry shall be the legal representatives of the Parish in all matters concerning its corporate property and all relations of the Parish to its clergy."<sup>39</sup> As Iker conceded, "we do not decide things by congregational wide votes," but rather "vestry members act on behalf of the congregation."<sup>40</sup>

All Saints' vestry informed Defendant Iker in October 2008 that the parish "had decided not to go with [his] departure . . . ."<sup>41</sup> Defendant Iker testified that he had "no objection to their vote to remain in The Episcopal Church."<sup>42</sup> The vestry's action was supported by 82% of respondents to a congregation-wide survey.<sup>43</sup>

As Defendant "All Saints" testified, because "the majority of the vestry wanted to remain loyal to The Episcopal Church," the dissenting vestry members who wished to follow Defendant Iker resigned in December 2008.<sup>44</sup> Defendant testified that this resignation was a "voluntary"

<sup>37</sup> JA02608, Bylaws of All Saints' Episcopal Church art. II (Jan. 21, 2001) (emphasis added).

<sup>38</sup> A4320, Dep. of Def. Diocese at 232:24–233:9.

<sup>39</sup> JA00221, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25.9 (2006); *see also* JA00495, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. I, canon 14, § 2.

<sup>40</sup> A4542, Jambor Aff. ¶ 6.

<sup>41</sup> A4320, Dep. of Def. Diocese at 231:13–17.

<sup>42</sup> A3945, Dep. of Def. Diocese at 232:24–25.

<sup>43</sup> A4541, Jambor Aff. ¶ 4.

<sup>44</sup> JA02694, Dep. of Def. All Saints at 16:1–18.

decision<sup>45</sup> and that no one “forced them to resign,” but rather the dissenters left because they did not support “the direction that the rector and the majority of the vestry were going.”<sup>46</sup>

To this day, All Saints’ corporate charter, on file with the Texas Secretary State, recites its continued “purpose” to act “according to the doctrine, discipline, and worship of the Protestant Episcopal Church . . . .”<sup>47</sup> All Saints’ 2012 bylaws affirm, as in 2008 and before, that “The affairs of the Corporation shall be conducted in conformity to the Constitution and Canons of the Episcopal Church in the United States of America . . . .”<sup>48</sup>

The congregation at 5001 Crestline Avenue, composed of around 1,700 loyal Episcopalians, continues to worship as an Episcopal Parish and participate in the life of the Protestant Episcopal Church as it has for the past six decades.<sup>49</sup>

### C. Defendant “All Saints” is a new entity

Defendant “All Saints” testified that it is a newly-formed entity:

- Q. Okay. Have you been with defendant All Saints’ Episcopal Church since its formation?
- A. In 2009, yes.<sup>50</sup>

Its members identify themselves as “Anglicans” and not Episcopalians.<sup>51</sup> They number “around 100 or so.”<sup>52</sup> They had “an organizational meeting in 2009 after [they] left,”<sup>53</sup> and they have no governing documents, bylaws, constitution, or canons at the parish level.<sup>54</sup> Their purported

<sup>45</sup> JA02694, Dep. of Def. All Saints at 16:13-18; *see also* JA02695, Dep. of Def. All Saints at 19:5-20:1.

<sup>46</sup> JA02695, Dep. of Def. All Saints at 20:15-21:20.

<sup>47</sup> JA02457, Charter of All Saints Episcopal Church art. II (Mar. 30, 1953).

<sup>48</sup> JA02632, Bylaws of All Saints’ Episcopal Church art. II (Jan. 29, 2012).

<sup>49</sup> A4541, Jambor Aff. ¶ 4.

<sup>50</sup> JA02707, Dep. of Def. All Saints at 68:7-9.

<sup>51</sup> JA02704, Dep. of Def. All Saints at 54:19-55:3.

<sup>52</sup> JA02699, Dep. of Def. All Saints at 36:4-8.

<sup>53</sup> JA02708, Dep. of Def. All Saints at 70:13-14.

<sup>54</sup> JA02711-12, Dep. of Def. All Saints at 84:15-86:6.

entity merged with another congregation, creating “a new entity called the Church of Christ the King and All Saints’,” with “full use of their property.”<sup>55</sup>

Defendant “All Saints” testified that it and Plaintiff All Saints (the one at 5001 Crestline) are “two separate entities” and that Defendant never took “any actions purporting to change or replace the governing documents of plaintiff All Saints’ Episcopal Church” or to “remove,” “override,” or “supersede” the continuing Episcopal vestry of Plaintiff All Saints’ Episcopal Church.<sup>56</sup> Rather, Defendant testified “we had resigned from the vestry of All Saints’ Episcopal Church on Crestline Road and it’s my knowledge that everyone who -- who did leave the vestry did go with the Episcopal Diocese of Fort Worth headed by Bishop Jack Iker.”<sup>57</sup>

In short, from 1947 to today, loyal Episcopalians have maintained a continuing Episcopal congregation of the Protestant Episcopal Church at 5001 Crestline, on land whose recorded deed recites an express trust for the Protestant Episcopal Church, consistent with its enabling resolution—which predates the formation of the Episcopal Diocese of Fort Worth by decades—to “always be subject to the Constitution and Canons of the Protestant Episcopal Church in the United States of America . . . .”<sup>58</sup>

By contrast, Defendants are a group of ex-Episcopalians who admit they resigned from their posts and left All Saints to set up a new, distinct non-Episcopal entity at another location in 2009, with no claim to supersede or replace the continuing historic All Saints’ Episcopal Church.<sup>59</sup>

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<sup>55</sup> JA02699, Dep. of Def. All Saints at 36:15-23.

<sup>56</sup> JA02712, Dep. of Def. All Saints at 85:3-86:14.

<sup>57</sup> JA02703, Dep. of Def. All Saints at 52:12-19.

<sup>58</sup> JA02553, Minutes of First Meeting of Incorporators (Jan. 6, 1953) (emphasis added).

<sup>59</sup> Plaintiffs incorporate by reference the complete statement of facts set forth in their December 1, 2015 Motion for Partial Summary Judgment at 4-13. For the convenience of the Court, Plaintiffs do not restate those facts in their entirety here but instead tailor the statement of facts for this supplemental motion.

## **VII. SUMMARY JUDGMENT STANDARD**

Movants must show “that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law.” *Lindley v. McKnight*, 349 S.W.3d 113, 123 (Tex. App.—Fort Worth 2011, no pet.).

## **VIII. ARGUMENT AND AUTHORITIES**

Section A analyzes All Saints’ deeds. Defendants have no right to take any of All Saints’ property on the face of those deeds. Section B reasserts the global arguments from Plaintiffs’ prior briefing as they relate to All Saints.

### **A. The Six Deeds**

Plaintiff All Saints Episcopal Church, the historic congregation that has worshipped continuously as an Episcopal congregation at 5001 Crestline for over sixty years, is the legal owner of its six properties on the face of those deeds. Defendants’ claims fail under the plain terms of the deeds.

In its recent proposed Counterclaim, raised six years into the litigation, Defendant “All Saints” expressed its desire to take all six of All Saints’ properties.<sup>60</sup> It has since disclaimed any right or interest in all but two of the deeds. But Defendants still seek to pluck the historic church and rectory out of the middle of those six properties. Defendants are entitled to none of the six properties under neutral principles of Texas law applied to the face of those deeds.

#### **1. 5001 Crestline**

*All of Block 14, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas*

The recorded deed for the historic sanctuary at 5001 Crestline recites an express trust for

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<sup>60</sup> While the Court has not signed the order granting leave for Defendant All Saints to file its Original Counterclaim, Plaintiffs have included arguments to negate the claims and defenses in that proposed Original Counterclaim. In doing so, Plaintiffs do not suggest that Defendant All Saints’ proposed Original Counterclaim has been filed or served, that any timetables have been triggered by filing or service, or that Defendant All Saints has any pleading on file to support its claims or defenses. As of the time of this filing, it does not.

the Protestant Episcopal Church on its face.

That 1947 deed conveyed **legal** title to “Charles Avery Mason, as Bishop of the Protestant Episcopal Church, for the Diocese of Dallas, in the State of Texas, [and] his successors in office and assigns.”<sup>61</sup> It conveyed **equitable** title to The Episcopal Church, noting:

This Conveyance, however, is in trust for the use and benefit of the Protestant Episcopal Church, within the territorial limits of what is now known as the said Diocese of Dallas, in the State of Texas, and for this purpose the said CHARLES AVERY MASON, as aforesaid, and his successors in office, shall hold, use, improve, manage and control the above described property in such manner as to him or them, may seem best for the interest of said Church within said Diocese. . . .<sup>62</sup>

The trust was created for consideration of \$5,000 and is thus contractual and irrevocable.<sup>63</sup> Even if it were revocable, however, it has not been revoked. Only the settlors of a trust have the power to revoke it.<sup>64</sup> Here, the deed makes clear that John P. King and J. Roby Penn—not Defendants—settled this trust.<sup>65</sup> Since they have not revoked it, the property remains in trust for “the Protestant Episcopal Church, within the territorial limits of what [was in 1947] known as the said Diocese of Dallas.”<sup>66</sup>

Defendants have made clear that they are not part of the Protestant Episcopal Church, have no relation to the Protestant Episcopal Church, and are in fact adverse to the Protestant Episcopal Church.<sup>67</sup> Plaintiffs have confirmed the same.

The 1984 declaratory judgment did not destroy this trust in favor of the Church. As the Texas Supreme Court noted, the 1984 judgment transferred only legal title to property that had

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<sup>61</sup> JA02523, Warranty Deed (May 8, 1947).

<sup>62</sup> JA02524, *id.*

<sup>63</sup> *Shellberg*, 459 S.W.2d at 470.

<sup>64</sup> *See* Tex. Prop. Code § 112.051.

<sup>65</sup> JA023523-25, Warranty Deed (May 8, 1947).

<sup>66</sup> *Id.*

<sup>67</sup> JA02710, Dep. of Def. All Saints at 78:9-12; *see also* JA02704, *id.* at 54:7-10 (“We do not consider ourselves to be members of The Episcopal Church in the United States. What -- whatever name it uses, TEC, ECUSA, whatever, we do not consider ourselves to be members of that body.”).



been held by a bishop as trustee.<sup>68</sup> As a matter of law, such a transfer of legal title did not divest The Episcopal Church of its equitable interest.<sup>69</sup>

Indeed, the deed itself confirms that, in granting equitable title to The Episcopal Church, the grantors did not intend the property to depart from The Episcopal Church in the event of a controversy concerning the local bishop:

[I]n the event of . . . resignation, suspension, deposition or removal from office for any cause of any Bishop in whom . . . be vested the title to the above described premises, as trustee under this instrument, then, and in that event, the senior [Presiding] Bishop of the Protestant Episcopal Church in the United States of America shall be held and deemed to be, for the purpose of sustaining and perpetuating the trust, the successor in office of said Bishop, until vacancy shall have been regularly filled.

Additionally, under All Saints' bylaws, the property is held in trust for the Church.<sup>70</sup>

Thus, 5001 Crestline is held in an express, irrevocable trust in favor of The Episcopal Church. The Corporation of the Episcopal Diocese of Fort Worth serves merely as trustee. When, as here, a trustee and beneficiary of a trust become adverse, Texas civil courts may remove and replace the trustee.<sup>71</sup> If Defendant Corporation is found to be trustee of Plaintiff the Protestant Episcopal Church's trust, the Court should remove Defendant and name Plaintiff All Saints as the trustee of that trust for The Episcopal Church.

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<sup>68</sup> *Episcopal Diocese*, 422 S.W.3d at 648 (“The 1984 judgment vested legal title of the transferred property in the Fort Worth Corporation . . .”).

<sup>69</sup> See *Binford v. Snyder*, 189 S.W.2d 471, 473 (Tex. 1945) (noting that, “[w]herever property, real or personal, which is already impressed with or subject to a trust of any kind, . . . is conveyed or transferred by the trustee, . . . the transferee “holds the property subject to the same trust which before existed”); see also *Maple Mortg., Inc. v. Chase Home Mortg. Corp.*, 81 F.3d 592, 597 (5th Cir. 1996) (explaining that, under Texas law, a person who holds only legal title cannot transfer equitable title); *Perfect Union Lodge No. 10 v. InterFirst Bank of San Antonio, N.A.*, 748 S.W.2d 218, 220 (Tex. 1988) (explaining that “separation of the legal and equitable estates in the trust property is the basic hallmark of the trust entity”).

<sup>70</sup> JA02639, Bylaws of All Saints Episcopal Church art. XI (Jan. 29, 2012) (“All real and personal property held by or for the benefit of All Saints' Episcopal Church is held in trust for the Episcopal Church and the Diocese thereof in which the Church is located.”).

<sup>71</sup> Tex. Prop. Code § 113.082(a)(1), (4) (“[O]n the petition of an interested person and after hearing, a court may, in its discretion, remove a trustee . . . if (1) the trustee materially violated or attempted to violate the terms of the trust and the violation or attempted violation results in a material financial loss to the trust . . . or (4) the court finds other cause for removal.”).

Beyond the express trust on the face of the deed, Plaintiffs and not Defendants are legally entitled to this property for the same reasons as for 5003 Dexter, set forth below and incorporated herein.

## 2. 5003 Dexter

*All of lots 6, 7, and 8, and the West 15 feet of Lot 5, and the East 20 feet of Lot 9, all in Block 26, of Chamberlin Arlington Heights, First Filing, an addition to the City of Fort Worth, Tarrant County, Texas*

The deed to 5003 Dexter conveyed legal title to “The Rt. Rev. C. Avery Mason, Bishop of the Protestant Episcopal Church, Diocese of Dallas, in the State of Texas.”<sup>72</sup> Pursuant to the 1984 declaratory judgment, while legal title of 5003 Dexter was transferred to the Corporation of the Episcopal Diocese of Fort Worth, beneficial trust remained in the parish for which the property was acquired. Under Canon 18.2 of the Constitution and Canons of the Episcopal Diocese of Fort Worth—which Defendant “All Saints” claims provides “the basis of the trust clause defendants are asserting”<sup>73</sup>—“Real property *acquired by the Corporation for the use of a particular Parish*, Mission or Diocesan School *shall be held by the Corporation in trust for the use and benefit of such Parish*, Mission or Diocesan School.”<sup>74</sup>

As the 5003 Dexter deed shows, this property originally was acquired in 1951 and has since continually been used by Plaintiff All Saints—the Episcopal congregation established in 1947 and the only relevant congregation existing at the time this property was acquired. In fact, Defendant Diocese has testified that it has “no objection to [All Saints’ vestry’s] vote to remain in The Episcopal Church”<sup>75</sup> and has “for purposes of this lawsuit always conceded that All Saints’ Episcopal Church stayed with the national church and opted not to go with [Defendants’]

<sup>72</sup> JA02527, General Warranty Deed (Mar. 15, 1951).

<sup>73</sup> JA02718-19, Dep. of Def. All Saints at 113:23-114:5; *see also* Defendant “All Saints” Original Counterclaim.

<sup>74</sup> JA00212, The Constitution and Canons of the Episcopal Diocese of Fort Worth, Canon 18.2 (2006) (emphasis added).

<sup>75</sup> A3945, Dep. of Def. Diocese at 232:24–25.

diocese.”<sup>76</sup> Moreover, Plaintiff All Saints was the only relevant Parish existing as of the 1984 judgment that transferred legal title of 5003 Dexter to the Diocesan Corporation.

Unlike Plaintiff All Saints, Defendant “All Saints” did not exist when 5003 Dexter was conveyed to Bishop Mason or when that property was acquired by the Diocesan Corporation for the use of Plaintiff All Saints. In fact, Defendant “All Saints” was not formed until 2009, after its founders “had resigned from the vestry of All Saints’ Episcopal Church on Crestline Road,” and it admits that it is an entirely “separate entit[y]” from the continuing All Saints Episcopal Church.<sup>77</sup> Also, considering that Defendant “All Saints” never took “any actions purporting to change or replace the governing documents of plaintiff All Saints’ Episcopal Church”<sup>78</sup> or “any actions purporting to strike or remove or punish vestry members of plaintiff All Saints’ Episcopal Church,”<sup>79</sup> it has not replaced Plaintiff All Saints. In sum, Plaintiff All Saints is the Parish for which 5003 Dexter was acquired, and Defendant “All Saints”—which was not formed until 2009—cannot claim any beneficial interest in that property. Additionally, under All Saints’ bylaws, the property is held in trust for the Church.<sup>80</sup>

Defendant “All Saints” resists this obvious conclusion by asserting that Canon 18.2 requires that 5003 Dexter be held in trust for it because it is the parish “in communion with” the Defendant Diocese.<sup>81</sup> But as Defendant “All Saints” conceded, the trust language in Canon 18.2 says nothing about being “in communion with” or being a “member of” the Defendant Diocese.<sup>82</sup> Instead, the plain language of Canon 18.2 says that the beneficial trust is for the “particular” Parish for which the property was acquired. Here, the only Parish for which the property was

<sup>76</sup> A4320, Dep. of Def. Diocese at 233:3–7.

<sup>77</sup> JA02703, JA02707, JA02712, Dep. of Def. All Saints at 52:12-19; 68:7-9; 86:7-9.

<sup>78</sup> JA02711, Dep. of Def. All Saints at 85:3-12.

<sup>79</sup> JA02712, Dep. of Def. All Saints at 86:1-6.

<sup>80</sup> JA02639, Bylaws of All Saints Episcopal Church art. XI (Jan. 29, 2012) (“All real and personal property held by or for the benefit of All Saints’ Episcopal Church is held in trust for the Episcopal Church and the Diocese thereof in which the Church is located.”).

<sup>81</sup> JA02719, Dep. of Def. All Saints at 115:3-8.

<sup>82</sup> JA02720, Dep. of Def. All Saints at 118:4-8.

acquired is Plaintiff All Saints, which (1) has existed continually since 1947, (2) has remained with The Episcopal Church, and (3) has not been replaced by Defendant “All Saints.” Accordingly, under Texas law, Defendant Corporation must be removed as trustee of Plaintiff All Saints’ trust as regards 5003 Dexter, given Defendants’ adversity to Plaintiffs, with control returned to Plaintiff All Saints.<sup>83</sup>

### **3. 5001 Dexter – Disclaimed by Defendant**

*Lots 1 and 2, Block 26, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas*

As an initial matter, Defendant “All Saints” has already disclaimed any right, interest, or claim in 5001 Dexter:

Q. Is defendant All Saints’ Episcopal Church making a claim to the property reflected in the deed in Exhibit 4 [*i.e.* 5001 Dexter]?

A. I -- no.<sup>84</sup>

Indeed, Defendant “All Saints” has disclaimed all interest in *every* property that, like 5001 Dexter, the Corporation of the Episcopal Diocese of Fort Worth does not hold legal title to:

Q. Okay. So any properties that are not held legally by the Diocesan Corporation are not disputed in this lawsuit, those go with plaintiff All Saints’ Episcopal Church?

A. I would say that’s correct, yes.

Q. Okay. And that’s defendant All Saints’ Episcopal Church’s official position in this litigation?

A. Yes.<sup>85</sup>

For this reason alone, Plaintiffs are entitled to summary judgment as regards the 5001 Dexter property.

<sup>83</sup> See Tex. Prop. Code § 113.082(a)(1), (4).

<sup>84</sup> JA02715, Dep. of Def. All Saints at 100:21-24.

<sup>85</sup> JA02710, Dep. of Def. All Saints at 81:16-24.

Regardless of Defendant “All Saints” disclaimer, however, Plaintiff All Saints is entitled to possess 5001 Dexter under the deed’s plain language, which conveyed 5001 Dexter to “All Saints Episcopal Church” in 1995.<sup>86</sup> This can only mean Plaintiff All Saints. Plaintiff All Saints has continuously operated All Saints Episcopal Church as a congregation of The Episcopal Church, in accordance with its charter and bylaws, for nearly 70 years. And Defendant Diocese has testified that it has “no objection to [All Saints’ vestry’s] vote to remain in The Episcopal Church”<sup>87</sup> and has “for purposes of this lawsuit always conceded that All Saints’ Episcopal Church stayed with the national church and opted not to go with [Defendants’] diocese.”<sup>88</sup>

Defendant “All Saints,” on the other hand, has no relation to the “All Saints Episcopal Church” existing in 1995 and openly admits that it is an entirely “separate entit[y].” Defendant “All Saints” was formed in 2009 after its founders “had resigned from the vestry of All Saints’ Episcopal Church on Crestline Road.”<sup>89</sup>

Further, even if this were not the case, 5001 Dexter is held in trust for The Episcopal Church. In 1995, when Plaintiff All Saints acquired this property, its governing local bylaws read that it acquired all property in trust for the Protestant Episcopal Church and “the Diocese thereof”—that is, the Diocese *of* the Protestant Episcopal Church.<sup>90</sup> That governing trust remains in its bylaws to this day, creating an unrevoked trust over the property in favor of the Church and the Diocese of that Church.<sup>91</sup> Defendant “All Saints” has never purported to supersede or replace those governing bylaws, and in fact has no local bylaws of its own.<sup>92</sup> Defendants do not (and cannot) claim to be the Protestant Episcopal Church or any Diocese of the Protestant Episcopal Church and so rightly disclaimed any interest in this property.

<sup>86</sup> JA02540, Warranty Deed with Vendor’s Lien (July 10, 1995).

<sup>87</sup> A3945, Dep. of Def. Diocese at 232:24–25.

<sup>88</sup> A4320, Dep. of Def. Diocese at 233:3–7.

<sup>89</sup> JA02703, JA02707, JA02712, Dep. of Def. All Saints at 52:12-19; 68:7-9; 86:7-9.

<sup>90</sup> JA02572, Bylaws of All Saints’ Episcopal Church at 10 (Nov. 19, 1992).

<sup>91</sup> JA02639, Bylaws of All Saints’ Episcopal Church at 8 (Jan. 29, 2012).

<sup>92</sup> JA02711-12, Dep. of Def. All Saints at 84:15-86:6.

**4. 4936 Dexter – Disclaimed by Defendant**

*The South 122 feet of Lots 21, 22 and 23 and the South 122 feet of the West 15 feet of Lot 24, all in Block 15, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas*

Like 5001 Dexter, Defendant “All Saints” openly disclaimed any right, interest, or claim in to 4936 Dexter, and for this reason alone, Plaintiffs are entitled to summary judgment as regards the 4936 Dexter property:

Q. Okay. Defendant All Saints’ Episcopal Church is not making a claim to the property represented by this deed [*i.e.*, the deed for 4936 Dexter]?

A. No.<sup>93</sup>

Further, like 5001 Dexter, the deed to 4936 Dexter names the Grantee as “All Saints Episcopal Church.”<sup>94</sup> And for the same reasons that applied to 5001 Dexter, incorporated herein, this language in the 4936 Dexter deed can refer only to Plaintiff All Saints, a parish of The Episcopal Church. Additionally, under All Saints’ bylaws, the property is held in trust for the Church.<sup>95</sup>

**5. 4939 Dexter – Disclaimed by Defendant**

*The West 90 feet of Lot A, Block 25, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas*

The deed to 4939 Dexter names as Grantee “All Saints Episcopal Church, a Texas Non-Profit Corporation.”<sup>96</sup> A corporation known as “All Saints Episcopal Church” thus holds legal and beneficial title to this property.

Defendant “All Saints” repeatedly disclaimed any interest in property where legal or beneficial title is vested in All Saints’ Episcopal Church, a Texas Non-Profit Corporation:

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<sup>93</sup> JA02715, Dep. of Def. All Saints at 100:25-101:13.

<sup>94</sup> JA02537, Warranty Deed with Vendor’s Lien (Sept. 12, 2003).

<sup>95</sup> JA02639, Bylaws of All Saints Episcopal Church art. XI (Jan. 29, 2012) (“All real and personal property held by or for the benefit of All Saints’ Episcopal Church is held in trust for the Episcopal Church and the Diocese thereof in which the Church is located.”).

<sup>96</sup> JA02535, Warranty Deed with Vendor’s Lien (Aug. 20, 1997).

Q. Does defendant All Saints' make any claim in this lawsuit to control a corporation in Texas named All Saints' Episcopal Church?

A. No, we do not.<sup>97</sup>

\* \* \*

Q. By extension, defendant All Saints' is not making any claims to property owned by . . . a corporation in Texas called All Saints' Episcopal Church, correct?

A. That's correct, yes.<sup>98</sup>

\* \* \*

Q. Okay. And based on what you said earlier, and I just want to make sure this is clear on the record, defendant All Saints' is not claiming those properties [*i.e.*, those where legal or beneficial title is vested in All Saints Corporation] in this litigation?

A. I suppose we are not, no.

Q. And . . . that's a clean no? . . . .

A. No, no, no.<sup>99</sup>

And, in addition to generally disclaiming any interest in property where legal or beneficial title was vested in All Saints corporation, Defendant "All Saints" specifically disclaimed any interest in the 4939 Dexter property: "Q. Okay. So defendant All Saints' Episcopal Church makes no claim in this litigation to the property reflected in the deed in Exhibit 6 [*i.e.*, 4939 Dexter], correct? A. Yes."<sup>100</sup> For this reason alone, Plaintiffs are entitled to summary judgment as regards the 4939 Dexter property.

Regardless of Defendant "All Saints'" disclaimer, it has no claim to 4939 Dexter. There is only one corporation known as "All Saints Episcopal Church," and Defendants have neither pleaded<sup>101</sup> nor claimed to be officers of that corporation.<sup>102</sup>

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<sup>97</sup> JA02704, Dep. of Def. All Saints at 56:3-6.

<sup>98</sup> JA02704-05, Dep. of Def. All Saints at 57:22-58:6 .

<sup>99</sup> JA02708, Dep. of Def. All Saints at 72:10-23.

<sup>100</sup> JA02716, Dep. of Def. All Saints at 102:21-103: 22.

<sup>101</sup> See Defendant "All Saints'" Original Counterclaim.

<sup>102</sup> JA02704, Dep. of Def. All Saints at 56:7-57:19.

Further, since its formation in 1953, “All Saints Episcopal Church, a Texas Non-Profit Corporation” has operated in accordance with its charter and bylaws, which have always subjected the corporation to the Constitution and Canons of The Episcopal Church.<sup>103</sup> In fact, the corporation’s purpose is to “maintain[] the worship of God and the preaching of the Gospel according to the doctrine, discipline and worship of the Protestant Episcopal Church in the United States Of America.”<sup>104</sup> Additionally, under All Saints’ bylaws, the property is held in trust for the Church.<sup>105</sup>

In sum, Defendants have no affiliation with The Episcopal Church or the All Saints corporation, and thus lack any basis to claim property where legal or beneficial title is vested in All Saints Episcopal Church, a Texas Non-Profit Corporation.

#### **6. 5005 Dexter – Disclaimed by Defendant**

*Lot 3-R, Block 26, Chamberlin Arlington Heights Addition to the City of Fort Worth, Tarrant County, Texas*

The 5005 Dexter property was conveyed in 1999, and the deed lists the grantee as the “Corporation of the Episcopal Diocese of Fort Worth, *in trust for the use and benefit of All Saints Episcopal Church, a Texas Non-Profit Corporation.*”<sup>106</sup>

As with 4939 Dexter, Defendant “All Saints” disclaimed any interest in property where legal or beneficial title is held by “All Saints Episcopal Church, a Texas Non-Profit Corporation.”

Q. []Can you read who this deed says the property is for the use and benefit of?

A. All Saints’ Episcopal Church, a Texas nonprofit corporation.

<sup>103</sup> See, e.g., JA02632, Bylaws of All Saints’ Episcopal Church art. II (Jan. 29, 2012); JA02608, Bylaws of All Saints’ Episcopal Church art. II (Jan. 21, 2001); JA02550, Bylaws of All Saints’ Episcopal Church art. I (1953).

<sup>104</sup> JA02547, Charter of All Saints Episcopal Church art. I (Mar. 30, 1953).

<sup>105</sup> JA02639, Bylaws of All Saints Episcopal Church art. XI (Jan. 29, 2012) (“All real and personal property held by or for the benefit of All Saints’ Episcopal Church is held in trust for the Episcopal Church and the Diocese thereof in which the Church is located.”).

<sup>106</sup> JA02532, Warranty Deed with Vendor’s Lien (Apr. 29, 1999) (emphasis added).



Q. And that's not you, correct?

A. We make no claim to that corporation.

Q. Okay. So according to the neutral principles deed, this property is for – is held by the [diocesan] corporation for the use and benefit of someone other than defendants, correct?

A. Yes.<sup>107</sup>

Defendant also specifically affirmed that “defendant All Saints’ is not making any claim to the property reflected in the deed in Exhibit 2 [*i.e.*, 5005 Dexter].”<sup>108</sup> Additionally, under All Saints’ bylaws, the property is held in trust for the Church.<sup>109</sup>

Plaintiffs thus are entitled to summary judgment as regards the 5005 Dexter property. Moreover, for the reasons stated regarding 4939 Dexter, incorporated herein, Defendant “All Saints” has no right or claim to the All Saints corporation or any property where legal or beneficial title is vested in that corporation.

Accordingly, under Texas law, Defendant Corporation must be removed as trustee of this trust, given Defendants’ adversity to Plaintiffs, with control returned to Plaintiff All Saints.<sup>110</sup>

\* \* \*

Finally, Defendants have repeatedly disclaimed any interest in All Saints Episcopal School—to the Court, to Plaintiffs, and under oath.<sup>111</sup> All Saints Episcopal School is not at issue in this case, Defendants have no claim to it, and should there ever be new statements by Defendants otherwise, they should be rejected.

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<sup>107</sup> JA02717, Dep. of Def. All Saints at 106:3-19.

<sup>108</sup> JA02717, Dep. of Def. All Saints at 106:14-23.

<sup>109</sup> JA02639, Bylaws of All Saints Episcopal Church art. XI (Jan. 29, 2012) (“All real and personal property held by or for the benefit of All Saints’ Episcopal Church is held in trust for the Episcopal Church and the Diocese thereof in which the Church is located.”).

<sup>110</sup> See Tex. Prop. Code § 113.082(a)(1), (4).

<sup>111</sup> A4542, Jambor Aff. ¶ 6 (Def. Iker: “[T]his has nothing to do with All Saints’ School. It’s incorporated, it owns its property, it has its own board and corporation. I don’t have any claim to it. The diocese never has.”); Defs. Resp. to Pls. Mot. for Partial Summ. J. at 40 (“Defendants concede they do not claim legal or beneficial title to All Saints Episcopal School . . . .”); A4317, Dep. of Def. Diocese at 218:12-25.

## **B. The Global Arguments**

On March 2, 2015, the Court granted Defendants' motion for partial summary judgment and denied Plaintiffs' motion for partial summary judgment "except with respect to claims relating to All Saints' Episcopal Church (Fort Worth)."<sup>112</sup>

Plaintiffs thus reassert and incorporate by reference as if fully set forth herein the arguments, authorities, and evidence of their prior briefing, applied here in support of Plaintiffs' claims relating to All Saints' Episcopal Church (Fort Worth) and in defense against all Defendants' claims relating to All Saints' Episcopal Church (Fort Worth).

In addition, Plaintiffs specifically incorporate by reference as if fully set forth herein the arguments, authority, and evidence in Plaintiffs' December 1, 2015 Motion for Partial Summary Judgment at pp. 34-81, December 22, 2015 Response to Defendants' Second Motion for Partial Summary Judgment at pp. 45-93, and January 23, 2015 Reply in Support of Plaintiff's Motion for Partial Summary Judgment at pp. 38-75.

### **1. The Court's March 2, 2015 Order Violates the U.S. Constitution**

The Texas Supreme Court remanded this case to see if the property issues could be resolved under neutral principles without running into ecclesiastical questions. That was a matter of developing the factual record.

But the Texas Supreme Court warned that *if* the property case could not be resolved solely under neutral principles without reaching ecclesiastical questions, *then* deference was still required on those ecclesiastical questions — even if deferring on those ecclesiastical questions would "effectively determine the property rights in question."<sup>113</sup>

As it turned out, once the record was developed, this case could not be resolved without reaching ecclesiastical questions. Defendants admitted that the corporation holds all property in

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<sup>112</sup> Order on Mots. for Partial Summ. J. (Mar. 2, 2015).

<sup>113</sup> *Masterson*, 422 S.W.3d at 606 (emphasis added) (citations omitted).

trust for separate religious bodies — the Episcopal Diocese and Episcopal Congregations — and so awarding the property meant answering who represents the Episcopal Diocese and Episcopal Congregations.<sup>114</sup> As one Defendant put it, “Our claims are based on our membership in the diocese; simple as that.”<sup>115</sup>

And Defendants do not deny that the Court decided these deeply ecclesiastical questions. In fact, they celebrate it, announcing publicly after the March 2, 2015 partial summary judgment that: “The court has declared that I am the Bishop of the Episcopal Diocese of Fort Worth . . . .”;<sup>116</sup> “the court has confirmed the Diocese’s right to dissociate from TEC . . . .”;<sup>117</sup> and “the Hon. John Chupp has ruled that [Defendants] control the Episcopal Diocese of Fort Worth . . . .”<sup>118</sup>

There is no question, under the Texas Supreme Court’s opinions in this matter and under the longstanding U.S. Supreme Court cases they recognized, that these are fundamentally religious questions of church polity and internal church governance and hierarchy. “Nor is there any dispute that questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern,” and when ecclesiastical tribunals “decide disputes over **the government and direction of subordinate bodies**, *the Constitution requires* that civil courts accept their decisions as binding upon them.”<sup>119</sup> The Texas Supreme Court already held in this case that The Episcopal Church is hierarchical from the top down, and that the Diocese is a “subordinate Episcopal affiliate” of The Episcopal Church.<sup>120</sup>

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<sup>114</sup> Defs.’ Second Mot. for Partial Summ. J. at 41; *see also* JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982); Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth ¶ 5 (July 15, 2014); A3948, Dep. of Def. Corp. at 17:16-19; A4274, Dep. of Def. Diocese at 49:2-5; Aff. of Jack Iker ¶ 6 (attached in support of Defs.’ Second Mot. for Partial Summ. J.); JA02710, Dep. of Def. All Saints at 78:13-21.

<sup>115</sup> JA02710, Dep. of Def. All Saints at 78:13-18.

<sup>116</sup> JA02783-84, Letter from Defendant Iker to All Saints’ Episcopal Church (Mar. 6, 2015).

<sup>117</sup> A4537, *Court denies TEC claims to Diocesan property & Trial court ruling expected soon*, DEFENDANTS’ LITIGATION BLOG, <http://www.fwepiscopal.org/news/2ndmsj.html> (last visited May 4, 2015).

<sup>118</sup> *Id.*

<sup>119</sup> *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 717, 724-25 (1976) (emphasis added).

<sup>120</sup> *Masterson*, 422 S.W.3d at 600, *see also id.* at 608; *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647.

And it is undisputed that the highest authority of The Episcopal Church, the General Convention — representing over 100 dioceses across the world — determined that Plaintiffs, not Defendants, are the only authorized representatives of the Episcopal Diocese of Fort Worth.<sup>121</sup>

Defendants encouraged the Court, successfully, to override a historic American religious denomination, the Protestant Episcopal Church, on questions at the core of ecclesiastical concern on the governance and discipline of its subordinate bodies in the midst of a religious schism. Defendants encouraged the Court to conclude that because this case involved property, the Court could expand its jurisdiction into these deeply ecclesiastical areas in order to resolve the property dispute. But “[t]he First Amendment [] commands civil courts to decide church property disputes without resolving underlying controversies over . . . church polity and church administration.”<sup>122</sup> Polity is “the form of government of a religious denomination.”<sup>123</sup> As the U.S. Supreme Court made clear, rejecting another neutral principles analysis that strayed into ecclesiastical territory: “**Resolution of the religious disputes at issue here affects the control of church property,**” and so “**civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation . . .**”<sup>124</sup>

Indeed, on the facts now developed and settled, it is clear this case falls into the category the Texas Supreme Court warned about in *Masterson*:

Civil courts are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted. *See Hosanna-Tabor*, \_\_\_ U.S. \_\_\_, 132 S.Ct. at 705), (citing *Milivojevich*, 426 U.S. at 708, 96 S.Ct. 2372) . So what happens to the relationship between a local congregation that is part of a hierarchical religious organization and the higher

<sup>121</sup> A4107-10, Buchanan Aff. ¶¶ 5-8; *Masterson*, 422 S.W.3d at 600 (noting that General Convention is “first and highest” tier of the Church composed of “representatives from each diocese and most of TEC’s bishops”).

<sup>122</sup> *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976) (emphasis added) (modifications omitted).

<sup>123</sup> *Merriam-Webster*, <http://www.merriam-webster.com/dictionary/polity> (last visited May 2, 2015).

<sup>124</sup> *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 720 (1976).

organization when members of the local congregation vote to disassociate is an ecclesiastical matter over which civil courts generally do not have jurisdiction. *Milivojevich*, 426 U.S. at 713-14, 96 S.Ct. 2372. **But what happens to the property is not, unless the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue.**<sup>125</sup>

It is indisputable on this record that the Episcopal Diocese and Congregations' "affairs have been ordered so that ecclesiastical decisions effectively determine the property issue."<sup>126</sup> As Defendants have repeatedly admitted, before the prior summary judgment motions and again in these supplemental proceedings, their property claims "live or die on [their] membership in the Episcopal Diocese of Fort Worth."<sup>127</sup> If they cannot represent the Episcopal Diocese and Episcopal Congregations, then they cannot claim to be the beneficiaries of the admitted trusts owed to those entities. And as the Texas Supreme Court made clear in these very cases, the "determination of who is or can be a member in good standing of TEC or a diocese is an ecclesiastical decision," and "courts applying the neutral principles methodology defer to religious entities' decisions on ecclesiastical and church polity issues such as who may be members of the entities,"<sup>128</sup> even where "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."<sup>129</sup>

This Court asked at the hearing why, if it was required to defer on such questions, could it not defer to the Defendants claiming to represent the Diocesan level of hierarchy, instead of deferring to the determinations by the highest authority of The Episcopal Church, the General

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<sup>125</sup> *Masterson*, 422 S.W.3d at 607 (emphasis added).

<sup>126</sup> *Masterson*, 422 S.W.3d at 607.

<sup>127</sup> Dep. of Def. All Saints at 78:19-20.

<sup>128</sup> *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 650, 52 (Tex. 2013).

<sup>129</sup> *Masterson*, 422 S.W.3d at 606.

Convention?<sup>130</sup> The Texas Supreme Court and U.S. Supreme Court have answered that question, holding unequivocally that deference is due to the “highest authority of a hierarchical religious organization,” not to the middle or lower levels of that hierarchy.<sup>131</sup>

This Court’s holdings overrode the highest authorities of The Episcopal Church on the ecclesiastical polity questions of who is authorized to represent the continuing Episcopal Diocese and whether an Episcopal Diocese has authority under Church law to break away from the Church that created it.

Thus, in the March 2, 2015 Order, as in the famous *Milivojevich* case, **“The fallacy fatal to the judgment . . . is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes.”**<sup>132</sup>

The fear in such cases is that civil courts may, however inadvertently, substitute their own philosophical or other views for those of the church, on issues of how churches ought to be structured or governed. And indeed, Defendants publicly characterized this case in just that way, announcing after the hearing and before their win that, “Near the conclusion of the hearing [the Court] indicated a philosophical preference for local self-determination, asking, ‘Why do we need to have a ‘big government’ solution to this where a New York church says what is best?’”<sup>133</sup>

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<sup>130</sup> Hearing on Motions for Partial Summary Judgment (Feb. 20, 2015) at 15:9-11 (THE COURT: “Well, what if I want to defer to the majority of the diocese’s decision, who they think it is?”).

<sup>131</sup> *Masterson*, 422 S.W.3d at 607; *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708 (1976).

<sup>132</sup> *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708 (1976).

<sup>133</sup> A4538, *Court denies TEC claims to Diocesan property & Trial court ruling expected soon*, DEFENDANTS’ LITIGATION BLOG, <http://www.fwepiscopal.org/news/2ndmsj.html> (last visited May 4, 2015) (modification omitted); see also Hr’g Tr. on Mots. for Partial Summ. J. at 93:1-4 (Feb. 20, 2015) (Court asking: “Why do we have to have some big government solution to this where somebody in New York [The Episcopal Church] controls what these people in Fort Worth [the Episcopal Diocese] are doing?”).

But the right to “the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned.”<sup>134</sup> To put it in context, had this case involved the Catholic Church instead of the Episcopal Church, the question at the hearing would have read: ‘Why do we need some big government solution to this where someone in Rome says what is best?’ Deciding on their own form of government, free from state interference, is the “unquestioned” right of religious denominations under the First Amendment.<sup>135</sup>

In fact, what Defendants asked this Court to do is so unconstitutional that they admitted the opposite — the true Texas Supreme Court mandate — to the U.S. Supreme Court. They told the U.S. Supreme Court, accurately and honestly, that when the facts show that property questions turn on the identity of religious bodies, then “the appropriate method for Texas courts” under *Masterson* is this: “Because the property dispute’s resolution turned, under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court deferred **to the national denomination’s** understanding of the church’s identity.”<sup>136</sup>

Respectfully, the Court’s March 2, 2015 Order violates the mandate of *Masterson* and *Episcopal Diocese*, as well as the U.S. Constitution’s principles it cites. The facts developed on remand show, indisputably, that the property issues here turn on who represents the Episcopal Diocese and the Episcopal Congregations. On that question, under neutral principles, this Court must defer to the Church under the First Amendment, even though it “effectively determine[s] the property rights in question.”<sup>137</sup> Under a correct application of *Masterson* and *Episcopal Diocese* to these facts, Plaintiffs prevail.

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<sup>134</sup> *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S. Ct. 694, 713 (2012).

<sup>135</sup> *Id.*

<sup>136</sup> A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)) (emphasis added); *accord Brown*, 116 S.W. at 364–65.

<sup>137</sup> *Masterson*, 422 S.W.3d at 606 (emphasis added) (citations omitted).

## 2. Plaintiffs Reassert their Prior Evidence, Arguments, and Authorities

In the following sections, Plaintiffs reassert their prior briefing, stated here as to the claims regarding All Saints, as the Court anticipated.<sup>138</sup>

### a. Facts for global theories

Plaintiffs incorporate by reference as if fully set forth herein the broader statement facts and related cited evidence from their prior briefing. In addition, Plaintiffs specifically incorporate by reference as if fully set forth herein the facts and evidence cited in Plaintiffs' December 1, 2015 Motion for Partial Summary Judgment at pp. 4-13. In addition, for context, Plaintiffs state in full the following facts:

#### i. Structure of The Episcopal Church

As the Texas Supreme Court has held in this case, The Episcopal Church is a “hierarchical organization”<sup>139</sup> with “three structural tiers. The first and highest is the General Convention,” which “adopts and amends [the Church’s] constitution and canons.”<sup>140</sup> “The second tier is comprised of regional, geographically defined dioceses[,]” which “must accede to [the Church’s] constitution and canons.”<sup>141</sup> “The third tier is comprised of local congregations[,]” which “must subscribe to and accede to the constitution and canons of both [the Church] and the Diocese in which they are located.”<sup>142</sup>

#### ii. Formation of the Episcopal Diocese of Fort Worth

The Church began its formal ministry in North Texas in 1838 and founded the Diocese of Dallas—the immediate predecessor to the Diocese of Fort Worth—in 1895. For nearly a

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<sup>138</sup> Hr’g on Status Conf. (Mar. 20, 2015) at 26:7-14 (“THE COURT: [C]an we not do the summary judgment that you -- that I granted for the other churches, but just do it for All Saints, too, in that whole thing, just cut and paste that [global] portion into it. MR. LEATHERBURY: Yes. MR. SHARPE: If that’s what the Court wants.”).

<sup>139</sup> *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 608 (Tex. 2013) .

<sup>140</sup> *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 647 (Tex. 2013).

<sup>141</sup> *Id.* at 647-48.

<sup>142</sup> *Id.*



century, from 1895 until 1982, this Diocese of Dallas encompassed both the Dallas and Fort Worth geographical areas.

In 1982, the Diocese of Dallas sought the permission of The Episcopal Church to divide and create a new, separate diocese for the Fort Worth geographical area.<sup>143</sup> New dioceses can be formed only with the permission of the Church<sup>144</sup> and only after the new diocese “accedes to [the Church’s] constitution and canons.”<sup>145</sup> The Diocese of Fort Worth was no exception. Its process of formation began only after the Church, in September 1982, provided it with formal, written permission to begin the process of formation under Article V of the Church’s Constitution.<sup>146</sup>

In order to further the process of formation, the Diocese of Fort Worth then held a Primary Convention in November 1982.<sup>147</sup> There, the Diocese and the Congregations within its geographical limits, including All Saints, “fully” acceded to the Church’s Constitution and Canons:

[T]he Primary Convention of the Diocese of Fort Worth . . . *pursuant to approval of the 67<sup>th</sup> General Convention of The Episcopal Church does hereby fully subscribe to and accede to the Constitution and Canons of The Episcopal Church*, and; IN SO DOING, we unanimously hereunto set our hand . . . 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 I, 9 (4) of General Convention, and with copies of the Constitution and Canons of the Diocese of Fort Worth adopted this day.<sup>148</sup>

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<sup>143</sup> A3932.2, Dep. of Def. Diocese at 98:12-21; *see also* A3957, Dep. of Def. Corp. at 131:7-15 (confirming that The Episcopal Church had to provide consent for division of the Episcopal Diocese of Dallas); A3938.1, Dep. of Def. Diocese at 159:19-160:4.

<sup>144</sup> A3932.1, Dep. of Def. Diocese at 96:11-14.

<sup>145</sup> *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647-48.

<sup>146</sup> JA00785, Journal of the General Convention, September 1982; A3932.2, Dep. of Def. Diocese at 98:12-21.

<sup>147</sup> *See* A3933-34, Dep. of Def. Diocese at 113:13-115:1.

<sup>148</sup> JA00348, 364-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982 (emphasis added); *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

The “Canons of The Episcopal Church” that the Diocese and All Saints promised to abide by included explicit provisions concerning property. Most notably, Canon I.7.4, which was already in force when the Diocese and All Saints made this promise, provides as follows:

*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.<sup>149</sup>

The Diocese’s founding Constitution and Canons committed to hold title to all real property in a Corporation “subject to control of the Church in the Diocese,”<sup>150</sup> to be used only for the purposes “authorized or approved by this Church, and for no other use.”<sup>151</sup> As required to complete the Diocese’s process of formation in the Church, the Diocese then sent the resolution reflecting its full accession to the Church’s Constitution and Canons, along with a copy of the Diocese’s proposed Constitution and Canons, effective January 1, 1983, to the Church for approval.<sup>152</sup>

In response, the Church sent the Diocese a certificate “bringing the Diocese of Fort Worth into union with The General Convention.”<sup>153</sup> The Church’s consent allowed the Diocese to obtain over \$100 million in real property and other property of the Church from the Church’s Diocese of Dallas.

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<sup>149</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

<sup>150</sup> JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

<sup>151</sup> JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

<sup>152</sup> A3934.1, Dep. of Def. Diocese at 120:19-121:22; JA00065, Letter from Reverend Logan E. Taylor to the General Convention of The Episcopal Church (Nov. 24, 1982).

<sup>153</sup> JA00064, Letter from Reverend James R. Gundrum, General Convention, to Reverend Donald Davies, the Episcopal Diocese of Fort Worth (Jan. 27, 1983).

### iii. Formation of the Corporation of the Episcopal Diocese of Fort Worth

In Texas, “[t]he board of directors of a religious, charitable, educational, or eleemosynary corporation may be affiliated with, elected, and controlled by an . . . unincorporated . . . association . . . the membership of which is composed of representatives, delegates, or messengers from a church or other religious association.”<sup>154</sup> Pursuant to this law, the Diocese created a subordinate corporation, the Corporation of the Episcopal Diocese of Fort Worth (“the Corporation”) in February 1983, filing Articles of Incorporation with the Texas Secretary of State that provided that the Corporation’s purpose was to receive and maintain property for the Episcopal Diocese.<sup>155</sup>

The Corporation’s governing documents ensure that this purpose is carried out by mandating that the Diocese’s Bishop serve as Chairman of the Board and that all Trustees be “either lay persons in good standing of a parish or mission in the [Diocese], or members of the clergy canonically resident within the [Diocese].”<sup>156</sup> The founding bylaws required the Corporation to act “in conformity with the Constitution and Canons of the Episcopal Church in the United States of America,” which “shall control” over the bylaws.<sup>157</sup> From its inception, the Corporation represented to the IRS that it was “a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”<sup>158</sup>

In 1984, the Corporation was a party to the declaratory judgment that finalized the Article V division of property from the Diocese of Dallas to the Corporation acting on behalf of

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<sup>154</sup> Tex. Bus. Orgs. Code § 22.207(a).

<sup>155</sup> See JA00066-69, Articles of Incorporation, Corporation of the Episcopal Diocese of Fort Worth (Feb. 28, 1983).

<sup>156</sup> JA00091, Bylaws, the Corporation of the Episcopal Diocese of Fort Worth (2006).

<sup>157</sup> JA00076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (May 17, 1983).

<sup>158</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); see also A3955, 3956.1-2, Dep. of Def. Corp. at 88:20-89:10, 120:4-8, 122:6-123:5 (conceding that the Corporation claimed its tax exemption as a subordinate unit of the Church from August 13, 1984 until at least January 1, 2000); A3965.1, Dep. of Def. Trustee Bates at 31:4-21 (agreeing that it was a “truthful statement” that the Corporation was a subordinate unit of The Episcopal Church).

the Diocese of Fort Worth.<sup>159</sup> In that action, the Corporation acknowledged its subordinate status to the Diocese and the Church. The Corporation stated that it was “a Texas nonprofit corporation, duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth.”<sup>160</sup> The Diocese, in turn, represented it was “organized pursuant to the Constitution and Canons of the Protestant Episcopal Church.”<sup>161</sup> The petition affirmed that the division was being effected under Article V of the Church’s Constitution.<sup>162</sup> And it affirmed that the property had been “acquired for the use of the Episcopal Church in the Diocese of Dallas” and was being transferred to the Corporation “for the use of the Church in the [new] Diocese,”<sup>163</sup> which, as the purported Defendant Corporation testified, meant “for the use of The Episcopal Church in the Diocese.”<sup>164</sup>

The Defendants purporting to represent the Corporation admit to this day that it would not be acceptable for the Corporation to hold the property for any purpose except in support of the Diocese and its parishes,<sup>165</sup> that all affairs of the Corporation must be in accord with the Diocese’s Constitutions and Canons,<sup>166</sup> and that its representations to the IRS of being a subordinate body of the Church were “truthful.”<sup>167</sup>

#### **iv. Defendants attempt to sever these subordinate entities from the Church**

In November 2008, then-Bishop of the Diocese, the Rt. Rev. Jack Leo Iker, renounced his affiliation with the Church, stating that he was no longer a bishop or a member of The

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<sup>159</sup> *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 648; A3958, Dep. of Def. Corp. at 150:3-14.

<sup>160</sup> JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>161</sup> *Id.*

<sup>162</sup> JA00720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>163</sup> JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>164</sup> A3959-60, Dep. of Def. Corp. at 154:3–156:1.

<sup>165</sup> A3948, Dep. of Def. Corp. at 16:20-17:9.

<sup>166</sup> A3950, Dep. of Def. Corp. at 47:16-48:13.

<sup>167</sup> A3965.1, Dep. of Def. Trustee Bates at 31:4-21 (agreeing that it was a “truthful statement” that the Corporation was a subordinate unit of The Episcopal Church).

Episcopal Church.<sup>168</sup> Contrary to his three written, signed vows to abide by the Doctrine, Discipline, and Worship of The Episcopal Church<sup>169</sup>—which he made as a condition of assuming office and having access to the property and other significant personal benefits in the first place<sup>170</sup>—Iker and the Defendants purported to remove the Episcopal Diocese and Congregations, along with all of the property, from the Church.<sup>171</sup>

The Church “accepted the renunciation” of former-Bishop Iker,<sup>172</sup> and the Church’s Presiding Bishop, as directed by the Church’s highest authority, the General Convention, removed Defendant Iker from authority within the Church and recognized as vacant the Diocesan positions held by the now-unqualified breakaway Defendants.<sup>173</sup> The loyal Episcopalians in Fort Worth organized a special convention of the Diocese, called to order by the Presiding Bishop of The Episcopal Church, in order to fill the vacated positions.<sup>174</sup>

It is undisputed that the highest authorities of The Episcopal Church recognize Plaintiffs as the duly constituted leadership of the continuing Episcopal Diocese and Congregations including All Saints’ Episcopal Church (Fort Worth).<sup>175</sup> Nonetheless, Defendants continued to claim that—despite his renunciation of and removal from the Church—Defendant Iker remains the Bishop of the Episcopal Diocese of Fort Worth.

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<sup>168</sup> A3926.1, Dep. of Def. Diocese at 26:10-15.

<sup>169</sup> A3928, Dep. of Def. Diocese at 39:2-24.

<sup>170</sup> A3928, Dep. of Def. Diocese at 39:21-24.

<sup>171</sup> See A896-97, Defendants’ “As we Realign,” (Nov. 16, 2008); A898-99, Defendants’ Responses to Attempted Inhibition of the Bishop (Nov. 24, 2008).

<sup>172</sup> *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 648.

<sup>173</sup> A608, Renunciation of Ordained Ministry and Declaration of Removal and Release of the Rt. Rev. Jack Leo Iker (Dec. 5, 2008); A900, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth, Feb. 7, 2009.

<sup>174</sup> See A934, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) and Special Meeting of Convention (Feb. 7, 2009).

<sup>175</sup> A4107-10; Aff. of the Rt. Rev. John Clark Buchanan ¶¶ 5-8 (Oct. 22, 2014) (“Buchanan Aff.”); see also A5-7, Aff. of The Rt. Rev. C. Wallis Ohl (Oct. 13, 2010) (“Ohl Aff.”); A23-25, Letters of Congratulations and Commendation to Episcopal Diocese of Fort Worth and Deputies and First Alternates to Diocesan Convention (Nov. 6 & 12, 2009); A30-31, Aff. of The Rt. Rev. Edwin F. Gulick, Jr. (July 28, 2009) (“Gulick Aff.”); A363, 365-66, Excerpts from *The Episcopal Church Annual* (2010); A613-14, Excerpts from *The Episcopal Church Annual* (2009); A866-67, 869-71, 876, Excerpts from the 2009 Journal of the General Convention.

**b. Defendants cannot take property under *Masterson* and *Episcopal Diocese of Fort Worth***

The Texas Supreme Court identified “the appropriate method for Texas courts” when a neutral principles instrument names an ecclesiastical religious entity as the beneficiary and two parties dispute control of that religious entity. “Because the property dispute’s resolution turned, under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court deferred to the national denomination’s understanding of the church’s identity.”<sup>176</sup> The Court should apply that appropriate method here.

**i. Defendants concede that the Diocesan Corporation holds property in trust for the Diocese and Congregations**

Defendants have admitted in sworn testimony that the Diocesan Corporation holds title to *all property in trust* for the Congregations, with the exception of one parcel, the Diocesan Center, which it holds in trust for the Diocese.<sup>177</sup> Defendants have repeatedly said the same to this Court.<sup>178</sup>

As a matter of law, under *Masterson* and *Episcopal Diocese of Fort Worth*, whoever has a legal right to represent those beneficiaries, the Episcopal Diocese and Congregations, is the beneficiary of those trusts. Defendants have admitted this, too—just a few months ago—to the U.S. Supreme Court:

“[U]sing principles of Texas law,” *Brown* concluded that

<sup>176</sup> A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)); accord *Brown*, 116 S.W. at 364–65.

<sup>177</sup> A3931-32, 3956, Dep. of Def. Diocese at 85:6-12, 86:11-16, 87:12-88:11; A3948, 3952, 3956, Dep. of Def. Corp at 17:10-18:2, 65:4-7, 107:13-108:7; accord JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

<sup>178</sup> Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth at 4–5; Second Amended Plea in Intervention [of Defendant Congregations] at 4–5. Moreover, the Corporation itself has told two other courts that it holds property “for the use of the Church in the Diocese,” JA00720, Petition, *Episcopal Diocese of Dallas v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984), “impressed with an express trust in favor of the diocese, with the property to be for the use of an Episcopalian congregation,” A1043, *Wantland Aff., Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833 (Dist. Ct. Tarrant Cnty. 15 3d Jud. Dist. July 29, 1994).

“whatever body is identified as being the church to which the deed was made must still hold the title.” Because the property dispute’s resolution turned, under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court deferred to the national denomination’s understanding of the church’s identity. “The method by which this Court addressed the issues in *Brown*,” the Texas Supreme Court held, “remains the appropriate method for Texas courts.”<sup>179</sup>

Because Defendants concede the property held by the Diocesan Corporation is held in trust for the Congregations—here, All Saints—and because the property dispute thereby turns on the identity of All Saints, this Court must, under *Masterson* and *Episcopal Diocese of Fort Worth*, declare that the property in dispute is held in trust for Plaintiff All Saints.<sup>180</sup>

## ii. Only Plaintiffs can control the Diocese

As a matter of law, Defendants cannot seize control of the Diocese. “There is a single Fort Worth Diocese . . . which both a majority and a minority faction claim to control.” *In re Salazar*, 315 S.W.3d 279, 285 (Tex. App.—Fort Worth 2010, orig. proceeding). “The question of ‘identity’ remains to be determined in the course of the litigation.” *Id.* at 286.

The Texas Supreme Court instructed exactly how to resolve this issue. “[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 . . . .” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650. “[D]etermination of who is or can be a member in good standing of TEC or a diocese is an ecclesiastical decision . . . .” *Id.* at 652. “[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.” *Masterson*, 422 S.W.3d at 602. “**Civil courts**

<sup>179</sup> A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)); accord *Brown*, 116 S.W. at 364–65.

<sup>180</sup> In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. See n.196, *infra*, and Section VIII.F.3 of Pls.’ Mot. for Partial Summ. J. at 92-94.

are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted.” *Id.* at 607 (emphasis added). “[D]eferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question.” *Id.* at 606.

Defendants agree: “[U]nder neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court defer[s] to the national denomination’s understanding of the church’s identity,” and “must defer.”<sup>181</sup>

Breakaway groups cannot avoid this law by claiming the higher church lacked authority to replace breakaway members or failed to follow internal church rules. The Texas Supreme Court squarely rejected such claims in *Masterson*:

Citing *Milivojevic*, the Anglican Church Leaders urge that the Episcopal Church has not created hierarchical tribunals with authority to remove the vestry, exclude people from membership in the local church, or to adjudicate this property dispute. But nothing in *Milivojevic* requires a hierarchical religious entity to expressly establish which powers its religious tribunals may properly exercise. **To the contrary, *Milivojevic* suggests that the First Amendment limits the jurisdiction of secular courts regarding the extent to which they may inquire into the form or type of decision-making authority a religious entity chooses to utilize, the specific powers of that authority, or whether the entity has followed its own procedures regarding controversies within the exclusive jurisdiction of the ecclesiastical authorities.**

422 S.W.3d at 607-08 (emphasis added) (citing *Serbian E. Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 720 (1976)).

“[T]he record conclusively shows TEC [The Episcopal Church] is a hierarchical organization.” *Masterson*, 422 S.W.3d at 608. “The Episcopal Church . . . has three structural tiers. The first and highest is the General Convention.” *Episcopal Diocese of Fort Worth*, 422

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<sup>181</sup> A3823, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).



S.W.3d at 647. Below that are the “regional, geographically defined dioceses [that] must accede to TEC’s constitution and canons.” *Id.* at 647-48. “The third tier is comprised of local congregations [that] must subscribe to and accede to the constitutions and canons of both TEC and the Diocese in which they are located.” *Id.* at 648.

As the Diocese asserted in an earlier case, in order to receive the property, “[t]he 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 . . . .”<sup>182</sup> And, as the Diocese represented for decades to the IRS in exchange for tax benefits, the “Episcopal Diocese of Fort Worth . . . [is a] subordinate organization[ of the] Protestant Episcopal Church in the United States of America.”<sup>183</sup> Indeed, as a condition of formation, the Diocese’s own founding Resolution affirmed the Diocese was formed “pursuant to approval of the 67th General Convention of The Episcopal Church” and submitted “unanimously” and “fully” to its rules.<sup>184</sup> The Diocese represented as recently as 2007 to the IRS that “[t]he Diocese of Fort Worth shall consist of those Clergy and Laity of the Episcopal Church in the United States of America resident in that portion of the State of Texas . . . .”<sup>185</sup>

The Episcopal Church indisputably recognizes only the local individual Plaintiffs and their duly-authorized successors as the authorized leadership of the Episcopal Diocese of Fort Worth.<sup>186</sup> The Episcopal Church does not recognize Defendants as having any authority or

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<sup>182</sup> JA00717, Petition, *Episcopal Diocese of Dallas v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>183</sup> A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

<sup>184</sup> JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

<sup>185</sup> A3789.75, Episcopal Diocese of Fort Worth, Application to Internal Revenue Service for Tax-Exempt Status (2007) (attaching Constitution and Canons of the Episcopal Diocese of Fort Worth (2001)).

<sup>186</sup> See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27<sup>th</sup> Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

holding any offices in the Episcopal Diocese of Fort Worth.<sup>187</sup> The highest authority of The Episcopal Church, the General Convention, passed a resolution at its meeting in 2009 commending the ministry of Plaintiffs as the continuing Diocese of Fort Worth.<sup>188</sup> The House of Deputies of the General Convention has recognized and seated only Plaintiffs as the elected “Deputies” of the Episcopal Diocese of Fort Worth at the General Convention’s last two meetings in 2009 and 2012.<sup>189</sup> The House of Bishops of the General Convention has recognized and continues to recognize Plaintiff the Rt. Rev. Rayford B. High, Jr. as the current Bishop of the Episcopal Diocese of Fort Worth and his predecessors, Bishops Edwin F. Gulick, Jr. and C. Wallis Ohl, as his predecessor Bishops of the Episcopal Diocese of Fort Worth.<sup>190</sup> The Presiding Bishop of the Episcopal Church has accepted for her certification canonically-required consents to the ordination of bishops by Plaintiff Bishop High and his predecessors-in-office, Bishops Gulick and Ohl, as well as such consents by the local Plaintiffs and their successors-in-office who have constituted the Standing Committee of the Episcopal Diocese of Fort Worth.<sup>191</sup> The Presiding Bishop authorized the participation of The Episcopal Church in this action to support the local Plaintiffs as the only authorized leadership of the Episcopal Diocese of Fort Worth.<sup>192</sup>

There is only one Episcopal Diocese of Fort Worth. The Texas Supreme Court ruled that The Episcopal Church is indisputably hierarchical in three tiers, with dioceses mandatorily submitting to the rules of the higher Church as a condition of formation. The Episcopal Diocese of Fort Worth is and always has been a subordinate body of The Episcopal Church since its inception, created to carry out the purposes of The Episcopal Church. The highest levels of the

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<sup>187</sup> See sources cited, *supra*, in footnote 186.

<sup>188</sup> See sources cited, *supra*, in footnote 186; see also A871, 875-76, Excerpts from the 2009 Journal of the General Convention.

<sup>189</sup> A4107-08, Buchanan Aff. ¶ 5.

<sup>190</sup> A4107, *id.*

<sup>191</sup> A4108, *id.*

<sup>192</sup> *Id.*

Church indisputably recognize only the local Plaintiffs, and not any Defendants, as the authorized leadership of the Diocese. That is dispositive as a matter of law, and this Court must apply that ecclesiastical determination as final and binding in the civil case before it. Further inquiry is unnecessary and unconstitutional.

**iii. Only Plaintiff All Saints can control All Saints**

For all the same reasons, only The Episcopal Church and its duly authorized Episcopal Diocese can recognize and determine whether Plaintiff All Saints or Defendant “All Saints” constitutes All Saints’ Episcopal Church.

As the Texas Supreme Court instructed, “what happens to the relationship between a local congregation that is part of a hierarchical religious organization and the higher organization when members of the local congregation vote to disassociate is an ecclesiastical matter over which civil courts generally do not have jurisdiction.” *Masterson*, 422 S.W.3d at 607 (citing *Milivojevich*, 426 U.S. at 713–14). Thus, in a property suit, the identity of “the true and proper representatives” of local congregations is an “ecclesiastical matter[] of church governance [over which t]he trial court lack[s] jurisdiction . . . and properly defer[s] to [the] ecclesiastical authority on those questions.” *Id.* at 607-08 (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. at 704; *Brown v. Clark*, 116 S.W. 360, 363 (Tex. 1909)).

Or, as Defendants themselves put it, “under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court defer[s] to the national denomination’s understanding of the church’s identity. [This] ‘remains the appropriate method for Texas courts.’”<sup>193</sup>

As Diocesan officials have stated in previous litigation:

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<sup>193</sup> A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)).

- “[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.”<sup>194</sup>
- “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 . . . .”<sup>195</sup>
- Parties that have “abandoned the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a member of the Vestry under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”<sup>196</sup>

The Episcopal Church and its duly-authorized Diocese recognize only Plaintiff All Saints as the continuing All Saints’ Episcopal Church.<sup>197</sup> As a matter of law, the Court must defer to

<sup>194</sup> A1037, Corp. of Episcopal Diocese of Fort Worth’s Second Suppl. Evidence in Support of Mot. for Summ. J., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 11, 1994), ex. A (Aff. of Rev. Canon Billie Boyd, Assistant to Bishop of Fort Worth).

<sup>195</sup> A1013, Pls.’ Mot. for Summ. J., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Dec. 8, 1993), ex. A (Aff. of Bishop Jack Iker). In fact, parishes in the Episcopal Diocese of Fort Worth have noted that the definition of “parish” includes “conformity to the doctrine, discipline and worship of the Episcopal Church.” A2647, Saint Andrew’s Episcopal Church (1997) (citing a manuscript attributed to Edward Henry Eckel, the Rector of St. Andrew’s from 1917 to 1930).

<sup>196</sup> A988-89, Second Am. Orig. Pet., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1019, Pls.’ Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd). Defendants are judicially, equitably, quasi-, and otherwise estopped from contradicting these (and other) admissions, which they made to courts, Plaintiffs, and others, regarding the obligations and commitments of the Diocese, Congregations, and Corporation to the Church and Plaintiffs, as explained in Section VIII.F.3 of Plaintiffs’ Motion for Partial Summ. J. (Dec. 1, 2014) at 92-94, which is hereby incorporated by reference into this Supplemental Motion for Partial Summary Judgment (All Saints). *See Baron v. Mullinax, Wells, Mauzy & Baab, Inc.*, 623 S.W.2d 457, 462 (Tex. App.—Texarkana 1981, writ ref’d n.r.e.) (quasi-estoppel may be raised by a plaintiff as a counter-defense that will nullify a defense that constitutes an unconscionable reversal from a former position); *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 396 (Tex. App.—Houston [14th Dist.] 1997, writ dismissed) (judicial estoppel “bars a party, who has successfully maintained a position in a prior judicial proceeding, from later adopting an inconsistent position, unless he can show the prior statement was made inadvertently due to mistake, fraud, or duress”); *Sw. Guar. Trust Co. v. Providence Trust Co.*, 970 S.W.2d 777, 783 (Tex. App.—Austin 1998, pet. denied) (“[E]quitable estoppel prevents parties from asserting claims against another party which arise out of their false representations relied upon by said party.”).

<sup>197</sup> See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27<sup>th</sup> Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A3-10, Ohl Aff. ¶¶ 3-13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

their determination and apply it for the civil purposes of this case. Under plain law and undisputed facts, this Court should grant partial summary judgment and declare that All Saints is represented by Plaintiff All Saints for all civil law purposes, including for enforcement of the trust interest Defendants concede exists.

Defendants admit in sworn testimony that the Corporation holds all property in trust for the Diocese and Congregations. Under *Masterson* and *Episcopal Diocese of Fort Worth*, as a matter of law, only The Episcopal Church and its duly-authorized Diocese can determine who controls the beneficiary at issue here, All Saints' Episcopal Church. This Court should grant summary judgment declaring that it defers to Plaintiff The Episcopal Church and its duly-authorized Diocese's determination that Plaintiff All Saints constitutes All Saints' Episcopal Church for civil law purposes.

**c. Express trust for the Church and its Constituent Entities**

In addition to the reasons set forth above, the disputed property is also held under an express trust for The Episcopal Church because (1) the Episcopal Diocese committed to hold all property in trust for The Episcopal Church as a condition of formation by the Church, admission to the Church, and receipt of the property under the Church's Constitution and (2) before the formation of the Diocese, the property was already held by the Dallas Diocese in express trust in favor of the Church.

**i. Texas Law of Express Trust**

Express trusts arise from the expressed intention of the owner of property to create a trust with respect to the property. See *Perfect Union Lodge No. 10 v. InterFirst Bank of San Antonio, N.A.*, 748 S.W.2d 218, 220 (Tex. 1988); Tex. Prop. Code § 112.002 ("A trust is created only if the settlor manifests an intention to create a trust."). A charitable trust is one for a purpose classified as charitable (*e.g.*, the advancement of religion or education or the promotion of health

or science). *See Boyd v. Frost Nat'l Bank*, 196 S.W.2d 497, 502 (Tex. 1946). The Rule Against Perpetuities does not apply to charitable trusts: A charitable trust can be perpetual. Tex. Prop. Code § 112.036.

Texas law recognizes five methods by which a trust can be created. *See id.* § 112.001. The first method is “Self-Declaration of Trust”: that is, “[a] trust may be created by . . . a property owner’s declaration that the owner holds the property as trustee for another person.” *Id.* § 112.001(1). A person has the same capacity to create a trust by declaration that the person has to transfer, will, or appoint free of trust. Tex. Prop. Code § 112.007; *see also Wilkerson v. McClary*, 647 S.W.2d 79, 80 (Tex. App.—Beaumont 1983, no writ) (“[T]he property at issue . . . can pass into the trust solely by declaration of trust.”). “No particular form of words is required to create a trust.” *Barrientos v. Nava*, 94 S.W.3d 270, 281 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2002, no pet.). Courts affix a trust where “the intention of the parties is that the property shall be held and dealt with for the benefit of another . . . .” *Christopher v. Davis*, 284 S.W. 253, 257 (Tex. Civ. App.—Dallas 1926, writ ref’d).

Under the statute of frauds, “[a] trust in either real or personal property is enforceable only if there is written evidence of the trust’s terms bearing the signature of the settlor or the settlor’s authorized agent.” Tex. Prop. Code § 112.004. But “an unsigned paper may be incorporated by reference in the paper signed by the person sought to be charged.” *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004) (quoting *Owen v. Hendricks*, 433 S.W.2d 164, 166 (Tex. 1968)) (internal quotation marks omitted). “Acceptance by a beneficiary of an interest in a trust is presumed.” Tex. Prop. Code § 112.010(a). A charitable corporation can serve as a trustee of a trust of which another charitable organization is the beneficiary. Tex. Bus. Orgs. Code. § 2.106.

A trust supported by consideration is a contractual trust, which is irrevocable even without an express statement of irrevocability in the instrument. *Shellberg*, 459 S.W.2d at 470–71 (“Sec. 41 of Art. 7425b, V.A.T.S., (The Texas Trust Act) is inapplicable to a trust that is created by contract and based on a valuable consideration. . . . [T]he attempted revocation of the trust by appellant was wholly ineffective.”); accord Bogert’s *The Law of Trusts & Trustees* § 998 n.8 (2014) (“Section 41 of the Texas Trust Act, providing that every trust is revocable unless expressly made irrevocable, d[oes] not apply to a contractual trust based on valuable consideration.” (discussing *Shellberg*)); see also Johanson’s *Tex. Estates Code Ann.* § 112.051 (2014) (“[S]tatute does not apply to trust created by agreement and supported by consideration; such a trust is irrevocable even if it does not expressly so state.” (citing *Shellberg*)).

**ii. The Diocesan Corporation holds property in trust for the Church**

Defendants claimed a right to 5001 Crestline, 5003 Dexter, and 5005 Dexter (the last later disclaimed) because they are held by the Diocesan Corporation. But the Diocese and Corporation contractually committed to hold all property in express trust for the Church.

The Episcopal Diocese of Fort Worth was created under Article V of The Episcopal Church’s Constitution, which allows the formation of a new Diocese “by the division of an existing Diocese.”<sup>198</sup> The Fort Worth Diocese was formed by division of the existing Episcopal Diocese of Dallas, which itself was formed in 1895<sup>199</sup> with the Diocese of Dallas’s unqualified accession to The Episcopal Church.<sup>200</sup>

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<sup>198</sup> JA00384, *The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* (1979), art. V.

<sup>199</sup> A422, *Journal of the Primary Convention of Dallas*, Dec. 19-20, 1895.

<sup>200</sup> A3939, *Dep. of Def. Diocese* at 162:5-20.

The Article V division process requires “the consent of the General Convention . . . under such conditions as the General Convention shall prescribe,”<sup>201</sup> including that the “new Diocese” “accede[] to the Constitution and Canons of this Church . . . .”<sup>202</sup> Defendants concede that the Dallas division was conducted under Article V and that it was the parties’ intent to conform to Article V.<sup>203</sup>

To secure the Church’s consent, every lay delegate and clergy member of the new Diocese, and every Congregation within the Diocese, resolved “unanimously,” “pursuant to approval of the 67th General Convention of The Episcopal Church,” to “fully subscribe to and accede to the Constitution and Canons of The Episcopal Church,” followed by seven pages of their signatures.<sup>204</sup> The Church’s Constitution and Canons included the following provision:

**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.<sup>205</sup>

The Diocese attached to its unanimous resolution a Diocesan Constitution and Canons that, in Article 1, again acceded to “the Constitution and Canons of the Episcopal Church in the United States of America,”<sup>206</sup> and, in Article 13, committed to hold “all property hereafter acquired for the use of the Church and the Diocese” in a Corporation “subject to control of the

<sup>201</sup> JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V, § 1.

<sup>202</sup> *Id.*

<sup>203</sup> A3957-58, Dep. of Def. Corp. at 133:5-134:9, 149:25-150:6; *see also* JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V, § 1; JA00789, Journal of the Eighty Seventh Annual Meeting of the Diocese of Dallas 12 (Oct. 1–2, 1982).

<sup>204</sup> JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

<sup>205</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4. Defendants admit this canon was in the Constitution and Canons when they acceded. A3950, Dep. of Def. Diocese at 47:21-48:16.

<sup>206</sup> JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).



Church in the Episcopal Diocese of Fort Worth.”<sup>207</sup> The Diocese made these commitments to the Church as required by Article V in exchange for admission as an Episcopal Diocese.<sup>208</sup>

After receiving approval from The Episcopal Church, the Dallas and Fort Worth Dioceses and the Dallas and Fort Worth Corporations jointly petitioned a civil district court in a “friendly suit”<sup>209</sup> to “effect the Article V division.”<sup>210</sup> Both Dioceses represented they were “organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America,”<sup>211</sup> and the Corporation represented it would hold property “pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth,”<sup>212</sup> which in Article 1 acceded to the Church’s Constitution and Canons. The parties asked the court to “record and declare” the division of assets “[p]ursuant to the terms of the resolution adopted by the plaintiffs,”<sup>213</sup> which implemented “the division of the Diocese of Dallas into two separate dioceses as permitted by Article V of the Constitution of the Episcopal Church . . . .”<sup>214</sup> The parties represented that the property had been “acquired for the use of the Episcopal Church in the Diocese of Dallas” and was being transferred “for the use of the Church in the [Fort Worth]

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<sup>207</sup> JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

<sup>208</sup> JA00065, Letter Submitting Resolution of Accession (Nov. 24, 1982); A3934, Dep. of Def. Diocese at 116:16-19 (“Q. Was this resolution sent to The Episcopal Church? A. Yes, along with the Constitution and Canons adopted at the convention for approval.”); A3933, *id.* at 110:21-23 (“Q. They [the Church] receive, look at, and approve the final Primary Constitution and Canons? A. Correct.”); JA00063, Church’s Certificate of Compliance with Article V to Diocese (Dec. 31, 1982).

<sup>209</sup> A2626-27, Letter from The Rev. Canon Charles A. Hough, III & N. Michael Kensel to The Rev. Steven Pope (Aug. 13, 2007).

<sup>210</sup> A3958, Dep. of Def. Corp. at 150:3-14.

<sup>211</sup> JA00716-17, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>212</sup> JA00728, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>213</sup> JA00721, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

<sup>214</sup> JA00719, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984); *see also* A3958, Dep. of Def. Corp. at 150:3-10 (“Q. And the parties to that division passed a resolution to discuss how to divide up the property under that Article V division, correct? A. Yes. Q. And then this friendly petition was telling the court the contents of that resolution to effect the Article V division? A. Yes.”).

Diocese . . . .”<sup>215</sup> As the Defendant’s purported representative of the Corporation testified in this case, “for the use of the Church in the Diocese” meant “for the use of The Episcopal Church in the Diocese.”<sup>216</sup> The Diocese and Corporation both signed the petition.<sup>217</sup> Defendants concede the court relied on those representations to transfer property worth millions.<sup>218</sup>

The Diocese’s and Corporation’s written, signed commitments to hold property under the Church’s and Diocese’s Constitutions and Canons, evidence their intent to hold property “in trust for this Church and the Diocese thereof,” (Church Canon I.6.4),<sup>219</sup> and “only for the services, rites and ceremonies, or other purposes, either authorized or approved by this Church, and for no other use.” (Diocesan Canon 25) (defining “Church” as “the Episcopal Church in the United States of America,” *see* Art. 1).<sup>220</sup> Other documents from the time affirm this plain intent, such as the Corporation’s founding bylaws requiring its affairs “be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of America . . . as . . . supplemented from time to time by the General Convention of the Church,” and stating that “[i]n the event of any conflict between these Bylaws and any part or all of said Constitution or Canons [of the Church], the latter shall control.”<sup>221</sup> And the Corporation accepted tax status and benefits, confirming to the IRS the year of the petition that the “Corporation of the Episcopal Diocese of

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<sup>215</sup> JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>216</sup> A3959-60, Dep. of Def. Corp., at 154:3–156:1.

<sup>217</sup> JA00734, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

<sup>218</sup> A3965, Def. Trustee Bates Dep. at 19:25-20:25; JA00001-2, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. Aug. 22, 1984).

<sup>219</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

<sup>220</sup> JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

<sup>221</sup> JA0076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (May 17, 1983).

Fort Worth . . . is a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”<sup>222</sup>

The Diocese’s and Corporation’s Article V trust commitments are written, signed, and incorporate the Church’s and Diocese’s Constitutions and Canons by reference. Thus, the trust is valid under the statute of frauds and permissibly incorporates by reference both the Church’s and the Diocese’s Constitution and Canons.<sup>223</sup> The Corporation of the Episcopal Diocese of Fort Worth, as a charitable corporation, is entitled to serve as trustee of this trust for the use and benefit of The Episcopal Church, another charitable organization. Tex. Bus. Orgs. Code § 2.106. Because the trust was established for a religious purpose, it is a charitable trust and is not subject to the Rule Against Perpetuities. Tex. Prop. Code § 112.036.<sup>224</sup>

The trust was supported by consideration and is thus contractual and irrevocable. In exchange for the agreement to hold property in trust, The Episcopal Church provided numerous benefits, including:

1. Granting permission for the formation of the Episcopal Diocese of Fort Worth, in accordance with Article V of the Church’s Constitution;<sup>225</sup>
2. Permitting the transfer of property and funds from the Diocese of Dallas to the Diocese of Fort Worth by consenting to the division of the Diocese of Dallas;<sup>226</sup>

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<sup>222</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensele, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

<sup>223</sup> To the extent that the Congregations held any interest in the property as of November 13, 1982, their accession on that date to the Church’s Constitution and Canons, which states that all property held by or for a congregation is held in trust for the Church, expressed their intent to hold property in trust. Because the accession is in writing and signed by representatives of the Congregations, it is likewise valid under the statute of frauds and permissibly incorporates by reference the Church’s Constitution and Canons. Thus the Congregations placed any interest they had in the property in trust for The Episcopal Church through their November 13, 1982 accession to the Church’s Constitution and Canons.

<sup>224</sup> This trust covers all property in suit. The Church’s trust canon covers all property held “by or for the benefit of” a congregation. Defendants have testified that all property held by the Corporation is held for the benefit of the Congregations with only one exception, the Diocesan Center. A3956, Dep. of Def. Corp. at 107:13-108:7. The Diocesan Center would be captured by the Diocese’s and Corporation’s commitments to hold all property hereafter acquired “for the Church and the Diocese.” JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

<sup>225</sup> JA00785-86, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982).

<sup>226</sup> *Id.*

3. Admitting the Diocese of Fort Worth into union with the Church;<sup>227</sup>
4. Permitting the Diocese and Corporation to use the Church's group tax exemption as subordinate entities within the Church;<sup>228</sup>
5. Providing the Diocese and its congregations with tens of thousands of dollars of grants and loans;<sup>229</sup>
6. Permitting clergy and lay employees to participate in Church benefit plans and providing millions of dollars of benefits through those plans.

In fact, considering just a few years for which data are available for only three of the more than half a dozen benefit plans available to the Diocese, *the Church's Pension Group provided nearly \$18,000,000 in medical, pension, and life insurance benefits.*<sup>230</sup>

Furthermore, Texas courts have recognized that a local chapter's acceptance of a parent association's rules, including its property and trust rules, in exchange for admission is inherently contractual and binding in nature. *See District Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d at 922 (“[W]e see no violation of public policy in permitting those rights to be determined by the rules of the order to which all the defendants, as members, solemnly subscribed. They made their own contract and it is not for the courts to relieve them of its effects.”).

Because the trust was contractual, it is irrevocable under Texas law, regardless of the presence or absence of express language of irrevocability. *See Shellberg*, 459 S.W.2d at 469. In *Shellberg*, five settlors placed their interests in real property in trust, with two of the settlors to act as trustees and manage the land. The settlors each contributed \$1,000 as operating capital for the trust, and subsequently agreed to extend the life of the trust in consideration of \$1 each. *Id.*

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<sup>227</sup> JA00063, Certification of Admission of Episcopal Diocese of Fort Worth into Union with the General Convention of The Episcopal Church (1982).

<sup>228</sup> A3936, Dep. of Def. Diocese at 134:6–11; A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

<sup>229</sup> *See, e.g.*, A2454-55, Presiding Bishop's Fund for World Relief, Grants Awarded Through June, 1994 (noting six grants to the Episcopal Diocese of Fort Worth for a total of \$47,000); A2407, Letter from Mary Becchi, Grants Director, Presiding Bishop's Fund for World Relief, The Episcopal Church, to The Rt. Rev. Jack L. Iker, Diocese of Fort Worth (Mar. 31, 2000) (noting \$25,000 grant to the Diocese).

<sup>230</sup> A2332, Church Pension Group Benefits, Diocese of Fort Worth.

at 466-67. After a disagreement arose between the settlors, one settlor-trustee resigned and informed the beneficiaries by letter: “I have revoked the trust of the Shellberg Estate Property insofar as my . . . interest is concerned.” *Id.* at 467-68.

The question presented for decision was “whether this contractual trust agreement and its related extension agreement, each of which is supported by valuable and legal considerations, are revocable by the trustor under Sec. 41 of the Texas Trust Act (Art. 7425b, V.A.T.S.) in view of the fact that none of such agreements expressly say in so many words that such trust is irrevocable.” *Id.* at 468. Noting that the settlors accepted consideration in exchange for the creation and extension of the trust, the Fort Worth Court of Civil Appeals held that “The instrument executed by [settlor] W.C. ‘Cantrell’ Shellberg on May 6, 1966, by which he attempted to revoke the trust is therefore ineffective and void and did not result in revoking the trust to any extent whatever. The trust is still in full force and effect and subject to being administered by the trustees and the trial court was correct in so holding.” *Id.* at 470.

As explained above, the Fort Worth Diocese, its Corporation, and its Congregations agreed to hold property in trust for The Episcopal Church. Their agreement was contractual and supported by consideration. Thus, as in *Shellberg*, they cannot unilaterally revoke their commitments. By breaching this contractual trust, they render themselves liable to, among other things, a specific performance remedy. Moreover, these properties were already in trust for The Episcopal Church before the creation of the new Diocese.<sup>231</sup>

The property acquired after the initial creation of a trust is also subject to a trust in favor of The Episcopal Church because a promise to create a trust in the future is enforceable when the promise is contractual. *See* Tex. Prop. Code § 112.003. The Fort Worth Diocese, its

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<sup>231</sup> JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984) (affirming transferred properties had been acquired “for the use of the Episcopal Church in the Diocese of Dallas . . . in trust”).

Corporation, and the Congregations promised to hold in trust for The Episcopal Church “[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation . . . .”<sup>232</sup> The plain terms of that promise include both previously-held and later-acquired property. Further, in Article 13 of the Diocesan constitution, they explicitly agreed that later-acquired property would be held for the use of the Church: “All such property [from Dallas] *as well as all property hereafter acquired for the use of the Church and the Diocese*, including parishes and missions, shall be vested in [the] Corporation . . . .”<sup>233</sup> And, as explained above, the commitment was contractual. Thus, such property is also held irrevocably in trust for The Episcopal Church.

### **iii. Leading Texas trust experts affirm these trust obligations**

Plaintiffs retained two leading experts in Texas trust law to consider the application of Texas law to the facts of this case:

- Professor Gerry Beyer, of the Texas Tech School of Law and before that, St. Mary’s University School of Law, is one of the foremost experts on trusts in Texas and authors the most-read legal blog on trusts and estates in the nation.
- Dr. Josh Tate of SMU, a native of Tarrant County, currently chairs the national Uniform Acts for Trust and Estate Law Committee for the ABA and authors *A Texas Companion for the Course in Wills, Trusts, and Estates*.

Both professors reached the same obvious conclusion: when you apply neutral principles of Texas law to Defendants’ and their predecessors’ decades of commitments, these meet the legal standard for express, irrevocable trusts in Texas.<sup>234</sup>

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<sup>232</sup> JA00397, *The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* (1979), tit. I, canon 6, § 4.

<sup>233</sup> JA00113, *The Constitution and Canons of the Episcopal Diocese of Fort Worth*, art. 13 (1982); *cf.* JA00717, *Petition, Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984) (asserting that the Corporation is “duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth”).

<sup>234</sup> This section (iii) is the only section of Plaintiffs’ Supplemental Motion for Partial Summary Judgment that relies in any way on expert opinion testimony.

This expert testimony is useful here. Because church documents were not previously subjected to secular trust analysis in Texas, there is little precedent applying Texas trust law to “evidence such as . . . terms of the local church charter[s] . . . and relevant provisions of governing documents of the general church.” *Masterson*, 422 S.W.3d at 603 (explaining what neutral principles analysis “will usually include” under such facts). Thus, while the legal force of Defendants’ trust commitments is plain, having two preeminent experts confirm that the “conduct measures up to that standard” is additionally useful. *Mega Child Care, Inc. v. Tex. Dep’t of Protective & Regulatory Servs.*, 29 S.W.3d 303, 309 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (permitting expert testimony on such mixed questions of law and fact); *see also Keisling v. Landrum*, 218 S.W.3d 737, 741-42 (Tex. App.—Fort Worth 2007, pet. denied) (considering expert testimony on trust law).

Professor Beyer is a renowned expert on Texas trust law and considered the effect of Defendants’ commitments to the Church as measured by the standards of Texas trust law. Professor Beyer is the Governor Preston E. Smith Regents Professor of Law at Texas Tech School of Law. Previously, he taught at St. Mary’s University and served as a visiting professor at several other law schools, including Boston College, Ohio State University, Southern Methodist University, the University of New Mexico, Santa Clara University, and La Trobe University (Australia). He is the recipient of dozens of outstanding and distinguished faculty awards, including the Chancellor’s Distinguished Teaching Award, the most prestigious university-wide teaching award at Texas Tech. He was also the recipient of the 2012-2013 Outstanding Research Award from the Texas Tech School of Law.

Assessing this case, Professor Beyer concluded that “the division of the Diocese of Dallas—which was duly approved by The Episcopal Church on condition of the new Diocese’s full accession to the Church’s Constitution and Canons—and the 1984 declaratory judgment,

which effected that division for civil law purposes by transferring title to the disputed property to the Corporation for the Episcopal Diocese of Fort Worth, created an express, contractual irrevocable trust in favor of The Episcopal Church” over all of the property at issue in this case.<sup>235</sup> Further, he concluded that Defendants had a fiduciary “relationship of trust and confidence” with the Church.<sup>236</sup> Defendants’ attempt to break away from the Church and keep the disputed property—in violation of their promises to abide by the Church’s Constitution and Canons—breached this fiduciary relationship.<sup>237</sup> Therefore, Professor Beyer also concluded, Defendants “should be determined to hold all the disputed property under a constructive trust in favor of The Episcopal Church.”<sup>238</sup>

Dr. Tate is an expert in both trust law and legal history at the SMU Dedman School of Law and considered the effect of the historical deeds in this case. Since 2005, Dr. Tate has taught courses in trusts and estates, property law, and legal history at SMU. He holds a J.D. from Yale Law School and a Ph.D. in History from Yale University. In the fall of 2012, he was a Lloyd M. Robbins Senior Research Fellow at the University of California at Berkeley. He currently serves as co-chair of the Uniform Acts for Trust and Estate Law Committee for the ABA Real Property, Trust and Estate Law Section, has chaired the Sutherland Prize Committee for the American Society for Legal History, and was recently appointed by the Selden Society as Honorary Secretary and Treasurer for the United States. He has published more than twenty-five scholarly articles, essays, and book reviews, and has given presentations at numerous academic conferences, colloquia, and workshops both in the United States and abroad. He is the author of *A Texas Companion for the Course in Wills, Trusts, and Estates*.

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<sup>235</sup> A4092, Aff. of Prof. Gerry W. Beyer ¶ 9 (Oct. 10, 2014).

<sup>236</sup> A4104, *id.* ¶ 36.

<sup>237</sup> A4102-05, *id.* ¶¶ 31-36.

<sup>238</sup> A4104-05, *id.* ¶ 36.



Dr. Tate examined the historical deeds to real property at issue in this case<sup>239</sup> and analyzed trust language that is substantively identical to that found in the deed to 5001 Crestline: “This conveyance . . . is in trust for the use and benefit of the Protestant Episcopal Church, within the territorial limits of what is now known as the . . . Diocese of Dallas, in the State of Texas.”<sup>240</sup> Dr. Tate concluded that such language “shows the intent of the settlors . . . to create a trust with The Episcopal Church as the beneficiary.”<sup>241</sup> Because the trust was created for consideration, he concluded that 5001 Crestline was held in irrevocable express trust for The Episcopal Church when that diocese was formed.<sup>242</sup> And, as stated above, even if the trust were revocable, there is no evidence of revocation by the settlors. Thus, those trust interests continue to this day and are legally enforceable under neutral principles of Texas law.<sup>243</sup>

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From the earliest deeds to the Diocese’s plain commitments on formation to the most recent conveyances, the picture is obvious: this property is, was, and always has been intended for the benefit of the Church and its constituent Diocese and Congregations. At every level, Defendants and their predecessors committed to steward this historic property for the use and benefit of the Church. And Defendants and their predecessors accepted the benefits of membership under those terms in return. These express, contractual trust commitments continue to this day. They do not simply disappear just because Defendants want them to. And Defendants are breaching those trusts by seizing or attempting to seize the property after leaving the Church.

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<sup>239</sup> A4080, Aff. of Dr. Joshua C. Tate ¶ 9 (Sept. 30, 2014).

<sup>240</sup> A4080, *id.* ¶ 10.

<sup>241</sup> *Id.*

<sup>242</sup> A4080–81, 87-88, *id.* ¶¶ 10–11, 20.

<sup>243</sup> A4076, *id.* ¶ 3.

**d. Constructive Trust for the Church, its Diocese, its Congregation, and the loyal Episcopalians in them**

To the extent the Court needs to look beyond the plain language of the All Saints deeds and concludes that there is no express trust in favor of Plaintiffs as to the All Saints properties, the Court must impose a constructive trust to prevent Defendants from profiting from their wrongful conduct. *See Hubbard v. Shankle*, 138 S.W.3d 474, 485 (Tex. App.—Fort Worth 2004, pet. denied).<sup>244</sup>

Under oath, Defendant identified All Saints’ “original charter” and “founding document”<sup>245</sup> promising to “sustain” The Episcopal Church and “promis[ing] conformity to its doctrine [and] discipline.”<sup>246</sup> Defendant agreed that All Saints could not have formed without permission<sup>247</sup> and that it made these “commitments and promises in order to secure that permission.”<sup>248</sup> Defendant agreed that these commitments “**give rise to the obligations and duties . . . of the officers of that religious body going forward.**”<sup>249</sup> And Defendant agreed that All Saints made those commitments “to obtain the services of the Protestant Episcopal Church.”<sup>250</sup>

A constructive trust is a flexible, equitable remedy, *see id.*, and Texas courts impose constructive trusts in a variety of situations where a party accepts property for the benefit of

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<sup>244</sup> Another state supreme court recently relied on constructive trust principles in similar circumstances. Where an express trust failed, the Virginia Supreme Court found and imposed a constructive trust on disputed church property because the breakaway faction’s “attempt[] to withdraw from TEC . . . represents a violation of its fiduciary obligation to TEC,” based on “the oath or declaration prescribed by Diocesan Canons,” the governing church documents and their property provisions, and the local church’s participation in the general church. *Falls Church v. Protestant Episcopal Church in the U.S.*, 740 S.E.2d 530, 540-42 (Va. 2013), *cert. denied*, 134 S. Ct. 1513 (2014). And this is precisely one of the neutral principles our Supreme Court instructed the Court to consider here. *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 653 (instructing that, on remand, the parties will “have the opportunity to develop the record as necessary” to show “the history, organization, and governing documents of the Church, the Diocese, and the parish support implication of a trust”).

<sup>245</sup> JA02718, Dep. of Def. All Saints at 110:2, 7-9.

<sup>246</sup> JA02545 Request for Organization, All Saints’ Episcopal Church (Jan. 10, 1947).

<sup>247</sup> JA02718, Dep. of Def. All Saints at 110:23-111:7.

<sup>248</sup> *Id.*

<sup>249</sup> JA02718, Dep. of Def. All Saints at 111:4-14 (emphasis added).

<sup>250</sup> JA02718, Dep. of Def. All Saints at 111:15-113:3.

another and then seizes it (or attempts to seize it) for its own benefit. *Mills*, 210 S.W.2d at 988-89. For example, Texas courts apply constructive trusts where an express trust is contemplated but fails, *see, e.g., Murphy v. Johnson*, 439 S.W.2d 440, 442 (Tex. Civ. App.—Houston [1st Dist.] 1969, no writ) (citation omitted), and where there was no express trust at all, but parol evidence shows a commitment to hold the property for another, *see Mills*, 210 S.W.2d at 988. And because the trust is constructive, not express, the inquiry is not limited to the instruments of title, but rather includes the parties’ history, course of conduct, relationships, and collateral commitments. *Id.* at 987-89; *see also Pope v. Garrett*, 211 S.W.2d 559, 561 (Tex. 1948) (imposing a constructive trust where equity required one “irrespective of and even contrary to the intention of the parties”).

A constructive trust requires three elements: (1) constructive or actual fraud; (2) unjust enrichment of the wrongdoer; and (3) tracing to an identifiable *res*. *See Hubbard*, 138 S.W.3d at 485. Thus, a constructive trust may be imposed to remedy any situation in which a party would be unjustly enriched as a result of wrongful conduct and that wrongful conduct is connected with particular property such as the property involved in this dispute.

Constructive fraud—which satisfies the first element—is “the breach of a legal or equitable duty that the law declares fraudulent because it violates a fiduciary relationship.”<sup>251</sup> Thus, a constructive trust may be imposed if a person in a fiduciary relationship acquires or retains property in violation of a fiduciary duty. “Fiduciary duties are imposed by courts on some relationships because of their special nature.”<sup>252</sup> Such duties “appl[y] to any person who

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<sup>251</sup> *Hubbard*, 138 S.W.3d at 483 (citation omitted).

<sup>252</sup> *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d at 199.

occupies a position of peculiar confidence towards another,”<sup>253</sup> and “may arise from a moral, social, domestic or purely personal relationship of trust and confidence.”<sup>254</sup>

Here, Defendants and their predecessors-in-office committed to hold these disputed properties “for the use of The Episcopal Church”<sup>255</sup> and as “approved by this Church, and for no other use.”<sup>256</sup> Texas law requires a constructive trust over the All Saints properties to keep Defendants from obtaining a windfall by breaching and causing the Diocese to breach these promises. Plaintiffs are entitled to retain these properties under constructive trust principles because Texas courts impose constructive trusts where a party accepts property for the benefit of another and then seizes (or attempts to seize) it for his own.

**i. A constructive trust is necessary to prevent Defendants from profiting from their wrongful conduct**

In 1947, All Saints began with a promise to follow the rules and discipline of The Episcopal Church, and it was granted existence under those terms. As Defendant “All Saints” confirmed in a recent deposition, the founding members of All Saints “petition[ed]” and “submitted” to the Episcopal Diocese of Dallas, which covered the geographic area where All Saints was located at that time.<sup>257</sup> Specifically, on January 10, 1947, “being desirous of obtaining the services of the Protestant Episcopal Church, and being ready, according to our ability, to sustain the same,” the founding members of All Saints requested organization as a congregation within The Episcopal Church.<sup>258</sup> In exchange for the Church’s services, All Saints promised to conform to the Constitution of the Church’s General Convention, the Constitution of the Church’s Episcopal Diocese of Dallas, and the Church’s doctrine, discipline, liturgy, rites,

<sup>253</sup> *Id.* (quoting *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 512 (Tex. 1942)).

<sup>254</sup> *Hubbard*, 138 S.W.3d at 483.

<sup>255</sup> A3960, Dep. of Def. Corp. at 155:19-156:1.

<sup>256</sup> JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

<sup>257</sup> JA02718, Dep. of Def. All Saints at 110:5-17.

<sup>258</sup> JA02545, Request for Formation (Jan. 10, 1947); *see also* JA02718, Dep. of Def. All Saints at 111:11-112:3.

and usages.<sup>259</sup> And, as Defendant “All Saints” recently confirmed, the founding members of All Saints “ma[d]e certain commitments and promises in order to secure [the] permission to organize as a mission church in the Episcopal Diocese,” and that it “expect[ed] those [commitments] would be honored and respected.”<sup>260</sup> That same year, All Saints was duly organized as a congregation of The Episcopal Church within the Episcopal Diocese of Dallas.

Moreover, before Defendants attempted to seize the All Saints properties, they were officers of the Church’s Diocese, bound by repeated oaths and resolutions that are so obvious, apparent, and plain that it is difficult to process their conduct since.

To name a few:

- As a condition of formation, the Episcopal Diocese of Fort Worth—along with every lay and clerical Diocesan leader and every Congregation within the Diocese—unanimously resolved, “pursuant to approval of the 67th General Convention of The Episcopal Church, [to] hereby fully subscribe to and accede to the Constitution and Canons of The Episcopal Church,”<sup>261</sup> including the canon that provides that “[a]ll 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 . . . .”<sup>262</sup>
- Lead Defendant Jack Leo Iker, who led the defection, swore in writing, not once, not twice, but three times to abide by the Doctrine, Discipline, and Worship of The Episcopal Church<sup>263</sup> as a condition of assuming office and having access to the property in the first place.<sup>264</sup> That oath included following the “Doctrine, Discipline, and Worship” of The Episcopal Church as expressed through its Constitution and Canons—which of course include the property provisions.<sup>265</sup>
- Defendants and their predecessors-in-office continuously represented to the IRS that the “Corporation of the Episcopal Diocese of Fort Worth . . . is a subordinate unit of [the] Protestant Episcopal Church in the United States of America”<sup>266</sup> and accepted the tax benefits of that representation for decades. In fact, in 2007, they

<sup>259</sup> See sources cited, *supra*, n.258.

<sup>260</sup> JA02718, Dep. of Def. All Saints at 111:4-10.

<sup>261</sup> JA00364-71, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth (Nov. 13, 1982).

<sup>262</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

<sup>263</sup> A3928, Dep. of Def. Diocese at 39:2-24.

<sup>264</sup> A3928, Dep. of Def. Diocese at 39:21-24.

<sup>265</sup> A3927, Dep. of Def. Diocese at 34:16-20.

<sup>266</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A3955, Dep. of Def. Corp. at 88:25-89:21.

told the Tarrant County Appraisal District that this was “full and complete” information, “never [] rescinded” by the IRS, and accepted more benefits.<sup>267</sup> Defendants concede under oath that such representations, if false, were illegal.<sup>268</sup>

- Defendants and their predecessors also continuously represented to the IRS that the “Episcopal Diocese of Fort Worth . . . [is a] subordinate organization[ of the] Protestant Episcopal Church in the United States of America” and accepted those tax benefits.<sup>269</sup>
- The Diocese’s founding Constitution reaffirmed these promises, proclaiming that “[t]he Church in this Diocese accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and recognizes the authority of the General Convention of said Church.”<sup>270</sup>
- In 1984, in order to induce the transfer of over \$100 million in property, the Diocese represented to a Texas state 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.”<sup>271</sup>
- In the same lawsuit, the Corporation also represented that it was “duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth.”<sup>272</sup> That Constitution affirms that “[t]he 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.’”<sup>273</sup>
- Defendants concede under oath that the Church “expects . . . bishop[s] to act in compliance with [their] oath” and “trust[s] . . . [them] to run the day-to-day affairs of the diocese” rather than “micromanag[ing] [the] affairs [of a] bishop of a diocese.”<sup>274</sup>
- Thus, as a condition of ordination and consecration, all bishops of the Diocese promise to “conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”<sup>275</sup> Indeed, the Church’s Canons require that “*any person accepting any*

<sup>267</sup> A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

<sup>268</sup> A3955, Dep. of Def. Corp. at 88:25-89:21.

<sup>269</sup> A2632, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984).

<sup>270</sup> JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), art. 1.

<sup>271</sup> JA00716-17, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>272</sup> JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>273</sup> JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

<sup>274</sup> A3930, Dep. of Def. Diocese at 79:17–20; 81:4–7, 16–18.

<sup>275</sup> JA00448-49, 452-453, Constitution and Canons, The Episcopal Church, arts. II, VIII (2006).

*office* in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church . . . .”<sup>276</sup>

- Trustees of the Corporation must be members of the Diocese, are elected by the Diocese, and must conduct their affairs in accordance with the Constitution and Canons of the Diocese.<sup>277</sup> Thus, they are leaders within the Diocese, which, obligates them to follow the Church’s Constitution and Canons.<sup>278</sup>
- ***Before this dispute, Defendants and their predecessors told another court:*** “[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.”<sup>279</sup>
- ***Before this dispute, Defendants and their predecessors told another court:*** “[N]o person may be a member of a parish who is not a member of The Episcopal Church.”<sup>280</sup>
- ***Before this dispute, Defendants and their predecessors told another court:*** Those who “abandon[] the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a member of the Vestry under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”<sup>281</sup>
- ***Before this dispute, Defendant Iker told another court*** that “Episcopal bishop[s] are] governed by the constitution and canons of the Church” and “must adhere to the constitution and canons of the Church or be subject to discipline,” and that “dioceses have canons that cannot be inconsistent with national canons.”<sup>282</sup>
- ***Before this dispute, Defendant Iker told another court*** that breakaway groups that have “abandoned communion with The Episcopal Church” are “a new

<sup>276</sup> JA00500-01, Constitution and Canons, The Episcopal Church, tit. I, canon 17, § 8 (2006) (“Fiduciary responsibility”) (emphasis added).

<sup>277</sup> A3950, Dep. of Def. Corp. at 47:21–48:13; JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

<sup>278</sup> A3964, Dep. of Def. Trustee Bates at 7:15-24 (“Q. Okay. And when were you on the board of trustees? A. November of 1999 to current. Q. And that is the board of trustees of the Corporation of the Episcopal Diocese -- A. That’s correct. Q. -- of Fort Worth? Okay. And you consider that an office within the Episcopal Diocese of Fort Worth? A. That’s correct.”); JA00728, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984) (Corporation must hold property “pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth.”); JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), art. 1 (“acced[ing] to the Constitution and Canons of the Episcopal Church in the United States of America . . .”).

<sup>279</sup> A1037, Corp. of Episcopal Diocese of Fort Worth’s Second Suppl. Evidence in Support of Mot. for Summ. J., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 11, 1994), ex. A (Aff. of Rev. Canon Billie Boyd, Assistant to Bishop of Fort Worth).

<sup>280</sup> A1013, Pls.’ Mot. for Summ. J., *Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Dec. 8, 1993), ex. A (Aff. of Bishop Jack Iker).

<sup>281</sup> A988-89, Second Am. Orig. Pet., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1019, ex. B (Aff. of Rev. Canon Billie Boyd).

<sup>282</sup> A1054-56, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

creation” and have “no relation to” the continuing subordinate entity “and no right to its property.”<sup>283</sup>

- ***Before this dispute, Defendants and their predecessors told another court*** that the “national canons” created an “express trust” enforceable by that court “even if title had been in [a breakaway faction].”<sup>284</sup>
- ***Before this dispute, Defendants and their predecessors told another court*** that “it was never the[] intent” of “loyal parishioners” that their “gifts and memorials be converted to the use of” another denomination by “Schismatic” defendants that “have abandoned communion with The Episcopal Church.”<sup>285</sup>
- ***Before their lawyers “corrected” them, Defendant Corporation testified in this case:*** When the Diocese and Corporation told the Dallas district court the Corporation would hold property “for the Church in the Diocese” that (obviously) meant “for the use of The Episcopal Church in the Diocese.”<sup>286</sup>

Q. It says the Church in the Diocese. So let me --

A. Okay. That’d be The Episcopal Church; is that --

Q. Okay. And that was the meaning of this sentence when it was submitted to --

A. Yeah.

Q. -- the Court?

A. Yes.

Q. And that’s a true and accurate statement?

A. Yes.

Q. So the title to all real property acquired for the use of The Episcopal Church in the Diocese shall be vested in a corporation to be known as the Corporation of the Episcopal Diocese of Fort Worth, correct?

A. Yes.

Q. And that’s what that sentence means?

A. Yes.

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<sup>283</sup> A1015, Pls.’ Mot. for Summ. J., *Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Dec. 8, 1993), ex. A (Aff. of Bishop Jack Iker).

<sup>284</sup> A1043, *Wantland Aff., Corp. of the Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. July 29, 1994).

<sup>285</sup> A991, Second Am. Orig. Pet., *Corp. Of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1028, *id.* ex. D (Aff. of Robert J. Rigdon).

<sup>286</sup> A3960, Dep. of Def. Corp. at 155:8-156:1.



- ***Before their lawyers “corrected” them, Defendant Diocese testified the same:***

Q. And do you read the word “shall” to be a requirement for the diocese?

A. Yes.

Q. And that’s mandatory language?

A. Yes.

Q. Okay. And so it instructs that the diocese shall hold its property in a Corporation?

A. Yes.

Q. Okay. What does the phrase “for the use of the Church in this Diocese” mean to you?

A. The Church in this Diocese would be the -- the duly elected clergy and lay officers of the diocese.

Q. At the time that this was written, what does the Church, capital C, mean?

A. The Episcopal Church.<sup>287</sup>

- The express stated purpose of the Fort Worth Diocese’s primary convention was to “fulfill the requirements of the National Constitution and Canons,” including “acced[ing] to the National Constitution and Canons.”<sup>288</sup>
- Upon making these and other commitments, Defendants and their predecessors accepted:
  - formation and union with The Episcopal Church Diocese under Article V of the Church’s Constitution;<sup>289</sup>
  - transfer of property and funds worth millions previously “acquired for the use of the Episcopal Church in the Diocese of Dallas”<sup>290</sup> over more than a century by persons committed to secure it “from the danger of alienation . . . from those who profess and practice the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America”;<sup>291</sup>

<sup>287</sup> A3940-41, Dep. of Def. Diocese at 173:20-174:21.

<sup>288</sup> JA00789, Journal of the Eighty Seventh Annual Meeting of the Diocese of Dallas 12 (Oct. 1–2, 1982).

<sup>289</sup> JA00785-86, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982); JA00063, Certification of Admission of Episcopal Diocese of Fort Worth into Union with the General Convention of The Episcopal Church (1982).

<sup>290</sup> JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox* No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>291</sup> A4117, Digest of the Canons for the Government of the Protestant Episcopal Church in the United States of America, Together with the Constitution, Canon I.26 (1893).

- participation in the governance of the Church, consistently sending representatives to meetings of both houses of the Church’s General Convention through 2006;<sup>292</sup>
- participation in Church benefit plans and programs available only to Church clerics, employees and institutions, which—based on only a few years of available data and less than half of the programs, have provided nearly \$18,000,000 in medical, pension, and life insurance benefits within the Diocese;<sup>293</sup> and
- entrustment with institutions built by the Church under its Constitution and Canons over 145 years by “the pioneers who gave beauty and meaning to worship on the American frontier – the missionaries, the courageous bishops, the loyal parishioners of the first Protestant Episcopal churches of Texas.”<sup>294, 295</sup>

In June 2006, the Church elected its first female Presiding Bishop.<sup>296</sup> Shortly thereafter, Defendants purported to remove the Episcopal Diocese of Fort Worth from The Episcopal Church. In November 2008, Defendant Iker sent the Church a letter on the Diocesan Bishop’s letterhead claiming that the “canonical declarations of the Presiding Bishop of The Episcopal Church pertaining to us are irrelevant and of no consequence” and that the Presiding Bishop “Katharine Jefferts Schori has no authority over me or my ministry.”<sup>297</sup>

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<sup>292</sup> A886, Aff. of Kathleen Wells ¶ 10 (Oct. 15, 2010).

<sup>293</sup> A2332, Church Pension Group Benefits, Diocese of Fort Worth.

<sup>294</sup> A2640, St. Andrews’ Episcopal Church V; A2646, *id.* (noting St. Andrew’s first funds and cornerstone were laid in 1872 by Alexander Charles Garrett, the First Missionary Bishop of Northern Texas of the Missionary Board of the Episcopal Church; later the First Bishop of Diocese of Dallas; finally Presiding Bishop of the Church USA).

<sup>295</sup> Defendants are judicially, equitably, quasi-, and otherwise estopped from contradicting these (and other) admissions, which they made to courts, Plaintiffs, and others, regarding the obligations and commitments of the Diocese, Congregations, and Corporation to the Church and Plaintiffs. Plaintiffs incorporate these estoppel arguments throughout the brief by reference here to avoid unnecessary repetition and clutter. *See Baron v. Mullinax, Wells, Mauzy & Baab, Inc.*, 623 S.W.2d 457, 462 (Tex. App.—Texarkana 1981, writ ref’d n.r.e.) (quasi-estoppel may be raised by a plaintiff as a counter-defense that will nullify a defense that constitutes an unconscionable reversal from a former position); *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 396 (Tex. App.—Houston [14th Dist.] 1997, writ dismissed) (judicial estoppel “bars a party, who has successfully maintained a position in a prior judicial proceeding, from later adopting an inconsistent position, unless he can show the prior statement was made inadvertently due to mistake, fraud, or duress”); *SW. Guar. Trust Co. v. Providence Trust Co.*, 970 S.W.2d 777, 783 (Tex. App.—Austin 1998, pet. denied) (“[E]quitable estoppel prevents parties from asserting claims against another party which arise out of their false representations relied upon by said party.”).

<sup>296</sup> A3825-28, Episcopal News Service Archives (available at [http://archive.episcopalchurch.org/3577\\_77550\\_ENG\\_HTML.htm](http://archive.episcopalchurch.org/3577_77550_ENG_HTML.htm)).

<sup>297</sup> A898, Letter from Defendant Iker (Nov. 24, 2008).

Of course, as Defendants and their predecessors-in-office told another Fort Worth court before the present dispute, in a sworn document: “We, the Undersigned Members of the Standing Committee of the Episcopal Diocese of Fort Worth, Find That [A Member] Of This Diocese Has Openly Renounced the Doctrine, Discipline, and Worship of This Church By Attempting To Take Himself and The People And Property . . . To The Jurisdiction Of . . . A Religious Body Not in Communion With The Episcopal Church[,] . . . Abandoning the Communion of This Church . . . . Under National Canon IV.10.”<sup>298</sup> Or, as Defendant Iker himself told another court, having sworn three times in writing to “conform to the Doctrine, Discipline, and Worship of the Episcopal Church,”<sup>299</sup> Episcopal Bishops “must adhere to the constitution and canons of the Church or be subject to discipline”<sup>300</sup>

In accordance with Title III, Canon 12, Section 7 of the Constitution and Canons of The Episcopal Church, the Presiding Bishop accepted Bishop Iker’s renunciation of ministry within the Church and recognized as vacant the Diocesan positions held by the then-unqualified breakaway Defendants.<sup>301</sup> The loyal Episcopalians in Fort Worth organized a Special Meeting of the Convention of the Episcopal Diocese of Fort Worth, called to order by the Presiding Bishop of The Episcopal Church, where the Diocese elected a Provisional Bishop and other qualified Diocesan leaders to fill the vacancies.<sup>302</sup> The highest judicatories of The Episcopal Church, by resolution of the Church’s highest authority, the General Convention, have recognized the Local Episcopal Parties in this case and their successors as the duly-constituted leadership of the

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<sup>298</sup> A999, Second Am. Orig. Pet., *Corp. Of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995) ex. B (Aff. of Standing Committee).

<sup>299</sup> A3928, Dep. of Def. Diocese at 39:2-24.

<sup>300</sup> A1054-56, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

<sup>301</sup> A608, Renunciation of Ordained Ministry and Declaration of Removal and Release of the Rt. Rev. Jack Leo Iker, Dec. 5, 2008; A900, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth, Feb. 7, 2009.

<sup>302</sup> A900, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth.

Diocese.<sup>303</sup> The Church recognizes the Local Episcopal Congregations in union with that Diocese as the continuing Congregations of the Diocese.<sup>304</sup>

**ii. Defendants have been—and will continue to be— unjustly enriched as a result of their broken promises**

Beyond breaking their obvious and repeated commitments to their Church, Defendants' conduct in executing this coup has been a fairly outstanding specimen of unjust enrichment and fiduciary misconduct.

For example:

- Defendants transferred money out-of-state during this case expressly to make it harder for this Court to reach:

Q. So you thought that that money would be harder for a court to reach out of state?

A. That is not what I said, but that was the thought of the Diocese, not of me, but of the Diocese, that was the decision that was made.<sup>305</sup>

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Q. Why didn't you tell the Court about the Louisiana bank account?

A. Because at the time, it did not enter my mind. I forgot.<sup>306</sup>

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Q. Why wasn't [the Louisiana account] listed on the books?

A. I don't have an answer to that. It just wasn't.

Q. Did you prepare these books?

A. Yes.<sup>307</sup>

- Defendants told the Court the money-in-suit had gone up, not down, since the dispute began,<sup>308</sup> then admitted otherwise under oath:

<sup>303</sup> A363, 365-66, Excerpts from *The Episcopal Church Annual* (2010); A4107-10, Buchanan Aff. ¶¶ 5-8.

<sup>304</sup> See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27<sup>th</sup> Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

<sup>305</sup> A3981, Dep. of Def. Director of Finance Parrott at 93:18-22.

<sup>306</sup> A3980, Dep. of Def. Director of Finance Parrott at 88:3-6.

<sup>307</sup> A3982, Dep. of Def. Director of Finance Parrott at 98:3-7.

Q. [] So you have told the court in your affidavit under oath that money comes in, money comes out in the operating accounts and it about rolls over, breaks even?

A. Pretty much, yes, sir.<sup>309</sup>

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Q. [W]e wouldn't expect hundreds of thousands of dollars to disappear from operating accounts, would we?

A. I would not, no, sir.<sup>310</sup>

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Q. . . . So operating accounts . . . [have] a total of \$547,030.13 gone between October 31st, 2008 and February 28th, 2011 from these 12 accounts; is that correct?

A. That's what it adds to, yes, sir.<sup>311</sup>

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Q. [W]e established there was over half a million dollars missing from bank accounts, correct?

A. Yes, sir.<sup>312</sup>

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Q. You would want to see all of the accounts, wouldn't you?

A. Sure.

Q. So why did you only show the Court six accounts?

A. Those were what I was asked to produce. These are -- this is what I was asked to produce at the time.

Q. Okay. Who asked you to produce that?

A. I was asked by the attorneys to produce that.<sup>313</sup>

- Defendants told the U.S. Supreme Court two months ago "the Corporation . . . has never had any relationship with the General Church,"<sup>314</sup> despite having told the

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<sup>308</sup> A3917, Reporter's Record, Hr'g at 30 (Mar. 31, 2011) (Defendants' Counsel to Court: "And, by the way, the accounts that [Plaintiffs are] talking about, they've got a bigger value today than they did at the time of separation. They haven't gone down, they've gone up.").

<sup>309</sup> A3977A, Dep. of Def. Director of Finance Parrott at 54:14-18.

<sup>310</sup> A3977A, Dep. of Def. Director of Finance Parrott at 55:9-12.

<sup>311</sup> A3978, Dep. of Def. Director of Finance Parrott at 63:12-64:4.

<sup>312</sup> A3979, Dep. of Def. Director of Finance Parrott at 84:13-16.

<sup>313</sup> A3977, Dep. of Def. Director of Finance Parrott at 50:19-51:3.

<sup>314</sup> A3821, Br. in Opp'n of Resp'ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).

IRS, among others, time and again that the Corporation “is a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”<sup>315</sup>

- Defendants have apparently used Church funds and assets dedicated for Episcopal ministry and mission—property at the heart of this suit—to fund their attempted defection from the Church:
  - Defendants told the Court on April 28, 2011 that their litigation funds had come “from extraordinary contributions. That is not -- that is from outside the plate.”<sup>316</sup> But under oath, Defendant Trustee Bates testified that his “best understanding of where” over half-a-million dollars went between November 2008 and May 2011 was “to legal fees” coming from “diocesan funds” that “both sides are claiming a right to in this case.”<sup>317</sup> By contrast, Defendants’ Director of Finance claimed not to know where most of that money went,<sup>318</sup>
  - Defendants admit to signing oil and gas leases “after the schism” for Congregations that “do not associate with us,” assigning those payments directly to Defendants,<sup>319</sup> and
  - Defendant Trustee Bates concedes that Defendants placed a \$3.5 million lien on properties subject to this dispute, during the litigation, approved by the Defendant Diocese and Corporation, using a single-purpose shell entity called Jude Funding, formed on the day of the transaction, facilitating a loan from Defendants to Defendants, encumbering disputed property and believing that this encumbrance would pass to Plaintiffs if Defendants lost the case.<sup>320</sup> In other words, Defendants thought they had created a vehicle whereby the Church would have to pay Defendants’ legal fees when a Court finally stopped their defection. Defendants did this after three or four title companies refused to provide title policies for conventional lenders to place encumbrances on the disputed property.<sup>321</sup>

Even now the Defendants obscure when precisely they began planning their defection from The Episcopal Church, while still accepting the benefits of membership. *While the*

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<sup>315</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007) (attaching and affirming same as “full and complete”); A3955, Dep. of Def. Corp. at 88:25-89:21.

<sup>316</sup> A3923, Reporter’s Record, Hr’g at 12 (Apr. 28, 2011) (“The Court: But somehow [Defendants are] coming up, I would assume, with money to pay you. [Defendants’ Counsel]: That has been from extraordinary contributions. That is not -- that is from outside the plate.”).

<sup>317</sup> A3971-72, Dep. of Def. Trustee Bates at 146:11-149:3.

<sup>318</sup> A3983, Dep. of Def. Director of Finance Parrott at 103:10-24.

<sup>319</sup> A3973, Dep. of Def. Trustee Bates at 169:1-171:1; A3984-85, Dep. of Def. Director of Finance Parrott at 161:1-13; 162:9-13 (St. Elisabeth’s); A3974, Dep. of Def. Trustee Bates at 179:13-180:7; A3986, Dep. of Def. Director of Finance Parrott at 207:8-20 (All Saints’ (Fort Worth)).

<sup>320</sup> A3966-69, Dep. of Def. Trustee Bates at 45:18-24; 46:6-8, 83:18-23; 91:1-25, 92:1-93:3.

<sup>321</sup> A3968, Dep. of Def. Trustee Bates at 92:1-93:3.

*Defendants have repeatedly testified in this case that they did not contemplate leaving The Episcopal Church until, at the earliest, Summer 2007,<sup>322</sup> the evidence demonstrates their discussions about leaving the Church began earlier:*

- In March 2006, Defendant Iker issued a statement to the Diocese discussing whether the Diocese should “terminate its relationship with the General Convention of the Episcopal Church” and concluding that the Diocese should “continue to count the cost and consider all the options.”<sup>323</sup>
- In June 2006, The Most Rev. Dr. Katharine Jefferts Schori was elected as the Presiding Bishop of The Episcopal Church.<sup>324</sup> Immediately following the election of The Most Rev. Dr. Jefferts Schori, Defendants began taking actions plainly intended to facilitate their exit from The Episcopal Church.
- In July 2006, Defendants began seeking insurance coverage specifically to cover them in litigation over defection from the Church (telling another Court, in an insurance coverage dispute, that they specifically relied in 2006 on the insurer’s promise that “we’ve written some policies like this for other dioceses and with the split and everything where some churches didn’t want to split but the diocese decided to split so they sued the diocese over splitting because they didn’t want to do it. We’ve been paying those claims.”).<sup>325</sup>
- In August 2006, Defendants modified the Corporation’s bylaws to delete “Article 1 (Authority)” stating that “[t]he affairs of this nonprofit corporation shall be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of America”—which “shall control” over the bylaws in “any conflict” between them.<sup>326</sup>
- Finally, in 2006, Defendants began to perform title searches to consolidate all property from the Diocese and Congregations into the Corporation,<sup>327</sup> in preparation of their future false claim that “the Corporation . . . has never had any relationship with the General Church.”<sup>328</sup>

And even in the face of this plain evidence, Defendants *continued* to claim, under oath,

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<sup>322</sup> A3937, Dep. of Def. Diocese at 146:25-147:15; A3951, Dep. of Def. Corp. at 57:1-20.

<sup>323</sup> A3813-14, “A Statement by Bishop Iker: Separation? At What Cost?” (Mar. 8, 2006) (available at <http://www.fwepiscopal.org/bishop/Statement030806.html>).

<sup>324</sup> A3825-29, Episcopal News Service Archives (available at [http://archive.episcopalchurch.org/3577\\_77550\\_ENG\\_HTM.htm](http://archive.episcopalchurch.org/3577_77550_ENG_HTM.htm)).

<sup>325</sup> See A3830, Defendant’s Original Counterclaim and Intervenor’s Original Complaint, *Philadelphia Indemnity Ins. Co. v. The Episcopal Diocese of Fort Worth*, No. 3:11-cv-00853-D (N.D. Tex. Aug. 9, 2011).

<sup>326</sup> Compare, JA00090-96, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006), with JA0076-79, Bylaws of the Corporation of The Episcopal Diocese of Fort Worth (May 17, 1983).

<sup>327</sup> See A3937-38, Dep. of Def. Diocese at 149:11-150:14.

<sup>328</sup> A3821, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).

that they did not consider defection until Summer 2007 and that these acts had *no relation* to the Presiding Bishop's election or a planned defection:

Q. . . . If my representation is correct, that the first female Presiding Bishop of The Episcopal Church was ordained in June or July of 2006, it's your testimony that the August 2006 changes to the corporate bylaws had nothing to do with that?

A. That's my testimony.<sup>329</sup>

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Q. Okay. And they had nothing to do with potentially withdrawing from The Episcopal Church?

A. That's correct.<sup>330</sup>

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Q. And it's your testimony today that the decision to do a title search in 2006 was entirely unrelated to a potential separation between the Episcopal Diocese of Fort Worth and The Episcopal Church?

A. That is correct.

Q. There's absolutely no relationship between those two acts?

A. The Corporation has nothing to do with the convention of the diocese. The answer is -- is no.<sup>331</sup>

What Defendants will admit, however, is that during this same time period, Defendants continued swearing in new officers to abide by the Doctrine, Discipline, and Worship of The Episcopal Church and accepting the many benefits of membership in the Church.<sup>332</sup>

Taken together, the foregoing facts are more than sufficient to establish that Defendants "occupie[d] a position of peculiar confidence" towards The Episcopal Church and its constituent institutions, *Johnson v. Brewer & Pritchard*, 73 S.W.3d at 199, and that Defendants "breach[ed] . . . a special trust [or] fiduciary relationship" with The Episcopal Church and these institutions, *Hubbard*, 138 S.W.3d at 485. These repeated oaths and commitments, the "trust"

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<sup>329</sup> A3970, Dep. of Def. Trustee Bates at 125:8-13.

<sup>330</sup> A3970, Dep. of Def. Trustee Bates at 126:4-6.

<sup>331</sup> A3937, Dep. of Def. Diocese at 148:4-13.

<sup>332</sup> A3935, Dep. of Def. Diocese at 132:15-133:3.



Defendants admit the Church must place in local officers to manage its regional affairs, the Defendants' secret maneuverings and overt misstatements and deceptions—it all points to the same conclusion. Defendants seek to unjustly enrich themselves by seizing the All Saints properties, in violation of their own repeated averments to the Church and civil courts. If this Court does not enforce Plaintiffs' express trust, a constructive trust is warranted under basic neutral principles of Texas law.

**e. Defendants cannot obtain the All Saints properties under Texas associations law**

Texas law says that local chapters of larger associations are not independent entities but are “part and parcel” of the larger association. *Minor v. St. John's Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893, 896 (Tex. Civ. App. 1910, writ ref'd); *accord District Grand Lodge No. 25, Grand United Order of Odd Fellows of Tex. v. Logan*, 177 S.W.2d 813, 815 (Tex. Civ. App.—Fort Worth 1943, writ ref'd). Thus, wholly apart from trust law and its requirements, Defendants cannot seize the All Saints properties under Texas associations law.

**i. All Saints is a constituent organization of the larger Episcopal Church**

In Texas, local chapters “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization . . . organized for specific purposes, most of which can be accomplished only through subordinate bodies.” *District Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d 915, 921 (Tex. 1942). “[T]he relative rights in the property of a local lodge [are] to be determined by rules of the order to which all the defendants, as members, solemnly subscribed. They made their own contract and it is not for the courts to relieve them of its effects.” *Id.* at 922. Where, as here, “[t]he local lodge came into being by virtue of the power conferred upon its members to organize themselves into a subordinate lodge,” that entity exists “for the benefit,

not of the individual members then composing [it], but for . . . the use and benefit of this body in carrying out the purposes of its organization under the jurisdiction and authority of the Grand Lodge from which it received the warrant for its existence.” *Minor*, 130 S.W. at 896-97. Defendant “All Saints” confirmed that this is how All Saints came into existence—on January 10, 1947, “being desirous of obtaining the services of the Protestant Episcopal Church, and being ready, according to our ability, to sustain the same,” the founding members of All Saints requested organization as a congregation within The Episcopal Church.<sup>333</sup> In exchange for the Church’s services, All Saints promised to conform to the Constitution of the Church’s General Convention, the Constitution of the Church’s Episcopal Diocese of Dallas, and the Church’s doctrine, discipline, liturgy, rites, and usages.<sup>334</sup>

**ii. Texas associations law does not allow a local majority—much less, a local minority—to destroy a constituent organization that is part of a larger association**

A dissenting local majority—much less, a dissenting local minority—cannot “destroy the old lodge, and, without any authority from the original parent body, . . . create a new one.” *Id.* Rather, Texas courts hold that the local entity “has never ceased to exist, that enough members thereof to constitute a lodge under the laws of the governing body have always remained, and still remain, preserving their allegiance to the Grand Lodge, and through it the life of the subordinate lodge, and that [the loyal minority] are the true and lawful successors, under the laws of the order, of the original trustees of [the local] Lodge . . . .” *Id.* at 897. Thus, “[i]t is well settled that when a person ceases to be a member of a *voluntary association*, his interest in its funds and property ceases and the remaining members become jointly entitled thereto, and *this rule applies where a number of members secede in a body and although they constitute a majority and organize a new association.*” *Progressive Union of Tex.*, 264 S.W.2d at 768 (cited

<sup>333</sup> JA02545, Request for Formation (Jan. 10, 1947).

<sup>334</sup> *Id.*

in 6 AM. JUR. 2d Associations and Clubs § 24 (2014) (Rights of members in organization's property and assets—Effect of loss or termination of membership)) (emphasis added).

*This is true even when the relevant deeds name only the local chapter, because “[i]nquiry concerning the laws of the Grand Lodge would have revealed . . . that the local lodge had no authority to convey the property.”* *District Grand Lodge No. 25, Grand United Order of Odd Fellows v. Logan*, 177 S.W.2d 813, 815 (Tex. Civ. App.—Fort Worth 1943, writ ref’d) (emphasis added). “[T]he relative rights in the property of a local lodge [are] to be determined by the rules of the order to which all the defendants, as members, solemnly subscribed. They made their own contract and it is not for the courts to relieve them of its effects.” *Dist. Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d at 922.

In *District Grand Lodge v. Jones*, the Supreme Court of Texas considered a set of facts remarkably similar to the case at bar. There, a local lodge had been granted dispensation as a subordinate lodge of the District Grand Lodge. The constitution and by-laws of the District Grand Lodge contained the following clause:

The title to all property, real, personal or mixed acquired by any subordinate lodge . . . by purchase, gift, devise or otherwise, shall be acquired by such subordinate lodge . . . as trustee for the District Grand Lodge No. 25, Grand United Order of Odd Fellows; and, the same shall be held in trust by such subordinate lodge . . . for the benefit of the District Grand Lodge, so long as such subordinate lodge . . . is alive and has complied with the rules, regulations and laws of the District Grand Lodge.

*Id.* at 918. When the local lodge became defunct, its trustees conveyed the local lodge's property to the remaining members at the time of the lodge's dissolution.

The Court rejected the local members attempt to claim the property. While “the several deeds thereto were executed to [the] local lodge,” the Texas Supreme Court held that the Grand Lodge's property clause “*became part of the contract entered into by the defendants when they*

*became members of the order and whatever rights defendants had in the lots in controversy were merely incidental to their membership and terminated absolutely with such membership.”* *Id.* at 920 (emphasis added). And it further held that “[w]hat shall become of [an association’s] property concerns only the members of any such association and when that question is determined in its constitution and by-laws, to which all members joining it must subscribe, there can be no public policy requiring the courts to make a contrary disposition.” *Id.* at 922.

The Courts of Appeals have followed *District Grand Lodge v. Jones* and applied it to similar facts. *See, e.g., Old Nat’l Life Ins. Co. v. Jerusalem Lodge No. 67, Free & Accepted Masons*, 192 S.W.2d 921, 924 (Tex. Civ. App.—Waco 1945, writ ref’d n.r.e.); *Logan*, 177 S.W.2d at 814; *Frierson v. Modern Mut. Health & Accident Ins. Co.*, 172 S.W.2d 389, 392–93 (Tex. Civ. App.—Waco 1943, writ ref’d w.o.m).

For example, in *Logan*, the Fort Worth Court of Appeals awarded property to the District Grand Lodge and interpreted *District Grand Lodge v. Jones* to mean that the national property clause vested “at least the equitable title to this property” in the Grand Lodge and that the local lodge “held the title only as trustee.” *Logan*, 177 S.W.2d at 814–15 (citation omitted). Moreover, *Old National Life Insurance Co.* makes clear that *Jones* applies whenever a local subordinate chapter violates the property rules of its parent organization, not just when the local chapter becomes defunct. 192 S.W.2d at 925.

Here, All Saints began with a promise to follow the rules and discipline of The Episcopal Church and, on January 10, 1947, “being desirous of obtaining the services of the Protestant Episcopal Church, and being ready, according to our ability, to sustain the same,” the founding members of All Saints requested organization as a congregation within The Episcopal Church.<sup>335</sup>

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<sup>335</sup> JA02545, Request for Formation (Jan. 10, 1947).

All Saints promised to conform to the Constitution of the Church’s General Convention, the Constitution of the Church’s Episcopal Diocese of Dallas, and the Church’s doctrine, discipline, liturgy, rites, and usages.<sup>336</sup> Similarly, the Diocese was formed as a “subordinate unit of [the] Protestant Episcopal Church in the United States of America,”<sup>337</sup> “pursuant to approval of the 67th General Convention of The Episcopal Church.”<sup>338</sup> The Diocese “unanimously” and “fully” acceded to the Church’s “Constitution and Canons,”<sup>339</sup> as a condition of formation,<sup>340</sup> which at the time and now includes the relevant property canon,<sup>341</sup> and “recognize[d] the authority of the General Convention of said Church.”<sup>342</sup> The Corporation is an instrumentality of the Diocese<sup>343</sup> and “a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”<sup>344</sup>

If the association’s property rule in *District Grand Lodge v. Jones* sounded familiar, that’s because it is:

General Association’s Property Rule in <i>District Grand Lodge v. Jones</i>	General Association’s Property Rule in <i>Episcopal Church v. Salazar</i>
The title to all property, real, personal or mixed	All real and personal property held by or for

<sup>336</sup> *Id.*

<sup>337</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

<sup>338</sup> JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

<sup>339</sup> *Id.*

<sup>340</sup> JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V; JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4; *see also* A3957, Dep. of Def. Corp. at 132:18–133:15.

<sup>341</sup> A3929, Dep. of Def. Diocese at 47:23-48:7 (“Q. And when the Episcopal Diocese of Fort Worth acceded to the Constitution and Canons of The Episcopal Church, the Dennis Canon was part of those Canons? A. That is correct.”).

<sup>342</sup> JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth art. 1 (1982).

<sup>343</sup> A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265) (Corporation’s Trustees “must be members of the Diocese, are elected by the Diocese, report to the Diocese, and conduct all affairs by the rules of the Diocese.”); *accord* A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10.

<sup>344</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* n.196, *supra*, and Section VIII.F.3 of Pls.’ Mot. for Partial Summ. J. at 92-94.

<p>acquired by any subordinate lodge . . . by purchase, gift, devise or otherwise, shall be acquired by such subordinate lodge . . . as trustee for the District Grand Lodge No. 25, Grand United Order of Odd Fellows; and, the same shall be held in trust by such subordinate lodge . . . for the benefit of the District Grand Lodge, so long as such subordinate lodge . . . is alive and has complied with the rules, regulations and laws of the District Grand Lodge.<sup>345</sup></p>	<p>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.<sup>346</sup></p>
<p>Deeds: held locally.<sup>347</sup></p>	<p>Deeds: held locally.<sup>348</sup></p>
<p>Texas Supreme Court: “[W]hatever rights defendants had in the lots in controversy were merely incidental to their membership and terminated absolutely with such membership.”<sup>349</sup></p>	<p>Here: Whatever rights defendants had in the lots in controversy were merely incidental to their membership and terminated absolutely with such membership.</p>

As in the cases cited above, All Saints—as well as the Episcopal Diocese of Fort Worth—was formed by permission of the larger organization, The Episcopal Church.<sup>350</sup> Both All Saints and the Diocese subscribed to the Church’s Constitution and Canons, which included a property clause in favor of The Episcopal Church.<sup>351</sup> Under Texas Supreme Court precedent, that clause “became a part of the contract” between Defendants and The Episcopal Church because the Constitution and Canons are the “articles of agreement to which all members are parties.” *District Grand Lodge*, 160 S.W.2d at 920. Any contrary use of that property, such as Defendants’ use of it for the benefit of another denomination, violates Texas associations law.

<sup>345</sup> 160 S.W.2d at 918.

<sup>346</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4. Defendants admit this canon was in the Constitution and Canons when they acceded. A3929, Dep. of Def. Diocese at 47:23-48:7.

<sup>347</sup> *District Grand Lodge*, 160 S.W.2d at 920.

<sup>348</sup> Of course, unlike *Jones*, the 5001 Crestline property separately and additionally contains express trust language for the national association. See JA02523-25.

<sup>349</sup> *District Grand Lodge*, 160 S.W.2d at 920.

<sup>350</sup> JA00785-86, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982).

<sup>351</sup> JA00364-65, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 25–26 (Nov. 13, 1982); JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

*See Old Nat'l Life Ins. Co.*, 192 S.W.2d at 925. Under this plain Texas law, Defendants cannot obtain the property from Plaintiffs as the continuing members of The Episcopal Church.

**f. Corporations Law – Diocesan Corporation**

As has been explained above, the Corporation of the Episcopal Diocese of Fort Worth holds only bare legal title to a portion of the All Saints Property. For example, the deed to the property at 5005 Dexter grants beneficial title to “All Saints Episcopal Church, a Texas Non-Profit Corporation,” and bare legal title to the “Corporation of the Episcopal Diocese of Fort Worth.”<sup>352</sup> Similarly, Defendants argue that the Diocesan Corporation has legal title to other tracts of the All Saints Property. But, in any event, it is clear that the Diocesan Corporation does not hold *beneficial* title to *any* of the All Saints Property.

Thus the Diocesan Corporation is, at most, the trustee of certain trusts over a portion of the All Saints Property. As a result, the names of the directors of the Diocesan Corporation are irrelevant to the resolution of this dispute: *Whoever* the directors of the Diocesan Corporation are, the Diocesan Corporation itself is obligated to hold the property for the use and benefit of beneficial owners of the All Saints Property, which, as shown above, are the Plaintiffs. And so if Defendants *were* Directors of the Diocesan Corporation, as they purport, they would be in breach of the Diocesan Corporation’s trust obligations to Plaintiffs. And then, under neutral principles of law, this Court would remove the Diocesan Corporation as trustee of those trusts.<sup>353</sup>

Removal would be justified, for example, “to prevent the trustee from engaging in further behavior that could potentially harm the trust,”<sup>354</sup> where the trustee has used trust property for its

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<sup>352</sup> See JA02532, Warranty Deed (Apr. 29, 1999).

<sup>353</sup> Tex. Prop. Code § 113.082(a)(1), (4) (“[O]n the petition of an interested person and after hearing, a court may, in its discretion, remove a trustee . . . if: (1) the trustee materially violated or attempted to violate the terms of the trust and the violation or attempted violation results in a material financial loss to the trust . . . or (4) the court finds other cause for removal.”).

<sup>354</sup> *Ditta v. Conte*, 298 S.W.3d 187, 192 (Tex. 2009).

own interests,<sup>355</sup> or where hostility exists between the trustee and the beneficiary such that it impedes the trustee's ability to effectively manage the trust property.<sup>356</sup> No one on earth would believe that a Diocesan Corporation controlled by Defendants could manage Plaintiffs' trusts after Defendants have already breached that trust and attempted to use the trust property for others.

But if the Court does reach the issue of Diocesan Corporate control, Defendants are not the directors of the Diocesan Corporation under the Diocesan Corporation's own by-laws.

**i. Defendants are disqualified under Tex. Bus. Orgs. Code § 22.207(a)**

The Diocesan Corporation is a subordinate instrument of the Diocese. Defendants concede, to this day, that "the Diocese alone has authority to select Trustees."<sup>357</sup> As explained above, only Plaintiffs, as a matter of law, may control the Diocese. And in no uncertain terms, since the Diocesan meeting of February 7, 2009 at the latest, Plaintiffs did not and do not "select [any Defendants as] Trustees."<sup>358</sup>

The Texas Business Organizations Code permits non-profit associations to create subordinate corporations whose directors are "elected, and controlled by," the association. Tex. Bus. Orgs. Code § 22.207(a). Defendants concede: "In some cases, a nonprofit corporation may be controlled by a religious or charitable association [as here] between the Corporation and the

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<sup>355</sup> See *Conte v. Ditta*, 312 S.W.3d 951, 959 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

<sup>356</sup> *Barrientos v. Nava*, 94 S.W.3d 270, 288-89 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Separately, this Court could further remedy Defendants' breach through a constructive trust. Texas law provides that a "constructive trust is a relationship with respect to property, subjecting the person by whom the title to the property is held *to an equitable duty to convey it to another*, on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property." *Talley v. Howsley*, 176 S.W.2d 158, 160 (Tex. 1943) (emphasis added) (internal quotation marks and citation omitted).

<sup>357</sup> A3834, Appellants' Reply Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted); see also JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. See n.196, *supra*, and Section VIII.F.3 of Pls.' Mot. for Partial Summ. J. at 92-94.

<sup>358</sup> A3834, Appellants' Reply Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted).



Diocese.”<sup>359</sup> Defendants concede that the Diocesan Corporation’s Trustees “must be members of the Diocese, are elected by the Diocese, report to the Diocese, and conduct all affairs by the rules of the Diocese.”<sup>360</sup>

There is only one Diocese, and on February 7, 2009, it elected the Plaintiff Trustees to continue the Diocesan Corporation’s work of holding property “subject to the control of the Church in the Episcopal Diocese of Fort Worth.”<sup>361</sup> Defendants told the Texas Supreme Court that “the Diocese alone has authority to select Trustees.”<sup>362</sup> It has, and this Court should recognize Plaintiffs’ selection of those Trustees under Tex. Bus. Orgs. Code § 22.207(a). Any actions taken by purported Defendant Trustees after February 7, 2009 were unauthorized and without effect.<sup>363</sup>

**ii. Defendants are disqualified under the Diocesan Corporation’s governing documents**

Separate and apart from Tex. Bus. Orgs. Code § 22.207(a), Defendants are not Trustees under the Diocesan Corporation’s internal documents.

**a. *Defendants are disqualified under the pre-2006 bylaws.***

In 2006, Defendants purported to modify the Diocesan Corporation’s documents to facilitate their planned defection. They added clauses purporting to give the Diocesan

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<sup>359</sup> See A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265) (citing Tex. Bus. Org. Code § 22.207(a)); see also JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

<sup>360</sup> A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); accord A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10; see also JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

<sup>361</sup> JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

<sup>362</sup> A3834, Appellants’ Reply Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted); see also JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

<sup>363</sup> To the extent Defendants can challenge the February Convention because it was a Special Convention and not an Annual Convention—and they cannot because they involve ecclesiastical procedures and rules—then the same acts were ratified at the November 2009 Annual Convention, and then Defendants would be removed from power, with all subsequent acts null and without effect, after November 14, 2009. A963, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009.

Corporation “sole authority to determine the identity and authority of the Bishop for purposes of the Corporation’s Articles” and to provide for election of Trustees by the Diocesan Corporation at its “annual meeting.”<sup>364</sup>

But Defendants have repeatedly conceded that under the Diocesan Corporation’s governing documents, from inception to now, “the by-laws of the Corporation still require the Corporation’s affairs to be conducted ‘in conformity’ with the Episcopal Diocese of Fort Worth . . . .”<sup>365</sup> As Defendant Corporation testified, the rules of the Diocese set mandatory limits on what the Corporate Trustees can and cannot do,<sup>366</sup> and “the bylaws of the Corporation must be consistent with the rules of the diocese” and “cannot conflict with the rules of the diocese. . . .”<sup>367</sup>

Defendants’ 2006 changes to the Diocesan Corporate documents “conflict with the rules of the diocese” and do not “conform” to Diocesan requirements for the Diocesan Corporation. At all relevant times, the Constitution and Canons of the Diocese have required that the Diocesan Corporation’s affairs “shall be conducted” by “five (5) elected members” and “the Bishop of the Diocese.”<sup>368</sup> Diocesan Canon 17.2 requires that the elected Trustees must be either members in good standing in the Diocese or Clergy canonically resident in the Diocese.<sup>369</sup> And Canon 17.3 further requires that the elected Trustees of the Diocesan Corporation “shall be elected” at the Diocese’s “Annual Convention,” at which time any vacancies in the Diocesan Corporation will

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<sup>364</sup> See JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006); JA00073, Revised Articles of the Corporation of the Episcopal Diocese of Fort Worth (Sept. 5, 2006).

<sup>365</sup> A3839, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265) (footnote omitted); accord JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 (Aug. 15, 2006).

<sup>366</sup> A3952-53, Dep. of Def. Corp. at 66:24-67:13.

<sup>367</sup> A3952, Dep. of Def. Corp. at 64:18-23; see also JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 (Aug. 15, 2006). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. See n.196, *supra*, and Section VIII.F.3 of Pls.’ Mot. for Partial Summ. J. at 92-94.

<sup>368</sup> JA00130, Constitution and Canons of the Episcopal Diocese of Fort Worth (1982) (Canon 11); cf. JA00211, Constitution and Canons of the Episcopal Diocese of Fort Worth (2006) (Canon 17) (same); A3854, ACNA purported “Constitution and Canons of the Episcopal Diocese of Fort Worth” (2013) (Canon 17) (same).

<sup>369</sup> JA00211, Constitution and Canons of the Episcopal Diocese of Fort Worth (2006) (Canon 17).

also be filled (even if they were temporarily filled by the Diocesan Corporation in the interim).<sup>370</sup> Likewise, Diocesan Canon 2 describes how the Bishop of the Diocese is selected,<sup>371</sup> and Church rules, to which the Diocese subscribed, detail how Bishops are removed and replaced.<sup>372</sup>

Thus, the Diocesan Corporation cannot give itself “sole authority” to determine the identity of the “Bishop” for Corporate purposes, because its rules “cannot conflict with the rules of the diocese,”<sup>373</sup> which require the “Bishop of the Diocese” to serve on the Diocesan Corporation and provide the procedures for his or her selection and removal. Nor can Defendants override Diocesan Canon 17.3 providing that the 5 elected Trustees will be selected by the Diocese and must be members of the Diocese.<sup>374</sup> These 2006 changes conflict with the “the rules of the Diocese” by which the Diocesan Corporation “must,” as Defendants told the Texas Supreme Court, “conduct all affairs.”<sup>375</sup> These purported 2006 changes are null and void.

Under the pre-2008 Diocesan Corporate rules, Defendants are no longer Trustees. Trustees must be either the Bishop of the Diocese, members in good standing of a parish in the Diocese, or canonically resident in the Diocese.<sup>376</sup> Under the bylaws, each Trustee serves “from the date of his election until his successor shall have been duly elected and qualified, *or until his* death, resignation, *disqualification* or removal.”<sup>377</sup>

The elected Trustees were no longer members of the Diocese after November 15, 2008, when they renounced the Church. As Defendants told a previous court, “no person may be a

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<sup>370</sup> *Id.*

<sup>371</sup> JA00195, Constitution and Canons of the Episcopal Diocese of Fort Worth (2006) (Canon 2).

<sup>372</sup> JA00446, 564-65 Constitution and Canons, The Episcopal Church, Art. § 1, Title IV, Canon 1 (2006); A1054-56, 1063, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002) (“Episcopal bishop[s] are governed by the constitution and canons of the Church” and “must adhere to the constitution and canons of the Church or be subject to discipline,” and “dioceses have canons that cannot be inconsistent with national canons.”).

<sup>373</sup> A3952, Dep. of Def. Corp. at 64:18-23.

<sup>374</sup> See JA00090-96, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006); JA00071-74, Revised Articles of the Corporation of the Episcopal Diocese of Fort Worth (Sept. 5, 2006).

<sup>375</sup> A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); accord A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:18–20.

<sup>376</sup> JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006).

<sup>377</sup> *Id.* (emphasis added).

member of a parish who is not a member of The Episcopal Church,”<sup>378</sup> and those who “abandon[] the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a member of the Vestry under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”<sup>379</sup> And Bishop Iker was no longer Bishop of the Diocese on that date, which was formally recognized two weeks later on December 5, 2008, when the Presiding Bishop accepted his renunciation.<sup>380</sup> Under neutral principles, courts do not second-guess these determinations of “who is or can be a member in good standing of . . . a diocese” or “whether to remove a bishop.”<sup>381</sup>

Thus, by December 5, 2008, under the bylaws, the Corporate Board was vacant. Defendants were disqualified, as they were neither Bishop of the Diocese nor members or clergy in good standing. As Defendants told the Texas Supreme Court, Trustees “must be members of the Diocese . . . .”<sup>382</sup> By December 5, 2008, they were not. And disqualification from the Corporation is self-executing under the Diocesan Corporation’s own bylaws, upon disqualification from the Diocese.<sup>383</sup>

On February 7, 2009, at a Special Convention, the Diocese again recognized that Defendants had vacated their offices by virtue of their disqualification, and the Diocese reconstituted the vacant Diocesan Corporation Board with persons qualified to serve as Bishop of the Diocese, members in good standing of the Diocese, or canonically resident clergy in the

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<sup>378</sup> A1013, Pls.’ Mot. for Summ. J., *Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Dec. 8, 1993), ex. A (Aff. of Bishop Jack Iker).

<sup>379</sup> A988, Second Am. Orig. Pet., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1019, Pls.’ Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd).

<sup>380</sup> A608, Letter from The Most Reverend Katharine Jefferts Schori, Presiding Bishop and Primate of The Episcopal Church, to Secretary of the House of Bishops, Secretary of the General Convention, et al. (Dec. 5, 2008).

<sup>381</sup> *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650, 652.

<sup>382</sup> A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); *accord* A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10; *see also* JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. II, § 3 (Aug. 15, 2006).

<sup>383</sup> JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006).

Diocese.<sup>384</sup> These decisions were reaffirmed at the next regularly scheduled Annual Diocesan Convention in November 2009.<sup>385</sup>

Defendants have no authority or role as Trustees, and any actions they took after November 15, 2008, December 5, 2008, and/or, at the latest, February 7, 2009 were unauthorized and without any effect.<sup>386</sup> Only Plaintiffs, who, in Defendants' words, are "members of the Diocese, are elected by the Diocese, report to the Diocese, and conduct all affairs by the rules of the Diocese,"<sup>387</sup> are the Trustees of the Diocesan Corporation as a matter of law.

**b.** *Defendants are disqualified under the 2006 bylaws.*

Even under the improper and void 2006 bylaws, Defendants were disqualified and replaced. Those bylaws still required good standing in the Diocese for elected Trustees and still automatically vacated Trustees' offices upon disqualification. And so on November 15, 2008, those seats became vacant. And the Bishop's seat vacated at the latest on December 5, 2008. The 2006 bylaws expressly gave only the Elected Trustees the ability to name a Diocesan Corporate "Bishop" in the event of a Diocesan dispute or vacancy regarding the Bishop. On December 5, there were no Elected Trustees left to do so, as they were all disqualified. Thus, even under the 2006 Diocesan Corporate Documents, Defendants were disqualified and their seats vacated—and they remained vacant until Plaintiffs filled them.

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<sup>384</sup> A941-42, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009.

<sup>385</sup> A963, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009.

<sup>386</sup> Defendants purport to have amended the Corporation's documents yet again in 2014, to further bolster their positions in this lawsuit. A3956, Dep. of Def. Corp. at 109:19-21, 110:11-13. Since Defendants had no authority to do so, those changes are void and should be struck.

<sup>387</sup> A3838, Appellants' Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); accord A3950, 3952, Dep. of Def. Corp. at 47:9-50:4, 64:9-10; see also JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

**iii. Even if Defendants were Trustees, the Diocesan Corporation is bound by its external commitments and is in breach**

But *if* Defendants *were* still Trustees, as they purport, they would be in plain breach of the Diocesan Corporation’s duties to administer the property for the Church, Diocese, and Congregations, which only Plaintiffs may control as a matter of law. Under Texas law, a corporation cannot violate its external commitments simply by amending its internal documents. *See, e.g.,* Tex. Bus. Orgs. Code § 3.056(b); *In re ReadyOne Indus., Inc.*, 294 S.W.3d 764, 770-72 (Tex. App.—El Paso 2009, no pet.); *Owens Entm’t Club v. Owens Cmty. Improvement Club*, 466 S.W.2d 70, 72 (Tex. Civ. App.—Eastland 1971, no writ). Defendants admit that the Diocesan Corporation is required to honor its legal obligations, regardless of who serves as its Trustees.<sup>388</sup>

Here, Defendants concede the Diocesan Corporation holds property in trust, at a minimum, for the Diocese and Congregations, which as a matter of law, only Plaintiffs can control. And the Diocesan Corporation *further* holds property in trust for the larger Church, having accepted property already “in trust” “for the use of the Episcopal Church in the Diocese of Dallas”<sup>389</sup> for “the use of The Episcopal Church in the [successor] Diocese.”<sup>390</sup> Only Plaintiffs represent The Episcopal Church, and as a matter of law, only Plaintiffs can represent the continuing Diocese and Congregations of that Church. The Defendant Diocesan Corporation is thus *not* using the property for the Church *or* the Diocese and Congregations, and is in breach.

And then, under neutral principles of law, this Court would simply remove the errant Diocesan Corporation as trustee of Plaintiffs’ trusts.<sup>391</sup> Removal is justified, for example, “to

<sup>388</sup> A3961, Dep. of Def. Corp. at 163:1-164:5.

<sup>389</sup> JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>390</sup> A3960, Dep. of Def. Corp. at 155:19-156:1.

<sup>391</sup> Tex. Prop. Code § 113.082(a)(1), (4) (“[O]n the petition of an interested person and after hearing, a court may, in its discretion, remove a trustee . . . if: (1) the trustee materially violated or attempted to violate the terms of the trust and the violation or attempted violation results in a material financial loss to the trust . . . or (4) the court finds other cause for removal.”).

prevent the trustee from engaging in further behavior that could potentially harm the trust,”<sup>392</sup> where trustees have used trust property for their own interests,<sup>393</sup> or where hostility exists between the trustee and the beneficiary such that it impedes the trustee’s ability to effectively manage the trust property.<sup>394</sup>

Likewise, under Texas Associations Law, a corporation can agree to be a subordinate member of an association. *Anambra State Cmty. in Hous., Inc. v. Ulasi*, 412 S.W.3d 786, 792 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *Raulston v. Everett*, 561 S.W.2d 635, 638 (Tex. Civ. App.—Texarkana 1978, no writ). Here, the Diocesan Corporation conceded to the IRS for decades that it “is a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”<sup>395</sup> Defendants concede even now that the Diocesan Corporation is required to “conduct all affairs by the rules of the Diocese,”<sup>396</sup> which as a matter of law only Plaintiffs can establish, as was explained above. Those rules require the Diocesan Corporation to hold property “for the use of the Church in this Diocese,” “subject to the control of the Church in the Episcopal Diocese of Fort Worth,” and with “all property hereafter acquired for the use of the Church and the Diocese.”<sup>397</sup> The Diocesan Corporation has breached its agreement as a subordinate entity of the Diocese and the Church and should be ordered to comply under Texas Associations Law.

Finally, for the manifold reasons supporting a constructive trust, *see* Section VIII.B.2, the

<sup>392</sup> *Ditta v. Conte*, 298 S.W.3d at 192.

<sup>393</sup> *See Conte v. Ditta*, 312 S.W.3d at 959.

<sup>394</sup> *Barrientos*, 94 S.W.3d at 288-89. Separately, this Court could further remedy Defendants’ breach through a constructive trust. Texas law provides that a “constructive trust is a relationship with respect to property, subjecting the person by whom the title to the property is held *to an equitable duty to convey it to another*, on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property.” *Talley*, 176 S.W.2d at 160 (emphasis added) (internal quotation marks and citation omitted).

<sup>395</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

<sup>396</sup> A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); *accord* A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10; *see also* JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 (Aug. 15, 2006).

<sup>397</sup> JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

Court may also hold the Diocesan Corporation, “by whom the title to the property is held[,] to an equitable duty to convey it to [the Diocese], on the ground that [the Diocesan Corporation’s] retention of the property is wrongful and that [it] would be unjustly enriched if [it] were permitted to retain the property.”<sup>398</sup> As the Fort Worth Court of Appeals has said, the “scope and application” of constructive trusts, “is generally left to the discretion of the court imposing same. . . . The forms and varieties of these trusts, which are termed *ex maleficio* or *ex delicto*, are practically without limit. The principle is applied wherever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrongdoer.”<sup>399</sup> Here, Defendants consolidated property into the Diocesan Corporation in 2006 to facilitate their wrongful defection,<sup>400</sup> despite the Diocesan Corporation’s decades of commitments to the Church and the Diocese<sup>401</sup>—now telling the U.S. Supreme Court “the [Diocesan] Corporation . . . has never had any relationship with the General Church,”<sup>402</sup> when for decades they admitted the opposite to the IRS and others.<sup>403</sup> Accordingly, because the property is subject to a constructive trust, the Court has the discretion to convey it to the rightful continuing Diocese, regardless of the identity of the Diocesan Corporation’s Trustees, to avoid “unjust enrich[ment] if [they] were permitted to retain the property.”<sup>404</sup>

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<sup>398</sup> *Talley*, 176 S.W.2d at 160 (emphasis added) (internal quotation marks and citation omitted).

<sup>399</sup> *Wheeler v. Blacklands Prod. Credit Ass’n*, 627 S.W.2d 846, 849 (Tex. App.—Fort Worth 1982, no writ) (internal quotation marks and citation omitted).

<sup>400</sup> See A3937-38, Dep. of Def. Diocese at 149:11-150:14.

<sup>401</sup> A3960, Dep. of Def. Corp. at 155:19-156:1; JA00728, Petition, *Episcopal Diocese of Dallas v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984); JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982); A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

<sup>402</sup> A3821, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).

<sup>403</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007) (attaching and affirming same as “full and complete”); A3955, Dep. of Def. Corp. at 88:25-89:21.

<sup>404</sup> See *Talley*, 176 S.W.2d at 160.



In short, under any one of numerous neutral principles of Texas law, Defendants cannot use the Diocesan Corporation to accomplish a violation of plain foundational commitments.

**g. Trespass to Try Title**

Because the All Saints Property is subject to express and constructive trusts in favor of The Episcopal Church for all of the reasons discussed above, and because Plaintiffs are the representatives and the entities of The Episcopal Church in the Fort Worth area, Plaintiffs are entitled to a judgment that they have a right to possess the property.

A plaintiff may recover on a trespass-to-try-title claim by showing “a superior title out of a common source.”<sup>405</sup> “Proof of a common source may be shown by the pleadings of the parties, agreements and stipulations, certified copies of deeds, or evidence offered at trial.”<sup>406</sup> An equitable title supports an action for trespass to try title.<sup>407</sup>

Here, the parties do not dispute the common source of their title. The common source of title is evident in the deeds that convey the various parcels of property into The Episcopal Church.<sup>408</sup> For purposes of Plaintiffs’ trespass-to-try-title claim, the parties dispute whether beneficial title is held by or for The Episcopal Church or one of its subordinate entities. As shown above, all of the All Saints Property is held either entirely by Plaintiffs or in express or constructive trust for The Episcopal Church and, as applicable, its constituent entities. It is undisputed that Plaintiffs are part of The Episcopal Church and Defendants are not, so Plaintiffs have superior equitable title out of a common source. The Court should enter judgment as a matter of law that Plaintiffs have the right to possess the property.

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<sup>405</sup> *Bacon v. Jordan*, 763 S.W.2d 395, 396-97 (Tex. 1988) (citing *Plumb v. Stuessy*, 617 S.W.2d 667, 668 (Tex. 1981); *Land v. Turner*, 377 S.W.2d 181, 183 (Tex. 1964)).

<sup>406</sup> *Bacon*, 763 S.W.2d at 397 (citing *State v. Noser*, 422 S.W.2d 594, 600 (Tex. Civ. App.—Corpus Christi 1967, writ ref’d n.r.e.); Tex. R. Civ. P. 798).

<sup>407</sup> *Johnson v. Wood*, 157 S.W.2d 146, 148 (Tex. 1941).

<sup>408</sup> See JA873–JA2521.

**h. Plaintiffs are entitled to retain the disputed properties under the *Watson* deference approach, which Plaintiffs re-urge for preservation purposes**

While Plaintiffs argue this motion under neutral principles as instructed by the Texas Supreme Court, it re-urges and argues here, for preservation purposes, its arguments under *Watson* deference, *Jones* retroactivity, and the enforceability of denominational trust clauses under *Jones v. Wolf*, 443 U.S. 595 (1979), irrespective of state trust law. Specifically, Plaintiffs move that (1) this case should be decided in its favor under *Watson v. Jones*'s deference approach,<sup>409</sup> because the hierarchical Episcopal Church indisputably recognizes Plaintiff All Saints as the only party authorized to use the identity and property of All Saints Episcopal Church (Fort Worth);<sup>410</sup> (2) the First Amendment and *Jones v. Wolf* require courts to enforce express trusts recited in general-church governing documents irrespective of state law, and here the Dennis Canon resolves the case in Plaintiffs' favor on those grounds;<sup>411</sup> (3) the application of the neutral-principles approach in this case infringes free-exercise rights because it is unconstitutionally retroactive under *Jones v. Wolf*, and this case must therefore be resolved in Plaintiffs' favor under the *Watson* deference doctrine; and (4) the neutral-principles approach endorsed in *Jones v. Wolf* does not remain a constitutionally viable means of resolving church-property disputes, especially in light of *Hosanna-Tabor Evangelical Lutheran Church & School*

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<sup>409</sup> 80 U.S. 679 (1871).

<sup>410</sup> See, e.g., A5-7, Ohl Aff. ¶ 5; A23, Letter from Katharine Jefferts Schori, Presiding Bishop, to People of Fort Worth (Nov. 12, 2009); A24-25, Letter from Bonnie Anderson, President of the House of Deputies, to Deputies and First Alternates (Nov. 6, 2009); A30-31, Gulick Aff. ¶ 7; A363, 365-66, Excerpts from *The Episcopal Church Annual* (2010), at 18, 217-18; A613-14, Excerpts from *The Episcopal Church Annual* (2009), at 213-14; A866-67, 869-71, 876, Excerpts from the Journal of the General Convention (2009), at 41-42, 50, 349, 354, 735; see also A4107-08, Buchanan Aff. ¶ 5 (Oct. 22, 2014).

<sup>411</sup> See, e.g., JA00485, 500-01, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. I, canon 7, § 4, & tit. I, canon 17, § 8; A189, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2009), tit. II, canon 6.

v. *EEOC*, 132 S. Ct. 694 (2012), and this case must therefore be resolved in Plaintiffs' favor under the deference doctrine.<sup>412</sup>

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For all the reasons set forth above, and for the additional reasons set forth below, Defendants' claims and defenses fail as a matter of law:

**i. Adverse Possession/Statute of Limitations**

Defendants have never been in physical possession of any of All Saints' property. To whatever extent Defendants attempt to apply their adverse possession argument, premised on "the Diocese's [purported] revocation of the Dennis Canon" in 1989,<sup>413</sup> to All Saints, that position would fail. Even if this so-called "revocation" were effective, it would only affect Plaintiffs' rights to the All Saints Property under the Dennis Canon. But separate and apart from Plaintiffs' rights to the All Saints Property under the Dennis Canon, Plaintiffs are entitled to each of All Saints' six tracts of property on other grounds for which Defendants' adverse possession argument is entirely irrelevant. For example, but not by way of limitation, Plaintiffs are entitled to All Saints' property for the following reasons<sup>414</sup>:

- **All Saints' property at 5001 Crestline:** The deed to this property itself recites an express trust in favor of "the Protestant Episcopal Church, within the territorial limits of what [was in 1947] known as the said Diocese of Dallas."<sup>415</sup> Only the settlors of a trust have the power to revoke it.<sup>416</sup> John P. King and J. Roby Penn—not Defendants—settled this trust and have not revoked it.<sup>417</sup> Defendants' purported revocation of the Dennis Canon is entirely irrelevant to the Church's beneficial ownership of this property under this deed.

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<sup>412</sup> For preservation purposes, Plaintiffs also incorporate by reference the more fulsome arguments outlined in Table G of Plaintiffs' Motion for Partial Summary Judgment (Dec. 1, 2014) and Appellees' Brief at 8-41, *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); Motion for Rehearing 3-5, *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); and Petition for Writ of Certiorari, *Episcopal Church et al. v. Episcopal Diocese of Fort Worth et al.*, 2014 WL 6334170, at \*28-36 (No. 13-1520).

<sup>413</sup> Defs' Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 35.

<sup>414</sup> Moreover, as noted above, Defendants have disclaimed any interest in four of the properties: 5005 Dexter, 4939 Dexter, 5001 Dexter, and 4936 Dexter.

<sup>415</sup> See JA02523-25, Warranty Deed (July 9, 1947).

<sup>416</sup> Tex. Prop. Code § 112.051.

<sup>417</sup> JA02523-25, Warranty Deed (July 9, 1947).

- **All Saints’ property at 5005 Dexter:** The deed to this property creates an express trust in favor of “All Saints Episcopal Church, A Texas Non-Profit Corporation.”<sup>418</sup> Christine E. Holowiak Urquhart and Thomas Urquhart, III—not Defendants—settled this trust and have not revoked it.<sup>419</sup> Defendants’ purported revocation of the Dennis Canon is entirely irrelevant to the All Saints Corporation’s beneficial ownership of this property under this deed.<sup>420</sup>
- **All Saints’ property at 4939 Dexter:** The deed to this property grants to “All Saints Episcopal Church, A Texas Non-Profit Corporation” fee simple title to the property.<sup>421</sup> Plaintiffs control this corporation; Defendants claim no interest in this corporation.<sup>422</sup> Defendants’ purported revocation of the Dennis Canon is entirely irrelevant to the All Saints Corporation’s fee simple ownership of this property under this deed.<sup>423</sup>
- **All Saints’ properties at 5001 Dexter and 4936 Dexter:** The deeds to these properties vest fee simple title in “All Saints Episcopal Church.”<sup>424</sup> As Defendant Iker, speaking for the Defendant Diocese, testified, “for purposes of this lawsuit, [the Defendant Diocese has] always conceded that All Saints’ Episcopal Church stayed with the national church and opted not to go with [the Defendant] Diocese.”<sup>425</sup> Thus, the entity that holds fee simple title to the properties at 5001 Dexter and 4936 Dexter is Plaintiff All Saints Episcopal Church.<sup>426</sup> Defendants’ so-called revocation of the Dennis Canon is entirely irrelevant to Plaintiff All Saints’ fee simple ownership of these properties.
- **All Saints’ 5003 Dexter Avenue Property:** By virtue of the 1984 declaratory judgment, only legal title to this property is held by the Corporation of the Episcopal Diocese of Fort Worth. As Defendants admit, each parcel of property held by the Corporation of the Episcopal Diocese of Fort Worth is held in trust for the particular congregation “for which that property was acquired.”<sup>427</sup> The property at 5003 Dexter Avenue was acquired for All Saints Episcopal Church. As noted above, All Saints’ Episcopal Church has “stayed with the national church and opted not to go with [the Defendant] Diocese.”<sup>428</sup> Defendants’ so-called revocation of the Dennis Canon is entirely irrelevant to Plaintiff All Saints’ beneficial ownership of this property.

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<sup>418</sup> JA02532-33, Warranty Deed with Vendor’s Lien (Apr. 29, 1999).

<sup>419</sup> *Id.*

<sup>420</sup> See JA02716-17, Dep. of Def. All Saints at 105:17-106:23.

<sup>421</sup> See JA02535-36, Warranty Deed with Vendor’s Lien (Aug. 20, 1997).

<sup>422</sup> See A4316, Dep. of Def. Diocese at 217:11-17; JA02704-05, JA02708, JA02716, Dep. of Def. All Saints at 56:3-10; 57:8-58:6; 71:23-72:23; 104:23-105:2.

<sup>423</sup> See JA02716, Dep. of Def. All Saints at 102:25-103:22.

<sup>424</sup> See JA02537, Warranty Deed with Vendor’s Lien (Sept. 12, 2003); JA02540, Warranty Deed with Vendor’s Lien (July 10, 1995).

<sup>425</sup> A4320, Dep. of Def. Diocese at 233:3-9.

<sup>426</sup> See JA02715-16, Dep. of Def. All Saints at 100:20-102:18.

<sup>427</sup> Defs’ Corrected Resp. to Plfs’ Mot. for Partial Summary Judgment at 9.

<sup>428</sup> A4320, Dep. of Def. Diocese at 233:3-9.

In addition, Defendants' Adverse Possession argument does not affect Plaintiffs' right to the All Saints' property under: (1) *Masterson's* requirements for church property disputes, (2) Texas Associations' Law, (3) or Texas Constructive Trust Law. Moreover,

Defendants' Adverse Possession argument is, therefore, entirely irrelevant to this Motion. Moreover, even if Plaintiffs' only viable claim to some portion of the All Saints Property were under the Dennis Canon, Defendants' adverse possession argument is misguided and ineffective for the reasons explained below.

**a. Defendants so-called revocation by their 1989 canon amendment was "wholly ineffectual"**

Defendants assert that in 1989 the Diocese altered its internal, ecclesiastical governance to deny any trust in favor of The Episcopal Church. Under clear Texas law, however, Defendants had no authority to revoke trusts that they did not settle.<sup>429</sup> And the only trust for the benefit of the Church that Defendants arguably settled was the trust defined under the Dennis Canon. That trust, however, was contractual in nature, making Defendants' "attempted revocation . . . wholly ineffective."<sup>430</sup>

**b. Defendants have never possessed the All Saints property**

Even if Defendants had revoked the trust concerning the Dennis Canon in 1989, they have never possessed the All Saints Property—adversely or otherwise. Rather, The Episcopal Church has continually possessed the All Saints Property—through its constituent congregation Plaintiff All Saints Episcopal Church—since before the creation of the Episcopal Diocese of Fort Worth in 1982.

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<sup>429</sup> Tex. Prop. Code § 112.051.

<sup>430</sup> *Shellberg v. Shellberg*, 459 S.W.2d 465, 471 (Tex. Civ. App.—Fort Worth 1970, writ ref'd n.r.e.).

To this day, the All Saints’ property is possessed in this manner. Every adverse possession statute in Texas requires, at a minimum, “peaceful *and adverse* possession.”<sup>431</sup> Defendants cannot fulfill that requirement with respect to All Saints’ property. Their adverse possession claim thus fails.

**c. Plaintiffs—not Defendants—possessed the All Saints Property before 2008**

Before Defendants’ purported to break away, the All Saints Congregation was undisputedly “part of The Episcopal Church.”<sup>432</sup> A local chapter of a larger organization “is not an independent organization, existing solely for the benefit of its members, but . . . is a part and parcel of [the] larger organization. . . .”<sup>433</sup> That is, such local organizations “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization.”<sup>434</sup>

Thus, at all relevant times, the possessors of the All Saints Property have been a part of The Episcopal Church.<sup>435</sup> In Texas, the adverse possession statutes place periods of limitations within which “[a] person must bring suit to recover real property held *by another*.”<sup>436</sup> The limitations statutes are thus entirely irrelevant to this situation.

**d. No claim against Plaintiffs for the All Saints Property accrued until Defendants broke away from the Episcopal Church and began claiming a right to it**

<sup>431</sup> See, e.g., TEX. CIV. PRAC. & REM. CODE § 16.025 (emphasis added).

<sup>432</sup> See A4277, Dep. of Def. Diocese. at 60:12-16.

<sup>433</sup> *Minor v. St. John’s Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893, 896 (Tex. Civ. App.—Galveston 1910, writ ref’d).

<sup>434</sup> *Dist. Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d 915, 921 (Tex. 1942).

<sup>435</sup> See *Minor*, 130 S.W. at 896.

<sup>436</sup> Tex. Civ. Prac. & Rem. Code § 16.024 (three-year statute); see also *id.* § 16.025 (five-year statute; requiring claim to be brought in five-year period to recover “real property held in peaceable and adverse possession by another”); *id.* § 16.026 (same for 10-year limitations period); § 16.028 same for 25-year limitations period).

“[S]tatutes of limitation only begin to run from the time that the right of action accrues.”<sup>437</sup> “A cause of action accrues, and the statute of limitations begins to run, when facts come into existence that authorize a claimant to seek a judicial remedy.”<sup>438</sup> In other words, “[a]dverse possession, to ripen into title, must be such as would expose the possessor to some liability for what was done by him or under his authority during the limitation period.”<sup>439</sup>

No claim against Plaintiffs for the All Saints Property accrued at least until Defendants purported to break away from The Episcopal Church in 2008 and claim a right to that property. Prior to then, Defendants were still a part of The Episcopal Church. Any adversarial actions that they may have taken towards the Church before then, would thus have been a matter of internal church discipline. Far from exposing these entities to civil liability, such matters are not justiciable: “The Free Exercise clause of the First Amendment to the United States Constitution . . . prohibit[s] civil courts from inquiring into matters concerning . . . ‘church discipline [or] ecclesiastical government.’”<sup>440</sup>

Moreover, Texas courts have long found that “limitations does not accrue” against a party like The Episcopal Church that “does not have a possessory interest that would allow him to institute a trespass to try title action seeking the ouster of the trespasser.”<sup>441</sup> Defendants’ mere “claim of ownership” over the property does not change this conclusion.<sup>442</sup> Therefore, no cause of action accrued, and no statute of limitations period ever began to run against the Plaintiffs.

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<sup>437</sup> *Warnecke v. Broad*, 138 Tex. 631, 634 (1942); *see also Archer v. Med. Protective Co. of Fort Wayne, Ind.*, 197 S.W.3d 422, 426 (Tex. App.—Amarillo 2006, pet. denied) (“Simply put, limitations begin to tick when a claim accrues.”) (citing *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 351 (Tex. 1990)).

<sup>438</sup> *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 202 (Tex. 2011).

<sup>439</sup> *Niendorff v. Wood*, 149 S.W.2d 161, 164 (Tex. Civ. App.—Amarillo 1941, writ ref’d).

<sup>440</sup> *Masterson*, 422 S.W.3d at 601 (quoting *Milivojevich*, 426 U.S. at 713–14).

<sup>441</sup> *State v. Beeson*, 232 S.W.3d 265, 277 (Tex. App.—Eastland 2007, pet. dismissed).

<sup>442</sup> *See Perkins v. Perkins*, 166 S.W. 917 (Tex. Civ. App.—Galveston 1914, writ ref’d) (“Plaintiff having no right to possession in this case, he was not required to bring suit in order to prevent the defendant’s claim ripening into a title.”); *see also Brown v. Wood*, 239 S.W.2d 195, 200 (Tex. Civ. App.—Dallas 1951, writ ref’d) (life tenant “could not hold adversely to . . . his remainderman” and, therefore, his “claimed fee simple title to the land in question . . . could not, and did not, start the running of the statutes of limitation in his favor, or in favor of his grantee under his warranty deed, until after his death”).

**e. Even if Plaintiffs had the option to sue earlier, the running of limitations did not begin until 2008**

As was shown above, Defendants' obligations under the Dennis Canon are contractual. Thus any disclaimer of these obligations before Plaintiffs brought suit to clear title to the All Saints Property constitutes an anticipatory repudiation. "[T]he law is well-settled in Texas that when one party repudiates a contract, the other party may then elect to either (1) accept the repudiation and bring a suit to recover damages for its breach; or (2) treat the repudiation as inoperative and sue for damages as they accrue when the time for performance under the contract is due."<sup>443</sup>

Here, Plaintiffs took the second option. Plaintiffs treated all of Defendants' alleged repudiations as inoperative until they sued to clear title to the All Saints Property in 2009. Thus, even if Defendants' pre-2008 claims of ownership of the property were "repudiations" of their trust interests, they did not trigger the running of the limitations period and this case was timely filed.

**f. Defendants' acknowledgement of the Church's beneficial interest defeats Defendants' claims for adverse possession**

Even where a person begins to possess some property adversely, his "acknowledgment of title in another will defeat the adverse possession claim if the acknowledgment is made before the limitations period passes."<sup>444</sup> Indeed, the Fort Worth Court of Appeals has held that "a single

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<sup>443</sup> *America's Favorite Chicken Co. v. Samaras*, 929 S.W.2d 617, 626 (Tex. App.—San Antonio 1996, writ denied); see also *Ingersoll-Rand Co. v. Valero Energy Corp.*, 997 S.W.2d 203, 211 (Tex. 1999) ("[T]he effect of such an anticipatory repudiation is to give the nonrepudiating party the option of treating the repudiation as a breach or ignoring the repudiation and awaiting the agreed upon time of performance.").

<sup>444</sup> *Santa Fe Energy Operating Partners, L.P. v. Carrillo*, 948 S.W.2d 780, 786 (Tex. App.—San Antonio 1997, pet. denied).



admission of title in another during the limitation period is fatal to a claimant's title by limitation."<sup>445</sup>

Here, during the relevant adverse possession periods, the Congregations, Diocese, and their subordinate Corporation repeatedly admitted that ultimate beneficial title to the property was held by The Episcopal Church. For example in a 1994 Texas state court case, the Defendants stated in court filings that the Church's "national canons" created an "express trust" enforceable by the court "even if [legal] title had been in [a breakaway faction]."<sup>446</sup> In the same case, they argued that a Congregation that "ha[s] abandoned communion with The Episcopal Church . . . is a new creation" is not part of "the true Church" and has "no right to its property."<sup>447</sup> All Saints itself stated throughout the relevant period that all such property was held in trust for the Church.<sup>448</sup>

These admissions, along with many similar others, are "fatal to [Defendants'] title by limitation."<sup>449</sup> Any adverse possession period that began to run was interrupted long before Defendants could have acquired title.

**g. Defendants' are equitably estopped from asserting title to the All Saints Property by limitations**

"A plaintiff may invoke equitable estoppel to prevent an opponent from pleading limitations if the opponent, his agent, or representatives make representations that induce the plaintiff to delay filing suit within the applicable limitations period."<sup>450</sup> The same principles

<sup>445</sup> *Allen v. Sharp*, 233 S.W.2d 485, 488 (Tex. Civ. App.—Fort Worth 1950, writ ref'd).

<sup>446</sup> A1043, *Wantland Aff., Corp. of the Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. July 29, 1994).

<sup>447</sup> A991, *Second Am. Orig. Pet., Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995).

<sup>448</sup> JA02582, *Bylaws of All Saints' Episcopal Church* at 10 (Nov. 19, 1992).

<sup>449</sup> *Allen*, 233 S.W.2d at 488.

<sup>450</sup> *Frank v. Bradshaw*, 920 S.W.2d 699, 701 (Tex. App.—Houston [1st Dist.] 1996, no pet.).

apply where the defendant made a “concealment of a material fact” that induced the plaintiff to delay filing suit.<sup>451</sup>

Here, by concealment and misrepresentation of the true facts, Defendants purported to be a permanently subordinate, constituent portion of The Episcopal Church until they attempted to break-away from the Church in 2008. For example, until their attempted break-away, the Diocese never revoked its “unqualified accession” to the Church,<sup>452</sup> including the requirement to secure property “from the danger of alienation [from] the Protestant Episcopal Church.”<sup>453</sup> In addition, until the purported break-away, the Diocese and Corporation each continuously represented to the IRS that they were “subordinate unit[s] of [the] Protestant Episcopal Church in the United States of America.”<sup>454</sup> Further, until the purported break-away, the Congregations—including All Saints—never revoked their 1982 resolution to “fully subscribe and accede to the Constitution and Canons of The Episcopal Church,<sup>455</sup> which included Canon I.7.4’s requirement that “[a]ll 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.”<sup>456</sup>

These commitments induced Plaintiffs to not file suit against Defendants before the attempted break-away. Once Defendants did attempt to break-away from The Episcopal Church and repudiate these commitments, Plaintiffs promptly filed this lawsuit. Defendants cannot equitably rely on their concealment and misrepresentation of the true facts in order to establish a defense to Plaintiffs’ claims under the statute of limitations. Defendants’ adverse possession

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<sup>451</sup> *Id.*

<sup>452</sup> A3939, Dep. of Def. Diocese at 162:5-20.

<sup>453</sup> A4117, Digest of the Canons for the Government of the Protestant Episcopal Church in the United States of America, Together with the Constitution, canon I.26 (1893). The terms “The Episcopal Church,” “the Protestant Episcopal Church,” “the Church,” and “TEC” all refer to Plaintiff The Episcopal Church.

<sup>454</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2633, Letter from John E. Picketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

<sup>455</sup> JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, November 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

<sup>456</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

claim should, therefore, be denied.<sup>457</sup>

## ii. Standing

Defendants have argued, weakly, that the loyal Episcopalians of Fort Worth (the “Local Episcopal Parties”) do not have standing to challenge Defendants’ taking of Episcopal property away from Episcopalians in Fort Worth. (Defendants have not challenged the standing of The Episcopal Church or Local Episcopal Congregations or their congregational representatives in this case.)

But a party has standing so long as she “allege[s] an interest peculiar to [herself] and distinguishable from the public generally . . . .” *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984). The Local Episcopal Parties have alleged such an interest as a displaced minority that formerly enjoyed use of the property in Episcopal congregations, and as the only parties recognized by The Episcopal Church as authorized to lead the Episcopal Diocese. As to the property of All Saints, which Plaintiff All Saints currently controls, the Local Episcopal Parties allege the right to the continued use and benefit of the property. The general public cannot allege such interests. Thus, the Local Episcopal Parties have standing.<sup>458</sup>

Defendants claim that because these individual Plaintiffs seek a declaration of their right to hold office under *Masterson*, they cannot also seek declarations that *if* they are declared officers, *then* they may resume use of the property. This is circular, absurd, and wrong.

Texas law not only permits *but requires* parties to bring such two-step, “contingent” claims in one pleading. *See Getty Oil Co. v. Ins. Co. of N. Am.*, 845 S.W.2d 794, 799 (Tex. 1992) (“Whenever a claim is one heretofore cognizable only after another claim has been

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<sup>457</sup> See, e.g., *Mandola v. Mariotti*, 557 S.W.2d 350, 351-52 (Tex. Civ. App.—Houston [1st Dist.] 1977, writ denied).

<sup>458</sup> Although Defendants do not challenge the standing of the Church or Plaintiff All Saints, Plaintiffs note that those parties’ standing is clear. The Church alleges a beneficial interest in the property of All Saints, and Plaintiff All Saints, which currently uses the property, alleges a right to the continued use and enjoyment of the property so long as it remains a congregation with the Church. Thus, both the Church and Plaintiff All Saints have alleged a peculiar interest that is distinguishable from the public generally. *Hunt*, 664 S.W.2d at 324.

prosecuted to a conclusion, the two claims may be joined in a single action . . . .” (quoting Tex. R. Civ. P. 51(b)). And parties *must* do so because the doctrine of *res judicata* could otherwise act to bar the second claims later.

For instance, in *Getty*, the court rejected Getty’s attempt to file suit when the claims arose “out of the same subject matter” as a previous lawsuit. *Id.* at 798-99. Getty argued it was not required to bring those claims in the first lawsuit because they “did not accrue until [the first] judgment was rendered . . . .” *Id.* at 799. But the Texas Supreme Court rejected this assertion, noting “Getty could have asserted its present claims in the [first] suit, with their resolution being contingent on the [other] claims.” *Id.* In fact, Getty was required to do so under *res judicata*.

Here, the Local Episcopal Parties’ claims all arise from Defendants’ attempt to wrest the Episcopal Diocese and its institutions from The Episcopal Church. The Local Episcopal Parties may seek to affirm their rights to (1) lead those entities and then (2) use and protect the property of those entities. These claims all arise from Defendants’ same wrongful conduct. And under *res judicata*, “[a]ny cause of action which arises out of [the] same facts should, if practicable, be litigated in the same lawsuit.” *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 630 (Tex. 1992).

*In re Salazar*, 315 S.W.3d 279, is not to the contrary. Despite Defendants’ repeated assertions, the Fort Worth Court of Appeals did not resolve which party is entitled to control the Diocese and Corporation. Rather, the Court said in no uncertain terms: “The trial court ***did not*** determine on the merits which Bishop and which Trustees are authorized persons within the [Diocesan] Corporation and the Fort Worth Diocese, ***nor do we***. The question of ‘identity’ ***remains to be determined*** in the course of the litigation.” *Id.* at 286 (emphases added). That is what this Court did in its 2011 summary judgment, and that is what it is mandated to do again on remand now.

Accordingly, the Local Episcopal Parties have standing to request a ruling that they have authority to represent the Diocese and the Diocesan Corporation and, contingent on that determination, to enforce those entities' property rights.

### iii. Quasi-Estoppel

Defendants are also estopped from asserting that their promises to hold the All Saints Property in trust for The Episcopal Church are not legally enforceable.

Quasi-estoppel “applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit.”<sup>459</sup> It thus applies here, for the following reasons.

Defendants (or their predecessors in office), in order to obtain possession of the disputed property, acceded “unanimously” and “fully” to the Constitution and Canons of The Episcopal Church,<sup>460</sup> which required that “[a]ll 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 . . . .”<sup>461</sup> The Diocese then attached to its unanimous resolution a Diocesan Constitution and Canons that, in Article 1, again acceded to “the Constitution and Canons of the Episcopal Church in the United States of America,”<sup>462</sup> and, in Article 13, committed to hold “all property hereafter acquired for the use of the Church and the Diocese” in a Corporation “subject to control of the Church in the Episcopal Diocese of Fort Worth.”<sup>463</sup>

The Diocese made these commitments to the Church as required by Article V of The Episcopal Church's Constitution in order to effect the formation of a new Diocese in Fort Worth

<sup>459</sup> *Lopez v. Muñoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 864 (Tex.2000) (citation omitted).

<sup>460</sup> JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

<sup>461</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

<sup>462</sup> JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

<sup>463</sup> JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

“by the division of an existing Diocese [the Diocese of Dallas].”<sup>464</sup> Then, after receiving Article V approval from the Church, the Dallas and Fort Worth Dioceses and their subordinate Corporations jointly petitioned a civil district court in a “friendly suit”<sup>465</sup> to legally “effect the Article V division.”<sup>466</sup>

In that suit, both Dioceses represented that they were “organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America,”<sup>467</sup> and the Diocesan Corporation represented it would hold property “pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth,”<sup>468</sup> which in Article 1 acceded to the Church’s Constitution and Canons. The parties asked the court to “record and declare” the division of assets “[p]ursuant to the terms of the resolution adopted by the plaintiffs,”<sup>469</sup> which implemented “the division of the Diocese of Dallas into two separate dioceses as permitted by Article V of the Constitution of the Episcopal Church . . . .”<sup>470</sup> The parties represented that the property had been “acquired for the use of the Episcopal Church in the Diocese of Dallas” and was being transferred “for the use of the Church in the [new] Diocese . . . .”<sup>471</sup> As the Defendants’ purported representative of the Diocesan Corporation testified in this case, “for the use of the Church in the Diocese” meant “for the use of The Episcopal Church in the Diocese.”<sup>472</sup> The

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<sup>464</sup> JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V.

<sup>465</sup> A2626-27, Letter from The Rev. Canon Charles A. Hough, III & N. Michael Kensel to The Rev. Steven Pope (Aug. 13, 2007).

<sup>466</sup> A3958, Dep. of Def. Corp. at 150:3-14.

<sup>467</sup> JA00716-17, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>468</sup> JA00728, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>469</sup> JA00721, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

<sup>470</sup> JA00719, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984); see also A3958, Dep. of Def. Corp. at 150:3-10 (“Q. And the parties to that division passed a resolution to discuss how to divide up the property under that Article V division, correct? A. Yes. Q. And then this friendly petition was telling the court the contents of that resolution to effect the Article V division? A. Yes.”).

<sup>471</sup> JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>472</sup> A3959-60, Dep. of Def. Corp., at 154:3–156:1.

Diocese and Corporation both signed the petition.<sup>473</sup> Defendants concede the court relied on those representations to transfer legal title to the All Saints Property.<sup>474</sup>

As a result of Defendants' promises, Defendants received legal title to a portion of the All Saints Property.<sup>475</sup> Having accepted this benefit in return for their promises, Defendants are estopped, under the doctrine of quasi-estoppel, from contending that they are free to disregard their promises.<sup>476</sup> Unlike equitable estoppel, quasi-estoppel requires "no concealment or misrepresentation of existing facts on the one side, and no ignorance or reliance on the other."<sup>477</sup>

Defendants contend that quasi-estoppel is not applicable here because quasi-estoppel "is a defensive theory."<sup>478</sup> Defendants are wrong. Texas courts have made clear that quasi-estoppel may be asserted as a counter-defense; *i.e.* a claim that, rather than seeking affirmative relief, acts to bar one's opponent from asserting a defense that is inconsistent with the position from which he previously received a benefit.<sup>479</sup> Thus, for example, Texas courts have held that a client should be estopped from raising the (otherwise dispositive) defense that its fee agreement with an attorney was never signed and thus unenforceable where "the attorney ha[s] performed and the [client] ha[s] accepted, used, and enjoyed the attorney's services and the product of those

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<sup>473</sup> JA00734, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

<sup>474</sup> A3965, Def. Trustee Bates Dep. at 19:25-20:25; JA00001-2, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. Aug. 22, 1984).

<sup>475</sup> A3965, Def. Trustee Bates Dep. at 19:25-20:25; JA00001-2, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. Aug. 22, 1984).

<sup>476</sup> *Lopez*, 22 S.W.3d at 864.

<sup>477</sup> *Neiman-Marcus Group, Inc. v. Dworkin*, 919 F.2d 368, 371 (5th Cir. 1990) (citing *Arrington v. Cnty. of Dallas*, 792 S.W.2d 468, 472 (Tex. App. —Dallas 1990, writ denied)).

<sup>478</sup> Defs' Mot. at 63.

<sup>479</sup> See *Baron v. Mullinax, Wells, Mauzy & Baab, Inc.*, 623 S.W.2d 457, 462 (Tex. App.—Texarkana 1981, no writ) (holding that appellant cannot claim contingent fee contract invalid for pending case while treating it as valid and receiving substantial benefits under it for other purposes); *Cook v. Smith*, 673 S.W.2d 232, 234-35 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) (employing equitable estoppel as a counter-defense); *cf. Transcon. Realty Investors, Inc. v. John T. Lupton Trust*, 286 S.W.3d 635, 648 (Tex. App.—Dallas 2009, no pet.) ("There are numerous cases discussing estoppel as a counter-defense . . .").

services.”<sup>480</sup> And, in any event, Plaintiffs are also counter-defendants because of Defendants’ affirmative claims.

Likewise, in the *Masterson* opinion, Texas Supreme Court Justice Debra Lehrmann (joined by then-Chief Justice Wallace Jefferson) agreed that Defendants would be quasi-estopped from asserting rights to any of the Episcopal Property—including the All Saints Property—under these facts.<sup>481</sup> Justice Lehrmann pointed out that the Defendants promised to abide by the Church’s doctrine and polity, accepted benefits from the Church, and declared that the church property was secured from alienation: “Having made these promises and accepted these benefits, [Defendants] may not now contend [they are] free to disregard these positions because a majority of its members have voted to do so.”<sup>482</sup>

Therefore, as Justice Lehrmann observed, Defendants are estopped from presenting their defenses pursuant to the doctrine of quasi-estoppel.

#### iv. Promissory Estoppel

“Texas has adopted the doctrine of promissory estoppel as set forth by the Restatement of Contracts § 90.”<sup>483</sup> Thus relief will be granted where a plaintiff can establish “(1) a promise, (2) foreseeability of reliance thereon by the promisor, and (3) substantial reliance by the promisee to his detriment.”<sup>484</sup> Each of these elements is present here. Plaintiffs are therefore entitled to relief under the doctrine of promissory estoppel.

First, in order to induce Plaintiffs to transfer legal title to some of the All Saints Property to them, Defendants promised to hold this property for the use and benefit of The Episcopal

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<sup>480</sup> *Garza v. Gray & Becker, P.C.*, 2002 Tex. App. LEXIS 8908, \*23-\*24 (Tex. App.—Austin Dec. 12, 2002, pet. den’d) (citing *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ) (subsequently overruled on unrelated grounds)).

<sup>481</sup> See *Masterson v. Diocese of Northwest Tex.*, 56 Tex. Sup. J. 1048, 2013 Tex. LEXIS 676, at \*80-81 (Tex. 2013) (Lehrmann, J., dissenting).

<sup>482</sup> *Id.* at \*82.

<sup>483</sup> *Fretz Const. Co. v. S. Nat. Bank of Houston*, 626 S.W.2d 478, 480 (Tex. 1981).

<sup>484</sup> *English v. Fischer*, 660 S.W.2d 521, 524 (Tex. 1983).



Church. Specifically, the Episcopal Diocese of Fort Worth—along with every lay and clerical Diocesan leader and every Congregation within the Diocese—unanimously resolved, “pursuant to approval of the 67th General Convention of The Episcopal Church, [to] hereby fully subscribe to and accede to the Constitution and Canons of The Episcopal Church,”<sup>485</sup> including the canon that provides that “[a]ll 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 . . . .”<sup>486</sup> Similarly, in order to obtain the All Saints Property, the Corporation represented that it was “duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth,”<sup>487</sup> which reaffirmed the Diocese’s commitments to these promises.<sup>488</sup>

Second, the Episcopal Diocese of Fort Worth’s promise to have the Diocesan Corporation hold the All Saints Property in trust had the foreseeable, intended consequence of prompting The Episcopal Diocese of Dallas—a subordinate body of The Episcopal Church—to transfer legal title to millions of dollars in real property to the Diocesan Corporation.

Finally, to the extent that Defendants’ contentions in this lawsuit—that they are otherwise entitled to the full benefits of the All Saints Property—are correct, The Episcopal Church has been substantially harmed by this reliance. Specifically, in that scenario, The Episcopal Church’s reliance on Defendants’ promises will have deprived The Episcopal Church of the use and benefit of the All Saints Property. But for this reliance, the property would have been held by a subordinate religious body of The Episcopal Church—not a secular corporation unaffiliated with the Church.

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<sup>485</sup> JA00364-71, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth (Nov. 13, 1982).

<sup>486</sup> JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

<sup>487</sup> JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

<sup>488</sup> See JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

“Damages recoverable in a case of promissory estoppel are . . . the amount necessary to restore [the plaintiff] to the position he would have been in had he not acted in reliance on the promise.”<sup>489</sup> Because Plaintiffs would not have transferred legal title to a portion of the All Saints Property had they not acted in reliance on the relevant promises, Plaintiffs are entitled to full title to the All Saints Property or else the full value of this property.

In response, Defendants argue that “Plaintiffs cannot assert estoppel because they are plaintiffs.”<sup>490</sup> That is incorrect because Plaintiffs are also counter-defendants and for the reasons below.

To support their novel position, Defendants quote from the seminal case in Texas regarding promissory estoppel: *Wheeler v. White*, 398 S.W.2d 93 (Tex. 1965). They fail to point out, however, that *Wheeler* emphatically contradicts the very position they take in this case. In *Wheeler*, the Texas Supreme Court reversed dismissal of a case because “[Plaintiff]’s pleadings on the theory of estoppel *state a cause of action*.”<sup>491</sup> Anticipating the objection Defendants have raised in this case, the court then held:

As to the argument that no new cause of action may be created by such a promise regardless of its established applicability as a defense, it has been answered that where one party has by his words or conduct made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise cannot afterward be allowed to revert to the previous relationship as if no such promise had been made. *This does not create a contract where none existed before, but only prevents a party from insisting upon his strict legal rights when it would be unjust to allow him to enforce them.*<sup>492</sup>

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<sup>489</sup> *Fretz Const. Co. v. S. Nat. Bank of Houston*, 626 S.W.2d 478, 483 (Tex. 1981).

<sup>490</sup> Defs’ 2d Mot. for Partial Summary Judgment at 62.

<sup>491</sup> *Wheeler v. White*, 398 S.W.2d 93, 95 (Tex. 1965) (emphasis added).

<sup>492</sup> *Id.* at 96.

As recently as 2014, this holding has been reaffirmed by the Fort Worth Court of Appeals, which held that “promissory estoppel is also a cause of action available to a promisee who has acted to his detriment in reasonable reliance on an otherwise unenforceable promise.”<sup>493</sup>

So, too, here. Plaintiffs are entitled, under the doctrine of promissory estoppel, to the All Saints Property. Defendants cannot be allowed to ignore this doctrine and act as if no promise had been made.

**v. Equitable and judicial estoppel also apply here**

Further, Defendants are equitably estopped from claiming a right to the disputed property. Equitable estoppel prevents a party from benefitting from misrepresentations that induce an opposing party to change position to its detriment.<sup>494</sup> As described above, Defendants induced Plaintiffs to permit Defendants to use the disputed property through Defendants’ misrepresentations that they would follow the Church’s rules and hold the property in trust for the Church. Defendants intended that their promises to hold the property in trust would cause Plaintiffs to permit Defendants to use the property, and Plaintiffs relied on those promises to their detriment. Plaintiffs neither knew, nor had the means to know, that Defendants would break their promises and attempt to secede from the Church with the property. Accordingly, Defendants are equitably estopped from claiming complete ownership of the disputed property.

Finally, “[j]udicial estoppel precludes a party who successfully maintains a position in one proceeding from afterwards adopting a clearly inconsistent position in another proceeding to obtain an unfair advantage.”<sup>495</sup> The doctrine “prevent[s] parties from playing fast and loose with

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<sup>493</sup> *1 Lincoln Fin. Co. v. Am. Family Life Assur. Co. of Columbus*, 02-12-00516-CV, 2014 WL 4938001, at \*5 (Tex. App.—Fort Worth Oct. 2, 2014, no pet.) (citing *Wheeler*, 398 S.W.2d at 96); *see also, e.g.*, Texas Pattern Jury Charges—Business, Consumer, Insurance & Employment (2014), PJC 101.41 (“The doctrine of promissory estoppel may be invoked as a cause of action.”).

<sup>494</sup> *See Office of Attorney Gen. of Tex. v. Scholer*, 403 S.W.3d 859, 862 (Tex. 2013).

<sup>495</sup> *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 643 (Tex. 2009).

the judicial system for their own benefit.”<sup>496</sup> As described above, Defendants have made numerous judicial statements regarding, among other things, the structure and discipline of The Episcopal Church, the inability of a constituent part of the Church to leave the Church with property, the manner in which one abandons communion with the Church, and the method by which Texas courts must determine the identity of religious entities. Defendants are judicially estopped from contradicting those statements now.

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For all of these global reasons, and as set forth in Plaintiffs’ prior briefing, which is incorporated by reference herein, the Court should grant Plaintiffs’ Supplemental Motion for Partial Summary Judgment on Claims Relating to All Saints Episcopal Church and deny Defendants’ cross-motion.

### **IX. GROUNDS**

The Court should grant Plaintiffs’ Supplemental Motion for Partial Summary Judgment on Claims Relating to All Saints’ Episcopal Church and deny Defendants’ for the reasons listed below and amplified in the argument sections above. This formal statement of grounds is not meant to limit the arguments set forth in the body of this motion.

#### **A. The Deeds**

Plaintiff All Saints is entitled to all six of its properties on the face of the deeds. In its putative counterclaim, Defendant “All Saints” appeared to claim all six deeds. Upon deposition, it has since disclaimed any right or interest in all but two deeds. But Defendants still seek to pluck the historic church and rectory out of the middle of those six properties. Defendants are entitled to none of the six properties under neutral principles of Texas law applied to the face of the deeds. Specifically:

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<sup>496</sup> *Id.*

1. All of Block 14, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas (5001 Crestline). This property was conveyed in 1947 expressly in trust for the use and benefit of the Protestant Episcopal Church in this region. The trust is irrevocable and, at any rate, has never been revoked. Defendants have no affiliation with the Protestant Episcopal Church. The 1984 declaratory judgment expressly transferred legal title only for this property to the Diocesan Corporation. It did not transfer beneficial title on its face and as a matter of law. Additionally, under Plaintiff All Saints' bylaws, the property is held in trust for the Church. Defendant Corporation cannot administer a trust in favor of the Protestant Episcopal Church because of its adversity to the Protestant Episcopal Church. When a trustee and beneficiary of a trust become adverse, Texas civil courts may remove and replace the trustee. The Court should remove Defendant Corporation as trustee of Plaintiff the Protestant Episcopal Church's trust and name Plaintiff All Saints as the trustee of that trust for The Episcopal Church.
  
2. All of lots 6, 7, and 8, and the West 15 feet of Lot 5, and the East 20 feet of Lot 9, all in Block 26, of Chamberlin Arlington Heights, First Filing, an addition to the City of Fort Worth, Tarrant County, Texas (5003 Dexter). This property is held by the Corporation in express trust for the Episcopal congregation for which it was acquired. It was acquired in 1951 for Plaintiff All Saints Episcopal Church, the Episcopal congregation established in 1947 that Defendants admit stayed with The Episcopal Church and has operated at 5001 Crestline continuously from 1947 to present. Defendant "All Saints" testified that it is a new entity formed in 2009 that has not attempted to remove or replace the authorized leaders or governing documents of the continuing Plaintiff All Saints. Defendant "All Saints" tried to claim that the trust is instead for it, a 2009 entity, because it is the parish "in union with" or a member of the putative Defendant Diocese. But, as Defendant "All Saints" conceded, the trust language Defendants rely on says nothing about "in union with" or "member of." It says the trust is for the "particular" Parish for whom the property was acquired. And that is Plaintiff All Saints, in 1951, fifty-eight years before Defendant "All Saints" formed itself. Additionally, under Plaintiff All Saints' bylaws, the property is held in trust for the Church. The trusts in favor of Plaintiff All Saints and the Church have never been revoked. Under Texas law, Defendant Corporation must be removed as trustee of Plaintiff All Saints' trust, given Defendants' adversity to Plaintiffs, with control returned to Plaintiff All Saints.
  
3. **DISCLAIMED BY DEFENDANT:** Lots 1 and 2, Block 26, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas (5001 Dexter). This property was conveyed in fee simple to All Saints Episcopal Church in 1995. Defendant "All Saints" disclaimed any right, interest, or claim in this property. And rightly so. The property is expressly titled to the All Saints at 5001 Crestline. Defendant "All Saints" admits it is a 2009 entity whose founders "had resigned from the vestry of All Saints' Episcopal Church on Crestline Road." In 1995, when All Saints

acquired this property, its governing local bylaws read that it acquired all property in trust for the Protestant Episcopal Church. That governing trust remains in its bylaws to this day. Defendant “All Saints” has never purported to supersede or replace those governing bylaws, and in fact has no local bylaws.

4. **DISCLAIMED BY DEFENDANT:** The South 122 feet of Lots 21, 22 and 23 and the South 122 feet of the West 15 feet of Lot 24, all in Block 15, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas (4936 Dexter). Like 5001 Dexter, this property was also conveyed in fee simple to All Saints Episcopal Church, on 5001 Crestline, this time in 2003. Defendant “All Saints” again disclaimed any right, interest, or claim in this property. Additionally, under Plaintiff All Saints’ bylaws, the property is held in trust for the Church. The same arguments set forth for 5001 Dexter apply and are incorporated here.
5. **DISCLAIMED BY DEFENDANT:** The West 90 feet of Lot A, Block 25, Chamberlin Arlington Heights, First Filing, an Addition to the City of Fort Worth, Tarrant County, Texas (4939 Dexter). This property was conveyed in 1997 to All Saints’ Episcopal Church, a Texas nonprofit corporation. Defendant “All Saints” disclaimed any right to the All Saints corporation and any right to this property. The enabling resolution authorizing the corporation states that it shall always be subject to the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and its governing documents reflect that to this day and require officers to perform their duties in accordance with the rules of The Episcopal Church. Additionally, under Plaintiff All Saints’ bylaws, the property is held in trust for the Church. Defendants have no affiliation with The Episcopal Church. Defendants have neither pleaded for nor claimed to be officers of this corporation and have no right or basis for such a claim.
6. **DISCLAIMED BY DEFENDANT:** Lot 3-R, Block 26, Chamberlin Arlington Heights Addition to the City of Fort Worth, Tarrant County, Texas (5005 Dexter). This property, conveyed in 1999, is titled to the Diocesan Corporation in trust for the use and benefit of All Saints’ Episcopal Church, a Texas nonprofit corporation. Defendant “All Saints” disclaimed all right, claim, and interest in the beneficial interest of this property, testifying: “We make no claim to that [All Saints] corporation,” this property is held by the Diocesan Corporation “for the use and benefit of someone other than defendants,” and “Defendant All Saints’ is not making any claim to the property.” Additionally, under Plaintiff All Saints’ bylaws, the property is held in trust for the Church. For the same reasons set forth above for 4939 Dexter, Defendant “All Saints” has no right to the All Saints corporation or this property which is held in beneficial trust for it. Under Texas law, Defendant Corporation must be removed as trustee of this trust, given Defendants’ adversity to Plaintiffs, with control returned to Plaintiff All Saints.

Finally, Defendants have repeatedly affirmed to the Court and under oath that they make no claims to All Saints Episcopal School.

### **B. The U.S. Constitution**

The Court's March 2, 2015 judgment violates the United States Constitution. As argued in the prior summary judgment proceedings, courts in America do not override churches on questions of religious polity. This Court overrode The Protestant Episcopal Church on the question of whether an Episcopal Diocese can unilaterally divorce itself from The Episcopal Church. It overrode The Episcopal Church on who is the Bishop of an Episcopal Diocese and who are its authorized representatives and members.

The Court could not have decided the property case for Defendants without overriding The Episcopal Church on these religious questions. As Defendant "All Saints" conceded: "Our claims are based on our membership in the diocese; simple as that."<sup>497</sup> Defendants have conceded that all property held by the Diocesan corporation is held in trust for the Episcopal Diocese and Congregations. The entire case thus turns on the identity of the Episcopal Diocese and Congregations, whether they had authority to break away from The Episcopal Church, and whether Defendant Iker and his followers were removed from office in those entities for abandoning their vows and violating Church law. In short, the parties here arranged their affairs in such a way "that ecclesiastical decisions effectively determine the property issue."<sup>498</sup>

And when that is the case, the Texas Supreme Court was perfectly clear about what must happen under the U.S. Constitution: "Civil courts are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted," and "deferring to decisions of

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<sup>497</sup> JA02710, Dep. of Def. All Saints' at 78:17-21.

<sup>498</sup> *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 607 (Tex. 2013).

ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question.”<sup>499</sup>

### C. The Global Arguments

In addition, Plaintiffs reassert all of their prior arguments from their December 1, 2014 cross-motion for partial summary judgment, response, and reply, as to the claims relating to All Saints, including:<sup>500</sup>

#### 1. The “appropriate method for Texas courts.”

Under a basic neutral principles analysis, this Court answers questions like “Is there a trust or deed, and for whom?” But if the answer is “yes, for an ecclesiastical entity”—and the question becomes who may control that entity—the Court hits a dead-stop under *Masterson* where it must defer to the Church on that question of which party represents the beneficiary entitled to the property.

This is not only Plaintiffs’ understanding. Just a few months ago, *Defendants* admitted to the U.S. Supreme Court:

“[U]sing principles of Texas law,” *Brown* concluded that “whatever body is identified as being the church to which the deed was made must still hold the title.” Because the property dispute’s resolution turned, under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court deferred to the national denomination’s understanding of the church’s identity. “The method by which this Court addressed the issues in *Brown*,” the Texas Supreme Court held [in *Masterson*],

<sup>499</sup> *Id.* (citing *Milivojevich*, 426 U.S. at 709–10; *Brown*, 116 S.W. at 364–65).

<sup>500</sup> Beyond the constitutional concerns, which are dispositive for Plaintiffs, Plaintiffs also reassert the other arguments set forth in their December 1, 2014 cross-motion, response, and reply, involving contractual trust, constructive trust, corporate law as to the Diocesan corporation, and associations law, and further reassert and preserve the objections stated in their June 19, 2014 Petition for Writ of Certiorari to the U.S. Supreme Court, incorporated herein by reference. Those positions are set forth in detail in Plaintiffs’ December 1, 2015 Motion for Partial Summary Judgment at pp. 34-81, December 22, 2015 Response to Defendants’ Second Motion for Partial Summary Judgment at pp. 45-93, and January 23, 2015 Reply in Support of Plaintiff’s Motion for Partial Summary Judgment at pp. 38-75, and are incorporated by reference herein.



“remains the appropriate method for Texas courts.”<sup>501</sup>

Or, as the Texas Supreme Court itself put it, “courts applying the neutral principles methodology defer to religious entities’ decisions on ecclesiastical and church polity issues such as who may be members of the entities,” including “who is or can be a member . . . of TEC or a diocese,” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650, 652, or “the true and proper representatives” of congregations, *Masterson*, 422 S.W.3d at 607-08.

Here, Defendants have now admitted in sworn testimony that the Corporation holds title to *all property in trust* for the Diocese and its Congregations.<sup>502</sup> Because Defendants concede that the Corporation holds the property in trust, the Court can dispose of this issue simply by determining who represents those beneficiaries, the Diocese and the Congregations. Under the facts admitted by Defendants, “deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment . . . effectively determine[s] the property rights in question.” *Id.* at 606.

It is now settled that “the record conclusively shows TEC is a hierarchical organization,” *id.* at 608, with “three structural tiers[, t]he first and highest [of which] is the General Convention,” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647. And “[c]ivil courts are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted.” *Masterson*, 422 S.W.3d at 607. **Because the General Convention and its authorized agents have determined that Defendants do not represent either the Diocese or**

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<sup>501</sup> A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)); accord *Brown v. Clark*, 116 S.W. at 364–65.

<sup>502</sup> A3931-32, Dep. of Def. Diocese at 85:6-12, 86:11-16, 87:12-88:11; A3948, 3952, 3956, Dep. of Def. Corp at 17:10-18:2, 65:4-7, 107:13-108:7; accord JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

**the Congregations and that Plaintiffs do,<sup>503</sup> this Court must, under *Masterson* and *Episcopal Diocese of Fort Worth*, declare that the property held by the Corporation in trust for those entities is held in trust for Plaintiffs.** The same analysis applies to any property that, under neutral principles of law, is held by or for those entities or their agents, such as tangible personal property and bank accounts.

Under *Masterson* and *Episcopal Diocese of Fort Worth*, this Court should declare that it defers to Plaintiff The Episcopal Church's determination that the Plaintiffs and their successors represent the Diocese and Congregations, including All Saints. If Defendants somehow were still Trustees of the Diocesan Corporation, as they purport, they would be in breach of the Diocesan Corporation's trust obligations to the Diocese and Congregations, and this Court would simply remove the breaching Diocesan Corporation as trustee of Plaintiffs' trusts. Tex. Prop. Code § 113.082(a)(1), (4).

## **2. *Express Trust for the Church and its Constituent Entities.***

The Diocese agreed to the Church's rules in exchange for formation, membership, and property. Those rules included the Church's trust canon, placing all property in trust for the Church as a whole. Defendants and their predecessors accepted the benefits of this agreement, and "the constitution and by-laws of an organization . . . constitute a contract between the organization and its members." *Int'l Printing Pressmen & Assistants' Union of N. Am. v. Smith*, 198 S.W.2d 729, 736 (Tex. 1946). Moreover, the property transferred to the Diocese and Diocesan Corporation was already in express trust for the Church. And numerous individual deeds also contain express trust language consistent with those global declarations of trust and are jointly and separately enforceable.

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<sup>503</sup> See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27<sup>th</sup> Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

Defendants claim to “revoke” that trust under Tex. Prop. Code § 112.051(a). But Defendants cannot revoke express trusts on the face of deeds when they were not settlors, and that statute “is inapplicable to a trust that is created by contract and based on a valuable consideration,” which cannot be revoked without “the agreement or consent of a majority of the beneficiaries.” *Shellberg*, 459 S.W.2d at 470. “[S]uch a trust is irrevocable even if it does not expressly so state.” Johanson’s Tex. Estates Code Ann. § 112.051 (2014) (citing *Shellberg*, 459 S.W.2d at 470-71).<sup>504</sup> Because Defendants and their predecessors in office agreed to hold property in trust in exchange for formation, membership, and transfer of the property, they are bound by that commitment and cannot revoke it now.

### 3. *Constructive Trust for the Church and its Constituent Entities.*

Even if there were no express trust, Plaintiffs would be entitled to a constructive trust. Texas courts impose constructive trusts where a party accepts property for the benefit of another and then seizes it for his own. *Mills v. Gray*, 210 S.W.2d 985, 988-89 (Tex. 1948). Constructive trusts apply where an express trust is contemplated but fails. *See Murphy v. Johnson*, 439 S.W.2d 440, 442 (Tex. Civ. App.—Houston [1st Dist.] 1969, no writ) (citing *Omohundro v. Matthews*, 341 S.W.2d 401, 405 (Tex. 1960)). Constructive trusts also apply where there was no express trust at all, but parol evidence shows a commitment to hold the property for another. *Mills*, 210 S.W.2d at 988. Constructive trusts recover church property just like any other property. *Libhart v. Copeland*, 949 S.W.2d 783, 804 (Tex. App.—Waco 1997, no pet.) (constructive trust over parsonage “corrected improper conduct of church officers which defrauded the church of its assets”).

Because Defendants were officers of The Episcopal Church’s Episcopal Diocese of Fort

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<sup>504</sup> Moreover, even before the Church formed the Diocese, these properties were already held in express trust for the Church, an obligation that survives the 1984 transfer of legal title as a matter of law. *Binford*, 189 S.W.2d 471, 473 (Tex. 1945).

Worth, entrusted with Church property only because they and their predecessors committed to steward it for the Church under its rules, “the history, organization, and governing documents of the Church, the Diocese, and the parish support implication of a trust.” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 653.

#### 4. *Texas Associations Law.*

Wholly apart from trust law and its requirements, Defendants cannot seize property under Texas associations law. Local chapters “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization . . . organized for specific purposes, most of which can be accomplished only through subordinate bodies.” *District Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d 915, 921 (Tex. 1942). “[T]he relative rights in the property of a local lodge [are] to be determined by rules of the order to which all the defendants, as members, solemnly subscribed. They made their own contract and it is not for the courts to relieve them of its effects.” *Id.* at 922. This is true even where deeds name only the local chapter, because “[i]nquiry concerning the laws of the Grand Lodge would have revealed . . . that the local lodge had no authority to convey the property.” *Logan*, 177 S.W.2d 813 at 815.

Here, the Diocese accepted property as a “subordinate unit of [the] Protestant Episcopal Church in the United States of America,”<sup>505</sup> after fully acceding to its rules. Under neutral principles of Texas associations law, departing members cannot now take that property, even if they “secede in a . . . majority and organize a new association.” *Progressive Union of Tex. v. Indep. Union of Colored Laborers of Tex., Lodge No. 1*, 264 S.W.2d 765, 768 (Tex. Civ. App.—

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<sup>505</sup> A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

Galveston 1954, writ ref'd n.r.e.) (citing 7 C.J.S., Associations, § 27). And this is under Texas state law of associations; separate and apart from that law, enabling such a faction to take the Episcopal Diocese and Congregations, including All Saints, from The Episcopal Church would be a gross breach of the First Amendment.

**5. *Corporations Law.***

Finally, Defendants have no right to control the Diocesan Corporation, because it is a subordinate entity of the Diocese that only Plaintiffs can control, Tex. Bus. Orgs. Code § 22.207(a), and separately because of the plain terms of the Diocesan Corporation's own bylaws. Under basic corporations law, Defendants are not qualified to serve as Trustees and have been removed. Plaintiffs have properly acted to replace those unqualified Defendants as Trustees; even if they had not, this Court under Texas law could reconstitute the board with qualified Plaintiffs under the Diocesan Corporation's governing documents. As shown, ultimately, the Trustees of the Diocesan Corporation are irrelevant: whoever the Trustees are, they must honor the Diocesan Corporation's admitted trust obligations to the Diocese and Congregations, which as a matter of law only Plaintiffs can control. If Defendants somehow were still Trustees, as they purport, they would be in breach of those trust obligations, and this Court would simply remove the breaching Diocesan Corporation as trustee of Plaintiffs' trusts. Tex. Prop. Code § 113.082(a)(1), (4).

The All Saints Corporation has always been operated in accordance with its charter and bylaws, which subject it to the authority of the Church. Defendants have no right to control the All Saints Corporation and have no right to its property.

\* \* \*

In short, under any analysis, Defendants' conduct is contrary to neutral principles of law, because their commitments to the Church as a condition of formation were plain and obvious.

Simply put, Texas law does not permit oath-breaking and land-grabbing, under deference *or* neutral principles.

**6. *Watson Deference and Jones Retroactivity and Trust Enforcement.***

While Plaintiffs argue this motion under neutral principles as instructed by the Texas Supreme Court, Plaintiffs re-urge and argue here, for preservation purposes, their arguments under *Watson* deference, *Jones* retroactivity, and the enforceability of denominational trust clauses under *Jones v. Wolf*, 443 U.S. 595 (1979), irrespective of state trust law. Specifically, Plaintiffs move that (1) this case should be decided in Plaintiffs' favor under *Watson v. Jones's* deference approach,<sup>506</sup> because the hierarchical Episcopal Church indisputably recognizes Plaintiffs as the only parties authorized to use the identity and property of the subordinate local Church entities;<sup>507</sup> (2) the First Amendment and *Jones v. Wolf* require courts to enforce express trusts recited in general-church governing documents irrespective of state law, and here the Dennis Canon resolves the case in Plaintiffs' favor on those grounds;<sup>508</sup> (3) the application of the neutral-principles approach in this case infringes free-exercise rights because it is unconstitutionally retroactive under *Jones v. Wolf*, and this case must therefore be resolved in Plaintiffs' favor under the *Watson* deference doctrine; and (4) the neutral-principles approach endorsed in *Jones v. Wolf* does not remain a constitutionally viable means of resolving church-property disputes, especially in light of *Hosanna-Tabor Evangelical Lutheran Church & School*

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<sup>506</sup> 80 U.S. 679 (1871).

<sup>507</sup> See, e.g., A5-7, Ohl Aff. ¶ 5; A23, Letter from Katharine Jefferts Schori, Presiding Bishop, to People of Fort Worth (Nov. 12, 2009); A24-25, Letter from Bonnie Anderson, President of the House of Deputies, to Deputies and First Alternates (Nov. 6, 2009); A30-31, Gulick Aff. ¶ 7; A363, 365-66, Excerpts from *The Episcopal Church Annual* (2010), at 18, 217-18; A613-14, Excerpts from *The Episcopal Church Annual* (2009), at 213-14; A866-67, 869-71, 876, Excerpts from the Journal of the General Convention (2009), at 41-42, 50, 349, 354, 735; see also A4107-08, Buchanan Aff. ¶ 5 (Oct. 22, 2014).

<sup>508</sup> See, e.g., JA00485, 500-01, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. I, canon 7, § 4, & tit. I, canon 17, § 8; A189, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2009), tit. II, canon 6.

v. *EEOC*, 132 S. Ct. 694 (2012), and this case must therefore be resolved in Plaintiffs' favor under the deference doctrine.

**D. Denial of Defendants' Claims and Defenses.**

For the reasons set forth above, as well as for the additional reasons set forth in Section VIII.F of Plaintiffs' Motion for Partial Summary Judgment, Defendants' claims and defenses relating to All Saints fail, and this Court should grant summary judgment not only in favor of Plaintiffs' claims urged herein but also against Defendants' claims and defenses relating to All Saints. First, Defendants' adverse possession claims, if asserted, fail because they do not meet the most basic elements of adverse possession: Plaintiff All Saints has continued in physical possession of the property, so, before November 2008 and after, the property was not possessed by another, nor were there any facts giving rise to civil liability or the running of limitations. Mere claims of complete ownership by one entitled to possess the property do not start an adverse possession claim. And intra-church parties did not open themselves to civil liability by passing a void intra-church canon; civil liability accrued when Defendants took property. And even if a limitations period had begun, it was interrupted by the Diocese, Diocesan Corporation, and Congregations' repeated reaffirmations of Church rules and property rights and their status as subordinate units of the Church, ending any adverse possession claim. In any event, there was never any revocation of the express trusts on the face of the deeds by the settlers.

Second, Defendants' standing claim/defense fails because the local Episcopalians recognized by The Episcopal Church as the authorized leaders of the Episcopal Diocese and Congregations obviously have an interest distinct from the general public. And parties are not only permitted but also *required* to bring two-step claims in a single action, such as first establishing the legal right to control the Diocese, and then seeking to protect the Diocese's

property rights.

Third, Defendants are estopped as a matter of law from raising claims and defenses that contradict numerous commitments and conduct, and prior statements to courts and federal and state authorities, among others, as Defendants' claims and defenses do here. This Court should grant summary judgment denying all of Defendants' claims and defenses.

**E. Trespass to Try Title.**

For all of these reasons, the Court should grant summary judgment on Plaintiffs' trespass to try title claim, declaring that Plaintiffs hold title to, and are entitled to possession of, the property at issue.

**X. SUMMARY JUDGMENT EVIDENCE**

The parties agreed by Rule 11 letter filed April 16, 2015 that all evidence already filed in support of the prior cross-motions, responses, and replies in this matter is also filed in support of these supplemental motions, responses, and replies, and that all prior objections and rulings on objections for that evidence are made here, without agreeing to the substance of those rulings. The parties agreed that they may reference legal arguments and evidence from those prior motions without need to restate or refile them here. Plaintiffs incorporate the April 16, 2015 Agreement by reference herein.

Plaintiffs further incorporate by reference into this summary judgment record, as if fully set forth herein and attached hereto, the summary judgment evidence from the prior cross-motions, including that set forth below:

**Index to Joint Appendix (filed November 24 and 26, 2014)**

<b>Exhibit No.</b>	<b>Description</b>	<b>Page Nos.</b>
1.	August 22, 1984 Judgment in <i>Episcopal Diocese of Dallas et al. v. Mattox</i>	JA00001



<b>Exhibit No.</b>	<b>Description</b>	<b>Page Nos.</b>
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3.	Articles of Incorporation of Corporation of the Episcopal Diocese of Fort Worth — 1983	JA00066
4.	Amended & Restated Articles of Incorporation of Corporation of the Episcopal Diocese of Fort Worth — 2006	JA00070
5.	By-Laws of Corporation of the Episcopal Diocese of Fort Worth — 1983	JA00075
6.	By-Laws of Corporation of the Episcopal Diocese of Fort Worth — 2006	JA00090
7.	Constitution & Canons of Episcopal Diocese of Fort Worth — 1982	JA00097
8.	Constitution & Canons of Episcopal Diocese of Fort Worth — 2006	JA00165
9.	Constitution & Canons of Episcopal Diocese of Fort Worth — 2008	JA00246
10.	Primary Convention proceedings — 1982	JA00338
11.	The Episcopal Church Constitution & Canons — 1979	JA00379
12.	The Episcopal Church Constitution & Canons — 2006	JA00440
13.	1984 Plaintiffs' Original Petition in <i>Episcopal Diocese of Dallas et al. v. Mattox</i>	JA00716
14.	Minutes of the Diocese of Dallas Special Convention — 1982	JA00781
15.	Journal of the General Convention of The Episcopal Church — 1982	JA00784
16.	Journal of the 87 <sup>th</sup> Annual Meeting of the Diocese of Dallas — 1982	JA00787
17.	[PAGES INTENTIONALLY LEFT BLANK]	JA00793
18.1	Certified copies of deeds LEP0000710–LEP0000910 LEP0001030–LEP0001034 LEP0001039–LEP0001237	JA00873

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18.4	Certified copies of deeds LEP0002140–LEP0002388	JA02023
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<b>EXHIBIT TT</b>	<b>Affidavit of Ednice Baerga</b>	A4229-4230
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TAB 3	Excerpts from Francis L. Hawks, <i>Contributions to the Ecclesiastical History of the United States</i> (1841)	A4532-4534

Plaintiffs further incorporate by reference into this summary judgment record as if fully set forth herein and attached hereto the additional summary judgment evidence set forth below:

**Index to Supplemental Joint Appendix (filed May 6, 2015)**

<b>Exhibit No.</b>	<b>Description</b>	<b>Beg. Bates No.</b>
1.	Deed to All Saints’ Episcopal Church Property at 5001 Crestline	JA02522
2.	Deed to All Saints’ Episcopal Church Property at 5003 Dexter	JA02526
3.	Deed to All Saints’ Episcopal Church Property at 5005 Dexter	JA02532
4.	Deed to All Saints’ Episcopal Church Property at 4939 Dexter	JA02535
5.	Deed to All Saints’ Episcopal Church Property at 4936 Dexter	JA02537

<b>Exhibit No.</b>	<b>Description</b>	<b>Beg. Bates No.</b>
6.	Deed to All Saints' Episcopal Church Property at 5001 Dexter	JA02540
7.	All Saints' Episcopal Church, Founding Document, January 10, 1947	JA02545
8.	All Saints' Episcopal Church Fort Worth, Texas; Church Charter February 26, 1953, First Bylaws, and Minutes of First Meeting of Incorporators	JA02546
9.	Articles of Agreement Between All Saints' Episcopal Church of Fort Worth, Texas and the Episcopal Church in the Diocese of Fort Worth, 1986	JA02554
10.	Bylaws of All Saints' Cathedral Fort Worth, Texas, 1986	JA02557
11.	Bylaws of All Saints' Episcopal Church Fort Worth, Texas, November 19, 1991	JA02561
12.	Bylaws of All Saints' Episcopal Church Fort Worth, Texas, November 19, 1992 Edition	JA02572
13.	Bylaws of All Saints' Episcopal Church Fort Worth, Texas, August 31, 2000 Approved by Vestry October 24, 2000	JA02584
14.	Bylaws of All Saints' Episcopal Church Fort Worth, Texas, January 21, 2001	JA02607
15.	Bylaws of All Saints' Episcopal Church Fort Worth, Texas, January 30, 2011	JA02619
16.	Bylaws of All Saints' Episcopal Church Fort Worth, Texas, January 29, 2012	JA02632
17.	Church Insurance Company of Vermont, Commercial Package Policy Declaration, Policy #VPP0005665	JA02646
18.	Canon 18, Title to Property retrieved from: <a href="http://www.fwepiscopal.org/resources/canons2007i.html">http://www.fwepiscopal.org/resources/canons2007i.html</a> on April 21, 2015	JA02652
19.	Letter from Stephanie Burke to Father Jambor, All Saints' Episcopal Church, September 23, 2003	JA02654
20.	Letter from Jack L. Iker to The Reverend Fathers Ryan Reed, Christopher Cantrell, Thomas Hightower, Fred Barber, Christopher Jambor, William Stanford, Sam McClain, William Crary, Timothy Perkins, Stuart Smith, William Dickson and Charles Hough, January 28, 2008	JA02655
21.	Letter from The Rt. Rev. Jack Leo Iker re: Conformity of All Saints' Real Property, September 2, 2008	JA02656
22.	Letter from Frank Hill, Hill Gilstrap, Attorneys at Law, to N. Michael Kensel, September 24, 2008	JA02657
23.	The 2007 Report of Episcopal Congregations and Missions According to Canons 1.6, 1.7, and 1.17 (otherwise known as the Parochial Report), March 25, 2008	JA02659

<b>Exhibit No.</b>	<b>Description</b>	<b>Beg. Bates No.</b>
24.	Memorandum to Nominating Committee from Fr. Chris Jambor, re: Criteria for Vestry Nominations, December 9, 2008	JA02668
25.	Letters from The Rev. Christopher N. Jambor to The Rt. Rev. Jack Leo Iker	JA02672
26.	Pastoral Letter from the Rt. Rev. Jack Leo Iker to the Clergy, Vestry and Members of All Saints' Episcopal Church in Fort Worth, October 20, 2008	JA02675
27.	Letter from Avery McDaniel, The Law Offices of Avery McDaniel, to Rt. Reverend Jack Leo Iker, December 15, 2008	JA02676
28.	Letter from The Rt. Rev. Jack Leo Iker, Episcopal Diocese of Fort Worth, to Avery McDaniel, December 22, 2008	JA02677
29.	Letter from Frank Hill, Hill Gilstrap, Attorneys at Law, to The Rt. Rev. Jack L. Iker, December 31, 2008	JA02678
30.	Email from kjefferts@episcopalchurch.org [Katherine] to frJambor@allsaintsfortworth.org (cc: crobertson@episcopalchurch.org), re: Fort Worth, June 4, 2008	JA02682
31.	Email from Jack L. Iker to Fr. Jambor re: one on one, February 29, 2008	JA02683
32.	Email from Jack L. Iker to Fr. Jambor re: memo, January 31, 2008	JA02684
33.	Email from Bishop Jack L. Iker to H. Fielding Chandler re: Diocese Split Concerns, December 14, 2008	JA02685
34.	A Pastoral Letter from The Bishop [The Rt. Rev. Jack Leo Iker] to the People of All Saints' Episcopal Church in Fort Worth, January 12, 2009	JA02686
35.	Email from Kent S. Henning to Bishop Iker re: Special Called Vestry Meeting, September 29, 2008	JA02689
36.	Transcript of the Deposition of the Defendant Appearing as "All Saints' Episcopal Church (Fort Worth)" by its Designated Representative William R. Brackett, April 21, 2015	JA02690
37.	Transcript of the Deposition of the Plaintiff All Saints' Episcopal Church (Fort Worth) by its Designated Representative Christopher N. Jambor, April 20, 2015	JA02722
38.	1990 proposed amendment to Cathedral Agreement (ASEC000349)	JA02756
39.	Minutes from Vestry meeting, October 2, 1990 (ASEC000364-0365)	JA02757
40.	Minutes from Vestry meeting, October 16, 1990 (ASEC000366-0367)	JA02759
41.	Letter from N. Michael Kensel to Frank Hill, September 6, 2007	JA02761
42.	Letter from Jack L. Iker to Rector, Wardens, and Vestry of All Saints' Episcopal Church, October 1, 2008 (ASEC000646)	JA02765

<b>Exhibit No.</b>	<b>Description</b>	<b>Beg. Bates No.</b>
43.	Letter from Vestry members of All Saints' Episcopal Church to Bishop Jack L. Iker, January 20, 2009	JA02766
44.	Letter from Dean William D. Nix, Jr. to Bishop Clarence C. Pope, Jr., August 23, 1990 (ASEC000350-0351)	JA02768
45.	Letter from Bishop Clarence C. Pope, Jr. to Dean, Wardens, and Vestry of All Saints' Cathedral, September 26, 1990 (ASEC000353-59)	JA02770
46.	Letter from Dean William D. Nix, Jr. to Bishop Clarence C. Pope, Jr., October 3, 1990 (ASEC000368)	JA02777
47.	Letter from Bishop Clarence C. Pope, Jr. to Dean William D. Nix, Jr., October 3, 1990 (ASEC000369)	JA02778
48.	Letter from Bishop Clarence C. Pope, Jr., October 12, 1990 (ASEC000372-73)	JA02779
49.	Pro Omnibus Sanctis article by Dean William D. Nix, Jr., October 9, 1990 (ASEC000374)	JA02781
50.	Email from Rev. Chris Jambor to Bishop Jack L. Iker, December 19, 2007 (ASEC000713)	JA02782
51.	Letter from the Rt. Rev. Jack L. Iker, to All Persons Affiliated with All Saints' Episcopal Church, Fort Worth (March 6, 2015)	JA02783

**Index to Supplemental Appendix to Plaintiffs' Supplemental Motion for Partial Summary Judgment (All Saints) (filed May 6, 2015)**

	<b>Description</b>	<b>APPENDIX PAGE(S)</b>
<b>EXHIBIT XX</b>	Affidavit of Robert P. Ritchie	A4535 – A4536
TAB 4	<i>Court denies TEC claims to Diocesan property &amp; Trial court ruling expected soon</i> , DEFENDANTS' LITIGATION BLOG, <a href="http://www.fwepiscopal.org/news/2ndmsj.html">http://www.fwepiscopal.org/news/2ndmsj.html</a> (last visited May 4, 2015)	A4537 – A4540
<b>EXHIBIT YY</b>	Affidavit of Rev. Christopher Jambor	A4541 – A4542

References to the record use the following notations:

- Joint Appendix (filed November 24 and 26, 2014) and Supplemental Joint Appendix (filed May 6, 2015): JA\_\_\_\_\_.

- Supplemental Appendix in Support of Plaintiffs' Motion for Partial Summary Judgment (filed December 1, 2014), Appendix in Support of Plaintiffs' Response to Defendants' Second Motion for Partial Summary Judgment (filed December 22, 2014), and Supplemental Appendix to Plaintiffs' Supplemental Motion for Partial Summary Judgment (filed May 6, 2015): A\_\_\_\_\_.

**XI. CONCLUSION AND PRAYER**

For all these reasons, Plaintiffs respectfully move the Court to grant their Supplemental Motion for Partial Summary Judgment on Claims Relating to All Saints' Episcopal Church, deny Defendants' cross-motion expected to be filed on May 6, 2015, and grant Plaintiffs all such further and additional relief to which they may be entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on May 6, 2015, the foregoing document was filed and served electronically on all counsel.

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