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THOMAS A. WILDER
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CAUSE NO. 141-252083-11

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

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary:

- The Court can resolve this case on two undisputed facts.
- Defendants' response brief falls apart on simple inspection.
- The roadmap to resolving this case is clear.

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I. SUMMARY OF REPLY: WHY DEFENDANTS LOSE

Defendants lose for a simple reason:

For five years, they have argued they can take property because the Corporation is a secular entity. But now they have admitted, in a formal, binding judicial admission, that under neutral principles of law, the Corporation *holds all property in trust* for the Episcopal Diocese and Episcopal Congregations.

And so the Corporation becomes irrelevant, and the remaining question for the Court is: in order to enforce the admitted trust for the Episcopal Diocese and Congregations, which side—Plaintiffs or Defendants—may act for those entities?

In 2013, the Texas Supreme Court mandated "the appropriate method for Texas courts" under these facts. Defendants admitted this "appropriate method" to the U.S. Supreme Court in 2014, to avoid *certiorari*. They told the public that "the Texas Supreme Court ruling will govern the outcome of our case." And so it shall.

Here is Defendants' correct description of that 2013 Texas Supreme Court ruling:

> In *Masterson*, the court recognized that it had employed the neutral-principles approach since its decision in *Brown v. Clark*, 116 S.W. 360 (Tex. 1909). In *Brown*, the deed to church property vested title in a local church. 'Using 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, 'remains the appropriate method for Texas courts.'**[1]

[1] 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) (emphasis added) (quoting *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 605 (Tex. 2013)) ("*Masterson*") (citations omitted).

The resolution of this case under "the appropriate method for Texas courts" is obvious. The Court should enter judgment for Plaintiffs based on two undisputed points: (1) the property is held in trust for the Episcopal Diocese and Congregations under neutral principles (***judicially admitted by Defendants***) and (2) The Episcopal Church has determined that only Plaintiffs are authorized to act as the continuing Episcopal Diocese and Episcopal Congregations (***undisputed***).

This is not, as Defendants now claim, the "discarded" Deference method. It is the proper application of Neutral Principles mandated by the 2013 Texas Supreme Court as "the appropriate method for Texas courts." And the Texas Supreme Court explained the difference between the two doctrines:

- The Deference Method ("discarded"): civil courts *defer the entire case* to church authorities, regardless of the parties' claims about deeds, church charters, state statutes, trusts, or other neutral principles.[2]
- The Neutral Principles Method ("the appropriate method for Texas courts"): civil courts apply neutral principles of law to deeds, church charters, statutes, trusts, and the like, deferring *only* on ecclesiastical issues that arise *within* the case.[3]

Both doctrines use the word "defer," but they are not the same. The Texas Supreme Court did not confuse the two. Nor did Defendants, when they correctly described "the appropriate method for Texas courts" to the U.S. Supreme Court. Defendants cannot pretend to confuse them now.

By contrast, Defendants now ask this Court to do the *direct opposite* of "the appropriate method for Texas courts":

- Defendants now say: if a case involves property, courts must use *civil* associations law to decide the *ecclesiastical* question of which parties represent the Diocese

[2] *Masterson*, 422 S.W.3d at 605.
[3] *Id.* at 605-06.

and Congregations.[4]

- But the 2013 Texas Supreme Court said: if a case involves property, courts "apply neutral principles of law to ***non-ecclesiastical issues***" but "must defer" on ecclesiastical ones, *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. Nevertheless, in our view ***the neutral principles methodology simply requires courts to conform to fundamental principles***: they fulfill their constitutional obligation to exercise jurisdiction where it exists, ***yet refrain from exercising jurisdiction where it does not exist***."[5]

Defendants ask this Court to violate the 2013 mandate and exercise jurisdiction where it does not exist. Defendants did not dare suggest their false description of Texas law to the U.S. Supreme Court. They should have the same respect for this Court.

Under neutral principles of Texas law, Defendants concede that all property is held in trust for the local religious bodies. Because the property dispute's resolution turns, under neutral principles, on the identity of those religious bodies—an ecclesiastical matter reserved to the denomination by the First Amendment—this Court must defer on that limited point, even though that deference will, under these facts, "effectively determine the property rights in question."[6]

On this simple ground, based on two undisputed facts, this Court can and should resolve the case for Plaintiffs under "the appropriate method for Texas courts."

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[4] Defs.' Second Mot. for Summ. J. at 28 ("But courts must exercise jurisdiction to decide who holds a particular office when property ownership is contested."); *cf.* Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 9.
[5] *Masterson*, 422. S.W.3d at 605-06 (emphasis added) (citation omitted).
[6] *Id.* at 606.

If the Court goes beyond "the appropriate method for Texas courts," Defendants will still lose. Their Response falls apart on simple inspection. For example:

- ***On contractual trust at formation.*** Defendants try to write off the controlling Fort Worth law on contractual trusts as "dicta." But the Fort Worth Court of Appeals said otherwise: "We **hold** that 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."[7] This holding was in effect at the Diocese's formation. It is cited by every major treatise on Texas trust law, from *Vernon's* to *Johanson's*. No court has ever criticized or disagreed with it. And the Legislature has since recodified the Texas Trust Act, incorporating this holding as a matter of law. The case explicitly rejects the interpretation Defendants offer. This controlling Fort Worth law binds this Court. Defendants asked for neutral principles; now they must follow them.
- ***On express trusts in the deeds.*** If this Court does not enforce a global solution, it can and must enforce the numerous trusts on a deed-by-deed basis. Defendants tell this Court: "Plaintiffs' motion does not point to a single deed reciting a trust expressly for TEC itself."[8] Somehow they fail to count the over 50 cited deeds with language like: "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."[9] Defendants now argue, apparently with a straight face, that the Protestant Episcopal Church in this

[7] *Shellberg v. Shellberg*, 459 S.W.2d 465, 470 (Tex. Civ. App.—Fort Worth 1970, writ ref'd n.r.e.).
[8] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 17.
[9] JA02395-96, Deed to St. Timothy's (Fort Worth) (1956); *accord* Pls.' Motion for Partial Summ. J. tbl. E, at 1-24.

region means the region with or without the Protestant Episcopal Church. This is not a fact issue; it is a delusion, and a waste of court and party resources.

- ***On constructive trust***. Defendants tell this Court that, as a matter of law, "broken promises" cannot "support a constructive trust,"[10] when the benchmark Texas case holds that even a single "oral promise" can "raise a constructive trust,"[11] much less the decades of oral and written commitments—*including sworn oaths made while they were plotting insurrection*—that Defendants trample here. And Defendants have the audacity to claim they have not been unjustly enriched because *they* view *themselves* as the Diocese, when they told a prior Fort Worth court that breakaway groups bear "no relation" to the real entity and have "no right" to its property, and that past donors "never" intended use of their gifts by those who had "abandoned communion with The Episcopal Church . . . ."[12]
- ***On associations law.*** Under "the appropriate method for Texas courts," this Court should never apply associations law: under neutral principles, the question of who can represent an Episcopal Diocese and Episcopal Congregations is reserved to The Episcopal Church by *Masterson* and *Episcopal Diocese.* But a century of Texas associations law reaches the same result. Defendants are flat wrong in claiming that Texas law on breakaway factions is limited by statute to Masons and other "lodges"—Plaintiffs cite bedrock *common law* doctrine that expressly applies to all "voluntary associations"; a few of those cases *reference* Defendants' statute (which deals with the separate topic of *incorporated* entities), only to note that it is *consistent with* common law, not as the *basis* for their

[10] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 27.
[11] *Mills v. Gray*, 210 S.W.2d 985, 988 (Tex. 1948) (quotation marks and citation omitted).
[12] 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); *see also* A1028, *id.* ex. D (Aff. of Robert J. Rigdon).

holdings. And even if the breakaway faction cases did not apply (how could they not?), Defendants would *still* lose under their own selective reading of associations law, because those generic cases hold that members are bound by an associations' rules and its right to interpret and apply those rules. And here, the association has repeatedly rejected any "implied" right to secede, as early as a century before Defendants joined, and most recently by an association-wide vote of local bishops and other clergy and lay representatives from over 100 dioceses across the world.

- ***On corporations law.*** Defendants confuse two entirely different concepts: (1) under the Corporation's own 2006 bylaws, the ones *Defendants* say control, Defendants are disqualified from service as directors of the Corporation and have vacated their seats; **separately**, (2) even *if* Defendants *were* still the directors of the Corporation (they are not), this Court would remove the *Corporation*, an entity, as trustee of Plaintiffs' trusts (*i.e.*, the trusts the Corporation administers for the Episcopal Diocese and Episcopal Congregations). That is basic Texas trust law: no person on earth would think a Corporation controlled by Defendants is capable of administering trusts for Plaintiffs, after Defendants have breached that trust and taken trust property.

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In short, using "the appropriate method for Texas courts"—what Plaintiffs have called the Simple Solution—the Court can resolve this case on two undisputed facts. And even if the Court ventured beyond "the appropriate method for Texas courts," Defendants would lose under any one of several legal doctrines. Defendants asked for neutral principles of Texas law. Now they have to follow them.

II. A FOREWARNING ON DEFENDANTS' FOREWARNING

Knowing they have lost, Defendants try to kick up dust by claiming throughout their brief that they and the law have been misquoted. However, like a magician who yells *ta-da*, only to reveal that the rabbit is still there, Defendants' claimed "misquotes" all fall apart—and the "full" quotes demonstrate the same meaning. By contrast, it is Defendants who contradict their own plain representations to the U.S. Supreme Court—that is the only "misquote" at play: Defendants misquote themselves. But the legal mandate in this case is clear and controlling, regardless of what Defendants are willing to admit to this Court now.

A. Defendants were not misquoted on "the appropriate method for Texas courts"; they misquote themselves.

Defendants now try to retreat from their own plain explanation of Texas law to the U.S. Supreme Court four months ago. This is obviously irrelevant; the Texas Supreme Court says what "the appropriate method for Texas courts is," not Defendants—regardless of whether Defendants will admit that law to this Court now.

But Defendants' retreat from their own quote is so intellectually dishonest that it cannot pass without comment—particularly where Defendants claim *Plaintiffs* have misquoted them.

Defendants pronounce: "Defendants did NOT tell the U.S. Supreme Court that church identity is an ecclesiastical matter — Plaintiffs deliberately misquote that brief."[13] But Defendants' own words speak for themselves: "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."[14]

How do Defendants justify this? With a claim so outrageously wrong, it is almost

[13] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 7.
[14] 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) (hereafter, "Defs.' U.S. Supreme Ct. Br.") (emphasis added).

comical. They say Plaintiffs "changed" the meaning of Defendants' quote by turning past-tense words into present tense (specifically, "turned" to "turn[s]" and "deferred" to "defer[s]").[15]

This is odd, because the version of Defendants' quote they claim is missing was featured on the cover page of Plaintiffs' motion.

Lest there be any confusion, here is a picture:

Plaintiffs did *subsequently* shorten the quote, after quoting it fully. But their claim about "changed" meaning is absurd. Defendants allege: "What Plaintiffs have done is take this statement about a 1909 case [*Brown*] and changed the words to turn it into a general statement about current law."[16] But Defendants' very next sentence to the U.S. Supreme Court shows it *was* a statement about current law: "'**The method by which this Court addressed the issues in *Brown*,' the Texas Supreme Court held, '<u>remains the appropriate method for Texas courts</u>.'**"[17]

[15] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 8.
[16] *Id.* (emphasis added).
[17] A3822-23, Defs.' U.S. Supreme Ct. Br. (emphasis added) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)).

In other words, Plaintiffs did not "turn" *Brown* into a statement about current law; the Texas Supreme Court did—and that is exactly what Defendants were telling the U.S. Supreme Court. Defendants proclaim: "No court should put up with quotations that omit the key part."[18] That is certainly true: Defendants just confused which party had done so.

In fact, for Defendants to try to write off their description of *Brown* as a mere "statement about a 1909 case" and not "a general statement about current law" is particularly incredible, since *Brown*'s relevance is their whole defense on the retroactivity point. Indeed, Defendants separately told this Court in the same brief that it *should* apply the *Brown* method: "***Since the [Texas Supreme] Court also held this approach was substantively reflected in Brown v. Clark in 1909, applying that approach here is not retroactive***." (original bold and italics).[19]

Defendants told the truth to the U.S. Supreme Court about "the appropriate method for Texas courts." They should show this Court the same respect.

B. Likewise, it is Defendants that misquote the Texas Supreme Court's mandate.

In the same way, Defendants distort the meaning of *Masterson* and *Episcopal Diocese*, then accuse Plaintiffs of misquoting them. But the plain text of those cases speaks for itself.

The "appropriate method for Texas courts" is not complicated: courts resolve non-ecclesiastical issues under neutral principles of law and defer on ecclesiastical issues, even if deferring on those points affects or even controls the property analysis. This is not a choice; it is fundamentally jurisdictional.

As the Texas Supreme Court said:

> 1. "Properly exercising jurisdiction requires courts to **apply neutral principles of law to *non-ecclesiastical issues*** involving religious entities in the same manner as they apply those principles to other entities and issues. Thus, courts are to apply neutral principles of

[18] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 7.
[19] Defs.' Second Mot. for Partial Summ. J. at 10.

law to issues such as land titles, trusts, and corporate formation, governance, and dissolution, even when religious entities are involved."[20]

2. "**But courts applying the neutral principles methodology *defer* to religious entities' decisions *on ecclesiastical and church polity issues*** such as who may be members of the entities and whether to remove a bishop or pastor, while they decide non-ecclesiastical issues such as property ownership and whether trusts exist based on the same neutral principles of secular law that apply to other entities."[21]

3. "**Further, *deferring* to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment *may*, in some instances, *effectively determine the property rights*** in question. Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist." [22]

In short, the Texas Supreme Court said:

Texas Supreme Court
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it effectively determines the property rights

That is exactly what Defendants told the U.S. Supreme Court:

> In *Masterson*, the court recognized that it had employed **the neutral-principles approach** since its decision in *Brown v. Clark*, 116 S.W. 360 (Tex. 1909). In *Brown*, the deed to church property vested title in a local church . . . . *Brown*

[20] *Masterson*, 422 S.W.3d at 606 (emphasis added).
[21] *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 650 (Tex. 2013) ("*Episcopal Diocese*") (emphasis added).
[22] *Masterson*, 422 S.W.3d at 606 (emphasis added) (citations omitted).

> 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, '**remains the appropriate method for Texas courts**.'[23]

And so:

Texas Supreme Court	Defendants to U.S. Supreme Court
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights

That is also precisely what Plaintiffs told this Court (quoted at length, because it will show how Defendants' "forewarning" is simply false):

> 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 two 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

[23] A3822-23, Defs.' U.S. Supreme Ct. Br. (emphasis added) (quoting *Masterson*, 422 S.W.3d at 605) (citations omitted).

> 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*], 'remains the appropriate method for Texas courts.'
>
> 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. 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.[24]

Thus, as Plaintiffs said, under neutral principles, courts *answer* non-ecclesiastical questions, like is there a trust or deed and for whom, but *defer* on ecclesiastical issues within that analysis, like who may control a religious entity if one is named in a deed or trust.

And so:

[24] Pls.' Mot. for Partial Summ. J. at 13-14 (emphasis added) (citations omitted).

Texas Supreme Court	Defendants to U.S. Supreme Court	Plaintiffs to this Court
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights

And so there is perfect consistency between these positions.

So what is Defendants' big "forewarning" of supposed misquotations by Plaintiffs? Here it is: *after* Plaintiffs correctly stated the law—apply neutral principles, but defer on ecclesiastical issues within that analysis—Plaintiffs then quoted the Texas Supreme Court for *examples* of ecclesiastical issues requiring deference. This is the third paragraph in the quotation from Plaintiffs above:

> 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.

So now here is Defendants' big reveal: they claim that Plaintiffs "stoop to misrepresenting what the Texas Supreme Court said by deliberately discarding the inconvenient parts (noted in *italics*) that show the opposite:

> 'But courts applying the neutral principles methodology defer to religious entities' decisions on ecclesiastical and church polity issues such as who may be members of the entities and whether to

> remove a bishop or pastor, *while they decide non-ecclesiastical issues such as property ownership and whether trusts exist based on the same neutral principles of secular law that apply to other entities.*'"[25]

But this is not inconvenient at all, nor was it "discarded"—it is precisely what Plaintiffs have been saying! To repeat, Plaintiffs *began* by explaining:

> 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.

And here is Defendants' second accusation of "stoop[ing]" to misrepresent (again, the alleged "inconvenient" part omitted is in italics):

> 'Whether Bishop Ohl was authorized to form a parish and recognize its membership … are ecclesiastical matters of church governance. The trial court lacked jurisdiction over and properly deferred to Bishop Ohl's exercise of ecclesiastical authority on those questions . . . . *But although we agree with the court of appeals as to these conclusions, we disagree with its determination that the question of who owns the property is inextricably linked to or determined by them.*'[26]

Once again, this is exactly what Plaintiffs have been saying. The Texas Supreme Court did *not* rule that deference *automatically* resolves the property case (i.e., that it is "inextricably linked"). That *would* be the "discarded" Deference method, where civil courts defer the *entire* case, non-ecclesiastical issues and all, to the Church. By contrast, the quote above, from *Masterson*, says that deference affects a property issue only *if*, under the facts of the case, the neutral principles analysis ultimately *turns* on an ecclesiastical issue. That is why Plaintiffs said, beginning on page 1 of their brief:

[25] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 7 (emphasis in original) (internal citations omitted).
[26] *Id.*

> 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.[27]

And here, the facts do ultimately show that the neutral principles analysis turns on an ecclesiastical question: because Defendants have now formally and judicially admitted—and they are legally prohibited from denying it now—that the civil Corporation holds all property in express trust, under neutral principles, for a set of religious bodies—the Episcopal Diocese and the Episcopal Corporations. This is just like *Brown*, where the civil deed named the local church body, and two groups claimed to be the local church body, so the court deferred to the denomination on that point alone in enforcing the deed. Or, in Defendants' own words:

> 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.'[28]

The same is true here: under neutral principles, the trust names the local church bodies under Defendants' own admissions, and so on the local church bodies' identity—an ecclesiastical matter—the court must defer to the national denomination's understanding of the church's identity to enforce the trust.

Once again, all three honest voices—the Texas Supreme Court, Defendants to the U.S. Supreme Court, and Plaintiffs to this Court, say the exact same thing: apply neutral principles to

[27] Pls.' Mot. for Partial Summ. J at 1-2; *cf. id.* at 13 (same).
[28] A3822-23, Defs.' U.S. Supreme Ct. Br. (emphasis added) (quoting *Masterson*, 422 S.W.3d at 605) (citations omitted).

property questions like deeds and trusts, but defer on ecclesiastical questions that arise within that analysis, even if such deference on those points affects the property rights.

And so Defendants' claim about "deliberately discarding" portions of quotes is, again, nonsense. The "omitted" portion says the exact same thing Plaintiffs have been saying all along.

By contrast, it is a fourth voice—Defendants, now speaking to this Court—that offers a lone, unsupportable version of the law. While the Texas Supreme Court says civil courts lack jurisdiction to answer ecclesiastical questions, even under a neutral principles analysis, Defendants now offer a new theory that contradicts *Masterson*, *Episcopal Diocese*, and their own U.S. Supreme Court briefing. **Defendants now claim that if property is involved, this *gives* civil courts jurisdiction to answer ecclesiastical issues within that case.**

Here are a few examples of Defendants' new claim:

- "Courts have no jurisdiction to decide who a church body should recognize as a minister. But courts must exercise jurisdiction to decide who holds a particular office when property ownership is contested."[29]
- "The Episcopal Diocese of Fort Worth ('the Diocese') is an unincorporated association formed and operating in Texas, so issues concerning its officers and control are governed by the Texas Uniform Unincorporated Nonprofit Association Act."[30]

Thus, Defendants tell this Court, because "property ownership is contested,"[31] it should **adjudicate** "under neutral principles of Texas association law"[32] whether the Church has "power or authority to appoint a local bishop,"[33] whether "the election and removal of an association's

[29] Defs.' Second Mot. for Partial Summ. J. at 28.
[30] *Id.* at 3-4 (citations omitted).
[31] *Id.* at 28.
[32] *Id.*
[33] *Id.* at 33.

[*i.e.*, the Diocese's] officers" was proper,[34] and whether it is Plaintiffs or Defendants who "are members in good standing of the Diocese or canonically resident within it."[35]

These are obviously ecclesiastical questions, as the Texas Supreme Court held (defining as ecclesiastical, for example, "who may be members of the entities and whether to remove a bishop or pastor,"[36] "determination of who is or can be a member in good standing of TEC or a diocese,"[37] and the authority to "recognize members of the vestry," *i.e.*, lay church leaders).

And so Defendants, contrary to their own U.S. Supreme Court briefing, introduce a new "version" of *Masterson* and *Episcopal Diocese*:

Texas Supreme Court	Defendants to U.S. Supreme Court	Plaintiffs to this Court	Defendants to this Court
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply **neutral principles** and **override** the Church *if* property is involved

[34] *Id.* at 28.
[35] *Id.* at 21 (Defendants asserting: "None of the Plaintiffs' nominees are members in good standing of the Diocese or canonically resident within it."); *cf. id.* at 20 (Defendants asserting that "[t]hey are members in good standing of parishes or missions in the Diocese.").
[36] *Episcopal Diocese*, 422 S.W.3d at 650 (emphasis added).
[37] *Id.* at 652 (emphasis added).

So who is right? Is it "defer to the Church" or "override the Church" on ecclesiastical issues when property is involved? The Texas Supreme Court was clear on this point, and Defendants' new theory is wrong:

> Further, deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question. Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist.[38]

Deference on ecclesiastical issues is mandatory and jurisdictional, even under the neutral principles approach, and even where such deference will affect or even "effectively determine the property rights in question."[39]

Defendants quote a shard from *Episcopal Diocese*: courts must use neutral principles "in determining which faction of a religious organization is entitled to the property when the organization splits."[40] No doubt: All that means is the Court can decide this case. It does not mean that the Court can decide the *ecclesiastical* issues arising within this case.

The mandate in this case is clear. Plaintiffs presented it accurately. So did Defendants, to the U.S. Supreme Court, to avoid *certiorari*. But now, knowing they have lost, Defendants reverse positions and cry "misquote." But their original quotes, and the holding and quotes of the Texas Supreme Court, are clear.

C. Defendants' other claimed "misquotes" fall apart.

The rest of Defendants' alleged misquotes concern alternative claims in the case. If the Court resolves this case under "the appropriate method for Texas courts," it will not reach these issues. So they are dealt with in detail later, in the appropriate sections.

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[38] *Masterson*, 422 S.W.3d at 606 (citations omitted).
[39] *Id.*
[40] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 9 (quoting *Episcopal Diocese*, 422 S.W.3d at 651) (quotation marks omitted).

But in short form, to dispel any "atmospheric" points Defendants hoped to score, Defendants' other claims are just as false as the ones above. And the truth shows just how feeble Defendants' positions are.

1. "The Church in this Diocese"

The Court need not reach express trust for the Church, because Defendants admit the property is in express trust for the Diocese and Congregations, which, as a matter of law, only Plaintiffs can represent. That resolves this case for Plaintiffs as discussed above. But if the Court goes beyond "the appropriate method for Texas courts," Plaintiffs still win because the property is also in express trust for the Church.

Defendants try to avoid this outcome by making an irrelevant and silly argument: that the phrase "the Church in this Diocese," found in the Diocesan charter and 1984 judgment, means the Diocese with or without the Church.

The argument is irrelevant, because the express trust for the Church is perfectly clear: According to the Church's canons in effect since before the Diocese was formed, all real and personal property "is held in trust for this Church and the Diocese ***thereof*** . . . ."[41]

The argument is silly, because "the Church in this Diocese" means what it says: the members of the Church in this Diocese. Not "the Diocese without the Church" or "the Diocese that used to be in the Church" or "the Diocese notwithstanding its relationship with the Church."

As if the language were not clear enough on its face, the Church's Constitution, cited in both the Diocesan charter and 1984 judgment, defines "Church" as The Episcopal Church.[42] And the Diocesan article that Defendants rely on, stating the property shall be used for "the

[41] 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 (emphasis added). Defendants admit this canon was in the Constitution and Canons when they acceded. A3929, Dep. of Def. Diocese at 47:23-48:7.

[42] JA00382, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), preamble ("The Protestant Episcopal Church in the United States of America, otherwise known as The Episcopal Church (which name is hereby recognized as also designating the Church) . . . .").

Church in this Diocese," refers in the very next sentence to property "for the use of the Church ***and*** the Diocese . . . ."[43] And extrinsic documents reiterate the obvious: the Church in this Diocese means the members of The Episcopal Church in the Diocese. Deeds vest property "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 [today, the Fort Worth Diocese], in the State of Texas."[44] And the Diocesan Constitution explained: "The 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 . . . ."[45]

Despite common sense and evidence, Defendants claim "the Church in this Diocese" means them—people with no relationship to the Church. This is based on a linguistic argument that falls apart on consideration: in Article 1 of the Diocesan Constitution, "the Church in this Diocese" acceded to the Church. And so, Defendants reason, "the Church in this Diocese" cannot mean "the Church." But, as the Texas Supreme Court said, dioceses are "geographically-defined."[46] And so the quote means what it says: the members of the Church in this region affirmed their submission to the larger Church. In no way does that translate to "the Diocese apart from the Church." Instead, it means what it says: the Church *in* the Diocese. Or, as the national Canons succinctly put it, "this Church and the Diocese *thereof* . . . ."[47] Ironically, since Defendants tell this Court "the Fort Worth Diocese owned no property when it became

[43] JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982) (emphasis added).
[44] JA02395-96, Deed to St. Timothy's (Fort Worth) (1956); *accord* Pls.' Motion for Partial Summ. J. tbl. E, at 1-24.
[45] JA00240, Constitution and Canons of the Episcopal Diocese of Fort Worth (2001).
[46] *Masterson*, 422 S.W.3d at 600 ("The second tier is comprised of regional, geographically defined dioceses.").
[47] 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 (emphasis added). Defendants admit this canon was in the Constitution and Canons when they acceded. A3929, Dep. of Def. Diocese at 47:23-48:7.

associated with TEC," that places all property in suit under the second Diocesan Article 13 clause, "property hereafter acquired for the use of the Church *and* the Diocese."[48]

Showing just how strained Defendants' position is, here are the phrases in this case that Defendants have now claimed mean the Diocese absent any relationship with the Church:

Phrase:	Defendants claim it means:
"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."[49]	The Diocese, with or without the Church.[50]
"the Church in this Diocese"	The Diocese, with or without the Church.[51]
"the Church and the Diocese"	The Diocese, with or without the Church.[52]
"this Church"	The Diocese, with or without the Church.[53]
"Church"	The Diocese, with or without the Church.[54]

So what is Defendants' claim of "misquoting" here? Plaintiffs noted that in the 1984 judgment, the parties told the Court and the Attorney General that the property being transferred had been "acquired for the use of the Episcopal Church in the Diocese of Dallas."[55] Next, in a paragraph discussing "the newly formed diocese," the petition stated that the property being transferred was "for the use of the Church in the Diocese . . . ."[56] To put it simply, Plaintiffs

[48] *See* Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth ¶ 4 (July 15, 2014).
[49] JA02395-96, Deed to St. Timothy's (Fort Worth) (1956); *accord* Pls.' Motion for Partial Summ. J. tbl. E, at 1-24.
[50] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 17.
[51] *Id.* at 4.
[52] A4307-08, Dep. of Def. Diocese at 180:7-185:25.
[53] *Id.*
[54] *Id.*
[55] JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).
[56] *Id.*

observed, correctly, 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."[57] That is Defendants' big claim of "misquoting."[58] But once again, it is Defendants that have strained and somersaulted to change the plain meaning of documents that speak for themselves. And Defendants never challenge the plain meaning of the Church's Canon, which sets forth the trust interest consistently with all the documents above: "for this Church and the Diocese ***thereof*** . . . ."[59]

Because Defendants cannot win on the facts and law, they must sling mud. This Court should reject that diversionary tactic.

The sad thing is, even Defendants do not believe their arguments. They just want the property, even though their positions defy common sense. Both the Defendant "Diocese" and Defendant "Corporation" testified under oath, before their lawyers changed their testimony, to the plain and obvious meaning of these documents:

Defendant "Corporation"

> 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

[57] *Id.*
[58] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 4.
[59] 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 (emphasis added). Defendants admit this canon was in the Constitution and Canons when they acceded. A3929, Dep. of Def. Diocese at 47:23-48:7.

> 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.[60]
>
> Defendant "Diocese"
>
> 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.[61]

Indeed, even Defendant Iker's most recent sworn statement, *attached to Defendants' Response brief*, agrees: "The only proper grammatical interpretation of the language 'Church in this Diocese' would be that language found in the preamble of the Constitution reading 'the Clergy and Laity of The Episcopal Church, resident in that portion of the State of Texas, constituting what is known as The Episcopal Diocese of Fort Worth.'"[62] Just so. The *Clergy and Laity of The Episcopal Church constituting the Episcopal Diocese* cannot mean *the Episcopal Diocese constituted by persons other than the Clergy and Laity of The Episcopal Church*.

[60] A4384, Dep. of Def. Corp. at 155:8-156:1.
[61] A3940-41, Dep. of Def. Diocese at 173:20-174:21.
[62] Aff. of Jack L. Iker to Response to Plaintiffs' Motion for Partial Summary Judgment (filed Dec. 22, 2014).

In short, while irrelevant, Defendants' focus on, and interpretation of, this one phrase "the Church in this Diocese" is a reach, to put it kindly. That reading contradicts (1) common sense, (2) the very next sentence of the Diocesan Constitution, (3) the definition of the Diocese in that Constitution, (4) the Church's Constitution to which the local Constitution submits, (5) the 1984 judgment, (6) the extrinsic deed evidence, and (7) Defendants' own original testimony before conferring with counsel. By contrast, Plaintiffs' position—which gives the phrase its plain meaning—harmonizes all of the above. And Defendants' claim of "misquotation" is, once again, nothing of the sort, and shows instead just how desperate Defendants' points have become.

2. Associations law

To the last alleged "misquote": As shown, this Court should never reach associations law. Applying Texas associations law to decide who represents the Episcopal Diocese and Congregations is a blatant violation of "the appropriate method for Texas courts" under neutral principles, as set forth in *Masterson* and *Episcopal Diocese*, and of the First Amendment.

But if the Court did go beyond "the appropriate method for Texas courts" and use associations law to adjudicate whether an Episcopal Diocese can break away from The Episcopal Church, Texas law has a doctrine for breakaway factions.

Of course, after asking this Court to *apply* Texas associations law, Defendants wish to avoid the associations law on point: so they tell this Court that this breakaway-faction doctrine is statutory and limited by that statute to Masonic and other "lodges."[63] Wrong on all accounts.

First, the cited law is expressly *common law* of associations. Indeed, some of the cases *mention* Defendants' cited statute and specifically *distinguish* it (as applying to entities

[63] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 28 ("Churches are not governed by the statute for Grand Lodges and Masons.").

incorporating under that statute).[64] Second, the common law principle expressly applies to defection from "a voluntary association" generally,[65] and Defendants have told the Court that the Church is "a voluntary association"[66] and should be treated as such.[67] Third, Defendants have the audacity to claim that such rules do not "apply to churches," when *Defendants* are the ones telling this Court that it must treat churches "in the same manner as with any other entities."[68] And fourth, Texas courts have *already* drawn the analogy between these secular breakaway cases and hierarchical churches.[69] Defendants' push to apply associations law to ecclesiastical issues violates *Masterson* and the First Amendment; but if Defendants are going to urge associations law, they cannot then ignore the secular anti-breakaway cases that Texas courts have already analogized to church cases.

Once again, it is Defendants that misquote to make their case. They claim Plaintiffs omitted the word "lodge" from their briefing. That is false; Plaintiffs use the word "lodge" over 40 times.[70] And there is nothing magic about that word: the case law applies on its face to all voluntary associations, and even Defendants' inapt statute applies to "similar institution[s] or order[s] organized for charitable or benevolent purposes," referencing "subordinate lodges *or bodies*" and using those terms interchangeably.[71]

All of this is immaterial. First, this Court does not constitutionally reach associations law under "the appropriate method for Texas courts." Second, beyond "the appropriate method,"

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[64] *Simpson v. Charity Benevolent Ass'n*, 160 S.W.2d 109, 112 (Tex. Civ. App.—Fort Worth 1942, writ ref'd w.o.m.) ("We find no proof in the record that District Grand Lodge No. 25 was ever incorporated, and any attempt to hold the property under the provisions of Articles 1402 and 1403 R.C.S. do not apply for that reason.").
[65] *Progressive Union of Tex. v. Indep. Union of Colored Laborers of Tex., Lodge No. 1*, 264 S.W.2d 765, 768 (Tex. Civ. App.—Galveston 1954, writ ref'd n.r.e.) (citing 7 C.J.S. Associations § 27).
[66] A4274, Dep. of Def. Diocese at 46:21-22.
[67] Defs.' Second Mot. for Partial Summ. J. at 4 n.6 (quoting *District Grand Lodge v. Jones*, 160 S.W.2d 915, 922 (Tex. 1942) for guidance on the law governing "a voluntary association.").
[68] *Id.* at unnumbered first page.
[69] *Minor v. St. John's Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893, 897 (Tex. Civ. App.—Galveston 1910, writ ref'd).
[70] *See, e.g.*, Pls.' Mot. for Partial Summ J. at 17, 68, 69-72.
[71] Tex. Bus. Org. Code §§ 23.101(5), 23.104 (emphasis added).

Plaintiffs still win under express and constructive trusts for the Church. And third, even under Defendants' version of associations law, they admit they are bound by the rules of the association. And the association has rejected Defendants' conduct here by global vote of bishops, clergy, and lay leaders from over 100 dioceses across the world—and for more than a century before that.[72]

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So the Court should be forewarned about Defendants' forewarning. They wish to lead this Court down an unjustified, unjustifiable, and unconstitutional path, based on false claims that contradict their own honest views, and based on cries of "misquote" that crumble on analysis.

III. THE COURT CAN RESOLVE THIS CASE ON TWO UNDISPUTED FACTS

In 2013, in *Masterson* and *Episcopal Diocese*, the Texas Supreme Court adopted the Neutral Principles method, rejected the Deference method, and explained "the appropriate method for Texas courts" in church property cases.

Under the "appropriate method for Texas courts"—the mandate for this case, and what Plaintiffs have called the Simple Solution—Plaintiffs now prevail under two simple, undisputed points.

A. *Masterson* and *Episcopal Diocese* mandate "the appropriate method for Texas courts."

The 2013 Texas Supreme Court explained how civil courts must handle these cases:

> 1. "Properly exercising jurisdiction requires courts to **apply neutral principles of law to *non-ecclesiastical issues*** involving religious entities in the same manner as they apply those principles to other entities and issues. Thus, courts are to apply neutral principles of law to issues such as land titles, trusts, and corporate formation,

[72] *See* Section IV.C, *infra*.

governance, and dissolution, even when religious entities are involved."[73]

2. "**But courts applying the neutral principles methodology *defer* to religious entities' decisions *on ecclesiastical and church polity issues*** such as who may be members of the entities and whether to remove a bishop or pastor, while they decide non-ecclesiastical issues such as property ownership and whether trusts exist based on the same neutral principles of secular law that apply to other entities."[74]

3. "**Further, *deferring* to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment *may*, in some instances, *effectively determine the property rights*** in question. Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist." [75]

In short, the Texas Supreme Court said:

Texas Supreme Court
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights

B. *Brown* is an example of "the appropriate method for Texas courts."

By way of example, the 2013 Texas Supreme Court described its holding in the 1909 case *Brown v. Clark.* The Court held that *Brown* exemplified the Neutral Principles approach

[73] *Masterson*, 422 S.W.3d at 606 (emphasis added).
[74] *Episcopal Diocese*, 422 S.W.3d at 650 (emphasis added).
[75] *Masterson*, 422 S.W.3d at 606 (emphasis added) (citations omitted).

and "remains the appropriate method for Texas courts to address such issues."[76]

In *Brown*, two denominations decided to merge. A local congregation in Texas was split over the merger. One faction recognized the authority of the merged denomination. The other did not. First, the Texas Supreme Court considered the propriety of the merger. It decided this question was ecclesiastical and deferred on this point. Then it considered the property question, "perhaps the only question in the case over which it had jurisdiction."[77]

The Court examined the deeds, which named the local church body.[78] The *Brown* Court held (as italicized by the 2013 *Masterson* Court):

> *It follows, we think, as a natural and proper conclusion, that the church to which the deed was made still owns the property, and that whatever body is identified as being the church to which the deed was made must still hold the title*. The Cumberland Presbyterian Church at Jefferson was but a member of and under the control of the larger and more important Christian organization, known as the Cumberland Presbyterian Church, and the local church was bound by the orders and judgments of the courts of the church. The Jefferson church was not disorganized by the act of union. It remained intact as a church, losing nothing but the word 'Cumberland' from its name. Being a part of the Cumberland Presbyterian Church, the church at Jefferson was by the union incorporated into the Presbyterian Church of the United States of America. The plaintiffs in error and those members who recognize the authority of the Presbyterian Church of the United States of America are entitled to the possession and use of the property sued for.[79]

According to *Masterson*, "*Brown* substantively reflected the neutral principles methodology."[80] The Court "did not simply defer to the ecclesiastical authorities with regard to

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[76] *Id.* In *Masterson*, the Texas Supreme Court described its 2013 interpretation of *Brown* as "the appropriate method for Texas courts." Plaintiffs re-urge and preserve their arguments that ***Watson*** deference is the appropriate method for hierarchical church property cases, that the First Amendment requires enforcement of church trust clauses regardless of state law, and that application of neutral principles is unconstitutionally retroactive in this case. *See* Pl. Mot. for Partial Summ. J. at VIII.E.

[77] *Id.* at 604 (quoting *Brown*, 116 S.W. at 364) (internal quotation marks omitted).

[78] *Id.* (quoting *Brown*, 116 S.W. at 364-65) ("The deed for the property was made to the trustees of the Cumberland Presbyterian Church at Jefferson, Tex.") (internal quotation marks omitted).

[79] *Id.* at 604-05 (quoting *Brown*, 116 S.W. at 364-65) (citation omitted).

[80] *Id.* at 608, n.7.

the property dispute. Instead, the Court addressed the merits of the title question by examining the deed using principles of Texas law."[81] But once the dispute came down to "*whatever body is identified as being the church to which the deed was made*," the Court deferred on that ecclesiastical question, even though that deference necessarily resolved the property dispute.[82]

Masterson thus cites this portion of *Brown* in holding that "deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question."[83]

Per the 2013 Texas Supreme Court, *Brown* exemplifies the 2013 mandate:

Texas Supreme Court
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights

C. Defendants admitted "the appropriate method for Texas courts" to the U.S. Supreme Court.

Defendants correctly presented this law to the U.S. Supreme Court in this case:

> In *Masterson*, the court recognized that it had employed the neutral-principles approach since its decision in *Brown v. Clark*, 116 S.W. 360 (Tex. 1909). In *Brown*, the deed to church property vested title in a local church . . . . *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

[81] *Id.* at 605.
[82] *Id.* at 604 (quoting *Brown*, 116 S.W. at 364-65).
[83] *Id.* at 606 (citing *Brown*, 116 S.W. at 364-65, and *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709–10 (1976)).

> 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.'[84]

Of course, now Defendants flip-flop and say something very different to this Court. Below is a chart showing the correct law, in green (including Defendants' statement above to the U.S. Supreme Court), and what Defendants tell this Court now:

Texas Supreme Court	Defendants to U.S. Supreme Court	Plaintiffs to this Court	Defendants to this Court
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply deference, even if it affects the property rights	**Non-Ecclesiastical Issues:** Apply neutral principles **Ecclesiastical Issues:** Apply neutral principles and override the Church *if* property is involved

But the Texas Supreme Court was clear, and Defendants' new theory is wrong:

> Further, deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question. Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist.[85]

[84] A3822-23, Defs.' U.S. Supreme Ct. Br. (quoting *Masterson*, 422 S.W.3d at 605) (citations omitted).

[85] *Masterson*, 422 S.W.3d at 606 (citations omitted).

Defendants' flip-flop is rejected in more detail in Section II above.

D. The "appropriate method for Texas courts" is not the "discarded" Deference method.

The Texas Supreme Court explained the difference between the "appropriate" Neutral Principles method and the Deference method it discarded. Both doctrines use the word "defer," but they are not the same. And the Texas Supreme Court did not confuse them.

- Under neutral principles, civil courts consider deeds, church charters, state statutes, and the like under neutral principles, deferring *only* on ecclesiastical issues that arise *within* the case.[86]
- Under the Deference approach, civil courts "simply defer to the ecclesiastical authorities with regard to the property dispute."[87]

In short, according to the Texas Supreme Court:

Neutral Principles ("the appropriate method")	Deference (rejected)
Non-Ecclesiastical Issues: Apply neutral principles **Ecclesiastical Issues:** Defer, even if it affects property	**Non-Ecclesiastical Issues:** Defer **Ecclesiastical Issues:** Defer

[86] *Id* at 605-06 ("Courts do not have jurisdiction to decide questions of an ecclesiastical or inherently religious nature, so as to those questions they must defer to decisions of appropriate ecclesiastical decision makers . . . . Properly exercising jurisdiction requires courts to apply neutral principles of law to non-ecclesiastical issues involving religious entities in the same manner as they apply those principles to other entities and issues. Thus, courts are to apply neutral principles of law to issues such as land titles, trusts, and corporate formation, governance, and dissolution, even when religious entities are involved.").
[87] *Id.* at 605.

E. Two undisputed facts.

Under "the appropriate method for Texas courts," the Court can resolve this case on two undisputed facts:

(1) Under neutral principles, the property is held in trust for the Episcopal Diocese and Congregations (***judicially admitted by Defendants***) and

(2) The Episcopal Church has determined that only Plaintiffs are authorized to act as the continuing Episcopal Diocese and Episcopal Congregations (***undisputed***).

On the first, Defendants state: "The Corporation holds real property in an express trust for the use and benefit of the congregations that use them, and all other property in an express trust for the use and benefit of the Diocese."[88] Their live pleading affirms: "The Diocesan Corporation continues to hold the property received from this Dallas court along with all other property acquired since 1984 for the use of the congregations of the Fort Worth diocese."[89] Defendant "Corporation" testified the same.[90] Defendant "Diocese" testified the same.[91] Defendant Iker averred by affidavit the same.[92] As Defendants told this Court, admissions of fact in their live pleadings not pled in the alternative are "formal judicial admissions" that bar them "from disputing it."[93] And Defendants cannot genuinely dispute what they have repeatedly pleaded and sworn.[94]

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[88] 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).

[89] Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth ¶ 5 (July 15, 2014).

[90] A3948, Dep. of Def. Corp. at 17:16-19.

[91] A4274, Dep. of Def. Diocese at 49:2-5.

[92] Aff. of Jack Iker ¶ 6 (attached in support of Defs.' Second Mot. for Partial Summ. J.).

[93] Defs.' Second Mot. for Partial Summ. J. at 17 (citing *Houston First Am. Sav. v. Musick*, 650 S.W.2d 764, 767 (Tex. 1983); *Gevinson v. Manhattan Constr. Co.*, 449 S.W.2d 458, 466 (Tex. 1969)).

[94] To the extent this assertion is alternatively construed as an issue of law or a mixed question of law and fact, Defendants have judicially admitted the factual predicates necessary for the Court to make this finding, and are prohibited from disputing those factual predicates. *See Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 568-69 (Tex. 2001) (holding that, although the date a cause of action accrues for default on a note is a question of

On the second point, it is undisputed in the record that the highest authorities of The Episcopal Church recognize only Plaintiffs as the continuing Episcopal Diocese of Fort Worth and its Episcopal Congregations.[95] This includes by formal resolution from The Episcopal Church's highest authority, the General Convention, composed of bishops, other clergy, and lay representatives from over 100 dioceses across the world.[96]

F. Application of "the appropriate method for Texas courts" to these facts.

Defendants lose for a simple reason:

For five years, they have argued they can take Church property under neutral principles because the Corporation is a secular entity. But now they have admitted, in a formal, binding judicial admission, that under neutral principles, the Corporation *holds all property in trust* for a set of religious bodies, the Episcopal Diocese and Episcopal Congregations. Under Defendants' own facts, equitable title rests in the local church bodies.

And so, as in *Brown*, "whatever body is identified as being the church to which the deed was made must still hold the title."[97] The Fort Worth Court of Appeals mandated: "The question of 'identity' remains to be determined in the course of the litigation."[98] "There is a single Fort Worth Diocese . . . which both a majority and a minority faction claim to control."[99] Likewise, Defendants concede there is only one of each Episcopal Congregation.[100]

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law, a party had judicially admitted the note's acceleration date, a question of fact, which was sufficient to conclusively establish an accrual date).

[95] A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 8-10, Ohl Aff. ¶¶ 4(e), 9-13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

[96] 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").

[97] *Masterson*, 422 S.W.3d at 604 (quoting *Brown*, 116 S.W. at 364-65) (italics in *Masterson*).

[98] *In re Salazar*, 315 S.W.3d 279, 286 (Tex. App.—Fort Worth 2010, orig. proceeding).

[99] *Id.* at 285.

[100] A3954, Dep. of Def. Corp. at 78:5-15; *see also* A3949, *id.* at 42:3-18; JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982); Pls.' the Episcopal Parties' July 15, 2014 Amended Petition, tbl. A; Second Am. Plea in Intervention [of Defendant Congregations] 1-2. Defendants argue that only certain Plaintiff Congregations have individual representatives in this case. But *none* of Defendants' Congregations have individuals appearing in this case. Defendants concede the entity is the necessary party. *See* Corrected Resp. by Defs. To Pls.' Mot. For Partial Summ. J. at 9 ("Members may come and go, but the parish or mission itself is the

Defendants leave no doubt that enforcing this neutral principles trust ultimately comes down to which parties *are* the continuing Episcopal Diocese and Episcopal Congregations and their authorized leadership and members. Defendants argue:

> The Diocese's charters have always provided that the Corporation holds property in trust for the churches for which that property was acquired:
>
> > Corporation of the Episcopal Diocese of Fort Worth shall hold real property acquired for the use of a particular Parish or Mission in trust for the use and benefit of such Parish or Mission.
>
> The entity for which property was acquired is not an ecclesiastical question—it is the entity that bought the property and has been using it as part of the Diocese for decades.[101]

And Defendants claim "the parishes and missions entitled to use these properties are the legal entities still in union with the Defendant Diocese," which presupposes Defendants are the Diocese.[102] Defendants purport "Plaintiffs left the Diocese, [but] they did not take the 'parish' with them."[103] Defendants claim, however, that on leaving The Episcopal Church, they took the Episcopal Diocese and Episcopal Congregations with them.[104] Defendants argue they, not Plaintiffs, are "members in good standing of the Diocese or canonically resident within it."[105] Defendants declare the "canonical declarations of the Presiding Bishop of The Episcopal Church pertaining" to "both the Episcopal Diocese of Fort Worth and I as the Diocesan Bishop" are

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legal entity in union with the Diocese; it does not travel with former members."). Moreover, Defendants concede that "the Diocese can dissolve a parish or mission whenever 'conditions render it advisable,' at which time all the property reverts to the Corporation for the use and benefit of the Diocese." *See id.* at 10-11 (quoting JA00113, JA00186, JA00265).

[101] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 9 (internal citations omitted).

[102] *Id.*

[103] *Id.*

[104] Defs.' Second Mot. for Partial Summ. J. at 32 (alleging "The Diocese withdrew from TEC . . . .").

[105] *Id.* at 21.

"irrelevant and of no consequence."[106] The Episcopal Church rejects these claims and recognizes only Plaintiffs as the qualified members and leaders of the Episcopal Diocese.[107]

These are "ecclesiastical and church polity issues such as who may be members of the entities,"[108] "who is or can be a member in good standing of TEC or a diocese,"[109] "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,"[110] a church's "ecclesiastical government,"[111] and "church discipline."[112] In *Brown*, the dissidents disputed whether the denomination "had authority" to effect a union in church polity; here, Defendants claim the Church "has no power or authority" to replace disqualified Diocesan leaders attempting to effect a disunion in church polity.[113]

"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."[114] The 2013 Texas Supreme Court held that "the record conclusively shows TEC is a hierarchical organization,"[115] with "three structural tiers. The first **and highest** is the General Convention. The General Convention consists of representatives from each diocese and most of TEC's bishops."[116] It is undisputed that the General Convention

[106] A898, Response to Attempted Inhibition of the Bishop, (Nov. 24, 2008).
[107] A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 8-10, Ohl Aff. ¶¶ 4(e), 9-13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1; 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.
[108] *Episcopal Diocese*, 422 S.W.3d at 650.
[109] *Id.* at 652.
[110] *Masterson*, 422 S.W.3d at 607-08.
[111] *Id.* at 601.
[112] *Id.*
[113] Defs.' Mot. for Partial Summ. J. at 32-33; A898, Response to Attempted Inhibition of the Bishop (Nov. 24, 2008).
[114] *Masterson*, 422 S.W.3d at 607.
[115] *Id*. at 608.
[116] *Episcopal Diocese*, 422 S.W.3d at 647 (emphasis added).

of The Episcopal Church recognizes only Plaintiffs as the leaders and members of the continuing Episcopal Diocese of Fort Worth and its Episcopal Congregations.[117]

Thus, under "the appropriate method for Texas courts," the Court can and should resolve this case on two undisputed facts:

(1) Under neutral principles, the property is held in trust for the Episcopal Diocese and Congregations (***judicially admitted by Defendants***) and

(2) The Episcopal Church has determined that only Plaintiffs are authorized to act as the continuing Episcopal Diocese and Episcopal Congregations (***undisputed***).

Or, as Defendants put it: "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.'"[118]

G. Defendants' responses fail.

This brief has already shown Defendants' flip-flop on the law, and why their new position to this Court is wrong. *See* Section II, above. Defendants also make a few other arguments in Response to the Simple Solution that fail.

Defendants claim: "According to Plaintiffs, the Corporation holds property for parishes that are **not** in union the Diocese, even though the Trustees of the Corporation must be members 'of a parish or mission ***in*** the Diocese.'"[119] No. The Corporation holds property for parishes that

[117] A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 8-10, Ohl Aff. ¶¶ 4(e), 9-13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1; 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.

[118] A3822-23, Defs.' U.S. Supreme Ct. Br. (quoting *Masterson*, 422 S.W.3d at 605) (citations omitted). This same method applies to property titled directly in the name of the religious bodies, such as personal property and bank accounts.

[119] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 10 (original emphasis).

are in union with the Diocese. Defendants' error is in assuming that they represent the Diocese, an ecclesiastical fact that the highest authority of The Episcopal Church has conclusively determined against them.

Defendants further claim, "it is only when the parties expressly allocate property on doctrinal grounds that courts must defer."[120] But that is not what happened in *Brown*. In *Brown*, the property "was purchased by the church and paid for in the ordinary way of business," and the deed simply named the local church body and "expressed no trust nor limitation upon the title."[121] The question reverted to which faction could represent that local church body, and the Court deferred on that point alone. Defendants make up this new qualification—"only when the parties expressly allocate property on doctrinal grounds"—out of whole cloth, citing an irrelevant 1929 clerical employment case, rather than the controlling cases here, *Brown*, *Masterson*, and *Episcopal Diocese*.

Finally, Defendants complain: "As the U.S. Supreme Court said in *Wolf*, one of the purposes of the Neutral Principles approach is to encourage states and churches to draw up agreements that don't [involve ecclesiastical questions]."[122] That may be true, but it isn't what happened here. As in *Brown*, the title issue ultimately came down to the control, leadership, and membership of religious bodies. And on that, the Court must defer. Here, as in *Brown*, under the facts at hand, "the congregation's affairs have been ordered so that ecclesiastical decisions effectively determine the property issue."[123]

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[120] *Id.* at 8.
[121] *Masterson*, 422 S.W.3d at 604 (quoting *Brown*, 116 S.W. at 364-65).
[122] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 8.
[123] *See Masterson*, 422 S.W.3d at 607. Defendants draw a false analogy to the facts of *Jones v. Wolf*. Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 6 (citing *Jones v. Wolf*, 443 U.S. 595 (1979)). In *Jones*, Georgia had adopted a presumption of majority rule for local church identity, which the U.S. Supreme Court ruled was permissible *if* it had been defeasible by the church with minimal burden before the dispute erupted. *Jones*, 443 U.S. at 606. On remand, the Georgia Supreme Court found that the church had not rebutted that presumption. *See Masterson*, 422 S.W.3d at 603. But, as *Masterson* noted, *Jones* allows states to adopt "any one of various approaches." *Id.* at 601 (quoting *Jones*, 443 U.S. at 602). And the Georgia method is not "the appropriate method

Thus, under "the appropriate method for Texas courts," this Court should resolve this case under two simple, undisputed facts.

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In summary, Defendants lose for a simple reason:

For five years, they have argued they can take property under neutral principles because the Corporation is a secular entity. But now they have admitted, in a formal, binding judicial admission, that under neutral principles of law, the Corporation *holds all property in trust* for the Episcopal Diocese and Episcopal Congregations. And so the Corporation becomes irrelevant, and the remaining question for the Court is: in order to enforce the admitted trust for the Episcopal Diocese and Congregations, which side may act for those entities?

Under "the appropriate method for Texas courts," on that question, the Court must defer, even though that limited deference will "effectively determine the property rights in question."[124]

IV. BEYOND "THE APPROPRIATE METHOD FOR TEXAS COURTS," DEFENDANTS' RESPONSE AGAIN FALLS APART ON SIMPLE INSPECTION.

If the Court goes beyond "the appropriate method for Texas courts" and, contrary to the First Amendment, adjudicates questions reserved to the Church, Defendants would *still* lose under basic principles of Texas law. Defendants' Response falls apart on simple inspection.

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for Texas courts"; *Brown* is. *See id*. at 605. If the Georgia law applied in Texas, *Brown* would have presumptively resolved the identity question by majority vote, after considering whether the presumption had been defeasible and defeased (or not). *Brown* did no such thing and references no such church-identity presumption, because none exists in Texas. In fact, Texas associations law rejects defection by majority vote. "It 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*, 264 S.W.2d at 768 (citing 7 C.J.S. Associations § 27); *see also Minor*, 130 S.W. at 896-97 (a dissenting local majority, "no matter how large," cannot "destroy" the subordinate chapter by shaking loose from the Supreme Council; in such cases, the loyal minority are, as a matter of law, "the true and lawful successors" to the local chapter's rights, including its property rights). And, even if the Georgia approach did apply (which it does not), Defendants would still have no right to the property because, under *Jones*, "any rule of majority representation" has "be[en] overcome . . . by providing . . . that the church property is held in trust for the general church and those who remain loyal to it," *Jones*, 443 U.S. at 607-08—*i.e.*, it is held in trust for "this Church and the Diocese *thereof*."

[124] *Masterson*, 422 S.W.3d at 606.

A. Express trust

1. *Shellberg* controls the case at bar.

Having asked for neutral principles, Defendants then urge this Court to ignore the controlling precedent.

In *Shellberg*, the Fort Worth Court of Civil Appeals held that a trust supported by consideration is contractual and therefore irrevocable.[125] Texas law recognizes as—a matter of law—that an organization's rules "constitute a contract" with members and local chapters that choose to join.[126] Here, the Episcopal Diocese accepted the Church's permission to form[127] and the transfer of property "acquired for the use of the Episcopal Church in the Diocese of Dallas,"[128] after committing to "fully" accede to the Church's rules,[129] to recognize "the authority of the General Convention of said Church,"[130] and to use that property "in trust for this Church and the Diocese thereof,"[131] "for the use of the Church and the Diocese,"[132] and for only those purposes "approved by this Church, and for no other use."[133] Those commitments are

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

[126] *Int'l Printing Pressmen and Assistants' Union of N. Am. v. Smith*, 198 S.W.2d 729, 736 (Tex. 1947); *accord District Grand Lodge v. Jones*, 160 S.W.2d at 920.

[127] A3957, Dep. of Def. Corp. at 132:18-134:9; A4304, Dep. of Def. Diocese at 166:6-25; *see also* JA000384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art V, § 1 (requiring "consent of the General Convention" and compliance with "such conditions as the General Convention shall prescribe by General Canon or Canons" for the division of a Diocese and formation of a new diocese).

[128] JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

[129] JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

[130] JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), art. 1.

[131] 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 (emphasis added). Defendants admit this canon was in the Constitution and Canons when they acceded. A3929, Dep. of Def. Diocese at 47:23-48:7.

[132] JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

[133] JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

contractual and irrevocable under controlling law. *Shellberg* is and was the controlling law at the time the Diocese formed, and as Defendants note, the parties were deemed to know that law.[134]

Recognizing that *Shellberg* requires judgment for Plaintiffs, Defendants ask this Court to dismiss *Shellberg*'s holding as "simply dicta."[135] But the Fort Worth Court of Appeals could not have been clearer: "***We hold that*** Sec. 41 of Art. 7425b, V.A.T.S., (The Texas Trust Act) [making certain trusts presumptively revocable] [now Tex. Prop. Code § 112.051(a)] is inapplicable to a trust that is created by contract and based on a valuable consideration."[136] Respectfully, courts are not at liberty to disregard a holding directly on point from a court with jurisdiction to review their decisions.

More fundamentally, Defendants' reading of *Shellberg* is wrong, because it directly contradicts the court's explanation of its own decision. In *Shellberg,* five grantors established a trust that by its terms could be revoked by three or more of the grantors.[137] Defendants purport that the question was "simply whether one (1) of them alone could revoke the trust."[138] According to Defendants, the court held that "the trust complied with the Texas Trust Act, because a trust that says it is revocable only by three grantors is expressly irrevocable by anything else."[139] That is incorrect. Rather, the court explained exactly what question it was deciding and why it had to decide it:

> The question presented here for a decision is whether this contractual trust agreement . . . which is supported by valuable and legal considerations, [is] revocable by the trustor under Sec. 41 of the Texas Trust Act (Art. 7425b, V.A.T.S.) [now Tex. Prop. Code

[134] Defs.' Second Mot. for Partial Summ. J. at 43 (claiming that "all parties are deemed to know Texas law" at the time of the trust formation).

[135] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 13.

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

[137] *Id.* at 466-67.

[138] Corrected Resp. by Defs. To Pls.' Mot. For Partial Summ. J. at 13.

[139] *Id.*

> § 112.051] in view of the fact that [the agreement does not] expressly say in so many words that such trust is irrevocable.[140]

In other words, the court had to decide whether the Texas Trust Act's presumption of revocability applied, ***because the Court ruled that the trust at issue was not expressly irrevocable.*** Defendants' attempt to recast *Shellberg* as holding that trust terms ***implying*** irrevocability are ***expressly*** irrevocable is especially ironic, considering that they have repeatedly argued the exact opposite.[141]

Shellberg was correctly decided and should be followed. As explained more fully in Plaintiff's Response,[142] it is a soundly reasoned decision that rests on (1) the considered opinion of the highest court of the state from which the Texas Trust Act was borrowed;[143] (2) academic analysis by Texas trust experts;[144] and (3) the unremarkable proposition that a person should not be able to extract benefits from another in exchange for a trust and then revoke the trust and keep the benefits.

In addition to being correct, *Shellberg* is entitled to great weight under the doctrine of *stare decisis*, because it decided a matter of statutory construction. *See Shellberg*, 422 S.W.2d at 466 ("Th[is] case involve[s] . . . the construction of . . . Sec. 41 of the Texas Trust Act [Tex. Prop. Code § 112.051(a)] . . . ."). As courts have explained, "*[s]tare decisis* is strongest in cases involving statutory construction because the Legislature may correct perceived construction errors through statutory amendment."[145]

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[140] *Shellberg*, 459 S.W.2d at 468.

[141] *See* Defs.' Second. Mot. for Partial Summ. J. at 36; Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 12-13.

[142] Pls.' Response to Defs.' Mot. for Partial Summ. J. at 70-75, incorporated as if fully set forth herein.

[143] *See Harrison v. Johnson*, 312 P.2d 951 (Okla. 1956).

[144] Arthur Yao, *Revocation of Trust Under Section 41 of the Texas Trust Act*, 7 S. Tex. L.J. 22, 29 (1963-1964); R. Dean Moorhead, *The Texas Trust Act*, 22 Tex. L. Rev. 123, 131 (1943-1944).

[145] *Grimes Cnty. Bail Bond Bd. v. Ellen*, 267 S.W.3d 310, 316 (Tex. App.—Houston [14th Dist.] 2008, pet. denied); *accord Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 749 (Tex. 2006).

In fact, under Texas law, "[t]he rule is well settled that when a statute is re-enacted without material change, it is presumed that the legislature knew and adopted the interpretation placed on the original act and intended the new enactment to receive the same construction." *Coastal Indus. Water Auth. v. Trinity Portland Cement Div. Gen. Portland Cement. Co.*, 563 S.W.2d 916, 918 (Tex. 1978); *cf. Fiess*, 202 S.W.3d at 749-50 (noting that if the Court's prior interpretation of a regulatory policy was wrong, "it is strange that insurance regulators did nothing to change the policy for a quarter century"). The rule applies to decisions, like *Shellberg*, made by the intermediate courts of appeal. *See Grimes*, 267 S.W.3d at 316 (presuming, after the legislature recodified an act, that the legislature intended the intermediate appellate court's "construction to continue to apply").

The statutory presumption of revocability was passed in 1943.[146] The Fort Worth Court of Civil Appeals, in *Shellberg*, construed it not to apply to contractual trusts in 1970.[147] The holding has been cited prominently by every leading commentary on that statute, from *Vernon's* to *Johanson's*.[148] Thirteen years after *Shellberg*, in 1983, the legislature recodified the statutory presumption without substantive change.[149] Accordingly, this Court must presume that the legislature knew and adopted *Shellberg*'s construction—that the statutory presumption of revocability is "inapplicable to a trust that is created by contract and based on a valuable consideration."[150]

Defendants' complaint that "[n]o other court has ever agreed with *Shellberg* in the 45 years since" misses the mark.[151] Rather, the timing of *Shellberg* provides all the more reason

[146] Texas Trust Act, ch. 148, § 41, 1943 Tex. Gen. Laws 232, 246.
[147] *Shellberg*, 459 S.W.2d at 469.
[148] *See* Pls.' Resp. to Defs.' Second Mot. for Partial Summ. J. at 9-10 (collecting authorities).
[149] Texas Trust Act, ch. 567, art. 2, § 2, 1983 Tex. Gen. Laws 3332.
[150] *Shellberg*, 459 S.W.2d at 470.
[151] Corrected Response by Defs. to Pls.' Mot. for Partial Summ. J. at 13.

that its holding should apply to the case at bar. First, as explained above, the legislature presumably adopted *Shellberg*'s construction of the Act, because *Shellberg* preceded a non-substantive recodification. Second, no court has ***disagreed with*** *Shellberg* "in the 45 years since"; in fact, the leading commentators on Texas trust law have cited the case with approval.[152] Third, *Shellberg* was decided just over a decade before the Fort Worth Diocese was formed by the court with jurisdiction over the region where those events took place. Thus *Shellberg* was recent, binding law that, as Defendants helpfully point out, the parties are deemed to have known when they arranged their affairs.[153] Accordingly, adherence to *Shellberg* is needed to "give[] due consideration to the settled expectations of [the] litigants because [otherwise] no issue could ever be considered truly resolved."[154]

2. The Church provided consideration for the trust.

Defendants' attempt to distinguish *Shellberg* by arguing that the Church provided no consideration also fails.[155] First, Defendants make no attempt to explain why their receipt of millions of dollars in medical, pension, and life insurance benefits and tens of thousands of dollars in grants and loans ***through their membership in the Church*** does not constitute consideration sufficient to support a trust. Any portion of those benefits is independently sufficient to constitute consideration, and the Court need not proceed any further to determine that the trust was supported by consideration.

Second, Defendants' attempts to rebut other forms of consideration also fail:

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[152] *See* Pls.' Resp. to Defs.' Second Mot. for Partial Summ. J. at 9-10 (collecting authorities).

[153] Defs.' Second Mot. for Partial Summ. J. at 43 (citing *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 525 n.3 (Tex. 1990)).

[154] *Grimes*, 267 S.W.3d at 315. Moreover, as the law in effect at the time, *Shellberg* governs, regardless of any future changes in Texas trust law. *See Jackson v. Hernandez*, 285 S.W.2d 184, 186 (Tex. 1955) (applying the law in effect at the time of "the occurrence of the events involved in this suit" and holding that the later adopted Texas Trust Act has "no application here").

[155] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 13-14.

- Defendants claim: "TEC did not divide the Dallas Diocese; the diocese decided to divide itself and TEC merely consented."[156] But it is undisputed that division of an existing Episcopal Diocese *required* the Church's consent under Article V of the Church's Constitution, as even Defendants admit.[157] And Defendants admit the 1984 judgment was merely the parties' completion of that Article V division.[158] Thus, the Court need not decide who divided the Diocese. The Church's *consent* to the division is sufficient consideration.

- Defendants claim: "TEC did not form the Diocese; it was formed by its own Primary Convention."[159] Similarly, it is undisputed that the Diocese could not be formed, except with the Church's permission and in accordance with its rules.[160] Thus, the Court need not decide who formed the Diocese. The Church's permission for formation of the Diocese is sufficient consideration.

- Defendants claim: "no new affiliation with TEC arose in 1982; every church in the Diocese was already affiliated through the Diocese of Dallas."[161] But those congregations wished to form a new diocese in union with The Episcopal Church, which could not occur without the Church's permission.[162] Thus, the Church's permission to form a new diocese in union with the Church is sufficient consideration.

- Defendants claim: "TEC paid for no local property, transferred no local property, and wasn't even a party to the lawsuit making that transfer."[163] But it is undisputed that the parties were proceeding under Article V, wished to form a new diocese under Article V, and brought the 1984 action as a "friendly suit"[164] to legally "effect the Article V division"[165] and transfer property "acquired for the use of the Episcopal Church in the Diocese of Dallas"[166] to the new diocese "for

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[156] *Id.* at 14.

[157] *Id.*; A3957, Dep. of Def. Corp. at 132:18-134:9; A4304, Dep. of Def. Diocese at 166:6-25; *see also* JA000384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art V, § 1 (requiring "consent of the General Convention" and compliance with "such conditions as the General Convention shall prescribe by General Canon or Canons" for the division of a Diocese and formation of a new diocese).

[158] A4382, Dep. of Def. Corp. at 149:25-150:14; A3958, Dep. of Def. Corp. at 150:3-14.

[159] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 13.

[160] A3957, Dep. of Def. Corp. at 132:18-134:9; JA000384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art V, § 1 (requiring "consent of the General Convention" and compliance with "such conditions as the General Convention shall prescribe by General Canon or Canons" for formation of a new diocese).

[161] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 14.

[162] A4286, Dep. of Def. Diocese at 96:11-23.

[163] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 14.

[164] A2626-27, Letter from The Rev. Canon Charles A. Hough, III & N. Michael Kensel to The Rev. Steven Pope (Aug. 13, 2007).

[165] A3958, Dep. of Def. Corp. at 150:3-14.

[166] JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

> the use of The Episcopal Church in the Diocese."[167] The Episcopal Church as a whole had no reason to be a party when the friendly suit was filed between two of its constituent entities acting pursuant to the Church's prior consent, which was given in exchange for the Diocese's and Congregations' repeated commitments.[168]

In addition to this specific consideration, Texas law recognizes generally, as a matter of law, that an organization's rules "constitute a contract" with members and local chapters that choose to join, and are enforceable as such.[169]

Thus, Defendants' claims that the Diocese's and Congregations' commitments are not contractual or lack consideration fail as a matter of law.

3. *Shellberg* does not conflict with the Texas Supreme Court's opinion.

Next, Defendants argue that applying *Shellberg* will conflict with the Texas Supreme Court's observation that the Dennis Canon does not contain express terms of irrevocability that would satisfy Tex. Prop. Code § 112.051.[170] Not so. As the *Shellberg* court and leading trust experts have repeatedly explained, *Shellberg* held that § 112.051 ***does not apply*** to contractual trusts.[171] Accordingly, there is no conflict between the Supreme Court's observation about what constitutes sufficient language *under* § 112.051 and the separate issue of contractual trusts, which are not governed by § 112.051. The issue of contractual trust was not before the Texas Supreme Court, and the Court rendered no opinion on it.[172]

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[167] JA00720, *id.*; *see also* A3959-60, Dep. of Def. Corp. at 154:3–156:1.

[168] A4382, Dep. of Def. Corp. at 149:25-150:14; JA000384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art V, § 1 (requiring "consent of the General Convention" and compliance with "such conditions as the General Convention shall prescribe by General Canon or Canons" for the division of a Diocese and formation of a new diocese).

[169] *Int'l Printing Pressmen*, 198 S.W.2d at 736; *accord District Grand Lodge v. Jones*, 160 S.W.3d at 920.

[170] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 12-13.

[171] *See Shellberg*, 459 S.W.2d at 470; Johanson's Texas Estates Code Annotated § 112.051; Bogert's The Law of Trusts and Trustees § 998 n.8 (2014); A4091, Aff. of Professor Gerry W. Beyer ¶ 8.

[172] *Episcopal Diocese*, 422 S.W.3d at 653.

4. The individual deeds are plain.

On this point, Defendants misrepresent Plaintiffs' brief beyond explanation.[173]

Plaintiffs never said the Court need not review individual deeds before granting judgment based on those deeds. Plaintiffs said ***if*** *the Court resolves the case on a global theory—such as the Simple Solution or the contractual trust at formation—****then*** *it need not do a deed-by-deed analysis.*[174] **But if the Court does not grant Plaintiffs' motion on a global theory, then the Court absolutely would need to review the parcels on a deed-by-deed basis, because numerous individual deeds contain express trusts in favor of the Church. That is why Plaintiffs categorized, cited, and moved on all relevant deeds in Plaintiffs' Motion for Partial Summary Judgment at 45-49 and Table E, incorporated and re-urged by reference as if fully set forth herein.**

Thus, it is hard to understand Defendants' claim that Plaintiffs asked for "global summary judgment" for all "parts of the church property" associated with "47 churches" by "urg[ing]the court to treat all the deeds as if they are the same" even without "review[ing] the approximately 300 individual deeds."[175] That is false.

To be clear, there are several global theories warranting judgment for Plaintiffs, and *if* the Court grants any one of them, then it is not necessary to reach Plaintiffs' claims on the individual deeds. These global, independently-sufficient theories include:

- Simple solution (*Masterson* and *Episcopal Diocese*)
- Express contractual trust at the Diocese's formation
- Constructive trust
- Associations law

[173] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 16-21.
[174] Pls.' Mot. for Partial Summ. J. at 45.
[175] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 16-17.

Only if the Court does not "resolve the case globally" under one of those theories must it then reach Plaintiffs' claims "on a deed-by-deed basis."[176] In that case, the Court would need to consider each deed.

Plaintiffs will not repeat their deed-by-deed analysis here, but, in short, Plaintiffs identified the deeds that recite express trusts for the Church or one of its constituent entities and then categorized them by their deed language, with citations to those deeds in the record.[177] To assist the Court, Plaintiffs attached a three-part, 49-page chart that lists each such deed by category.[178]

Nevertheless, Defendants baldly assert that "Plaintiffs' motion does not point to a single deed reciting a trust expressly for TEC itself."[179] But here is some of the deed language Plaintiffs cited:

> 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 . . . .[180]

Quite obviously, that language creates an express trust for the Church with the property to be used within a particular geographical area. Defendants' assertion that the language recites a trust for the Diocese rather than the Church, and regardless of whether it is connected to the Church, is unreasonable to the point of fantasy. Accordingly, Defendants have not created any ***genuine*** fact issue.[181] And Defendants are flat wrong that Plaintiffs gave "a record citation for exactly

[176] Pls.' Mot. for Partial Summ. J. at 45 (emphasis omitted).

[177] *Id.* at 45-49.

[178] *Id.* tbl. E.

[179] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 17.

[180] Pls.' Mot. for Partial Summ. J. at 46 (citing JA02395-96, Deed to St. Timothy's (Fort Worth) (1956) (emphasis added and omitted)).

[181] *See Rayon v. Energy Specialties, Inc.*, 121 S.W.3d 7, 11-12 (Tex. App.—Fort Worth 2001, no pet.) ("A material fact issue is 'genuine' only if the evidence is such that a reasonable jury could find the fact in favor of the nonmoving party.").

one such deed . . . ."[182] Plaintiffs attached ***a 24-page chart listing more than 50 deeds containing that type of trust language***.

Defendants' remaining arguments are similarly unhinged from the facts and from what Plaintiffs actually argued. For example, Plaintiffs do not rely—as Defendants claim—on only the words "in trust" to create a trust in favor of the Church.[183] Rather, Plaintiffs explained that, according to well-established rules of statutory construction and Texas trust law, a grant to the "Bishop of the Diocese of Dallas of the Protestant Episcopal Church in the United States of America, his successors in office and assigns, in trust" creates a trust in favor of the Church with the Bishop serving as trustee.[184] And again, despite Defendants' complaint that Plaintiffs "quoted only one deed" creating an express trust for a specific congregation, Plaintiffs attached ***an 18-page chart listing more than 50 deeds that create express trusts for specific congregations***.[185]

Finally, Defendants re-urge their claim that the 1984 judgment—contrary to its plain language—supersedes preexisting beneficial title for the Church. This fails as a matter of law. Both Defendants and the Texas Supreme Court have acknowledged: "The 1984 judgment vested ***legal*** title of the transferred property in the Fort Worth Corporation."[186] As a matter of law, that transfer of legal title did not divest existing beneficiaries of their beneficial interest.[187] Now, Defendants argue that the 1984 judgment must have impliedly divested the Church of any prior

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[182] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 16.

[183] *Id.* at 18.

[184] Pls.' Mot. for Partial Summ. J. at 47.

[185] *Id.* tbl. E, at 32-49.

[186] Defs.' Second Mot. for Partial Summ. J. at 14 (quoting *Episcopal Diocese*, 422 S.W.3d at 648 (emphasis added)).

[187] *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 Mortgage 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").

beneficial title. Defendants argue that "the Judgment necessarily ***split*** beneficial title between the two dioceses along the same lines as legal title," because otherwise "all the churches in this dispute are still held in trust for the Diocese of Dallas."[188] But that theory says nothing about *the Church's* beneficial title. The Diocese of Dallas was dividing, and *each* resulting Diocese respectively petitioned that the property was "for the use of the Church in the Diocese."[189] Defendants cannot imply the *opposite* into the text—that somehow the judgment *divested* the Church of its beneficial title.[190]

In short, this Court can and should grant one of Plaintiffs' global theories, starting with the Simple Solution, which is "the appropriate method for Texas courts." But if the Court does not grant a global theory, Plaintiffs have moved in the alternative on numerous deeds in the record containing express trusts for the Church and its constituent entities, and the Court would need to reach those claims.

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On express trust, Defendants' Response falls apart. And this Court should find that the property is held in express trust for Plaintiff The Episcopal Church and its constituent entities under neutral principles of law.

B. Constructive trust

Defendants and their predecessors made decades of plain commitments to their Church, their Diocese, and their Congregations, including sworn oaths taken *for* the Church while

[188] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 19-20.

[189] The petition stated that the property had been "acquired for the use of the Episcopal Church in the Diocese of Dallas" and was now being transferred to the corporation of the new Diocese "for the use of the Church in the Diocese." JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984). Defendant Corporation testified that meant (obviously) "for the use of The Episcopal Church in the [new] Diocese." A3959-60, Dep. of Def. Corp., at 154:3–156:1.

[190] Defendants also argue their "implied divestment" theory because the Church was not a party to the suit. But, as shown, there was no reason for the Church to intervene in a friendly suit between two constituent entities operating consistently with their commitments and pleading the property was for "the use of the Church in the Diocese." *See* Section IV.A.2, *supra*.

planning to take historic Episcopal property and entities *from* the Church.[191] And their legal claims of why broken vows and breached trust are not enough to warrant a constructive trust fail.

Defendants argue that a constructive trust should not be imposed because (1) there was no unjust enrichment, (2) the Defendants owed no fiduciary duties to The Episcopal Church, and (3) the Defendants' litany of broken promises cannot support a constructive trust claim.[192] These arguments find no support in the record or Texas law. If the Court does not find an express trust, a constructive trust should be applied to the disputed property in favor of Plaintiffs.

1. Defendants have been unjustly enriched

Defendants reassert their spurious claim that, after making repeated promises to The Episcopal Church, then seizing its identity and property to use against the Church's interests, there has been no unjust enrichment.[193] Plaintiffs detailed twelve pages of examples of Defendants' unjust enrichment and incorporate them here,[194] including:

- The opening speech of the new Diocese defined its purpose: "to launch the newest missionary effort within the Episcopal Church on the 1st of January 1983."[195] The Episcopal Church permitted the formation of the Diocese and transfer of property worth over a hundred million dollars that was previously "acquired for the use of the Episcopal Church in the Diocese of Dallas,"[196] based on *seven pages of signatures* "unanimously" and "fully" acceding to the Church's rules, including its property rules,[197] and based on commitments to hold property "for the use of the Church and the Diocese"[198] and for only those purposes "approved by this Church, and for no other use."[199]

- Defendants take property amassed and dedicated over a century by "the pioneers who gave beauty and meaning to worship on the American frontier – the missionaries, the

[191] A4295-96, 4299, Dep. of Def. Diocese at 132:7-134:5, 147:6-15.
[192] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 21-28.
[193] *Id.* at 22-24.
[194] *See* Pls.' Mot. for Partial Summ. J. at 55-66.
[195] JA00351, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982.
[196] JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).
[197] JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A4291-92, Dep. of Def. Diocese at 117:25-121:22.
[198] JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).
[199] JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

courageous bishops, the loyal parishioners of the first Protestant Episcopal churches of Texas,"[200] after telling a previous court "it was never the[] intent" of "loyal parishioners" that their "gifts and memorials be converted to the use" of another denomination by those who "have abandoned communion with The Episcopal Church."[201]

- Defendants now claim they "revoked" their commitment under national canons to hold the property in trust in 1989, *after telling a court in 1994* that those same "national canons" created an "express trust" enforceable by that court "even if title had been in [the breakaway faction in that earlier case]," attaching for the court a sworn copy of that canon.[202]

- After the Diocese recognized the authority of the General Convention as a condition of formation, Defendants now claim they have an "implied" right to take an Episcopal Diocese out of The Episcopal Church, when the General Convention and its House of Bishops have rejected that claim,[203] and for a hundred years before Defendants chose to join, it has been recognized that the Church is "not a fugitive coalition, but a perpetual union"[204] and that dioceses "surrender" "[s]uch an exercise of independency as would permit them to withdraw from the union at their own pleasure"[205]—and there is no "impl[ied] right of any Diocese to *secede* from the union established by the Constitution[.]"[206]

- Lead Defendant Iker, who led the defection, proclaimed that the Church and its Presiding Bishop had no authority over him or the (faux) Diocese, despite swearing in writing three times to abide by the Doctrine, Discipline, and Worship of The Episcopal Church[207] as a condition of assuming Diocesan office and having access to the property and substantial personal benefits in the first place,[208] and after testifying here that the Church must rely on local officers "to act in compliance with [their] oath" and "trust[s] . . . [them] to run the day-to-day affairs of the diocese" without the Church having to "micromanage" them.[209]

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[200] A2640, St. Andrews' Episcopal Church V; A2646, *id.* at 7 (noting St. Andrew's first funds and cornerstone were laid in 1877 by Alexander Charles Garrett, the First Missionary Bishop of Northern Texas of the Missionary Board of the Episcopal Church; later the First Bishop of the Diocese of Dallas; finally Presiding Bishop of the Church USA).

[201] 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); *see also* A1028, *id.* ex. D (Aff. of Robert J. Rigdon).

[202] 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).

[203] A4106-10, Buchanan Aff. at ¶¶ 3-8 (Oct. 22. 2014).

[204] A4528, Murray Hoffman, Treatise on the Law of the Protestant Episcopal Church 110 (1850).

[205] A4533, Francis L. Hawks, Contributions to the Ecclesiastical History of the United States 11 (1841).

[206] A4531, Francis Vinton, A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States 143 (1870).

[207] A3928, Dep. of Def. Diocese at 39:2-24.

[208] A3928, *id.* at 39:21-24.

[209] A3930, *id.* at 79:17–20; 81:4–7, 16–18.

- Defendants secreted their planned defection from their Church, continuing to administer the Declaration of Conformity to the Church while planning to take historic property and entities *from* the Church.[210] Defendants used a shell single-purpose entity, controlled by a Defendant, to place new debt on Church property during this litigation that they believe would encumber Plaintiffs when Plaintiffs prevail in the case.[211] And Defendants moved funds out of state intentionally to avoid recovery by the Church, then declined to place those funds on their books or disclose them to this Court during supersedeas discovery.[212]

And rather than denying their bad conduct, Defendants concede it, and argue weakly that they were forced to behave badly because loyal Episcopalians exercised their legal rights. *See, e.g.*, Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J at 23-24 ("And it is especially galling that they complain about moving the church's bank accounts temporarily to Louisiana, when their own lawyers were trying to freeze the Diocese's bank accounts in Texas.").

Defendants also bolster their spurious claim about the lack of unjust enrichment by citing several cases in which constructive trusts were imposed based upon allegedly more flagrant conduct than their own.[213] But, the gravamen of those cases was exactly the same as here: parties abused confidential relationships by accepting property for the benefit of another and then taking it for their own advantage.[214] Like the situation described in *Mills v. Gray*, here, the Defendants abused their confidential relationship with The Episcopal Church by promising to hold property for its benefit, then taking it and using it contrary to that promise.[215] And in *Libhart v. Copeland*, the court held that a constructive trust should be imposed on church property where "improper conduct . . . defrauded the church of its assets."[216] Similar to the

[210] A4295-96, 4299, Dep. of Def. Diocese at 132:7-134:5, 147:6-15.
[211] A4423, Def. Trustee Bates Dep. at 83:11-84:1.
[212] A3981, Dep. of Def. Director of Finance Parrott at 93:18-22; A3980, *id.* at 88:3-6; A3982, *id.* at 98:3-7.
[213] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 22-23.
[214] *See Mills v. Gray*, 210 S.W.2d 985, 988 (Tex. 1948) (noting son potentially abused confidential relationship with mother by using her property for his own benefit); *Pope v. Garrett*, 211 S.W.2d 559, 562 (Tex. 1948) (imposing constructive trust on property wrongfully acquired and used for purposes not intended by grantor); *Libhart v. Copeland*, 949 S.W.2d 783, 804 (Tex. App.—Waco 1997, no pet.) (applying constructive trust to church property used by church officials contrary to its agreed-upon purpose).
[215] *See Mills*, 210 S.W.2d at 988.
[216] *Libhart*, 949 S.W.2d at 804.

church officials in *Libhart*, the Defendants here have used church property intended for one purpose for an entirely contrary one.[217]

Moreover, Defendants demonstrate remarkable chutzpah by asserting that *Libhart* is the only case in Texas imposing a constructive trust on church property, implying that only cases of that sort are instructive under neutral principles.[218] But cases applying constructive trusts to church property are rare because, as the *Masterson* Court observed, most Texas courts did not apply neutral principles in church property cases before now—and so they did not reach the neutral principles of constructive trust![219] Thus, the dearth of Texas constructive trust cases in the church context should come as no surprise, and cases applying constructive trusts outside of this context are controlling. It was *Defendants* that asked to be subjected to the same laws that apply to other entities. No secular context would tolerate Defendants' conduct, and it should not be tolerated here.

2. Defendants breached fiduciary duties to The Episcopal Church

Defendants argue further that a constructive trust cannot be imposed because they owed no fiduciary duties to The Episcopal Church. While this false, it is also irrelevant, because a formal fiduciary duty is not required to impose a constructive trust. The breach of a promise made between parties who have a "moral, social, domestic or purely personal relationship of trust and confidence"[220] can support a constructive trust. The pages of commitments, oaths, and relationships detailed in Plaintiffs' Motion, a few of which are cited above, more than demonstrate this relationship of "trust and confidence."[221]

[217] *Id.* at 791, 804.
[218] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 23.
[219] *Masterson*, 422 S.W.3d at 605.
[220] *Hubbard v. Shankle*, 138 S.W.3d 474, 483 (Tex. App.—Fort Worth 2004, pet. denied).
[221] *See* Pls.' Mot. for Partial Summ. J. at 55-66.

But Defendants *did* owe fiduciary duties to the Church. They argue bizarrely that they were not bound by such duties because the delegates to the Primary Convention signed their full and unanimous oath to The Episcopal Church *individually* and not as *representatives* of their Congregations. But that resolution was signed by "Lay Delegates"[222] specifically defined by the Convention as "Delegates *representing* 53 Parishes and Missions registered to vote,"[223] and by "Canonically Resident Clergy" each identified by his office in the Diocese or Congregations.[224] Defendant "Diocese" admitted that these signatories to the accession were from "duly certified elected delegate[s] *from a parish or mission of the diocese.*"[225] And Defendant Virden testified that he was a member of a "parish that was represented at the Primary Convention" by "delegates from [his] parish" who signed the resolution demonstrating accession.[226] Next to the signatures on the resolution were the names of the parishes or missions represented by that delegate, and next to the name of every active clergy-member in the Primary Convention Proceedings was the name of their parish.[227] Notwithstanding Defendants' bare assertions to this Court, there is no evidence in the record that any individual who signed the accession to the Church's Constitution and Canons was doing so in an individual capacity.

Defendants similarly assert that the Corporation never had a fiduciary relationship with The Episcopal Church, and that the Corporation and its Trustees owed duties only to the Diocese and Congregations.[228] But Defendant Corporation testified that its representation in the 1984

[222] *See* JA00368-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, November 13, 1982.
[223] *Id.* at JA00351 (emphasis added).
[224] *Id.* at JA00340.
[225] A4291, Dep. of Def. Diocese at 114:5-11.
[226] A4352, Dep. of Def. Corp. at 28:10-19.
[227] *See* JA00368-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, November 13, 1982.
[228] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 25.

action to hold property "for the use of the Church in the Diocese"[229] meant (obviously) "for the use of The Episcopal Church in the Diocese."[230] The Diocese's Constitutional article authorizing the Corporation's formation, on which Defendants state the Church relied[231] and which they admit binds the Corporation,[232] requires the Corporation to hold property "subject to the control of the Church in the Episcopal Diocese of Fort Worth . . . ."[233] The Corporation's founding bylaws subordinated it to the Church, stating its affairs "shall be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of America" as well as the Diocese's, both of which "control" over its bylaws.[234] Defendants complain of "conflicts" between duties, but any conflicts here were *caused* by Defendants' own breaches; had they honored their commitments to the structure and authority of the Church as promised, every one of these commitments would be aligned.[235]

Defendants next argue that they and Defendant Iker did not owe any fiduciary duties with respect to property, and that any commitments were merely spiritual in nature.[236] But both the Diocese's "full" accession[237] and the repeated oaths of the Declaration of Conformity were to the Church's Constitution and Canons,[238] which include the property canon.[239]

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[229] JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).
[230] A3959-60, Dep. of Def. Corp. at 154:3–156:1.
[231] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 35 ("TEC's own rules required new dioceses to submit their original Charters to the General Convention for review, and on that basis TEC then admitted the Diocese into Union.").
[232] Defs.' Second Mot. for Partial Summ. J. at 16.
[233] JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).
[234] JA00076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (1983).
[235] *See* Pls.' Resp. to Defs.' Mot. for Partial Summ. J. at 87-88.
[236] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 25.
[237] JA00364-71, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth (Nov. 13, 1982).
[238] A4271, 4293, Dep. of Def. Diocese at 34:1-3, 17-20; 124:21-24 (admitting oath was to "conform to the doctrine, discipline and worship of The Episcopal Church . . . *as expressed in the Constitution and Canons*" and that he would not have been able to hold Church office without taking this oath) (emphasis added).
[239] *See, e.g.*, A4274, *id.* at 48:3-7 (admitting that the Dennis Canon, which addresses property held in trust for The Episcopal Church, was part of the Church's Constitution and Canons).

Defendants argue that the Congregations were not in union with The Episcopal Church. But Defendants previously told another court that "[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."[240] And Defendants and their predecessors told a prior court that "under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law," parish members that "abandoned the communion of The Episcopal Church . . . ceased to be qualified to serve as a priest or as a member of the Vestry . . . ."[241] Defendants direct the Court to the Diocesan provision allowing congregations to form corporations,[242] but they fail to mention that same provision's requirement that any such "articles of incorporation must expressly provide that such corporation is subject to, and its powers and rights shall be exercised in accordance with, the Constitution and Canons of the Episcopal Church in the United States of America and the Constitution and Canons of this Diocese."[243]

Finally, Defendants assert that the "long and cordial" relationship between the parties does not give rise to a fiduciary duty, because "the fact that they trusted one another" cannot create such a relationship. The only case Defendants cite for this assertion says nothing of the sort. Described in greater length below, *Crim Truck* merely notes that contractual relationships, as well as relationships that are cordial and longstanding, do not, *based on those facts alone*, create confidential relationships.[244] That offers no insight to the situation here, where property

[240] 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).
[241] 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).
[242] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 9.
[243] JA00155, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 34 (1982).
[244] *Crim Truck & Tractor Co. v. Navistar Intern. Transp. Corp.*, 823 S.W.2d 591, 595-96 (Tex. 1992).

was acquired and maintained by *decades* of repeated oaths, conduct, and commitments, which have now been broken.

3. Broken promises do support imposition of constructive trusts

Defendants next turn to the flagrantly incorrect argument that their litany of broken commitments cannot support the imposition of a constructive trust. This argument is flatly untrue, as the Texas Supreme Court, in the seminal case on the subject, upheld the propriety of a constructive trust based on a broken promise.[245]

In *Mills v. Gray*, a mother transferred property to her son, who had reached an agreement with his mother that he would hold the property in trust for her.[246] The Texas Supreme Court affirmed the reversal of the trial court's exclusion of parol evidence showing the son had agreed to hold property in trust for his mother, and then used it for his own benefit, in order to demonstrate a constructive trust should be imposed.[247] The Court applied the principle that "[f]raud sufficient to raise a constructive trust *from an oral promise* made by the grantee to the grantor is not necessarily limited to actual fraud."[248]

Defendants rely heavily on *Crim Truck & Tractor Co. v. Navistar International Transportation Corporation*, and *Thigpen v. Locke*, both of which make the uncontroversial and irrelevant point that contractual relationships are not necessarily fiduciary relationships.[249] These cases *do not* say broken promises cannot support a constructive trust. The basis of the constructive trust here is not simply a contract, oral or written, or a merely cordial, longstanding business relationship; it is years of now-trampled commitments and sworn oaths, which induced the transfer of Church property within the Church. And Defendants' attempt to cast their

[245] *Mills*, 210 S.W.2d at 988.
[246] *Id.*
[247] *Id.* at 987.
[248] *Id.* at 988-89 (quotation marks and citation omitted) (emphasis added).
[249] *See Crim Truck*, 823 S.W.2d at 595, *Thigpen v. Locke*, 363 S.W.2d 247, 252 (Tex. 1962).

behavior merely as "broken promises" is ludicrous. They have converted over $100 million in property, which they received by virtue of making and reaffirming commitments and oaths to The Episcopal Church, numerous courts, and the Federal Government for decades. In any secular context, this conduct would be swiftly rectified, and so it should be here.

The Defendants next argue that their past statements to third parties (which they have repeatedly and disingenuously whitewashed in this case) "are neither fraud nor breach of fiduciary duty" because the Plaintiffs did not rely upon them.[250] But Defendants cite a single case addressing *actual* fraud.[251] A constructive trust arising from *constructive* fraud—the breach of a relationship of "trust and confidence"—"*does not require an intent to defraud*."[252] Moreover, statements made to third parties are relevant as further evidence demonstrating the "agreement" and "arrangement" between the parties,[253] such as when the Episcopal Diocese and Corporation told the IRS they were subordinate entities of The Episcopal Church,[254] or when they told the district court transferring property that the Diocese was "organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America"[255] and the property was "for the use of the Church in the Diocese."[256]

Finally, Defendants confusingly argue (without citation to authority of any sort) that a constructive trust cannot be placed on church property because, despite Defendants' many now-broken oaths and commitments to The Episcopal Church, Defendant Iker never *personally* owned the property. But Defendants do not dispute Defendant Iker's capacity as their

[250] Defs.' Resp. to Pls.' Mot. for Partial Summ. J. at 27.
[251] *See In re Int'l Profit Assocs., Inc.*, 274 S.W.3d 672, 678 (Tex. 2009) (explaining elements of actual fraud).
[252] *Hubbard*, 138 S.W.3d at 483.
[253] *Mills*, 210 S.W.2d at 989.
[254] 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 88:20-89:21; A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).
[255] JA00716-17, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).
[256] JA00721, *id.*

representative and leader; indeed, they have argued the opposite: that he is the highest authority of the "Diocese."[257]

The facts demonstrate that Defendants and their predecessors occupied a special relationship of "trust and confidence" with Plaintiffs, and Defendants would be unjustly enriched if they were permitted to maintain possession of the disputed property. Separately, Defendants' many broken promises overwhelmingly support the imposition of a constructive trust.

C. Associations law

Defendants ask this Court to do something it cannot: use Texas associations law to determine the leaders and members of an Episcopal Diocese and Congregations—issues *Masterson* reserved to "the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted," even where property is concerned.[258]

But even under associations law, Defendants are bound by their commitments to their Church and cannot take the property they inherited *ex officio* based on those commitments.

Defendants' Response brief falls apart on this point as well.

1. Breakaway-faction cases are not limited by statute to Masons

Having asked this Court to apply associations law, Defendants now try to avoid the associations law on point. As one Texas court put it in *Progressive Union*:

> It 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.[259]

Defendants now claim this doctrine is limited by statute to "a Grand Lodge, the Masons,

[257] Defs.' Second Mot. for Partial Summ. J. at 29-30.
[258] *Masterson*, 422 S.W.3d at 607.
[259] *Progressive Union*, 264 S.W.2d at 768 (citing 7 C.J.S. Associations § 27).

or similar benevolent societies" and thus "does not apply to churches."[260] But *Progressive Union* cites hornbook associations law regarding secession from "a voluntary association,"[261] and Defendants have said the Church is "a voluntary association"[262] and should be treated as such.[263] Nor are such principles limited by statute; the statute Defendants cite applies to *incorporated* associations, and courts have specifically declined to apply it in cases involving unincorporated associations.[264]

It is surprising that Defendants argue such rules do not "apply to churches," when they are the ones telling this Court it must treat churches "in the same manner as with any other entities."[265] Ironically, Texas courts have already analogized this secular doctrine to the church context in *Minor*, a case with the precedential weight of a Texas Supreme Court opinion,[266] ruling against a breakaway faction and describing *Brown* as "in point."[267] Defendants can't have it both ways: if they want churches to be governed by associations law, they cannot pretend the associations law they don't like is irrelevant when courts have already analogized it to churches.

As Defendants and their predecessors told a prior Fort Worth court, parties that have "abandoned the communion of The Episcopal Church . . . cease[] to be qualified to serve [as officers] **under the Constitution and Canons of the Diocese *and* of The Episcopal Church**

[260] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 28.
[261] *Progressive Union*, 264 S.W.2d at 768 (citing 7 C.J.S. Associations § 27).
[262] A4274, Dep. of Def. Diocese at 46:21-22.
[263] Defs.' Second Mot. for Partial Summ. J. at 4 n.6 (quoting *District Grand Lodge v. Jones*, 160 S.W.2d 915, 922 (Tex. 1942), for guidance on the law governing "a voluntary association"). Indeed, even the more specific term Defendants' wish to use, "benevolent societies," would seem to apply. Black's Law Dictionary 141 (9th ed. 2009) defines a benevolent association as: "An unincorporated, nonprofit organization that has a philanthropic or charitable purpose." If churches do not get their own category, it is hard to see how this would not fit the bill.
[264] *See, e.g.*, *Simpson v. Charity Benevolent Ass'n*, 160 S.W.2d 109, 112 (Tex. Civ. App.—Fort Worth 1942, writ ref'd w.o.m.) ("We find no proof in the record that District Grand Lodge No. 25 was ever incorporated, and any attempt to hold the property under the provisions of Articles 1402 and 1403 R.C.S. do not apply for that reason.").
[265] Defs.' Second Mot. for Partial Summ. J. at unnumbered first page.
[266] *Minor v. St. John's Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W.893, 897 (Tex. Civ. App.—Galveston 1910, writ ref'd); *see The Greenbook: Texas Rules of Form* appx. E (Tex. L. Rev. Ass'n ed., 12th ed. 2010) ("Writ refused" decisions indicated that the "[j]udgment of the court of civil appeals is correct. Such cases have equal precedential value with the Texas Supreme Court's own opinions.").
[267] *Minor*, 130 S.W. at 897.

and canon law."[268] And as Defendant Iker averred to that court, "**under Canon law**, no person may be a member of a parish who is not a member of The Episcopal Church."[269] Thus, as in *Minor*, a local majority within an Episcopal Diocese, "no matter how large," cannot take the entity from "the original parent body"—and in such cases, "the life of the subordinate lodge" continues, having "never ceased to exist," with the loyal minority as the "true and lawful successors, under the laws of the order . . . ."[270]

2. Subordinate is as subordinate does

Despite (1) the Texas Supreme Court's finding that Episcopal Dioceses and Congregations are "subordinate Episcopal affiliate[s],"[271] *and* despite (2) the Diocese's and Corporation's repeated representations to the Federal Government that they are "subordinate unit[s] of [the] Protestant Episcopal Church in the United States of America,"[272] *and* despite (3) the recognition for over a century before Defendants joined that the Church is not a "fugitive coalition, but a perpetual union"[273] and that there is no express or "impl[ied] right of any Diocese to *secede* from the union established by the Constitution,"[274] *and* despite (4) Defendants' own sworn representations and court filings in another case that the national "association's" rules disqualify from local service or membership those who are "not a member of The Episcopal

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[268] 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) (emphasis added); *see also* A1019, Pls.' Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* Pls.' Mot. for Partial Summ. J. at 60 n.209 & Section VIII.F.3.

[269] 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) (emphasis added).

[270] *Minor*, 130 S.W. at 896-97.

[271] *Masterson*, 422 S.W.3d at 600.

[272] 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 88:20-89:21; A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

[273] A4528, Murray Hoffman, Treatise on the Law of the Protestant Episcopal Church 110 (1850).

[274] A4531, Francis Vinton, A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States 143 (1870).

Church,"[275] Defendants now argue that Episcopal Dioceses and Congregations are really free agents.

Of course, the Texas Supreme Court held that "what happens to the relationship between a local congregation that is part of a hierarchical religious organization and the higher organization when members of the local congregation vote to disassociate is an ecclesiastical matter," even if those "ecclesiastical decisions effectively determine the property issue."[276] Defendants ignore this constitutional mandate, but still lose under associations law.

Defendants spend three pages protesting that IRS regulations do not govern this property dispute.[277] But Plaintiffs never said they did. The relevance of Defendants' repeated representations to the Federal Government, at least as far as Texas associations law is concerned, is that ***even Defendants understood themselves to be subordinate to the Church***.[278] That understanding is significant because it directly contradicts their current, unsupported claims that The Episcopal Church has "no authority" over the Episcopal Diocese[279] and that the Corporation "has never had any affiliation or relationship to TEC."[280] Before this dispute erupted, even Defendants repeatedly admitted they were members of a subordinate entity of the larger association, the Church.

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[275] 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); *see also* 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); A1019, Pls.' Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd).

[275] 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) (emphasis added).

[276] *Masterson*, 422 S.W.3d at 607.

[277] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 30-32.

[278] Defendants are incorrect that their representations to the IRS that they were subordinate to the Church were limited to the Corporation. *Id.* at 31. In fact, the Diocese also accepted tax benefits as a "subordinate organization on whose behalf [the] Protestant Episcopal Church in the United States of America has applied for recognition of exemption." A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003) ("respon[ding] to [the Diocese's] request . . . regarding your organization's tax-exempt status").

[279] A898, Responses to Attempted Inhibition of the Bishop (Nov. 24, 2008).

[280] Defs.' Second Mot. for Partial Summ. J. at 51.

Desperate to manufacture an issue where none exists, Defendants scrambled to introduce two additional documents on Reply.[281] The first states that "The Episcopal Church is comprised of 117 autonomous dioceses" before explaining, in the next sentences, that the Church's "governing body is the General Convention" and that dioceses are "subordinate units" within the Church.[282] If Defendants try to make hay out of the word "autonomous," this Court must read the one-page letter as a harmonious whole, in a way that renders no part meaningless.[283]

The letter finds no inconsistency in dioceses that function autonomously within the Church, under the governance of, and subordinate to, the authority of the General Convention. Texas law finds no inconsistency either; associations cases have similarly noted that a local entity can be "a subordinate unit of the Grand Aerie" yet "recognize the autonomy of the Local Aerie" both as a legal entity and in its "authority to conduct the business of the Local Aerie, not in conflict with the Laws of the Order."[284] Nor did Defendants find inconsistency in these concepts, testifying that their representations of subordinacy were "truthful,"[285] yet noting that the national Church "trust[s] . . . [them] to run the day-to-day affairs of the diocese," "in compliance with [their] oath," without the Church having to "micromanage" them.[286]

Likewise, in the second document, an ecclesiastical court refers in passing to a diocese as a "wholly autonomous entity which is not a party to these proceedings," in declining to attribute

[281] Stipulation at 1 (Jan. 13, 2015). Plaintiffs reserve their right to supplement and amend their briefing and evidence if and when Defendants introduce new evidence on reply. And Plaintiffs do not waive their right to object to any evidence Defendants submit on reply.
[282] Letter from Ellen F. Cooke, Treasurer (July 15, 1987).
[283] *Cf. Naik v. Naik*, 438 S.W.3d 166, 174 (Tex. App.—Dallas 2014, no pet. h.) ("We must consider the entire writing in an effort to harmonize and give effect to the provisions of the contract so that none will be rendered meaningless.").
[284] *See Grand Aerie Fraternal Order of Eagles v. Haygood*, 402 S.W.3d 766, 779-80 (Tex. App.—Eastland 2013, no pet.).
[285] 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).
[286] A3930, Dep. of Def. Diocese at 79:17–20; 81:4–7, 16–18.

to a party, the Church, the non-party diocese's failure to produce discovery materials.[287] But as the court found in *Aerie*, there is no inconsistency in recognizing a local chapter and its parent association as "separate and autonomous legal entities," so as not to "impute" the conduct of one onto the other, while still recognizing the chapter's "subordinate" status and obligation to act "not in conflict with the Laws of the Order."[288] Moreover, this document must be read in light of the rest of the undisputed evidence, which harmonizes the use of these terms within the Church.

By contrast, a reading of "autonomous" that nullifies the subordination of a diocese to the Church would not only make the first document internally inconsistent, but it would also contradict (1) the Texas Supreme Court's ruling that dioceses are "subordinate Episcopal affiliate[s],"[289] (2) Defendants' prior admissions of their subordination,[290] and (3) the undisputed evidence demonstrating subordination.[291] These new documents raise no fact issue on the subordination of Episcopal Dioceses to The Episcopal Church, must less a genuine one.

3. Defendants lose under their own reading of associations law

If the Court set aside the issues above—the relevant associations law on breakaway factions, and the Diocese's status as a subordinate entity—Defendants would *still* lose, under their own presentation of associations law.

Defendants concede they are bound, under associations law, by the rules of the association: "The only rules that govern here are the ones the parties adopted that are enforceable."[292] Indeed, under Texas associations law, "the constitution and by-laws of an

[287] Mem. & Dec. on Mot. for Modification of Sentence at 14-15, *Protestant Episcopal Church in the United States of America v. Bennison* (Ct. for Trial of a Bishop 2009).
[288] *Haygood*, 402 S.W.3d at 779-80.
[289] *Masterson*, 422 S.W.3d at 600; *accord Episcopal Diocese*, 422 S.W.3d at 647-48.
[290] A2631-32, Letter from Glen 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); A3955, Dep. of Def. Corp. at 88:25-89:21.
[291] *See* Pls.' Mot. for Partial Summ. J. at 5-12.
[292] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 30.

organization . . . constitute a contract between the organization and its members."[293] This includes property rules, "because they became a 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."[294]

a. Defendants lose under the association's trust clause

Indeed, in *District Grand Lodge v. Jones*, the Texas Supreme Court enforced as contractual a trust clause in the larger association's rules almost identical to the one here:

General Association's Property Rule in *District Grand Lodge v. Jones*	General Association's Property Rule in *Episcopal Church v. Salazar*
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.[295]	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.[296]

Defendants try to distinguish that case by claiming a statute mandated the result, but that is incorrect: the court specifically held that the statute was inapplicable and based the holding on

[293] *Int'l Printing Pressmen and Assistants' Union of N. Am. v. Smith*, 198 S.W.2d 729, 736 (Tex. 1947); *accord District Grand Lodge v. Jones*, 160 S.W.2d at 920.
[294] *District Grand Lodge v. Jones*, 160 S.W.2d at 920.
[295] *Id.* at 918.
[296] 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.

the parties' consent to the association's rules under common law.[297]

Defendants try to deny their contract by saying the Diocese "qualified" its accession to exclude the trust clause. But the actual document, "The Resolution of Accession to the Constitution and Canons of the Episcopal Church,"[298] says the Diocese "fully" acceded.[299] And when pressed, Defendants could locate no actual "qualification" affecting the trust clause upon accession.[300]

And Defendants try to claim that after securing the benefits of association, they can take back their assent to the trust clause, because the trust is presumed revocable under Tex. Prop. Code § 112.051. But the trust clause "became a part of the contract entered into by the defendants when they became members of the order,"[301] and under the controlling trust law in effect then and now, § 112.051 "is inapplicable to a trust that is created by contract and based on a valuable consideration."[302]

b. Defendants lose under the association's other property rules

Moreover, Defendants concede that other property rules in the founding documents, such as the reversionary clause against parishes, are "not a revocable trust that can be revoked under state law."[303] Thus, Defendants are contractually bound by their commitments in the founding documents to use consecrated property "only for the services, rites and ceremonies, or other purposes, either authorized or approved by this Church, and for no other use,"[304] and to hold real

[297] *Dist. Grand Lodge v. Jones,* 160 S.W.2d at 921 ("Obviously, we are not deciding that this article [1403] has the effect to pass title of the properties of a defunct unincorporated local benefit lodge to its unincorporated grand lodge. That question is not before us. We refer to it merely as a legislative statement of . . . public policy . . . .").
[298] JA0065, Letter to Episcopal Church (Nov. 24, 1982).
[299] JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.
[300] A4291, Dep. of Def. Diocese at 117:2-119:14.
[301] *Dist. Grand Lodge v. Jones*, 160 S.W.2d at 920.
[302] *Shellberg*, 459 S.W.2d at 470.
[303] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 11 (noting "right of reverter [against parishes in diocesan documents] is not a revocable trust that can be revoked under state law").
[304] JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

property "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.'"[305]

Defendants are violating both of those contractual provisions. Defendants concede they sent these terms to the Church in their application for admission, and they concede the Church relied on them in granting the Diocese's request to form as an Episcopal Diocese within the Church.[306] Defendants are not using the consecrated property for purposes authorized or approved by the Church, and they are not holding their real property subject to the control of the Church in the Diocese.

c. Defendants lose under the association's disciplinary rules

The Diocese's obligations did not end with the property rules. The Diocese and Congregations committed, on formation and admission, to "recognize[] the authority of the General Convention"[307] and to adopt only canons that were not "inconsistent with . . . the Constitution and Canons of the General Convention . . . ."[308] Every bishop, priest, and deacon must swear to "conform to the Doctrine, Discipline, and Worship of the Episcopal Church,"[309] and "[a]ny person accepting any office in this Church" must "well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised."[310]

Defendants now claim that they have an "implied" right to take the Episcopal Diocese out of The Episcopal Church, arguing that "[u]nder TEC's rules, nothing prevents a diocese from

[305] JA00113, *id.*, art. 13 (1982).

[306] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 35; Defs.' Second Mot. for Partial Summ. J. at 53.

[307] JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

[308] JA00118, *id.*, canon 18 (1982).

[309] JA00452, Constitution and Canons, The Episcopal Church, art. VIII (2006).

[310] JA00500-01, Constitution and Canons, The Episcopal Church, tit. I, canon 17, § 8 (2006) ("Fiduciary responsibility") (emphasis added).

disaffiliating and retaining its property."[311] That is false, based on the property provisions discussed above. It is also false based on the association's rules about its own structure and governance. The Church's Canons contain a departure option only for missionary (extraterritorial) dioceses, requiring the prior consent of the General Convention or Presiding Bishop, and no departure option for dioceses within the United States.[312]

Defendants wish to read this as a tacit approval of their actions, but the opposite is true. For more than a century before Defendants chose to join the Church, it was recognized that the Church is not "a fugitive coalition, but a perpetual union,"[313] that dioceses "surrender" "[s]uch an exercise of independency as would permit them to withdraw from the union at their own pleasure,"[314] and that there is no "impl[ied] right of any Diocese to *secede* from the union established by the Constitution[.]"[315]

Under Texas associations law, members of voluntary associations "subject[] [themselves] to [the] organization's power to administer, as well as its power to make, its rules."[316] And "[t]he right of a voluntary club or association to interpret its own organic agreements, such as its charter, its bylaws and regulations, after they are made and adopted, is not inferior to its right to make and adopt them . . . ."[317] Thus, courts "will not interfere . . . so long as the governing bodies of those associations do not substitute legislation for interpretation and do not overstep the bounds of reason or violate public policy . . . ."[318]

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[311] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 30.

[312] A4108-09, Aff. of the Rt. Rev. John Clark Buchanan ¶ 7 (Oct. 22, 2014).

[313] A4528, Murray Hoffman, Treatise on the Law of the Protestant Episcopal Church 110 (1850).

[314] A4533, Francis L. Hawks, Contributions to the Ecclesiastical History of the United States 11 (1841).

[315] A4531, Francis Vinton, A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States 143 (1870).

[316] *Stevens v. Anatolian Shepherd Dog Club of Am., Inc.*, 231 S.W.3d 71, 74 (Tex. App.—Houston [14th Dist.] 2007, pet. denied); *accord Dickey v. Club Corp. of Am.*, 12 S.W.3d 172, 176 (Tex. App.—Dallas 2000, pet. denied).

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

[318] *Dickey*, 12 S.W.3d at 176.

With the exception of during the Civil War, not a single Episcopal Diocese purported to secede in the 225 years between the Church's founding in 1789 and 2006,[319] when the Church elected its first female Presiding Bishop. In 2006, two of the Church's 109 dioceses purported to defect, making the same arguments as Defendants.[320] In 2008, before Defendants' purported withdrawal, the Church's House of Bishops, which is authorized by the General Convention to make authoritative and binding interpretations of the Church's Constitution and Canons,[321] affirmed that diocesan leaders have no constitutional or canonical authority to remove their dioceses from The Episcopal Church.[322] And in 2009, after Defendants' conduct, the entire General Convention, the Church's highest authority composed of delegates from over 100 dioceses across the world, recognized by vote and formal resolution Plaintiffs, the loyal minority remaining in the Diocese, as the continuing Diocese, in light of Defendants' extra-constitutional and extra-canonical conduct.[323]

Thus, the Church has merely applied the well-established *expressio unius* canon of construction—that, the mention of one thing (departure of Missionary Dioceses) is "equivalent to an express exclusion of all others" (departure of regular Dioceses).[324] Defendants have drawn the opposing inference and concluded that the lack of procedures for departure of regular Dioceses means that regular Dioceses can depart whenever and however they want and without any action by the Church.[325]

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[319] A4108-09, Buchanan Aff. ¶ 7 (Oct. 22. 2014). And that limited exception bears no relation to the present case, as during the Civil War the Church's southern dioceses purported temporarily to leave the Church and join a Confederate Church as a result of the political situation existing at the time. *Id.*
[320] *Id.* ¶ 8.
[321] *Id.* ¶ 3.
[322] *Id.* ¶ 8.
[323] *Id.* ¶¶ 5-8; A5, 8-10, Ohl Aff. ¶¶ 4(e), 9-13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1; *Masterson*, 422 S.W.3d at 600 ("The General Convention consists of representatives from each diocese and most of TEC's bishops. It adopts and amends TEC's Constitution and Canons, which establish the structure of the denomination and rules for how it operates.").
[324] *State v. Mauritz-Wells Co.*, 175 S.W.2d 238, 241 (Tex. 1943).
[325] *See* Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 30.

Quite obviously, the Church's construction is the better one. It makes little sense to argue that the Church's rules provide specific procedures for departure of Missionary Dioceses, including requiring the Church's approval, but permit regular Dioceses to secede at their pleasure, contrary to a centuries-long understanding of the relationship between the Church and the dioceses. Moreover, Defendants' interpretation would produce the absurd result of requiring the Church to explicitly state in its rules everything that a diocese cannot do. Not only would that be an unreasonable burden, but it is contrary to the decision of the Fort Worth Court of Civil Appeals in *Simpson v. Charity Benevolent Association*, 160 S.W.2d 109, 112 (Tex. Civ. App.—Fort Worth 1942, writ ref'd w.o.m.).

In that case, the court explained that in a three-tiered hierarchical lodge-system, where the Grand Lodge (highest tier) "blew the breath of life into the District Grand Lodge" (middle tier), the District Grand Lodge could not take certain actions where "[t]he constitution of the Grand Lodge does not delegate any such authority to a District Grand Lodge . . . ."[326] Thus, as in *Simpson*, Defendants cannot claim rights that have not been delegated to them by the Church's constitution.[327]

But even assuming that Defendants' interpretation of the Church's rules is reasonable—or even *better* than the Church's interpretation—the Church's interpretation would still be permissible and, therefore, binding. Under neutral principles of Texas law, where, as here, an entity is "charged with administering" a text, that entity's interpretation need not be "the only—or the best—interpretation in order to warrant our deference."[328] Moreover, because the Church

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

[327] Although a lodge case, the court specifically stated that it was not deciding the case under the statute that Defendants argue distinguishes the lodge cases. *Id*. ("[T]he provisions of Articles 1402 and 1403 R.C.S. do not apply . . . ."). Moreover, *Simpson* is a particularly apt comparison because in that case, as here, the District Grand Lodge (middle tier) came into existence after both the Grand Lodge (highest tier) and the local lodges (lowest tier) and only with the permission of the Grand Lodge. Thus, as in *Simpson*, the Church "blew the breath of life" into the Diocese. *Id.*

[328] *R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011).

has long held and previously applied its interpretation, it is not "substitut[ing] legislation for interpretation . . . ."[329] Even Defendants recognized the Church's consistent interpretation of its rules before this dispute. As they told a prior Fort Worth court, "under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law," parties that have "abandoned the communion of The Episcopal Church . . . cease[] to be qualified to serve [as officers]."[330] And as Defendant Iker averred, "under Canon law, no person may be a member of a parish who is not a member of The Episcopal Church . . . ."[331]

The association has thus interpreted its own rules for over a century before Defendants joined and a year before Defendants' conduct, in every instance finding no implied right of secession. The rules provide only one way for certain dioceses to sever ties with the Church: extra-territorial dioceses may do so with prior permission from the Church. It does not "overstep the bounds of reason or violate public policy" for the association to interpret its rules consistently with the understanding that was in place a century before Defendants joined.[332] By contrast, Defendants invite this Court to read an "implied" right into the Constitution and Canons that has been consistently discredited for over a century, and which would incidentally destroy and render meaningless Defendants' submission to "the authority of the General Convention"[333] and, in the words of Texas associations law, would "subvert [the Church's] contractual right to exercise such power of interpretation and administration."[334]

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[329] *Dickey*, 12 S.W.3d at 176.

[330] 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) (emphasis added); *see also* A1019, Pls.' Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* Pls.' Mot. for Partial Summ. J. at 60 n.209 & Section VIII.F.3.

[331] 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).

[332] *Dickey*, 12 S.W.3d at 176.

[333] JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

[334] *Juarez*, 172 S.W.3d at 280 (quoting *Brotherhood of R.R. Trainmen v. Price*, 108 S.W.2d 239, 241 (Tex. Civ. App.—Galveston 1937, writ dism'd)).

Thus, the association's trust rule, its non-trust property rules, and its disciplinary rules all separately bind the Episcopal Diocese to The Episcopal Church and preclude Defendants' conduct. To be clear, the First Amendment prohibits courts from interfering with a Church's interpretation and enforcement of its own rules.[335] But wholly apart from that First Amendment prohibition, Texas associations law also rejects Defendants' positions in this case.

D. Corporations law

In their Response, Defendants confuse two entirely separate concepts: (1) removing the Corporation as trustee of Plaintiffs' trusts, and (2) finding that Defendants are not directors of the Corporation under its own bylaws.[336] This Court can do either. And either resolves this case for Plaintiffs.

1. Because the Corporation holds all property in trust, control of the Corporation is ultimately irrelevant

If the Court applies the Simple Solution—"the appropriate method for Texas courts"—then the Corporation becomes irrelevant. ***Whoever*** the directors of the Corporation are, the Corporation itself is obligated to hold the property for the use and benefit of Plaintiffs.

And so if Defendants *were* Directors of the Corporation, as they purport, they would be in breach of the Corporation's trust obligations to Plaintiffs. And then, under neutral principles of law, this Court would remove the Corporation as trustee of those trusts.[337]

Removal would be justified, for example, "to prevent the trustee from engaging in further

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[335] *Masterson*, 422 S.W.3d at 608 ("[C]ourts are precluded from exercising jurisdiction over matters the First Amendment commits exclusively to the church, even where a hierarchical religious organization fails to establish tribunals or specify how its own rules and regulations will be enforced.").

[336] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 32 ("Corporate law, not trust law, governs removal of corporate officers.").

[337] 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.").

behavior that could potentially harm the trust,"[338] where the trustee has used trust property for its own interests,[339] or where hostility exists between the trustee and the beneficiary such that it impedes the trustee's ability to effectively manage the trust property.[340] No one on earth would believe that a Corporation controlled by Defendants could manage Plaintiffs' trusts, after Defendants have already breached that trust and taken trust property.

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

2. Defendants are not directors of the Corporation under its own bylaws

Under the Corporation's 2006 bylaws, the Corporation is managed by a board of directors. (These directors are called "Trustees" of the Corporation, but this should not be confused with the separate issue of removing the Corporation itself, an entity, from acting as trustee for a third party's trust, as described in Section IV.D.1 above).

Plaintiffs have shown that under the 2006 bylaws—the ones that Defendants claim control—Defendants are not the directors of the Corporation. Without repeating that analysis in detail, those bylaws state that each director 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."[341]

Under the bylaws, disqualification thus vacates the office.[342] Defendants concede elected

[338] *Ditta v. Conte*, 298 S.W.3d 187, 192 (Tex. 2009).
[339] *See Conte v. Ditta*, 312 S.W.3d 951, 959 (Tex. App.—Houston [1st Dist.] 2010, no pet.).
[340] *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).
[341] JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006) (emphasis added).
[342] *Id*.

directors must be members in good standing of a parish in the Diocese.[343] As Defendants told a previous court, "no person may be a member of a parish who is not a member of The Episcopal Church . . . ."[344] When Defendants lost that status after November 15, 2008,[345] or at the latest on February 7, 2009,[346] they ceased to be qualified under the Corporate bylaws and vacated their seats. This is true regardless of whether Diocesan membership is determined by "the appropriate method for Texas courts" (see Section III) or by Texas associations law (see Section IV.C).[347]

Plaintiffs are the only parties qualified to serve as Corporate directors under the bylaws Defendants present as controlling, and this Court has authority to recognize their appointments or to appoint through this action those qualified directors.[348]

Defendants offer no rebuttal to this. They argue weakly that the Corporate documents "require conformity to the Diocese that existed in 2006, not Plaintiffs' substitute created in 2009 . . . ."[349] But as Defendants testified, the Diocese that existed in 2006 was The Episcopal Church's Episcopal Diocese.[350] Whether under *Masterson* or Texas associations law, that entity "never ceased to exist," with the loyal minority as its "true and lawful successors, under the laws

[343] Pls.' Resp. to Defs' Mot. at 58-62.
[344] 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).
[345] A4352, Dep. of Def. Corp. at 29:20-30:3 ("Q. After November 2008, none of the trustees of the Corporation were affiliated with congregations of a diocese of The Episcopal Church? A. That's correct.").
[346] *See* A934, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009). Because the Corporate Board was vacant by February 7, 2009 at the latest, any later purported revisions to the Corporation's governing documents by Defendants were *ultra vires*, unauthorized, void, voidable, or otherwise without any force or effect. *See, e.g.*, A35-39, Amended and Restated Articles of Incorporation of Corporation of the Episcopal Diocese of Fort Worth (Apr. 14, 2009).
[347] A more detailed analysis, incorporated by reference as if fully set forth herein, can be found at Pls.' Resp. to Defs.' Second Mot. for Partial Summ. J. at 58-62. Defendants' 2006 Corporate Bishop clause changes nothing because it requires the "vote of a majority of members" at "a special meeting of the Board, subject to the notice provisions set forth in these Bylaws, for the purpose of making the determination." Defendant Corporation testified under oath that the Defendant directors never followed this procedure and, importantly, never did so prior to their disqualification. *See* JA0090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (2006); A4443, Dep. of Def. Bates at 163:22-164:15 ("Q. [] Has the board of the Corporation of the Episcopal Diocese of Fort Worth, since November 2008, ever taken any action to declare the identity of the bishop? A. No. Q. Okay. And certainly it didn't do so before the initiation of this lawsuit? A. No.").
[348] *See* Pls.' Mot. for Partial Summ. J. at 55-62, incorporated as if fully set forth herein.
[349] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 34.
[350] A4359, Dep. of Def. Corp. at 57:21-58:7; *see also* Defs.' Second Mot. for Partial Summ. J. at 51-52.

of the order . . . ."[351]

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Under a plain application of the Corporation's bylaws—the ones Defendants urge—Defendants are not the Corporation's directors. And if they were, this Court would and should remove the Corporation as trustee of Plaintiffs' trusts.

E. Adverse possession

Five years into the litigation, Defendants suddenly decided they had been squatting on this property and now had squatters' rights.

This fails for many reasons. Among them: not long after "the Diocese's revocation of the Dennis Canon" alleged by Defendants,[352] the Diocesan Corporation brought claims to enforce the Dennis Canon in a Fort Worth court, averring to its content and force by affidavit of the Diocesan Canon.[353] This is "fatal to . . . title by limitation."[354]

1. Adverse possession fails under "the appropriate method for Texas courts"

Defendants base their adverse possession claim on the following: "TEC had actual and constructive notice that the Corporation held property in trust only for local churches."[355] Even if this were true, only The Episcopal Church and its Episcopal Diocese can resolve which party in this case represents the local churches. Under the mandate of this case, that ends Defendants' adverse possession claim.

2. Adverse possession fails under the statutes

In Texas, the adverse possession statutes place periods of limitations within which "[a]

[351] *Minor*, 130 S.W. at 896-97.
[352] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 35.
[353] A1039, Hough Aff., *Corp. of the Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. July 29, 1994).
[354] *Allen v. Sharp*, 233 S.W.2d 485, 488 (Tex. Civ. App.—Fort Worth 1950, writ ref'd).
[355] Corrected Resp. by Defs. to Pls.' Mot. for Partial Summ. J. at 35.

person must bring suit to recover real property held ***by another***."[356] Yet, at least until 2008, the Congregations "were part of The Episcopal Church."[357] As Defendant Iker testified by affidavit, "no person may be a member of a parish who is not a member of The Episcopal Church . . . ."[358] The running of a limitations period against The Episcopal Church could not have begun until an entity that was not "part and parcel" of the Episcopal Church possessed the property.[359] This did not occur until at least November 15, 2008. And even if limitations began to run on that date, Plaintiffs filed suit on April 15, 2009, well within even the shortest limitations period pleaded by Defendants.

3. Adverse possession fails under the doctrine of repudiation

"[S]tatutes of limitation only begin to run from the time that the right of action accrues."[360] "[C]auses of action accrue and statutes of limitations begin to run, when facts come into existence that authorize a claimant to seek a judicial remedy."[361] 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."[362]

No cause of action accrued here until Defendants purported to break away from the Church. Defendants' argument to the contrary is based on analogies to the ouster or underpayment of a cotenant, which are entirely inapposite and irrelevant. In both of those situations, unlike here, the ousted cotenant had an immediate right to possession of the property

[356] 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*") (emphasis added); *id.* § 16.026 (same for 10-year limitations period); § 16.028 (same for 25-year limitations period).
[357] *See* A4277, Dep. of Def. Diocese at 60:12-16.
[358] 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).
[359] *Minor*, 130 S.W. at 896.
[360] *Warnecke v. Broad*, 161 S.W.2d 453, 454 (Tex. 1942); *see also Archer v. Medical 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)).
[361] *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 202 (Tex. 2011).
[362] *Niendorff v. Wood*, 149 S.W.2d 161, 164 (Tex. Civ. App.—Amarillo 1941, writ ref'd).

that the possessor violated, exposing himself to liability. Here, by contrast, the trust provision gave the Church the ultimate interest in the property, but it also allowed the Defendants in the Congregations, as parts of The Episcopal Church, to use and possess the property until they purported to break away from the Church in 2008.[363]

"[L]imitations do[] not accrue" against a party that, while having an ultimate interest in the property, "does not have a possessory interest that would allow him to institute a trespass to try title action seeking the ouster of the trespasser."[364] A possessor's mere "claim of ownership" over the property does not change this conclusion or trigger a cause of action.[365]

Plaintiffs fully explained this issue in their Motion, and Defendants' entirely fail to distinguish the law there cited in their Response.[366] Therefore, no cause of action accrued, and no statute of limitations period began to run against the Church until the Congregations purported to break away from the Church in 2008.

4. Adverse possession fails because of Defendants' and their predecessors' acknowledgment of the Dennis Canon

Even where a person begins to possess some property adversely, "a single admission of title in another during the limitation period is fatal to a claimant's title by limitation."[367] Here, in 1994, Diocesan, Corporation, and Congregational leaders stated in court filings that the Church's "national canons" created an "express trust" over property within the Diocese, enforceable by the civil court "even if [legal] title had been in [a breakaway faction]."[368] They relied expressly on

[363] 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 (1979) (granting the Congregations full "power and authority . . . over such property so long as the particular . . . Congregation remain[ed] a part of, and subject to, th[e] Church and its Constitution and Canons").
[364] *State v. Beeson*, 232 S.W.3d 265, 277 (Tex. App.—Eastland 2007, pet dism'd).
[365] *See Perkins v. Perkins*, 166 S.W. 917, 917 (Tex. Civ. App.—Galveston 1914, writ ref'd).
[366] Defendants' "repudiation" argument also fails because the canon purporting to repudiate the trust in favor of The Episcopal Church was void on its face. Further, Defendants' have no evidence that the canon was received by The Episcopal Church by any specific date, creating, at a minimum, a fact issue on this point.
[367] *Allen*, 233 S.W.2d at 488.
[368] 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).

the Dennis Canon, with a Diocesan priest averring to the Dennis Canon's text, attaching it as an Exhibit, and testifying by affidavit that "[t]his Canon was enacted in 1979 and in existence when the real property in question was purchased in 1985 and which is the subject matter of this lawsuit."[369] As explained in Plaintiffs' Motion, these admissions, along with many similar others, are "fatal to [Defendants'] title by limitation."[370] The Diocese and Congregations "fully" acceded to Church rules, including the Dennis Canon, on formation, and could identify no actual "qualification" excluding that Canon.[371] And the 1994 court proceedings and numerous other acknowledgements interrupted any applicable limitations period based on a purported 1989 revocation.[372] Any adverse possession period that began to run was interrupted long before Defendants could have acquired title.

5. Adverse possession fails under the doctrine of anticipatory repudiation

Further, as explained above, Defendants' trust obligations here are contractual. Thus any pre-emptive disclaimer of these obligations is governed by the doctrine of anticipatory repudiation. Under that doctrine, "limitations may begin to run upon a promisor's anticipatory repudiation, but only if the repudiation is adopted by the nonrepudiating party."[373] Here, Plaintiffs never adopted any repudiation by Defendants. Thus, even if Defendants' pre-2008 claims of ownership of the property were "repudiations" of their trust interests—and they were not—any such "repudiation" did not trigger the running of the limitations period and this case was timely filed.

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[369] A1039, Hough Aff., *Corp. of the Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. July 29, 1994).
[370] *Allen*, 233 S.W.2d at 488.
[371] *See* Pls.' Resp. at 52-53, incorporated by reference as if fully set forth herein.
[372] *See id*. at 102 n.499, incorporated by reference as if fully set forth herein.
[373] *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.").

F. Defendants' other Response arguments fail

1. Estoppel

Defendants' many reversals are barred under doctrines of estoppel. And Defendants' claim that these arguments are unavailable to Plaintiffs is wrong.[374] It is well established that estoppel may be urged as a counter-defense by Plaintiffs, where it applies.[375] In the *Masterson* dissenting opinion, Texas Supreme Court Justice Debra Lehrmann (joined by then-Chief Justice Wallace Jefferson) acknowledged that plaintiffs could assert their rights to the property under the doctrine of quasi-estoppel.[376] Justice Lehrmann pointed out that those 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."[377]

The doctrine of quasi-estoppel may be applied as a counter-defense, and is not limited to statements made in prior lawsuits.[378] Rather, as the Texas Supreme Court recently held, "[q]uasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken."[379] Thus, as Justice Lehrmann rightly concluded, Defendants are estopped from contradicting their promises to hold the property in trust for the Church.

Plaintiffs re-allege their estoppel arguments made in the Motion. As was explained in Plaintiffs' Motion, the doctrines of judicial, quasi-, and equitable estoppel apply here.

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[374] *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 . . . .).
[375] *Id.*
[376] *See Masterson*, 422 S.W.3d at 622 (Lehrmann, J., dissenting).
[377] *Id.* at 623 (Lehrmann, J., dissenting).
[378] *See, e.g., Baron v. Mullinax, Wells, Mauzy & Baab, Inc.*, 623 S.W.2d 457, 462 (Tex. Civ. 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).
[379] *Lopez v. Munoz, Hockema & Reed*, 22 S.W.3d 857, 864 (Tex. 2000) (*citing Atkinson Gas Co. v. Albrecht*, 878 S.W.2d 236, 240 (Tex. App.—Corpus Christi 1994, writ denied)).

2. Standing

As fully explained in Plaintiffs' Motion, Defendants' standing claim is misguided and fails. Defendants' Response does not make a single contrary argument on this point, but merely points to its argument in Defendants' own Motion for Summary Judgment. To the extent any response to that "argument" is necessary, Plaintiffs' fully incorporate their Response to Defendants' Motion, which responds to this point.[380]

3. Severance

Despite asking to expedite the hearing of the merits of this case since remand, Defendants now claim that this Court cannot hear argument on the Trespass to Try Title or Attorneys' Fees claims.[381] But Plaintiffs are entitled to move for summary judgment on all claims made in their Petition in this case. These claims include both the Trespass to Try Title and Attorneys' Fees claims.[382] Defendants have not come forward with a reason why Plaintiffs are not entitled to summary judgment on these claims. This Court should, therefore, grant summary judgment on them. Further, even if Defendants' severance argument were correct, once Plaintiffs are successful on their remaining claims, they will be entitled to judgment on their Trespass to Try Title and Attorneys' Fees claims. There is no reason to waste judicial resources and delay judgment on these issues until a later date.

4. All Saints

Defendants testified in this case that they have no claim to the Corporation of All Saints Episcopal School (Fort Worth) and all property held by it,[383] the Corporation of All Saints

[380] *See* Pls.' Resp. to Defs.' Second Mot. for Partial Summ. J. at 85-86.
[381] The parties did agree to postpone discovery on the amount of fees.
[382] *See* Pls.' the Episcopal Parties' July 15, 2014 Amended Petition.
[383] A3944, Dep. of Def. Diocese at 218:10-24 ("[W]e have no claim on – on any of the school property . . . I don't think that has ever been a part of [the lawsuit]."); *see also* A4231, Aff. of Anne Michels ¶ 4 (Dec. 1, 2014) ("Michels Aff.") (attaching Articles of Incorporation and Restated Certificate of Formation of Corporation of All Saints Episcopal School); A4239-44, Articles of Incorporation of All Saints Episcopal School of Fort Worth, Feb. 20, 1996; A4248-53, Restated Certificate of Formation of All Saints Episcopal School of Fort Worth, May 9, 2011.

Episcopal Church (Fort Worth) and all property held by it,[384] and donations collected by All Saints Episcopal Church (Fort Worth) and held in its bank accounts.[385] And Defendants disclaimed any objection to All Saints' status as a congregation of The Episcopal Church.[386]

In their Response, Defendants purport that despite their disclaimer of interest in All Saints under oath, they now claim the Diocesan Corporation holds legal title to certain properties in trust for the use and benefit of All Saints Episcopal Church (Fort Worth). But such a claim changes nothing: in addition to *Masterson* and associations law, under which Plaintiffs prevail, Defendants disclaimed any objection to All Saints' status as a continuing congregation in The Episcopal Church.[387] For this additional reason, Plaintiffs ask that this Court to enter an order clarifying that beneficial title to the property is held by Plaintiff All Saints Episcopal Church (Fort Worth), an entity with no relation to Defendants, and whose trust Defendants cannot administer. In light of the disagreements between Defendants and Plaintiff All Saints Episcopal Church (Fort Worth), legal title should also be transferred to Plaintiff All Saints Episcopal Church (Fort Worth) to ensure that the property is held for the use and benefit of Plaintiff All Saints Episcopal Church (Fort Worth).[388]

V. THE ROADMAP TO RESOLVING THIS CASE IS CLEAR

Defendants' Response falls apart on simple inspection. Their "forewarning" in reality shows just how flimsy their claims are: on review, under any analysis, Defendants cannot take property they inherited access to as leaders and members of The Episcopal Church's Episcopal

[384] A3943, Dep. of Def. Diocese at 216:17-217:6; *see also* A4231, Michels Aff. ¶ 3 (attaching Articles of Incorporation of Corporation of All Saints Episcopal Church); A4234-37, Articles of Incorporation, All Saints Episcopal Church, Feb. 26, 1953.
[385] A3942, *id.* at 213:8-12.
[386] A3945, *id.* at 232:18-25.
[387] *Id*.
[388] 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.").

Diocese, under the rules and commitments of those roles.

- The Court should resolve this case under the Simple Solution—what *Masterson* called "the appropriate method for Texas courts"—on two undisputed facts.
- If the Court goes beyond "the appropriate method for Texas courts," Plaintiffs still prevail under any one of several neutral principles of Texas law.
- Plaintiffs prevail separately under express trust at the formation of the Diocese, because the Diocese and Congregations contracted to hold property in trust in exchange for the benefits of formation and association. Under controlling Fort Worth precedent cited by every major authority on Texas trust law, that commitment is binding and irrevocable. And Plaintiffs prevail on the numerous individual deeds stating express trusts for the Church and its constituent entities, each of which deeds is cited in Table E of Plaintiffs' Motion for Partial Summary Judgment and is in the summary judgment record in this case.
- Plaintiffs prevail separately under constructive trust because Defendants' numerous commitments, oaths, and representations gave rise to a relationship of trust and confidence with the Church that granted them access to a century-and-a-half of property never intended for those who abandon the Church.
- Plaintiffs prevail separately under associations law because dissident factions cannot take local bodies' identity and property and because Defendants have violated their contract to follow the rules and governance of the association.
- Plaintiffs prevail separately under corporations law because Defendants are not directors under the bylaws they present to the Court, and if they were, the Court would remove the Corporation itself as trustee of Plaintiffs' trusts.

VI. CONCLUSION AND PRAYER

In short, under any analysis, Defendants cannot take the Episcopal Diocese and property committed "for the use of The Episcopal Church in the Diocese" out of The Episcopal Church.[389]

The mission of the Episcopal Diocese of Fort Worth was clear on formation: "to launch the newest missionary effort within the Episcopal Church on the 1st of January 1983."[390] The Episcopal Church allowed that formation and authorized transfer of property now worth over a hundred million dollars that had been "acquired for the use of the Episcopal Church in the Diocese of Dallas,"[391] based on seven pages of signatures "unanimously" and "fully" acceding to the Church's rules[392] and based on commitments to hold property "for the use of the Church and the Diocese"[393] and for only those purposes "approved by this Church, and for no other use."[394]

Now, Defendants try to take the property they achieved access to through their offices within the Church—property they and their predecessors admitted to another Fort Worth court was never intended for those who "have abandoned communion with The Episcopal Church."[395] Such conduct would never be tolerated in any secular context. Under neutral principles, it cannot be tolerated here either.

Plaintiffs respectfully pray that this Court grant Plaintiffs' Motion for Partial Summary Judgment and issue the declarations, injunctions, and other relief requested therein; deny

[389] JA00720, *id.*; *see also* A3959-60, Dep. of Def. Corp. at 154:3–156:1.

[390] JA00351, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982.

[391] JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

[392] JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* Dep. of Def. Diocese at 117:25-121:22.

[393] JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

[394] JA00145, *id.*, canon 25 (1982).

[395] 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); *see also* A1028, *id.* ex. D (Aff. of Robert J. Rigdon).

Defendants' Second Motion for Partial Summary Judgment; and award Plaintiffs such other and further relief to which they are entitled.

Respectfully submitted,

By: /s/ *Sandra Liser* w/ permission
Sandra Liser
State Bar No. 17072250
Naman Howell Smith & Lee, PLLC
Fort Worth Club Building
306 West 7th Street, Suite 405
Fort Worth, Texas 76102-4911
Telephone: 817-509-2025
Facsimile: 817-509-2060
sliser@namanhowell.com

Mary E. Kostel
The Episcopal Church
c/o Goodwin|Procter LLP
901 New York Ave., N.W.
Washington, D.C. 20001
Telephone: 202-346-4184
Facsimile: 202-346-4444
mkostel@goodwinprocter.com

David Booth Beers
Goodwin|Procter LLP
901 New York Ave., N.W.
Washington, D.C. 20001
Telephone: 202-346-4224
Facsimile: 202-346-4444
dbeers@goodwinprocter.com

Attorneys for The Episcopal Church

By: /s/ *Frank Hill* w/ permission
Frank Hill
State Bar No. 09632000
HILL GILSTRAP, P.C.
1400 W. Abram Street
Arlington, Texas 76013-1705
Telephone: 817-261-2222
Facsimile: 817-861-4685
fhill@hillgilstrap.com

Attorney for the Local Episcopal Congregations

By: /s/ *Thomas S. Leatherbury*
William D. Sims, Jr.
State Bar No. 18429500
Thomas S. Leatherbury
State Bar No. 12095275
Daniel L. Tobey
State Bar No. 24048842
VINSON & ELKINS LLP
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201-2975
Telephone: 214-220-7792
Facsimile: 214-999-7792
bsims@velaw.com
tleatherbury@velaw.com
dtobey@velaw.com

Jonathan D.F. Nelson
State Bar No. 14900700
Jonathan D.F. Nelson, P.C.
1400 W. Abrams Street
Arlington, Texas 76013-1705
Telephone: 817-261-2222
Facsimile: 817-861-4685
jnelson@hillgilstrap.com

Kathleen Wells
State Bar No. 02317300
P.O. Box 101714
Fort Worth, Texas 76185-0174
Telephone: 817-332-2580
Facsimile: 817-332-4740
chancellor@episcopaldiocesefortworth.org

Attorneys for Plaintiffs the Local Episcopal Parties

CERTIFICATE OF SERVICE

I certify that on January 23, 2015, the foregoing document was filed and served electronically on all counsel.

J. Shelby Sharpe, Esq.
Sharpe Tillman & Melton
6100 Western Place, Suite 1000
Fort Worth, TX 76107

R. David Weaver, Esq.
The Weaver Law Firm
1521 N. Cooper Street, Suite 710
Arlington, TX 76011

Scott A. Brister, Esq.
Andrews Kurth L.L.P.
111 Congress Avenue, Suite 1700
Austin, TX 78701

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

US 3217453