

CAUSE NO. 141-252083-11

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

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

“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. . . . [This,] the Texas Supreme Court held, ‘remains the appropriate method for Texas courts.’”

— Defendants to U.S. Supreme Court,
Sept. 26, 2014

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I. INTRODUCTION

Defendants are former Episcopalians who served as officers of The Episcopal Church's Episcopal Diocese of Fort Worth. They gained access to more than \$100 million of property in that capacity. They committed to use that property only for the benefit of the Church and its Diocese, and without those commitments, they never would have had access to the property. Now, Defendants have broken those agreements and purported to take the Episcopal Diocese and its Congregations, and along with them, all the property, out of The Episcopal Church and into another denomination.

This conduct is unacceptable under the most basic neutral principles of Texas law, including express contractual trust, constructive trust, associations law, and corporate control. Any one of these neutral principles is sufficient. So many apply because Texas does not countenance violations of plain commitments regarding property. In Texas and in America, people can leave their Church. But they cannot take property they held for that Church.

II. PARTIES

While the case style is complex, the parties belong in two groups. "Plaintiffs" are The Episcopal Church ("the Church") and the local parties it recognizes as the authorized leaders of the Episcopal Diocese of Fort Worth and its Congregations.¹ "Defendants" are the individuals who broke away from The Episcopal Church, took property, and continue to hold themselves out without authority as the Episcopal Diocese and its institutions.²

III. OVERVIEW

Defendants must return the property under any of several basic doctrines:

1) *Masterson and Episcopal Diocese of Fort Worth* — This is the simplest solution.

Under a basic neutral principles analysis, this Court answers questions like "Is there a trust or

¹ These parties are listed in Table A and incorporated herein.

² These parties are listed in Table B and incorporated herein.

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.

As *Defendants* put it to the U.S. Supreme Court just two months ago, where “the property dispute’s resolution turn[s], under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court defer[s] to the national denomination’s understanding of the church’s identity.”³ Then, as the Texas Supreme Court said in *Masterson*, “deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment . . . effectively determine[s] the property rights in question.” *Masterson v. Diocese of Nw. Tex.*, 422 S.W. 594, 606 (Tex. 2013).

Here, *Defendants* concede that the Diocesan Corporation holds title to *all property in trust* for the Diocese and its Congregations. And *Defendants* have now admitted—to the U.S. Supreme Court, no less—that under the Texas Supreme Court’s 2013 decisions, that is the end of the neutral principles analysis, because only Plaintiff The Episcopal Church can determine which party is authorized to control those beneficiaries, the Diocese and Congregations. The Court should hold for Plaintiffs on this ground without further inquiry.

2) Contractual Trust for the Church — Texas law holds that a trust in exchange for consideration is irrevocable as a matter of law, regardless of express language of irrevocability. When you agree to a trust as part of a deal and accept benefits in return, “attempted revocation . . . [is] wholly ineffective.” *Shellberg v. Shellberg*, 459 S.W.2d 465, 471 (Tex. Civ. App.—Fort Worth 1970, writ ref’d n.r.e.); accord *Johanson’s Tex. Estates Code Ann.* § 112.051

³ A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 605 (Tex. 2013) (citations omitted)).

(2014). The Diocese and Corporation agreed to hold property in trust in exchange for formation by, membership in, and property from the Church. Defendants cannot break that deal now.

3) Constructive Trust for the Church — Texas law says that parties cannot obtain property by breaking their promises. Defendants and their predecessors-in-office committed to hold the disputed property “for the use of The Episcopal Church”⁴ and as “approved by this Church, and for no other use.”⁵ Texas law requires a constructive trust to keep Defendants from obtaining a windfall by breaching and causing the Diocese to breach these promises.

4) Associations Law — Texas law says that local chapters of larger associations are not independent entities but are “part and parcel” of the larger association. *Minor v. St. John’s Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893, 896 (Tex. Civ. App. 1910, writ ref’d); accord *District Grand Lodge No. 25, Grand United Order of Odd Fellows of Tex. v. Logan*, 177 S.W.2d 813, 815 (Tex. Civ. App.—Fort Worth 1943, writ ref’d). A dissenting local majority, “no matter how large,” cannot sever this relationship. *Minor*, 130 S.W. at 896. Thus, where, as here, subordinate organizations vote to break away from the larger association, the loyal minority are, as a matter of law, “the true and lawful successors” to the local chapter’s property rights. *Id.* at 897.

5) Corporate Control — And while Defendants attempt to focus this case on who controls the Corporation, that question is ultimately irrelevant, because whoever runs the Corporation is bound to honor its undisputed trust obligations to the Diocese and Congregations. If, as they purport, Defendants do control the Corporation, this Court would remove the Corporation as trustee of the Diocese’s and the Congregations’ trusts under Texas law. But even under basic principles of Texas corporations law and the Corporation’s own bylaws, Defendants cannot and do not constitute the directors of the Corporation as a matter of law.

⁴ A3960, Dep. of Def. Corp. at 155:19-156:1.

⁵ JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

IV. BACKGROUND

Over thirty years ago, the Episcopal Diocese of Fort Worth was formed under Article V of the Constitution of The Episcopal Church, by division of the Episcopal Diocese of Dallas⁶—an entity that was itself formed with “unqualified accession” to the Church,⁷ including the requirement to secure property “from the danger of alienation [from] the Protestant Episcopal Church.”⁸ The new Fort Worth Diocese made the same accession to the Church’s governance and created a Corporation to accept property that had been “acquired for the use of the Episcopal Church in the Diocese of Dallas”⁹ and was now being transferred to the Corporation “for the use of The Episcopal Church in the [new] Diocese.”¹⁰ The Diocese and Corporation each continuously represented to the IRS that they were “subordinate unit[s] of [the] Protestant Episcopal Church in the United States of America.”¹¹

On these terms, the Diocese accepted more than \$100 million in property that had been collected over more than a century by “the missionaries, the courageous bishops, the loyal parishioners of the first Protestant Episcopal churches of Texas.”¹² These are the institutions and property that Defendants now claim to take from the Church and its Diocese for their own unauthorized use.

⁶ A3932.1-2, Dep. of Def. Diocese at 96:11-14, 98:12-21; *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 647-48 (Tex. 2013); JA00785, Journal of the General Convention, September 1982.

⁷ A3939, Dep. of Def. Diocese at 162:5-20.

⁸ A4117, Digest of the Canons for the Government of the Protestant Episcopal Church in the United States of America, Together with the Constitution, Canon I.26 (1893). The terms “The Episcopal Church,” “the Protestant Episcopal Church,” “the Church,” and “TEC” all refer to Plaintiff The Episcopal Church.

⁹ JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

¹⁰ A3959-60, Dep. of Def. Corp., at 154:3–156:1.

¹¹ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2633, Letter from John E. Picketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

¹² A2640, *St. Andrew’s Episcopal Church V*; A2646, *id.* (noting St. Andrew’s first funds and cornerstone were laid in 1872 by Alexander Charles Garrett, the First Missionary Bishop of Northern Texas of the Missionary Board of the Episcopal Church; later the First Bishop of Diocese of Dallas; finally Presiding Bishop of the Church USA).

A. The Church creates the Diocese by splitting the Diocese of Dallas in 1982.

“The Episcopal Church [the ‘Church’] has three structural tiers. The first and highest is the General Convention,”¹³ which “alters and revises the Canons” that govern the Church, its dioceses, and its parishes.¹⁴ “Below that are the various dioceses which are generally geographical in nature”¹⁵ and that “must accede to TEC’s [the Church’s] constitution and canons.”¹⁶

The Church began its formal ministry in North Texas in 1838 and founded the Diocese of Dallas—the immediate predecessor to the Diocese of Fort Worth—in 1895. For nearly a century, from 1895 until 1982, this Diocese of Dallas encompassed both the Dallas and Fort Worth geographical areas. In 1982, however, the Diocese of Dallas sought permission to divide, creating a new, separate diocese for the Fort Worth geographical area.¹⁷

New dioceses can be formed only with the permission of the Church¹⁸ and only after the new diocese “accedes to [the Church’s] constitution and canons.”¹⁹ The Diocese of Fort Worth was no exception. Its process of formation began only after the Church, in September 1982, provided it with formal, written permission to begin the process of formation under Article V of the Church’s Constitution.²⁰

¹³ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647.

¹⁴ A1062-63, Amicus Brief of Rt. Rev. Jack Leo Iker, et al., *Dixon v. Edwards, et al.*, No. 01-2337 (4th Cir. Jan. 8, 2002).

¹⁵ *Id.*

¹⁶ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647-48.

¹⁷ A3932.2, Dep. of Def. Diocese at 98:12-21; *see also* A3957, Dep. of Def. Corp. at 131:7-15 (confirming that The Episcopal Church had to provide consent for division of the Episcopal Diocese of Dallas); A3938.1, Dep. of Def. Diocese at 159:19-160:4.

¹⁸ A3932.1, Dep. of Def. Diocese at 96:11-14.

¹⁹ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647-48.

²⁰ JA00785, Journal of the General Convention, September 1982; A3932.2, Dep. of Def. Diocese at 98:12-21.

In order to further the process of formation, the Diocese of Fort Worth then held a Primary Convention in November 1982.²¹ There, the Diocese “fully” acceded to the Church’s Constitution and Canons:

[T]he Primary Convention of the Diocese of Fort Worth . . . ***pursuant to approval of the 67th General Convention of The Episcopal Church does hereby fully subscribe to and accede to the Constitution and Canons of The Episcopal Church***, and; IN SO DOING, we unanimously hereunto set our hand . . . and the Secretary of Convention is hereby instructed to promptly inform the Secretary of General Convention by copy of this Resolution with all signatures, in accordance with Canon I, 9 (4) of General Convention, and with copies of the Constitution and Canons of the Diocese of Fort Worth adopted this day.²²

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

All real and personal property held by or for the benefit of any Parish, Mission, or Congregation ***is held in trust for this Church*** and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.²³

The Diocese’s founding Constitution and Canons committed to hold title to all real property in a Corporation “subject to control of the Church in the Diocese,”²⁴ to be used only for the purposes “authorized or approved by this Church, and for no other use.”²⁵ As required to complete the Diocese’s process of formation in the Church, the Diocese then sent the resolution reflecting its

²¹ See A3933-34, Dep. of Def. Diocese at 113:13-115:1.

²² JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, November 13, 1982 (emphasis added); see also A3934.1, Dep. of Def. Diocese at 118:15-18.

²³ 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.

²⁴ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

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

full accession to the Church's Constitution and Canons, along with a copy of the Diocese's proposed Constitution and Canons, effective January 1, 1983, to the Church for approval.²⁶

In response, the Church sent the Diocese a certificate "bringing the Diocese of Fort Worth into union with The General Convention."²⁷ This certificate allowed the Diocese to obtain over \$100 million in real property from the Diocese of Dallas. The Diocese then formed the Diocesan Corporation, and the property was formally granted to the Corporation—for the use and benefit of the Church and its Diocese—through a declaratory judgment in Texas state court.²⁸

As the Diocese represented to the IRS, "[t]he Diocese of Fort Worth . . . consist[s] of those Clergy and Laity of the Episcopal Church in the United States of America resident in that portion of the State of Texas."²⁹ The Diocese accepted tax exemption as a "subordinate organization[of the] Protestant Episcopal Church in the United States of America."³⁰

B. The Diocese forms the Corporation as a subordinate entity.

In Texas, "[t]he board of directors of a religious, charitable, educational, or eleemosynary corporation may be affiliated with, elected, and controlled by an . . . unincorporated . . . association . . . the membership of which is composed of representatives, delegates, or messengers from a church or other religious association."³¹ Pursuant to this law, the Diocese created a subordinate corporation, the Corporation of the Episcopal Diocese of Fort Worth ("the Corporation") in February 1983, filing Articles of Incorporation with the Texas Secretary of

²⁶ A3934.1, Dep. of Def. Diocese at 120:19-121:22; JA00065, Letter from Reverend Logan E. Taylor to the General Convention of The Episcopal Church (Nov. 24, 1982).

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

²⁸ JA00006-14, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

²⁹ A3789.75, Episcopal Diocese of Fort Worth, Application to Internal Revenue Service for Tax-Exempt Status (2007) (attaching Constitution and Canons of the Episcopal Diocese of Fort Worth (2001)).

³⁰ A2633, Letter from John E. Picketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

³¹ Tex. Bus. Orgs. Code § 22.207(a).

State that provided that the Corporation's purpose was to receive and maintain property for the Episcopal Diocese.³²

The Corporation's governing documents ensure that this purpose is carried out by mandating that the Diocese's Bishop serve as Chairman of the Board and that all Trustees be "either lay persons in good standing of a parish or mission in the [Diocese], or members of the clergy canonically resident within the [Diocese]."³³ The founding bylaws required the Corporation to act "in conformity with the Constitution and Canons of the Episcopal Church in the United States of America," which "shall control" over the bylaws.³⁴ From its inception, the Corporation represented to the IRS that it was "a subordinate unit of [the] Protestant Episcopal Church in the United States of America."³⁵

In 1984, the Corporation was a party to the declaratory judgment that finalized the Article V division of property from the Diocese of Dallas to the Corporation acting on behalf of the Diocese of Fort Worth.³⁶ In that action, the Corporation acknowledged its subordinate status to the Diocese and the Church. The Corporation stated that it was "a Texas nonprofit corporation, duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth."³⁷ The Diocese, in turn, represented it was "organized pursuant to the Constitution and Canons of the Protestant Episcopal Church."³⁸ The petition affirmed that the division was being

³² See JA00066-69, Articles of Incorporation, Corporation of the Episcopal Diocese of Fort Worth (Feb. 28, 1983).

³³ JA00091, Bylaws, the Corporation of the Episcopal Diocese of Fort Worth (2006).

³⁴ JA00076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (May 17, 1983).

³⁵ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); see also A3955, 3956.1-2, Dep. of Def. Corp. at 88:20-89:10, 120:4-8, 122:6-123:5 (conceding that the Corporation claimed its tax exemption as a subordinate unit of the Church from August 13, 1984 until at least January 1, 2000); A3965.1, Dep. of Def. Trustee Bates at 31:4-21 (agreeing that it was a "truthful statement" that the Corporation was a subordinate unit of The Episcopal Church).

³⁶ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 648; A3958, Dep. of Def. Corp. at 150:3-14.

³⁷ JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

³⁸ *Id.*

effected under Article V of the Church’s Constitution.³⁹ And it affirmed that the property had been “acquired for the use of the Episcopal Church in the Diocese of Dallas” and was being transferred to the Corporation “for the use of the Church in the [new] Diocese,”⁴⁰ which, as the purported Defendant Corporation testified, meant “for the use of The Episcopal Church in the Diocese.”⁴¹

The Defendants purporting to represent the Corporation admit to this day that it would not be acceptable for the Corporation to hold the property for any purpose except in support of the Diocese and its parishes,⁴² that all affairs of the Corporation must be in accord with the Diocese’s Constitutions and Canons,⁴³ and that its representations to the IRS of being a subordinate body of the Church were “truthful.”⁴⁴

C. The Congregations are also subordinate to the Church and the Diocese.

Finally, as the Texas Supreme Court found in this case, the third and lowest tier of The Episcopal Church “is comprised of local congregations which must subscribe to and accede to the constitutions and canons of both TEC and the Diocese in which they are located.”⁴⁵ Thus, “each parish [*i.e.*, Congregation] 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.”⁴⁶

³⁹ JA00720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁴⁰ JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁴¹ A3959-60, Dep. of Def. Corp. at 154:3–156:1.

⁴² A3948, Dep. of Def. Corp. at 16:20-17:9.

⁴³ A3950, Dep. of Def. Corp. at 47:16-48:13.

⁴⁴ 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).

⁴⁵ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 648. Table F lists the Congregations in the Diocese and is incorporated herein by reference.

⁴⁶ 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).

The Congregations of the Diocese unanimously signed the 1982 resolution “fully subscrib[ing] and acce[d]ing to the Constitution and Canons of The Episcopal Church,”⁴⁷ which included Canon I.7.4’s requirement that “[a]ll real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust *for this Church* and the Diocese *thereof*.”⁴⁸ As the Diocese, Corporation, and congregational leaders have consistently told other courts, “no person may be a member of a parish who is not a member of The Episcopal Church.”⁴⁹ Those who “abandon[] the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a [lay] member of the Vestry under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”⁵⁰

D. Defendants attempt to sever these subordinate entities from the Church.

In November 2008, then-Bishop of the Diocese, the Rt. Rev. Jack Leo Iker, renounced his affiliation with the Church, stating that he was no longer a bishop or a member of The Episcopal Church.⁵¹ Contrary to his three written, signed vows to abide by the Doctrine, Discipline, and Worship of The Episcopal Church⁵²—which he made as a condition of assuming office and having access to the property and other significant personal benefits in the first place⁵³—Iker and the Defendants purported to remove the Episcopal Diocese and Congregations, along with all of the property, from the Church.⁵⁴

⁴⁷ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, November 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

⁴⁸ 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).

⁴⁹ 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 2).

⁵⁰ 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 id.* ex. B (Aff. of Rev. Canon Billie Boyd 2).

⁵¹ A3926.1, Dep. of Def. Diocese at 26:10-15.

⁵² A3928, Dep. of Def. Diocese at 39:2-24.

⁵³ A3928, Dep. of Def. Diocese at 39:21-24.

⁵⁴ *See* A896-97, Defendants’ “As we Realign,” (Nov. 16, 2008); A898-99, Defendants’ Responses to Attempted Inhibition of the Bishop (Nov. 24, 2008).

The Church “accepted the renunciation” of former-Bishop Iker,⁵⁵ and the Church’s Presiding Bishop, as directed by the Church’s highest authority, the General Convention, removed Defendant Iker from authority within the Church and recognized as vacant the Diocesan positions held by the now-unqualified breakaway Defendants.⁵⁶ The loyal Episcopalians in Fort Worth organized a special convention of the Diocese, called to order by the Presiding Bishop of The Episcopal Church, in order to fill the vacated positions.⁵⁷

It is undisputed that the highest authorities of The Episcopal Church recognize the Plaintiff Local Episcopal Parties, led initially by the Rt. Rev. Edwin F. Gulick, Jr., later by the Rt. Rev. C. Wallis Ohl, and now by the Rt. Rev. Rayford B. High, Jr., as the duly constituted leadership of the Diocese and its institutions.⁵⁸ The Episcopal Church and its authorized Diocese recognize the Local Episcopal Congregations as the duly constituted, continuing Congregations and their leadership within the Diocese.⁵⁹

Nonetheless, Defendants continued to claim that—despite his renunciation of and removal from the Church—Bishop Iker remains the Bishop of the Episcopal Diocese of Fort Worth. Bishop Iker and other breakaway Defendants, all former Episcopalians, purport to control the Diocese and are using the Diocese’s property for the benefit of a new entity they

⁵⁵ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 648.

⁵⁶ 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.

⁵⁷ See A934, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) and Special Meeting of Convention (Feb. 7, 2009).

⁵⁸ A4107-10; Aff. of the Rt. Rev. John Clark Buchanan ¶¶ 5-8 (Oct. 22, 2014) (“Buchanan Aff.”); see also A5-7, Aff. of The Rt. Rev. C. Wallis Ohl (Oct. 13, 2010) (“Ohl Aff.”); A23-25, Letters of Congratulations and Commendation to Episcopal Diocese of Fort Worth and Deputies and First Alternates to Diocesan Convention (Nov. 6 & 12, 2009); A30-31, Aff. of The Rt. Rev. Edwin F. Gulick, Jr. (July 28, 2009) (“Gulick Aff.”); A363, 365-66, Excerpts from *The Episcopal Church Annual* (2010); A613-14, Excerpts from *The Episcopal Church Annual* (2009); A866-67, 869-71, 876, Excerpts from the 2009 Journal of the General Convention.

⁵⁹ A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27th Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Aff. of Kathleen Wells ¶ 3 (Dec. 1, 2014) (“Wells Aff.”); A4227, Aff. of The Rev. Canon Waggoner ¶ 1 (Dec. 1, 2014) (“Waggoner Aff.”).

helped to form in 2009, the Anglican Church of North America.⁶⁰ To clarify and regain control of these entities for legal purposes—including control of the property held by and for them—Plaintiffs filed suit. On January 21, 2011, this Court granted summary judgment for Plaintiffs, following the traditional *Watson* deference method for resolving such disputes.⁶¹

E. The Texas Supreme Court remands this case for consideration under neutral principles of law.

On August 30, 2013, the Texas Supreme Court held that “[b]ased on our decision in *Masterson*,” “the methodology referred to as ‘neutral principles of law’ must be used” in church property disputes.⁶² In contrast to the *Watson* deference approach, (which required compulsory deference on all intra-church property issues), under neutral principles, the parties may present any “of a state’s neutral principles of law in resolving non-ecclesiastical questions.”⁶³

The Court held that “the record does not warrant rendition of judgment to either party based on neutral principles of law” and “must be remanded for further proceedings.”⁶⁴ The Court instructed: “Upon remand the parties will have the opportunity to develop the record as necessary and present these arguments . . . according to neutral principles of law,” including that “the history, organization, and governing documents of the Church, the Diocese, and the parish support implication of a trust.”⁶⁵

This neutral principles analysis, the Texas Supreme Court made clear, still requires courts to “defer to religious entities’ decisions on ecclesiastical and church polity issues such as who may be members of the entities,” “whether to remove a bishop or pastor,” and “who is or can be

⁶⁰ See Second Amended Third-Party Petition of Defendant The Episcopal Diocese of Fort Worth at 5; see also http://www.anglicanchurch.net/media/Our_Genesis_revised_2.8_13.pdf (listing ACNA’s date of creation as Spring 2009); <http://anglicanchurch.net/?/main/page/about-acna> (counting the purported Episcopal Diocese of Fort Worth as a member of ACNA).

⁶¹ See *Watson v. Jones*, 80 U.S. 679 (1871).

⁶² *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647. The United States Supreme Court denied Plaintiffs’ petition for certiorari on November 3, 2014.

⁶³ *Id.*

⁶⁴ *Id.* at 647, 651.

⁶⁵ *Id.* at 653.

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 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.”⁷⁰

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.⁷¹ Because Defendants concede that the Corporation holds the property in trust, the Court can dispose of this issue simply by determining who represents those beneficiaries, the Diocese and the Congregations. Under the facts admitted by Defendants, “deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment . . . effectively determine[s] the property rights in question.” *Id.* at 606.

It is now settled that “the record conclusively shows TEC is a hierarchical organization,” *id.* at 608, with “three structural tiers[, t]he first and highest [of which] is the General

⁷⁰ A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)); accord *Brown v. Clark*, 116 S.W. at 364–65.

⁷¹ A3931-32, Dep. of Def. Diocese at 85:6-12, 86:11-16, 87:12-88:11; A3948, 3952, 3956, Dep. of Def. Corp at 17:10-18:2, 65:4-7, 107:13-108:7; accord JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

Convention,” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647. And “[c]ivil courts are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted.” *Masterson*, 422 S.W.3d at 607. **Because the General Convention and its authorized agents have determined that Defendants do not represent either the Diocese or the Congregations and that Plaintiffs do,⁷² this Court must, under *Masterson* and *Episcopal Diocese of Fort Worth*, declare that the property held by the Corporation in trust for those entities is held in trust for Plaintiffs.** The same analysis applies to any property that, under neutral principles of law, is held by or for those entities or their agents, such as tangible personal property and bank accounts.

Under *Masterson* and *Episcopal Diocese of Fort Worth*, this Court should (1) declare that it defers to Plaintiff The Episcopal Church’s determination that the Plaintiffs and their successors represent the Diocese and Congregations, (2) enjoin Defendants to surrender control of the property and return the property to the Diocese and the Congregations, as those entities are defined by Plaintiff The Episcopal Church, and (3) enjoin Defendants from holding themselves out as the Diocese or Congregations for civil law purposes, including as beneficiaries of their trust interests or owners of tangible personal property and bank accounts held by or for those entities. If Defendants somehow were still Trustees of the Corporation, as they purport, they would be in breach of the Corporation’s trust obligations to the Diocese and Congregations, and this Court would simply remove the breaching Corporation as trustee of Plaintiffs’ trusts. Tex. Prop. Code § 113.082(a)(1), (4).

2) Additional Grounds. Even if the Court does not resolve the case for Plaintiffs on this

⁷² See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27th Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

basis under *Masterson* and *Episcopal Diocese of Fort Worth*, Plaintiffs are alternatively entitled to reclaim the property and obtain declarations of their rights through the application of any one of the following additional neutral principles of Texas law, including:

1. Express Trust for the Church and its Constituent Entities. The Diocese agreed to the Church's rules in exchange for formation, membership, and property. Those rules included the Church's trust canon, placing all property in trust for the Church as a whole. Defendants and their predecessors accepted the benefits of this agreement, and "the constitution and by-laws of an organization . . . constitute a contract between the organization and its members." *Int'l Printing Pressmen & Assistants' Union of N. Am. v. Smith*, 198 S.W.2d 729, 736 (Tex. 1946). Moreover, the property transferred to the Diocese and Corporation was already in express trust for the Church. And numerous individual deeds also contain express trust language consistent with those global declarations of trust and are jointly and separately enforceable.

Defendants claim to "revoke" that trust under Tex. Prop. Code § 112.051(a). But that statute "is inapplicable to a trust that is created by contract and based on a valuable consideration," which cannot be revoked without "the agreement or consent of a majority of the beneficiaries." *Shellberg*, 459 S.W.2d at 470. "[S]uch a trust is irrevocable even if it does not expressly so state." Johanson's Tex. Estates Code Ann. § 112.051 (2014) (citing *Shellberg*, 459 S.W.2d at 470-71).⁷³ Because Defendants and their predecessors in office agreed to hold property in trust in exchange for formation, membership, and transfer of the property, they are bound by that commitment and cannot revoke it now.

2. Constructive Trust for the Church and its Constituent Entities. Even if there were no express trust, Plaintiffs would be entitled to a constructive trust. Texas courts impose

⁷³ Moreover, even before the Church formed the Diocese, these properties were already held in express trust for the Church, an obligation that survives the 1984 transfer of legal title as a matter of law. *Binford*, 189 S.W.2d 471, 473 (Tex. 1945).

constructive trusts where a party accepts property for the benefit of another and then seizes it for his own. *Mills v. Gray*, 210 S.W.2d 985, 988-89 (Tex. 1948). Constructive trusts apply where an express trust is contemplated but fails. See *Murphy v. Johnson*, 439 S.W.2d 440, 442 (Tex. Civ. App.—Houston [1st Dist.] 1969, no writ) (citing *Omohundro v. Matthews*, 341 S.W.2d 401, 405 (Tex. 1960)). Constructive trusts also apply where there was no express trust at all, but parol evidence shows a commitment to hold the property for another. *Mills*, 210 S.W.2d at 988. Constructive trusts recover church property just like any other property. *Libhart v. Copeland*, 949 S.W.2d 783, 804 (Tex. App.—Waco 1997, no pet.) (constructive trust over parsonage “corrected improper conduct of church officers which defrauded the church of its assets”).

Because Defendants were officers of The Episcopal Church’s Episcopal Diocese of Fort Worth, entrusted with Church property only because they and their predecessors committed to steward it for the Church under its rules, “the history, organization, and governing documents of the Church, the Diocese, and the parish support implication of a trust.” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 653.

3. Texas Associations Law. Wholly apart from trust law and its requirements, Defendants cannot seize property under Texas associations law. Local chapters “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization . . . organized for specific purposes, most of which can be accomplished only through subordinate bodies.” *District Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d 915, 921 (Tex. 1942). “[T]he relative rights in the property of a local lodge [are] to be determined by rules of the order to which all the defendants, as members, solemnly subscribed. They made their own contract and it is not for the courts to relieve them of its effects.” *Id.* at 922. This is true even where deeds name only the local chapter, because “[i]nquiry concerning the laws of the Grand Lodge would have revealed . . . that

the local lodge had no authority to convey the property.” *Logan*, 177 S.W.2d 813 at 815.

Here, the Diocese accepted property as a “subordinate unit of [the] Protestant Episcopal Church in the United States of America,”⁷⁴ after fully acceding to its rules. Under neutral principles of Texas associations law, departing members cannot now take that property, even if they “secede in a . . . majority and organize a new association.” *Progressive Union of Tex. v. Indep. Union of Colored Laborers of Tex., Lodge No. 1*, 264 S.W.2d 765, 768 (Tex. Civ. App.—Galveston 1954, writ ref’d n.r.e.) (citing 7 C.J.S., Associations, § 27). And this is under Texas state law of associations; separate and apart from that law, enabling such a faction to take the Episcopal Diocese from The Episcopal Church would be a gross breach of the First Amendment.

4. Corporations Law. Finally, Defendants have no right to control the Corporation, because it is a subordinate entity of the Diocese that only Plaintiffs can control, Tex. Bus. Orgs. Code § 22.207(a), and separately because of the plain terms of the Corporation’s own bylaws. Under basic corporations law, Defendants are not qualified to serve as Trustees and have been removed. Plaintiffs have properly acted to replace those unqualified Defendants as Trustees; even if they had not, this Court under Texas law could reconstitute the board with qualified Plaintiffs under the Corporation’s governing documents. As shown, ultimately, the Trustees of the Corporation are irrelevant: whoever the Trustees are, they must honor the Corporation’s admitted trust obligations to the Diocese and Congregations, which as a matter of law only Plaintiffs can control. If Defendants somehow were still Trustees, as they purport, they would be in breach of those trust obligations, and this Court would simply remove the breaching Corporation as trustee of Plaintiffs’ trusts. Tex. Prop. Code § 113.082(a)(1), (4).

⁷⁴ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

In short, under any analysis, Defendants' conduct is contrary to neutral principles of law, because their commitments to the Church as a condition of formation were plain and obvious. Simply put, Texas law does not permit oath-breaking and land-grabbing, under deference *or* neutral principles.⁷⁵

5. Disclaimer of Interest. Deposition testimony has made clear that Defendants are not claiming an interest in certain property ostensibly at issue in this case. Defendants have repudiated any claim to the Corporation of All Saints Episcopal School (Fort Worth) and all property held by it, the Corporation of All Saints Episcopal Church (Fort Worth) and all property held by it, and donations collected by All Saints Episcopal Church (Fort Worth) and held in its bank accounts. Defendants disclaimed any objection to All Saints' status as a congregation in The Episcopal Church. The Court should clarify title to all such property for Plaintiff All Saints Episcopal Church (Fort Worth). And all property that any Defendant holds for the benefit of All Saints Episcopal Church (Fort Worth), or any related entity, must, for these additional reasons, be returned to Plaintiff All Saints Episcopal Church (Fort Worth) and removed from this lawsuit. In addition, Defendants have disclaimed interest in property of—and granted special warranty deeds to—Trinity Episcopal Church (Fort Worth), St. Martin-in-the-Fields Episcopal Church (Keller), and St. Luke's Episcopal Church (Stephenville), all constituent entities of The Episcopal Church and its Episcopal Diocese of Fort Worth. To the extent Defendants assert claims to such property in this case, the Court should clarify that Defendants have no interest in such property.

⁷⁵ This is a motion for partial summary judgment. Plaintiffs have not moved on all claims asserted in their July 15, 2014 Amended Petition and reserve their right to assert those other claims in subsequent proceedings. For example, Plaintiffs have not moved on their claims for Promissory Estoppel, Conversion, Texas Business & Commercial Code § 16.29, damages for Breach of Fiduciary Duty (as opposed to as one sufficient predicate of constructive trust), Action to Quiet Title, or a request for an Accounting. Additionally, Plaintiffs' severed claims remain pending in the '09 case (Cause No. 141-237105-09).

6. *Watson Deference and Jones Retroactivity and Trust Enforcement.* While Plaintiffs argue this motion under neutral principles as instructed by the Texas Supreme Court, Plaintiffs re-urge and argue here, for preservation purposes, their arguments under *Watson* deference, *Jones* retroactivity, and the enforceability of denominational trust clauses under *Jones v. Wolf*, 443 U.S. 595 (1979), irrespective of state trust law. Specifically, Plaintiffs move that (1) this case should be decided in Plaintiffs' favor under *Watson v. Jones*'s deference approach,⁷⁶ because the hierarchical Episcopal Church indisputably recognizes Plaintiffs as the only parties authorized to use the identity and property of the subordinate local Church entities;⁷⁷ (2) the First Amendment and *Jones v. Wolf* require courts to enforce express trusts recited in general-church governing documents irrespective of state law, and here the Dennis Canon resolves the case in Plaintiffs' favor on those grounds;⁷⁸ (3) the application of the neutral-principles approach in this case infringes free-exercise rights because it is unconstitutionally retroactive under *Jones v. Wolf*, and this case must therefore be resolved in Plaintiffs' favor under the *Watson* deference doctrine; and (4) the neutral-principles approach endorsed in *Jones v. Wolf* does not remain a constitutionally viable means of resolving church-property disputes, especially in light of *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S. Ct. 694 (2012), and this case must therefore be resolved in Plaintiffs' favor under the deference doctrine.

3) Denial of Defendants' Claims and Defenses. For the reasons set forth above, as well as for the additional reasons set forth in Section VIII.F, *infra*, Defendants' claims and defenses

⁷⁶ 80 U.S. 679 (1871).

⁷⁷ See, e.g., A5-7, Ohl Aff. ¶ 5; A23, Letter from Katharine Jefferts Schori, Presiding Bishop, to People of Fort Worth (Nov. 12, 2009); A24-25, Letter from Bonnie Anderson, President of the House of Deputies, to Deputies and First Alternates (Nov. 6, 2009); A30-31, Gulick Aff. ¶ 7; A363, 365-66, Excerpts from *The Episcopal Church Annual* (2010), at 18, 217-18; A613-14, Excerpts from *The Episcopal Church Annual* (2009), at 213-14; A866-67, 869-71, 876, Excerpts from the Journal of the General Convention (2009), at 41-42, 50, 349, 354, 735; see also A4107-08, Buchanan Aff. ¶ 5 (Oct. 22, 2014).

⁷⁸ See, e.g., JA00485, 500-01, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. I, canon 7, § 4, & tit. I, canon 17, § 8; A189, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2009), tit. II, canon 6.

fail, and this Court should grant summary judgment not only in favor of Plaintiffs' claims urged herein but also against Defendants' claims and defenses in whole. First, Defendants' adverse possession claims fail because they do not meet the most basic elements of adverse possession: before November 2008, the property was not possessed by another, nor were there any facts giving rise to civil liability or the running of limitations. Mere claims of complete ownership by one entitled to possess the property do not start an adverse possession claim. And intra-church parties did not open themselves to civil liability by passing a void intra-church canon; civil liability accrued when Defendants took property. And even if a limitations period had begun, it was interrupted by the Diocese, Corporation, and Congregations' repeated reaffirmations of Church rules and property rights and their status as subordinate units of the Church, ending any adverse possession claim.

Second, Defendants' standing claim/defense fails because the local Episcopalians recognized by The Episcopal Church as the authorized leaders of the Episcopal Diocese and Congregations obviously have an interest distinct from the general public. And parties are not only permitted but also *required* to bring two-step claims in a single action, such as first establishing the legal right to control the Diocese, and then seeking to protect the Diocese's property rights.

Third, Defendants are estopped as a matter of law from raising claims and defenses that contradict numerous commitments and conduct, and prior statements to courts and federal and state authorities, among others, as Defendants' claims and defenses do here. This Court should grant summary judgment denying all of Defendants' claims and defenses.

4) Trespass to Try Title. For all of these reasons, the Court should grant summary judgment on Plaintiffs' trespass to try title claim, declaring that Plaintiffs hold title to, and are entitled to possession of, the property at issue and enjoining Defendants to surrender control of

the property and return the property to Plaintiffs.

5) Attorneys' Fees. For all of these reasons, the Court should grant Plaintiffs' request for reasonable and necessary attorneys' fees, in an amount to be determined by the Court in subsequent proceedings, and deny Defendants' request for attorneys' fees.

6) Declaratory and Injunctive Relief. For all of these reasons, Plaintiffs move for declaratory and injunctive relief to enforce Plaintiffs' rights, including as follows:

1. The Court declares that Plaintiffs and their duly elected or appointed successors, as recognized and determined by The Episcopal Church, are the proper authorities of the Diocese, the bishops, the members of the Standing Committee, the Trustees of the Diocesan Corporation and the Endowment Fund, and the Congregations, respectively, and are entitled to the exclusive use and control of the Property;⁷⁹ that, as recognized and determined by The Episcopal Church, Defendants and their successors do not hold those offices and are not entitled to the use or control of the Property; and that Defendant Diocese and Congregations, when controlled by Defendants, were not the continuing Episcopal Diocese of Fort Worth or its Congregations.
2. The Court declares that all of the Property is held in trust for and may be used only for the Church and its Diocese and Congregations, subject to the Constitutions and Canons of the Church and its Diocese.
3. The Court declares that, to the extent that the Corporation holds title to the Property, it does so in trust for the use and benefit of the Diocese and the Congregations, as represented by the Local Episcopal Parties and their successors and the Local Episcopal Congregations.
4. The Court declares for civil law purposes that the Defendants' actions seeking to withdraw the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, its Congregations, parishes or missions, or other Diocesan institutions or any property of any character or kind from The

⁷⁹ The phrase "the Property," as used herein, refers to (1) the real and personal property listed in table D of the Motion (which Table is hereby incorporated herein by reference), and (2) any and all real or personal property, of any character or kind, type or description, including all bank accounts and financial assets, that were held by or for the benefit of The Episcopal Church, the Diocese, the Diocesan Corporation, the Fund for the Endowment of the Episcopate, any of the parishes or missions of the Diocese (including but not limited to the congregations listed in Table F of the Motion), or any other constituent entity of the Diocese, as of November 15, 2008, as well as any property acquired using, or as a result of, the Property in any way, including but not limited to income generated by selling, investing, encumbering any with debt, leasing, or placing liens on any of the Property, and property purchased with the Property or with funds derived from the Property. The Property also includes any and all property that originated as part of the Property, including any and all of the Property that Defendants have re-characterized, transferred to different accounts, placed under different names, transferred to new entities, or commingled with other property.

Episcopal Church were and are unauthorized, void, and without effect, as recognized and determined by The Episcopal Church.

5. The Court declares that Defendants have no rights to or authority over any of the Property, and that Defendants have no right or authority to possess, divert, encumber, alienate, transfer, or use any of the Property.
6. The Court orders that Plaintiffs recover from Defendants title to and possession of the Property and have a writ of possession over the Property.
7. The Court declares that the August 15, 2006 (filed September 5, 2006) and April 21, 2009 attempted changes by the Defendants to the Articles and Bylaws of the Diocesan Corporation, any other similar changes, and any changes by Defendants after November 16, 2008 were ultra vires, unauthorized, void, and/or without effect.
8. The Court enjoins Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them to vacate and surrender possession of the Property, to surrender control of the Diocese and the Diocesan Corporation to Plaintiffs and to the authorized leaders of the parishes and missions listed in Table D of Plaintiffs' July 15, 2014 Amended Petition, as recognized and determined by The Episcopal Church, to cease holding themselves out as the Diocese, Corporation, or Congregations, or using their names or seals, and to return and to execute any necessary documents to accomplish the surrender of such control and such Property.
9. If, in the alternative, the Court finds that Defendants are entitled to control the Corporation, then the Court orders the removal of the Corporation as the trustee of the Diocese's and Congregations' trusts and orders the return of the control of any Property held by the Corporation to the use and benefit of Plaintiffs.
10. The Court imposes a constructive trust on the Property and orders that the Property be restored to Plaintiffs' use and benefit.
11. The Court denies Defendants' claims and defenses made and all relief sought by Defendants in any and all pleadings filed by Defendants in this action.
12. The Court finds that Defendants are estopped as a matter of law from raising their claims and defenses.
13. The Court orders that Defendants pay Plaintiffs their reasonable and necessary attorneys' fees to be determined by the Court in subsequent proceedings.
14. The Court denies Defendants' request for attorneys' fees.

VI. SUMMARY JUDGMENT EVIDENCE

Because this case involves dozens of parties and hundreds of properties worth over \$100 million, the summary judgment record is large. For the convenience of the Court, Plaintiffs have created and filed separately (1) Tables listing some of the more voluminous information and (2) a Joint Appendix and a Supplemental Appendix containing summary judgment evidence. Specifically:

- The Tables include voluminous information such as party names, property lists, and exhibit lists, filed concurrently as *Tables to Plaintiffs' Motion for Partial Summary Judgment* and referenced herein as “Table __” (e.g., Table A).
- The Joint Appendix includes exhibits submitted jointly with Defendants, filed on November 24 and 26, 2014 and referenced herein as JA_____ (e.g., JA000001).
- The Supplemental Appendix contains additional evidence, filed concurrently with this Motion and referenced herein as A__ (e.g., A1). For both appendices, any other numbering systems, such as “LEP” and “SC”, are old and should be disregarded.

Plaintiffs hereby adopt and incorporate by reference as if fully set forth herein the Tables, Joint Appendix, and Supplemental Appendix as part of the summary judgment record.

VII. SUMMARY JUDGMENT STANDARD

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

VIII. ARGUMENT AND AUTHORITIES

Under neutral principles of law, Defendants cannot remove the Diocese, its Corporation, and its Congregations from The Episcopal Church, nor can they remove the property of those

entities from the Church.

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

Defendants concede that (1) the Corporation holds property in trust for the Diocese and Congregations and (2) under *Masterson*, this Court must defer “to the national denomination’s understanding” of “the local church body’s identity” in enforcing that trust. This Court can resolve the case by declaring that the property is held in trust for Plaintiffs as the only parties legally entitled to represent the Diocese and Congregations.

1. Defendants concede that the Corporation holds property in trust for the Diocese and Congregations.

Defendants have now admitted in sworn testimony that the Corporation holds title to *all property in trust* for the Congregations, with the exception of one parcel, the Diocesan Center, which it holds in trust for the Diocese.⁸⁰ Defendants have repeatedly said the same to this Court.⁸¹

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

“[U]sing principles of Texas law,” *Brown* concluded that “whatever body is identified as being the church to which the deed was made must still hold the title.” Because the property dispute’s resolution turned, under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court deferred to the national denomination’s understanding of the

⁸⁰ A3931-32, 3956, Dep. of Def. Diocese at 85:6-12, 86:11-16, 87:12-88:11; A3948, 3952, 3956, Dep. of Def. Corp at 17:10-18:2, 65:4-7, 107:13-108:7; *accord* JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

⁸¹ Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth at 4–5; Second Amended Plea in Intervention [of Defendant Congregations] at 4–5. Moreover, the Corporation itself has told two other courts that it holds property “for the use of the Church in the Diocese,” JA00720, Petition, *Episcopal Diocese of Dallas v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984), “impressed with an express trust in favor of the diocese, with the property to be for the use of an Episcopalian congregation,” A1043, *Wantland Aff., Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. July 29, 1994).

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."⁸²

Because Defendants concede the property is held in trust for the Diocese and Congregations, and because the property dispute thereby turns on the identity of the Diocese and Congregations, this Court must, under *Masterson* and *Episcopal Diocese of Fort Worth*, declare that the property in dispute is held in trust for Plaintiffs.⁸³

2. Only Plaintiffs can control the Diocese.

a. Controlling law.

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

The Texas Supreme Court instructed exactly how to resolve this issue. "[C]ourts applying the neutral principles methodology defer to religious entities' decisions on ecclesiastical and church polity issues such as who may be members of the entities and whether to remove a bishop or pastor" *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650. "[D]etermination of who is or can be a member in good standing of TEC or a diocese is an ecclesiastical decision" *Id.* at 652. "[D]eference' is not a choice where ecclesiastical questions are at issue; as to such questions, deference is compulsory because courts lack jurisdiction to decide ecclesiastical questions." *Masterson*, 422 S.W.3d at 602. **"Civil courts 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**

⁸² A3822-23, Br. in Opp'n of Resp'ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)); accord *Brown*, 116 S.W. at 364–65.

⁸³ In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. See n.209 and Section VIII.F.3.

been submitted.” *Id.* at 607 (emphasis added). “[D]eferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question.” *Id.* at 606.

Defendants agree: “[U]nder neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court defer[s] to the national denomination’s understanding of the church’s identity,” and “must defer.”⁸⁴

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

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

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

b. Facts.

“[T]he record conclusively shows TEC [The Episcopal Church] is a hierarchical organization.” *Masterson*, 422 S.W.3d at 608. “The Episcopal Church . . . has three structural tiers. The first and highest is the General Convention.” *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 647. Below that are the “regional, geographically defined dioceses [that] must accede

⁸⁴ A3823, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).

to TEC's constitution and canons." *Id.* at 647-48. "The third tier is comprised of local congregations [that] must subscribe to and accede to the constitutions and canons of both TEC and the Diocese in which they are located." *Id.* at 648.

As the Diocese asserted in an earlier case, in order to receive the property, "[t]he Episcopal Diocese of Fort Worth . . . is a duly constituted religious organization, organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America" ⁸⁵ And, as the Diocese represented for decades to the IRS in exchange for tax benefits, the "Episcopal Diocese of Fort Worth . . . [is a] subordinate organization[of the] Protestant Episcopal Church in the United States of America." ⁸⁶ Indeed, as a condition of formation, the Diocese's own founding Resolution affirmed the Diocese was formed "pursuant to approval of the 67th General Convention of The Episcopal Church" and submitted "unanimously" and "fully" to its rules. ⁸⁷ The Diocese represented as recently as 2007 to the IRS that "[t]he Diocese of Fort Worth shall consist of those Clergy and Laity of the Episcopal Church in the United States of America resident in that portion of the State of Texas" ⁸⁸

The Episcopal Church indisputably recognizes only the local individual Plaintiffs and their duly-authorized successors as the authorized leadership of the Episcopal Diocese of Fort Worth. ⁸⁹ The Episcopal Church does not recognize Defendants as having any authority or holding any offices in the Episcopal Diocese of Fort Worth. ⁹⁰ The highest authority of The Episcopal Church, the General Convention, passed a resolution at its meeting in 2009

⁸⁵ JA00717, Petition, *Episcopal Diocese of Dallas v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁸⁶ A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

⁸⁷ JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

⁸⁸ A3789.75, Episcopal Diocese of Fort Worth, Application to Internal Revenue Service for Tax-Exempt Status (2007) (attaching Constitution and Canons of the Episcopal Diocese of Fort Worth (2001)).

⁸⁹ See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27th Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

⁹⁰ See sources cited, *supra*, in footnote 89.

commending the ministry of Plaintiffs as the continuing Diocese of Fort Worth.⁹¹ The House of Deputies of the General Convention has recognized and seated only Plaintiffs as the elected “Deputies” of the Episcopal Diocese of Fort Worth at the General Convention’s last two meetings in 2009 and 2012.⁹² The House of Bishops of the General Convention has recognized and continues to recognize Plaintiff the Rt. Rev. Rayford B. High, Jr. as the current Bishop of the Episcopal Diocese of Fort Worth and his predecessors, Bishops Edwin F. Gulick, Jr. and C. Wallis Ohl, as his predecessor Bishops of the Episcopal Diocese of Fort Worth.⁹³ The Presiding Bishop of the Episcopal Church has accepted for her certification canonically-required consents to the ordination of bishops by Plaintiff Bishop High and his predecessors-in-office, Bishops Gulick and Ohl, as well as such consents by the local Plaintiffs and their successors-in-office who have constituted the Standing Committee of the Episcopal Diocese of Fort Worth.⁹⁴ The Presiding Bishop authorized the participation of The Episcopal Church in this action to support the local Plaintiffs as the only authorized leadership of the Episcopal Diocese of Fort Worth.⁹⁵

c. Application of law to facts.

There is only one Episcopal Diocese of Fort Worth. The Texas Supreme Court ruled that The Episcopal Church is indisputably hierarchical in three tiers, with dioceses mandatorily submitting to the rules of the higher Church as a condition of formation. The Episcopal Diocese of Fort Worth is and always has been a subordinate body of The Episcopal Church since its inception, created to carry out the purposes of The Episcopal Church. The highest levels of the Church indisputably recognize only the local Plaintiffs, and not any Defendants, as the

⁹¹ *Id.*; see also A871, 875-76, Excerpts from the 2009 Journal of the General Convention.

⁹² A4107-08, Buchanan Aff. ¶ 5.

⁹³ A4108, *id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

authorized leadership of the Diocese. That is dispositive as a matter of law, and this Court must apply that ecclesiastical determination as final and binding in the civil case before it. Further inquiry is unnecessary and unconstitutional.

This Court should grant partial summary judgment and declare that the Episcopal Diocese of Fort Worth is represented by the Plaintiffs recognized by The Episcopal Church for all civil law purposes, including for enforcement of the trust interest Defendants concede exists. The individuals who left the Episcopal Church are free to form their own new congregations as part of ACNA or any other church, but they are not entitled to claim to be or to hold onto the name and property of the historic churches that have always been part of The Episcopal Church.

3. Only Plaintiffs can control the Congregations.

For all the same reasons, only The Episcopal Church and its duly authorized Episcopal Diocese can recognize and determine the subordinate Congregations for civil law purposes.

a. Controlling law.

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

Or, as Defendants themselves put it, “under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court defer[s] to the national

denomination's understanding of the church's identity. [This] 'remains the appropriate method for Texas courts.'"⁹⁶

b. Facts.

Defendants concede that for 47 Congregations, there are two camps, one Plaintiff and one Defendant, each claiming to represent that continuing Congregation.⁹⁷ And Defendants concede that for each, there is only one continuing Congregation, and the Corporation must honor the trust interest owed to it.⁹⁸

As Diocesan officials have acknowledged in previous litigation in sworn affidavits:

- “[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.”⁹⁹
- “Under the Constitution of the Diocese and under Canon law, no person may be a member of a parish who is not a member of The Episcopal Church”¹⁰⁰
- Parties that have “abandoned the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a member of the Vestry under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”¹⁰¹

⁹⁶ A3822-23, Br. in Opp'n of Resp'ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)).

⁹⁷ A3954, Dep. of Def. Corp. at 78:5-15; *see also* Pls.' the Episcopal Parties' July 15, 2014 Amended Petition, tbl. A; Second Am. Plea in Intervention [of Defendant Congregations] 1-2.

⁹⁸ A3949, Dep. of Def. Corp. at 42:3-18; *see also* JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

⁹⁹ 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).

¹⁰⁰ 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).

¹⁰¹ A988-89, Second Am. Orig. Pet., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1019, Pls.' Mot. for Summ. J., ex. B (Aff. of Rev.

Parishes in the Episcopal Diocese of Fort Worth, including St. Andrew's, have noted that the definition of "parish" includes "conformity to the doctrine, discipline and worship of the Episcopal Church."¹⁰²

c. Application of law to facts.

It is undisputed that two camps claim to be the continuing Congregations formed by and for The Episcopal Church. As a matter of law, the Court must defer to Plaintiff The Episcopal Church's determination of which party constitutes the continuing Congregation and apply that determination for the civil purposes of this case. Under plain law, this Court should grant partial summary judgment and declare that the Congregations of the Episcopal Diocese of Fort Worth are represented by the Plaintiffs recognized by The Episcopal Church and its continuing Diocese for all civil law purposes, including for enforcement of the trust interest Defendants concede exists.¹⁰³

4. Conclusion: All property held by the Corporation is held in trust for Plaintiffs as the continuing Diocese and Congregations.

The Court can dispose of this case simply and directly under the Texas Supreme Court's 2013 opinions. Defendants admit in sworn testimony that the Corporation holds all property in trust for the Diocese and Congregations. Under *Masterson* and *Episcopal Diocese of Fort Worth*, as a matter of law, only The Episcopal Church can determine who controls those beneficiaries, the Diocese and Congregations, for civil law purposes. This Court should grant summary judgment (1) declaring that it defers to Plaintiff The Episcopal Church's determination that the Local Episcopal Parties and their successors represent the Diocese and Congregations,

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 n.209 and Section VIII.F.3.

¹⁰² A2647, Saint Andrew's Episcopal Church (1997) (citing a manuscript attributed to Edward Henry Eckel, the Rector of St. Andrew's from 1917 to 1930).

¹⁰³ See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27th Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

(2) enjoining Defendants to surrender control of the property and return the property to the Diocese and the Congregations, as those entities are defined by Plaintiff The Episcopal Church, and (3) enjoining Defendants from holding themselves out as the Diocese or Congregations for civil law purposes, including as beneficiaries of their trust interests or owners of tangible personal property and bank accounts held by or for those entities.

5. Defendants cannot hide behind corporate form to enable a breach of this trust.

Because the Corporation holds property not for itself, but in trust for others, the identity of the Corporation's Trustees is ultimately irrelevant. Whoever those Trustees are, they must honor the trusts administered by the Corporation. Defendants have conceded this as well.¹⁰⁴

Defendants have no right to represent the Corporation under plain corporations law, as set forth in Section VIII.B.4, below. Defendants concede—in sworn deposition testimony in this case and in statements to the Texas Supreme Court—that “the Diocese alone has authority to select Trustees.”¹⁰⁵ And the rightful continuing Diocese has removed Defendants as Trustees and has replaced them with loyal Episcopalians or their loyal successors who have served as Trustees since February 7, 2009. This Court should so rule under Section VIII.B.4.

But even *if* the Court were to find that Defendants *were* still Trustees, as they purport, they would be in plain breach of the Corporation's duties to administer the trusts for the rightful continuing Diocese and Congregations. And then, under neutral principles of law, this Court would simply remove the errant Corporation as trustee of the trusts benefitting Plaintiffs. Tex. Prop. Code § 113.082(a)(1), (4).¹⁰⁶ Removal is justified, for example, “to prevent the trustee

¹⁰⁴ A3961, Dep. of Def. Corp. at 163:1-164:5.

¹⁰⁵ A3834, Appellants' Reply Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted); *see also* JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

¹⁰⁶ 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

from engaging in further behavior that could potentially harm the trust,”¹⁰⁷ where trustees have used trust property for their own interests,¹⁰⁸ or where hostility exists between the trustee and the beneficiary such that it impedes the trustee’s ability to effectively manage the trust property.¹⁰⁹

B. Defendants cannot take property under numerous other neutral principles of Texas law.

Because Plaintiffs are the only parties entitled to control the Diocese and Congregations as a matter of law, and because Defendants concede the property is held in trust for those entities, the Court need not proceed any further to resolve this case. However, if the Court does not resolve the case for Plaintiffs on this basis under *Masterson, Episcopal Diocese of Fort Worth*, and this record, Plaintiffs are entitled to reclaim the property through any one of several neutral principles of Texas law, including:

- Express Trust for the Church and its constituent entities, as applicable
- Constructive Trust for the Church and its constituent entities, as applicable
- Texas Associations Law
- Texas Corporations Law

Any one of these neutral principles is sufficient. So many apply because Texas law does not countenance Defendants’ conduct: repeatedly making and then breaking plain commitments.

and the violation or attempted violation results in a material financial loss to the trust . . . or (4) the court finds other cause for removal.”).

¹⁰⁷ *Ditta v. Conte*, 298 S.W.3d 187, 192 (Tex. 2009).

¹⁰⁸ *See Conte v. Ditta*, 312 S.W.3d 951, 959 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

¹⁰⁹ *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 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).

1. Defendants must return the property to the Church's Diocese under express trust.

The disputed property is held under an express trust because (1) the Diocese committed to hold all property in trust for the Church as a condition of formation by the Church, admission to the Church, and receipt of the property under the Church's Constitution; and (2) before the formation of the Diocese, that property was already held in express trust in favor of the Church.

a. Defendants and their predecessors agreed to the Church's trust canon and accepted benefits in return, creating an express contractual trust at the Diocese's formation.

As a condition of formation, membership, and receipt of property and other benefits, the Episcopal Diocese of Fort Worth submitted "unanimously" and "fully" to the Constitution and Canons of The Episcopal Church,¹¹⁰ which required that "[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof"¹¹¹ Because Defendants and their predecessors committed to these terms and accepted the benefits in return, the property is held in express, irrevocable trust for the Church.¹¹²

b. Under Texas law, a promise to hold property in trust in exchange for benefits creates an irrevocable contractual trust.

Express trusts arise from the expressed intention of the owner of property to create a trust with respect to the property. *See Perfect Union Lodge No. 10 v. InterFirst Bank of San Antonio, N.A.*, 748 S.W.2d 218, 220 (Tex. 1988); Tex. Prop. Code § 112.002 ("A trust is created only if the settlor manifests an intention to create a trust."). A charitable trust is one for a purpose classified as charitable (*e.g.*, the advancement of religion or education or the promotion of health or science). *See Boyd v. Frost Nat'l Bank*, 196 S.W.2d 497, 502 (Tex. 1946). The Rule Against

¹¹⁰ JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

¹¹¹ 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.

¹¹² In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* n.209 and Section VIII.F.3.

Perpetuities does not apply to charitable trusts: A charitable trust can be perpetual. Tex. Prop. Code § 112.036.

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

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

A trust supported by consideration is a contractual trust, which is irrevocable even without an express statement of irrevocability in the instrument. *Shellberg*, 459 S.W.2d at 470–

71 (“Sec. 41 of Art. 7425b, V.A.T.S., (The Texas Trust Act) is inapplicable to a trust that is created by contract and based on a valuable consideration. . . . [T]he attempted revocation of the trust by appellant was wholly ineffective.”); accord Bogert’s *The Law of Trusts & Trustees* § 998 n.8 (2014) (“Section 41 of the Texas Trust Act, providing that every trust is revocable unless expressly made irrevocable, d[oes] not apply to a contractual trust based on valuable consideration.” (discussing *Shellberg*)); see also Johanson’s *Tex. Estates Code Ann.* § 112.051 (2014) (“[S]tatute does not apply to trust created by agreement and supported by consideration; such a trust is irrevocable even if it does not expressly so state.” (citing *Shellberg*)).

c. The Diocese accepted formation, union, and property under the Church’s trust clause.

The Episcopal Diocese of Fort Worth was created under Article V of The Episcopal Church’s Constitution, which allows the formation of a new Diocese “by the division of an existing Diocese.”¹¹³ The Fort Worth Diocese was formed by division of the existing Episcopal Diocese of Dallas, which itself was formed in 1895¹¹⁴ with the Diocese of Dallas’s unqualified accession to The Episcopal Church.¹¹⁵

The Article V division process requires “the consent of the General Convention . . . under such conditions as the General Convention shall prescribe,”¹¹⁶ including that the “new Diocese” “accede[] to the Constitution and Canons of this Church”¹¹⁷ Defendants concede that the

¹¹³ JA00384, *The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* (1979), art. V.

¹¹⁴ A422, *Journal of the Primary Convention of Dallas*, Dec. 19-20, 1895.

¹¹⁵ A3939, *Dep. of Def. Diocese* at 162:5-20.

¹¹⁶ JA00384, *The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* (1979), art. V, § 1.

¹¹⁷ *Id.*

Dallas division was conducted under Article V and that it was the parties' intent to conform to Article V.¹¹⁸

To secure the Church's consent, every lay delegate and clergy member of the new Diocese, and every Congregation within the Diocese, resolved "unanimously," "pursuant to approval of the 67th General Convention of The Episcopal Church," to "fully subscribe to and accede to the Constitution and Canons of The Episcopal Church," followed by seven pages of their signatures.¹¹⁹ The Church's Constitution and Canons included the following provision:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to this Church and its Constitution and Canons.¹²⁰

The Diocese attached to its unanimous resolution a Diocesan Constitution and Canons that, in Article 1, again acceded to "the Constitution and Canons of the Episcopal Church in the United States of America,"¹²¹ and, in Article 13, committed to hold "all property hereafter acquired for the use of the Church and the Diocese" in a Corporation "subject to control of the Church in the Episcopal Diocese of Fort Worth."¹²² The Diocese made these commitments to the Church as required by Article V in exchange for admission as an Episcopal Diocese.¹²³

¹¹⁸ A3957-58, Dep. of Def. Corp. at 133:5-134:9, 149:25-150:6; *see also* JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V, § 1; JA00789, Journal of the Eighty Seventh Annual Meeting of the Diocese of Dallas 12 (Oct. 1-2, 1982).

¹¹⁹ JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

¹²⁰ JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4. Defendants admit this canon was in the Constitution and Canons when they acceded. A3950, Dep. of Def. Diocese at 47:21-48:16.

¹²¹ JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

¹²² JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

¹²³ JA00065, Letter Submitting Resolution of Accession (Nov. 24, 1982); A3934, Dep. of Def. Diocese at 116:16-19 ("Q. Was this resolution sent to The Episcopal Church? A. Yes, along with the Constitution and Canons adopted at the convention for approval."); A3933, *id.* at 110:21-23 ("Q. They [the Church] receive, look at, and approve the

After receiving approval from The Episcopal Church, the Dallas and Fort Worth Dioceses and the Dallas and Fort Worth Corporations jointly petitioned a civil district court in a “friendly suit”¹²⁴ to “effect the Article V division.”¹²⁵ Both Dioceses represented they were “organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America,”¹²⁶ and the Corporation represented it would hold property “pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth,”¹²⁷ which in Article 1 acceded to the Church’s Constitution and Canons. The parties asked the court to “record and declare” the division of assets “[p]ursuant to the terms of the resolution adopted by the plaintiffs,”¹²⁸ which implemented “the division of the Diocese of Dallas into two separate dioceses as permitted by Article V of the Constitution of the Episcopal Church”¹²⁹ The parties represented that the property had been “acquired for the use of the Episcopal Church in the Diocese of Dallas” and was being transferred “for the use of the Church in the [new] Diocese”¹³⁰ As the Defendant’s purported representative of the Corporation testified in this case, “for the use of the Church in the Diocese” meant “for the use of The Episcopal Church in the Diocese.”¹³¹ The Diocese and Corporation both signed the petition.¹³² Defendants concede

final Primary Constitution and Canons? A. Correct.”); JA00063, Church’s Certificate of Compliance with Article V to Diocese (Dec. 31, 1982).

¹²⁴ A2626-27, Letter from The Rev. Canon Charles A. Hough, III & N. Michael Kensel to The Rev. Steven Pope (Aug. 13, 2007).

¹²⁵ A3958, Dep. of Def. Corp. at 150:3-14.

¹²⁶ JA00716-17, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

¹²⁷ JA00728, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

¹²⁸ JA00721, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

¹²⁹ JA00719, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984); see also A3958, Dep. of Def. Corp. at 150:3-10 (“Q. And the parties to that division passed a resolution to discuss how to divide up the property under that Article V division, correct? A. Yes. Q. And then this friendly petition was telling the court the contents of that resolution to effect the Article V division? A. Yes.”).

¹³⁰ JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

¹³¹ A3959-60, Dep. of Def. Corp., at 154:3–156:1.

¹³² JA00734, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

the court relied on those representations to transfer property worth millions.¹³³

d. The Diocese's commitments created an express, irrevocable trust for the Church.

The Diocese's and Corporation's written, signed commitments to hold property under the Church's and Diocese's Constitutions and Canons, evidence their intent to hold property "in trust for this Church and the Diocese thereof," (Church Canon I.6.4),¹³⁴ and "only for the services, rites and ceremonies, or other purposes, either authorized or approved by this Church, and for no other use." (Diocesan Canon 25) (defining "Church" as "the Episcopal Church in the United States of America," *see* Art. 1).¹³⁵ Other documents from the time affirm this plain intent, such as the Corporation's founding bylaws requiring its affairs "be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of America . . . as . . . supplemented from time to time by the General Convention of the Church," and stating that "[i]n the event of any conflict between these Bylaws and any part or all of said Constitution or Canons [of the Church], the latter shall control."¹³⁶ And the Corporation accepted tax status and benefits, confirming to the IRS the year of the petition that the "Corporation of the Episcopal Diocese of Fort Worth . . . is a subordinate unit of [the] Protestant Episcopal Church in the United States of America."¹³⁷

The Diocese's and Corporation's Article V trust commitments are written, signed, and incorporate the Church's and Diocese's Constitutions and Canons by reference. Thus, the trust is valid under the statute of frauds and permissibly incorporates by reference both the Church's and

¹³³ A3965, Def. Trustee Bates Dep. at 19:25-20:25; JA00001-2, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. Aug. 22, 1984).

¹³⁴ 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.

¹³⁵ JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

¹³⁶ JA0076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (May 17, 1983).

¹³⁷ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

the Diocese's Constitution and Canons.¹³⁸ The Corporation of the Episcopal Diocese of Fort Worth, as a charitable corporation, is entitled to serve as trustee of this trust for the use and benefit of The Episcopal Church, another charitable organization. Tex. Bus. Orgs. Code § 2.106. Because the trust was established for a religious purpose, it is a charitable trust and is not subject to the Rule Against Perpetuities. Tex. Prop. Code § 112.036.¹³⁹

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

1. Granting permission for the formation of the Episcopal Diocese of Fort Worth, in accordance with Article V of the Church's Constitution;¹⁴⁰
2. Permitting the transfer of property and funds from the Diocese of Dallas to the Diocese of Fort Worth by consenting to the division of the Diocese of Dallas;¹⁴¹
3. Admitting the Diocese of Fort Worth into union with the Church;¹⁴²
4. Permitting the Diocese and Corporation to use the Church's group tax exemption as subordinate entities within the Church;¹⁴³
5. Providing the Diocese and its congregations with tens of thousands of dollars of grants and loans;¹⁴⁴

¹³⁸ To the extent that the Congregations held any interest in the property as of November 13, 1982, their accession on that date to the Church's Constitution and Canons, which states that all property held by or for a congregation is held in trust for the Church, expressed their intent to hold property in trust. Because the accession is in writing and signed by representatives of the Congregations, it is likewise valid under the statute of frauds and permissibly incorporates by reference the Church's Constitution and Canons. Thus the Congregations placed any interest they had in the property in trust for The Episcopal Church through their November 13, 1982 accession to the Church's Constitution and Canons.

¹³⁹ This trust covers all property in suit. The Church's trust canon covers all property held "by or for the benefit of" a congregation. Defendants have testified that all property held by the Corporation is held for the benefit of the Congregations with only one exception, the Diocesan Center. A3956, Dep. of Def. Corp. at 107:13-108:7. The Diocesan Center would be captured by the Diocese's and Corporation's commitments to hold all property hereafter acquired "for the Church and the Diocese." JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

¹⁴⁰ JA00785-86, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982).

¹⁴¹ *Id.*

¹⁴² JA00063, Certification of Admission of Episcopal Diocese of Fort Worth into Union with the General Convention of The Episcopal Church (1982).

¹⁴³ A3936, Dep. of Def. Diocese at 134:6-11; A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

¹⁴⁴ *See, e.g.*, A2454-55, Presiding Bishop's Fund for World Relief, Grants Awarded Through June, 1994 (noting six grants to the Episcopal Diocese of Fort Worth for a total of \$47,000); A2407, Letter from Mary Becchi, Grants

6. Permitting clergy and lay employees to participate in Church benefit plans and providing millions of dollars of benefits through those plans.

In fact, considering just a few years for which data are available for only three of the more than half a dozen benefit plans available to the Diocese, *the Church's Pension Group provided nearly \$18,000,000 in medical, pension, and life insurance benefits.*¹⁴⁵

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

Because the trust was contractual, it is irrevocable under Texas law, regardless of the presence or absence of express language of irrevocability. *See Shellberg*, 459 S.W.2d at 469. In *Shellberg*, five settlors placed their interests in real property in trust, with two of the settlors to act as trustees and manage the land. The settlors each contributed \$1,000 as operating capital for the trust, and subsequently agreed to extend the life of the trust in consideration of \$1 each. *Id.* at 466-67. After a disagreement arose between the settlors, one settlor-trustee resigned and informed the beneficiaries by letter: “I have revoked the trust of the Shellberg Estate Property insofar as my . . . interest is concerned.” *Id.* at 467-68.

The question presented for decision was “whether this contractual trust agreement and its related extension agreement, each of which is supported by valuable and legal considerations, are revocable by the trustor under Sec. 41 of the Texas Trust Act (Art. 7425b, V.A.T.S.) in view of

Director, Presiding Bishop's Fund for World Relief, The Episcopal Church, to The Rt. Rev. Jack L. Iker, Diocese of Fort Worth (Mar. 31, 2000) (noting \$25,000 grant to the Diocese).

¹⁴⁵ A2332, Church Pension Group Benefits, Diocese of Fort Worth.

the fact that none of such agreements expressly say in so many words that such trust is irrevocable.” *Id.* at 468. Noting that the settlors accepted consideration in exchange for the creation and extension of the trust, the Fort Worth Court of Civil Appeals held that “The instrument executed by [settlor] W.C. ‘Cantrell’ Shellberg on May 6, 1966, by which he attempted to revoke the trust is therefore ineffective and void and did not result in revoking the trust to any extent whatever. The trust is still in full force and effect and subject to being administered by the trustees and the trial court was correct in so holding.” *Id.* at 470.

As explained above, the Fort Worth Diocese, its Corporation, and its Congregations agreed to hold property in trust for The Episcopal Church. Their agreement was contractual and supported by consideration. Thus, as in *Shellberg*, they cannot unilaterally revoke their commitments. By breaching this contractual trust, they render themselves liable to, among other things, a specific performance remedy.

The property acquired after the initial creation of a trust is also subject to a trust in favor of The Episcopal Church because a promise to create a trust in the future is enforceable when the promise is contractual. *See* Tex. Prop. Code § 112.003. The Fort Worth Diocese, its Corporation, and the Congregations promised to hold in trust for The Episcopal Church “[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation”¹⁴⁶ The plain terms of that promise include both previously-held and later-acquired property. Further, in Article 13 of the Diocesan constitution, they explicitly agreed that later-acquired property would be held for the use of the Church: “All such property [from Dallas] *as well as all property hereafter acquired for the use of the Church and the Diocese,*

¹⁴⁶ 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.

including parishes and missions, shall be vested in [the] Corporation”¹⁴⁷ And, as explained above, the commitment was contractual. Thus, any additional property acquired by the Diocese, the Corporation, or the Congregations since the initial trust was established is also held irrevocably in trust for The Episcopal Church.

e. The property was already in trust for the Church before the Diocese existed.

The Episcopal Church held beneficial title to the property in suit long before the Diocese was formed. The declaratory judgment expressly transferred “legal title” of this property.¹⁴⁸ A transfer of legal title to property held in trust does not divest the equitable interest of the beneficiary. *See, e.g., Binford v. Snyder*, 189 S.W.2d 471, 473 (Tex. 1945). Thus, as a matter of law, even if the Diocese and Corporation had *not* committed to hold this property in trust for the Church (which they did), the transfer of legal title could not divest the Church of pre-existing trust interests.

i. The Dallas Diocese held the property in trust for the Church before the Fort Worth Diocese was formed.

As the parties represented to the district court in 1984, the properties transferred by the Episcopal Diocese of Dallas were already held “for the use of the Episcopal Church in the Diocese of Dallas . . . vested in the name of the Bishop and his successors in office in trust.”¹⁴⁹ The Diocese of Dallas was formed in 1895¹⁵⁰ and made unqualified accession to the Church’s Constitution and Canons,¹⁵¹ which under Canon I.26, required that local property be secured

¹⁴⁷ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982); *cf.* JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984) (asserting that the Corporation is “duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth”).

¹⁴⁸ JA0006, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. Aug. 22, 1984).

¹⁴⁹ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* n.209 and Section VIII.F.3.

¹⁵⁰ A422, Journal of the Primary Convention of Dallas, Dec. 19-20, 1895.

¹⁵¹ A3939, Dep. of Def. Diocese at 162:5-20.

“from the danger of alienation . . . from those who profess and practice the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America.”¹⁵² Transfer of legal title to the new Diocese would have no effect on the Church’s beneficial title, even absent the Diocese’s recommitment to that trust.

ii. The grantors of property held by 47 of the 55 Congregations within the Diocese created express, irrevocable trusts for The Episcopal Church or one of its constituent entities.

The Court need not review the approximately 300 individual deeds on a parcel-by-parcel basis, because, as shown, the Diocese and all the Congregations of the Diocese committed by signed writing to hold *all of the property* in trust for the Church. *See* Sections VIII.B.1.a–d, above. And even before that, the Diocese’s predecessor diocese held the totality of the properties in trust for the Church. *See* Section VIII.B.1.e.i, above. Moreover, the Court can further address the property globally under basic neutral principles of constructive trust and associations law. *See* Sections VIII.B.2–3, below. **But if the Court does not resolve the case globally, then on a deed-by-deed basis, 47 of the 55 Congregations within the Diocese have deeds evidencing express trusts in favor of The Episcopal Church or one of its constituent entities.** *See* Table E. The same is true for the Camp Crucis property.¹⁵³ Subsequent transfers of legal title would again have no effect on those trusts. *Binford*, 189 S.W.2d at 473.

Based on deeds discovered to date, the list of Congregations associated with real property in express irrevocable trust for The Episcopal Church or one of its constituent entities includes, but may not be limited to, the following: All Saints (Fort Worth); All Saints (Weatherford); All Saints (Wichita Falls); Ascension & St. Mark (Bridgeport); Christ the King (Fort Worth); Church

¹⁵² A4117, Digest of the Canons for the Government of the Protestant Episcopal Church in the United States of America, Together with the Constitution, Canon I.26 (1893).

¹⁵³ JA01153-55, Deed to Camp Crucis (Sept. 2, 1947).

of the Holy Apostles (Fort Worth); Good Shepherd (Brownwood); Good Shepherd (Granbury); Good Shepherd (Wichita Falls); Holy Comforter (Cleburne); Holy Cross (Burleson); Holy Spirit (Graham); Holy Trinity (Eastland); Our Lady of the Lake (Laguna Park); St. Alban's (Arlington); St. Alban's (Hubbard); St. Andrew's (Breckenridge); St. Andrew's (Fort Worth); St. Andrew's (Grand Prairie); St. Anne's (Fort Worth); St. Barnabas (Keller); St. Christopher's (Fort Worth); St. Elisabeth's (Fort Worth); St. Gregory's (Mansfield); St. John the Divine (Burkburnett); St. John's (Brownwood); St. John's (Fort Worth); St. Laurence's (Southlake); St. Luke-in-the-Meadow (Fort Worth); St. Luke's (Mineral Wells); St. Luke's (Stephenville); St. Mark's (Arlington); St. Martin-in-the-Fields (Southlake); St. Mary's (Hamilton); St. Mary's (Hillsboro); St. Matthew's (Comanche); St. Michael's (Richland Hills); St. Patrick's (Bowie); St. Paul's (Gainesville); St. Peter & St. Paul (Arlington); St. Stephen's (Wichita Falls); St. Thomas the Apostle (Jacksboro); St. Timothy's (Fort Worth); St. Vincent's Cathedral (Bedford); Trinity (Dublin); Trinity (Fort Worth); and Trinity (Henrietta).

For 31 Congregations and Camp Crucis, deeds transferring property created an express trust and named The Episcopal Church as the beneficiary. For the vast majority of the congregations, deeds created the trusts with language similar to the following:

[Grantors], for and in consideration of [consideration received] . . . Have granted, bargained, sold, released and conveyed and Do by these presents grant, bargain, sell, release or convey **unto C. Avery Mason, as Bishop of the Protestant Episcopal Church in the United States of America**, for the Diocese of Dallas, in the State of Texas, his successors in offices and assigns, [the applicable property] 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.** . . . ¹⁵⁴

¹⁵⁴ JA02395-96, Deed to St. Timothy's (Fort Worth) (1956) (emphases added). And, as another example, a deed to property associated with All Saints Episcopal Church (Fort Worth)—the 5001 Crestline deed—deeds property “in trust for the use and benefit of the Protestant Episcopal Church.” These congregations include All Saints (Fort Worth); All Saints (Weatherford); Good Shepherd (Brownwood); Good Shepherd (Granbury); Good Shepherd

By their plain terms, such deeds create an express trust in favor of The Episcopal Church.

For 13 Congregations, conveyances named the grantee as “C. Avery Mason, 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” or used substantially similar language.¹⁵⁵ Because Texas courts “are governed by the traditional canon of construction *noscitur a sociis*: ‘that a word is known by the company it keeps,’” *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 750–51 (Tex. 2006), “[w]here words of general nature follow, or are used in connection with the designation of particular objects or classes of persons or things, the meaning of the general words will be restricted to the particular designation,” *Erwin v. Steele*, 228 S.W.2d 882, 884 (Tex. Civ. App.—Dallas, 1950, writ ref’d n.r.e.). Here, the phrase “in trust” follows a reference to the “Bishop of the Diocese of Dallas of the Protestant Episcopal Church.” The same person cannot be both the sole trustee and sole beneficiary of a trust. Tex. Prop. Code § 112.034(a). Thus, it is not possible for the Bishop of the Dallas Diocese or any of his successors to be the beneficiary of the trusts created by these deeds. Accordingly, because the deeds refer to the “Diocese of Dallas of the Protestant Episcopal Church,” trusts created with that type of language benefit The Episcopal Church and its constituent Diocese, not any entity independent of The Episcopal Church.

For 23 Congregations, deeds recite express trusts for specific Congregations within the Church, such as the All Saints’ (Wichita Falls) deed conveying property to “C. Avery Mason,

(Wichita Falls); Holy Comforter (Cleburne); Holy Cross (Burleson); Holy Trinity (Eastland); St. Alban’s (Arlington); St. Alban’s (Hubbard); St. Andrew’s (Breckenridge); St. Andrew’s (Fort Worth); St. Andrew’s (Grand Prairie); St. Christopher’s (Fort Worth); St. Elizabeth’s (Fort Worth); St. John the Divine (Burkumett); St. John’s (Fort Worth); St. Laurence’s (Southlake); St. Luke-in-the-Meadow (Fort Worth); St. Luke’s (Mineral Wells); St. Luke’s (Stephenville); St. Mark’s (Arlington); St. Mary’s (Hamilton); St. Mary’s (Hillsboro); St. Patrick’s (Bowie); St. Paul’s (Gainesville); St. Stephen’s (Wichita Falls); St. Timothy’s (Fort Worth); Trinity (Dublin); Trinity (Fort Worth); and Trinity (Henrietta). See Table E, at 1–24.

¹⁵⁵ JA02411, Deed to St. Vincent’s (Bedford) (1967). These congregations include Christ the King (Fort Worth); Holy Spirit (Graham); St. Andrew’s (Fort Worth); St. Andrew’s (Grand Prairie); St. Anne’s (Fort Worth); St. Gregory’s (Mansfield); St. John’s (Brownwood); St. Luke’s (Stephenville); St. Michael’s (Richland Hills); St. Paul’s (Stephenville); St. Peter & St. Paul (Arlington); St. Timothy’s (Fort Worth); and St. Vincent’s (Bedford). See Table E, at 25–31.

Bishop of the Diocese of Dallas of the Protestant Episcopal Church in the U.S.A. and his successors in office” and stating that:

[a]s part of the consideration for this conveyance it is specifically provided that this property shall not be sold, transferred, mortgaged, pledged, or in anywise encumbered except for the sole use and benefit of All Saints Episcopal Church of Wichita Falls.¹⁵⁶

Prior to this lawsuit, all such Congregations “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.”¹⁵⁷ Thus, for this category of deeds, if there is a dispute as to which party *is* the named beneficiary in the deed, then, as Defendants concede, “under neutral principles of Texas law, on the local church body’s identity—an ecclesiastical matter—the court defer[s] to the national denomination’s understanding of the church’s identity” and must enforce the trust for that party.^{158, 159}

¹⁵⁶ JA00876-77, Deed to All Saints (Wichita Falls) (1959). These congregations include: All Saints (Fort Worth); All Saints (Weatherford); All Saints (Wichita Falls); Ascension & St. Mark (Bridgeport); Church of the Holy Apostles (Fort Worth); Our Lady of the Lake (Laguna Park); St. Alban’s (Arlington); St. Andrew’s (Breckenridge); St. Andrew’s (Fort Worth); St. Andrew’s (Grand Prairie); St. Barnabas (Keller); St. John’s (Fort Worth); St. Laurence’s (Southlake); St. Luke’s (Mineral Wells); St. Luke’s (Stephenville); St. Luke-in-the-Meadow (Fort Worth); St. Martin-in-the-Fields (Southlake); St. Mary’s (Hillsboro); St. Matthew’s (Comanche); St. Paul’s (Gainesville); St. Thomas the Apostle (Jacksboro); Trinity (Dublin); and Trinity (Fort Worth). See Table E, at 32–49. For example, deeds to two properties held in trust for All Saints Episcopal Church (Fort Worth) contained similar language to that quoted above (the 5005 Dexter Ave. deed and the 5003 Dexter Ave. deed), deeding the properties to the “Corporation of the Episcopal Diocese of Fort Worth, in trust for the use and benefit of All Saints Episcopal Church.”

¹⁵⁷ 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).

¹⁵⁸ A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)); *accord Brown*, 116 S.W. at 364–65.

¹⁵⁹ Similarly, there are several deeds granting property directly to congregations or entities related to congregations. See Table E, at 32–49. These deeds include, among others, those for the properties at 5001 Dexter Ave. (All Saints, Fort Worth), 4939 Dexter Avenue (All Saints, Fort Worth), 4936 Dexter Avenue (All Saints, Fort Worth), 9745 Saints Circle (All Saints Episcopal School, Fort Worth), and N. Normandale Street (All Saints Episcopal School, Fort Worth). As shown in Section VIII.C, below, Defendants have disclaimed any claim to All Saints (Fort Worth). For any Congregations Defendants do claim to represent or control, then to determine the entity entitled to ownership of those properties, the Court must “defer . . . to the national denomination’s understanding of the [congregation’s] identity.” A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)). Because the national denomination here has determined that Plaintiff All Saints Episcopal

The deeds in all three categories involve sales of land for consideration, and trusts created thereby cannot be revoked except “by the agreement or consent of a majority of the beneficiaries,” *Shellberg*, 459 S.W.2d at 470, without regard to whether they were executed before or after the enactment of the Texas Trust Act.¹⁶⁰ And subsequent transfers of “legal title” such as the 1984 declaratory judgment¹⁶¹ do not disturb pre-existing grants of beneficial title. *Binford*, 189 S.W.2d at 473.

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

f. Leading Texas trust experts affirm these trust obligations.

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

- Professor Gerry Beyer, of the Texas Tech School of Law and before that, St. Mary’s University School of Law, is one of the foremost experts on trusts in Texas and authors the most-read legal blog on trusts and estates in the nation.

Church (Fort Worth) represents all of the entities named in these deeds, the Court should return these properties to that Plaintiff All Saints Episcopal Church (Fort Worth).

¹⁶⁰ Moreover, any deeds from before April 19, 1943—when the Texas Trust Act took effect—are presumed irrevocable unless expressly made revocable. *See Isbell v. Williams*, 705 S.W.2d 252, 255 (Tex. App.—Texarkana 1986, writ ref’d n.r.e.); *see, e.g.*, JA1710-13, St. Matthew’s (Comanche), JA01021-24, St. Paul’s (Gainesville), JA02455-58, Trinity Episcopal Church (Dublin).

¹⁶¹ JA00006, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. Aug. 22, 1984).

- Dr. Josh Tate of SMU, a native of Tarrant County, currently chairs the national Uniform Acts for Trust and Estate Law Committee for the ABA and authors *A Texas Companion for the Course in Wills, Trusts, and Estates*.

Both professors reached the same obvious conclusion: when you apply neutral principles of Texas law to Defendants’ and their predecessors’ decades of commitments, these meet the legal standard for express, irrevocable trusts in Texas.¹⁶²

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

Professor Beyer is a renowned expert on Texas trust law and considered the effect of Defendants’ commitments to the Church as measured by the standards of Texas trust law. Professor Beyer is the Governor Preston E. Smith Regents Professor of Law at Texas Tech School of Law. Previously, he taught at St. Mary’s University and served as a visiting professor at several other law schools, including Boston College, Ohio State University, Southern

¹⁶² This section is the only section of Plaintiffs’ Motion for Partial Summary Judgment that relies in any way on expert opinion testimony. Defendants’ Motion to Strike this expert testimony is unpersuasive, as Plaintiffs’ Response to that motion shows.

Methodist University, the University of New Mexico, Santa Clara University, and La Trobe University (Australia). He is the recipient of dozens of outstanding and distinguished faculty awards, including the Chancellor’s Distinguished Teaching Award, the most prestigious university-wide teaching award at Texas Tech. He was also the recipient of the 2012-2013 Outstanding Research Award from the Texas Tech School of Law.

Assessing this case, Professor Beyer concluded that “the division of the Diocese of Dallas—which was duly approved by The Episcopal Church on condition of the new Diocese’s full accession to the Church’s Constitution and Canons—and the 1984 declaratory judgment, which effected that division for civil law purposes by transferring title to the disputed property to the Corporation for the Episcopal Diocese of Fort Worth, created an express, contractual irrevocable trust in favor of The Episcopal Church” over all of the property at issue in this case.¹⁶³ Further, he concluded that Defendants had a fiduciary “relationship of trust and confidence” with the Church.¹⁶⁴ Defendants’ attempt to break away from the Church and keep the disputed property—in violation of their promises to abide by the Church’s Constitution and Canons—breached this fiduciary relationship.¹⁶⁵ Therefore, Professor Beyer also concluded, Defendants “should be determined to hold all the disputed property under a constructive trust in favor of The Episcopal Church.”¹⁶⁶

Dr. Tate is an expert in both trust law and legal history at the SMU Dedman School of Law and considered the effect of the historical deeds in this case. Since 2005, Dr. Tate has taught courses in trusts and estates, property law, and legal history at SMU. He holds a J.D. from Yale Law School and a Ph.D. in History from Yale University. In the fall of 2012, he was a Lloyd M. Robbins Senior Research Fellow at the University of California at Berkeley. He

¹⁶³ A4092, Aff. of Prof. Gerry W. Beyer ¶ 9 (Oct. 10, 2014).

¹⁶⁴ A4104, *id.* ¶ 36.

¹⁶⁵ A4102-05, *id.* ¶¶ 31-36.

¹⁶⁶ A4104-05, *id.* ¶ 36.

currently serves as co-chair of the Uniform Acts for Trust and Estate Law Committee for the ABA Real Property, Trust and Estate Law Section, has chaired the Sutherland Prize Committee for the American Society for Legal History, and was recently appointed by the Selden Society as Honorary Secretary and Treasurer for the United States. He has published more than twenty-five scholarly articles, essays, and book reviews, and has given presentations at numerous academic conferences, colloquia, and workshops both in the United States and abroad. He is the author of *A Texas Companion for the Course in Wills, Trusts, and Estates*.

Dr. Tate examined the historical deeds to the real property at issue in this case.¹⁶⁷ Applying neutral principles of Texas law to his analysis of these deeds, he concluded that “real property associated with at least thirty-nine congregations in the Diocese of Fort Worth, in addition to the real property known as Camp Crucis, was already held in irrevocable express trust for The Episcopal Church when that diocese was formed.”¹⁶⁸ These irrevocable trust interests continue to this day and are legally enforceable under neutral principles of Texas law.¹⁶⁹ In addition, other deeds evidence the existence of an irrevocable, express trust in favor of “certain duly organized congregations of The Episcopal Church.”¹⁷⁰ As a matter of law, as was discussed above, the Court should defer to the Church regarding the identity of these Congregations.

2. Defendants must return the property under constructive trust

Even if there were no express trust in this case—ignoring for the moment the decades of express trust commitments shown above—Defendants would *still* have to relinquish the disputed property under the doctrine of constructive trust.

Constructive trusts are an equitable remedy. They return wrongfully-taken property and prevent unjust enrichment. Constructive trusts apply where express trusts fail, and they apply

¹⁶⁷ A4080, Aff. of Dr. Joshua C. Tate ¶ 9 (Sept. 30, 2014).

¹⁶⁸ A4087-88, *id.* ¶ 20.

¹⁶⁹ A4076, *id.* ¶ 3.

¹⁷⁰ *Id.*

where no express trust was contemplated at all. Constructive trusts return church property taken by church trustees. *See Libhart*, 949 S.W.2d at 804 (“[T]he suit corrected improper conduct of church officers which defrauded the church of its assets. . . . The court’s judgment imposed a constructive trust on . . . the former parsonage.” (citation omitted)).

That is precisely what another state supreme court did recently under similar facts. Where an express trust failed, the Virginia Supreme Court found and imposed a constructive trust on disputed church property because the breakaway faction’s “attempt[] to withdraw from TEC . . . yet still maintain the property represents a violation of its fiduciary obligation to TEC,” based on “the oath or declaration prescribed by Diocesan Canons,” the governing church documents and their property provisions, and the local church’s participation in the general church. *Falls Church v. Protestant Episcopal Church in the U.S.*, 740 S.E.2d 530, 540-42 (Va. 2013), *cert. denied*, 134 S. Ct. 1513 (2014).

This is precisely one of the neutral principles our Supreme Court instructed the Court to consider here. *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 653 (instructing that, on remand, the parties will “have the opportunity to develop the record as necessary” to show “the history, organization, and governing documents of the Church, the Diocese, and the parish support implication of a trust”).

a. Law.

Under Texas law, a court will impose a constructive trust to disgorge unjust enrichment and thus to prevent someone from profiting from his or her wrongful conduct. *See Hubbard v. Shankle*, 138 S.W.3d 474, 485 (Tex. App.—Fort Worth 2004, *pet. denied*). A constructive trust is a flexible, equitable remedy. *See id.* (noting that “[a] constructive trust is an equitable remedy” and that its “form . . . is practically without limit”).

Courts impose constructive trusts in a variety of situations where a party accepts property for the benefit of another and then seizes it for his own benefit. *Mills*, 210 S.W.2d at 988-89. For example, Texas courts apply constructive trusts where an express trust is contemplated but fails. *See Murphy*, 439 S.W.2d at 442 (citing *Omohundro*, 341 S.W.2d at 405); *see also In re Davis*, 244 F.3d 133 (5th Cir. 2000) (applying Texas law). And Texas courts also apply constructive trusts where there was no express trust at all but parol evidence shows a commitment to hold the property for another. *Mills*, 210 S.W.2d at 988. Because the trust is constructive, not express, the inquiry is not limited to the instruments of title, but rather includes the parties' history, course of conduct, relationships, and collateral commitments. *Id.* at 987-89.

Courts will impose a constructive trust where equity and justice call for one; a constructive trust is a remedy and is not based on the intention of the parties. The Supreme Court of Texas has stated that constructive trusts are “imposed irrespective of and even contrary to the intention of the parties.” *Pope v. Garrett*, 211 S.W.2d 559, 561 (Tex. 1948); *see also Mills*, 210 S.W.2d at 987.

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

Constructive fraud—which satisfies the first element—is “the breach of a legal or equitable duty that the law declares fraudulent because it violates a fiduciary relationship.”¹⁷¹ Thus, a constructive trust may be imposed if a person in a fiduciary relationship acquires or retains property in violation of a fiduciary duty. “Fiduciary duties are imposed by courts on

¹⁷¹ *Hubbard*, 138 S.W.3d at 483 (citation omitted).

some relationships because of their special nature.”¹⁷² Such duties “appl[y] to any person who occupies a position of peculiar confidence towards another,”¹⁷³ and “may arise from a moral, social, domestic or purely personal relationship of trust and confidence.”¹⁷⁴

Texas courts recognize fiduciary duties related to property between religious parties. For example, the Dallas Court of Appeals has held that a plaintiff may bring a claim for breach of fiduciary duty that arises out of representations regarding donations but not a claim for breach of fiduciary duty that arises out of representations regarding religious concepts. *See Smith v. Tilton*, 3 S.W.3d 77, 88–89 (Tex. App.—Dallas 1999, no pet.). Texas courts have used constructive trusts to remedy the mishandling of church property. *See Libhart*, 949 S.W.2d at 804.

b. Application.

Before Defendants seized the property at issue in this case, they were officers of the Church’s Diocese, bound by repeated oaths and resolutions that are so obvious, apparent, and plain that it is difficult to process their conduct since.

To name a few:

- As a condition of formation, the Episcopal Diocese of Fort Worth—along with every lay and clerical Diocesan leader and every Congregation within the Diocese—unanimously resolved, “pursuant to approval of the 67th General Convention of The Episcopal Church, [to] hereby fully subscribe to and accede to the Constitution and Canons of The Episcopal Church,”¹⁷⁵ including the canon that provides that “[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof”¹⁷⁶
- Lead Defendant Jack Leo Iker, who led the defection and the misappropriation of property, swore in writing, not once, not twice, but three times to abide by the Doctrine, Discipline, and Worship of The Episcopal Church¹⁷⁷ as a condition of

¹⁷² *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d at 199.

¹⁷³ *Id.* (quoting *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 512 (Tex. 1942)).

¹⁷⁴ *Hubbard*, 138 S.W.3d at 483.

¹⁷⁵ JA00364-71, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth (Nov. 13, 1982).

¹⁷⁶ 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.

¹⁷⁷ A3928, Dep. of Def. Diocese at 39:2-24.

assuming office and having access to the property in the first place.¹⁷⁸ That oath included following the “Doctrine, Discipline, and Worship” of The Episcopal Church as expressed through its Constitution and Canons—which of course include the property provisions.¹⁷⁹

- Defendants and their predecessors-in-office continuously represented to the IRS that the “Corporation of the Episcopal Diocese of Fort Worth . . . is a subordinate unit of [the] Protestant Episcopal Church in the United States of America”¹⁸⁰ and accepted the tax benefits of that representation for decades. In fact, in 2007, they told the Tarrant County Appraisal District that this was “full and complete” information, “never [] rescinded” by the IRS, and accepted more benefits.¹⁸¹ Defendants concede under oath that such representations, if false, were illegal.¹⁸²
- Defendants and their predecessors also continuously represented to the IRS that the “Episcopal Diocese of Fort Worth . . . [is a] subordinate organization[of the] Protestant Episcopal Church in the United States of America” and accepted those tax benefits.¹⁸³
- The Diocese’s founding Constitution reaffirmed these promises, proclaiming that “[t]he Church in this Diocese accedes to the Constitution and Canons of the Episcopal Church in the United States of America, and recognizes the authority of the General Convention of said Church.”¹⁸⁴
- In 1984, in order to induce the transfer of over \$100 million in property, the Diocese represented to a Texas state court that it was “a duly constituted religious organization, organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America.”¹⁸⁵
- In the same lawsuit, the Corporation also represented that it was “duly organized under the Constitution and Canons of the Episcopal Diocese of Fort Worth.”¹⁸⁶ That Constitution affirms that “[t]he title to all real estate acquired for the use of the Church in this Diocese, including the real property of all parishes and missions, as well as Diocesan Institutions, shall be held subject to control of the

¹⁷⁸ A3928, Dep. of Def. Diocese at 39:21-24.

¹⁷⁹ A3927, Dep. of Def. Diocese at 34:16-20.

¹⁸⁰ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A3955, Dep. of Def. Corp. at 88:25-89:21.

¹⁸¹ A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

¹⁸² A3955, Dep. of Def. Corp. at 88:25-89:21.

¹⁸³ A2632, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984).

¹⁸⁴ JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), art. 1.

¹⁸⁵ JA00716-17, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

¹⁸⁶ JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

Church in the Episcopal Diocese of Fort Worth acting by and through a corporation known as ‘Corporation of the Episcopal Diocese of Fort Worth.’”¹⁸⁷

- Defendants concede under oath that the Church “expects . . . bishop[s] to act in compliance with [their] oath” and “trust[s] . . . [them] to run the day-to-day affairs of the diocese” rather than “micromanag[ing] [the] affairs [of a] bishop of a diocese.”¹⁸⁸
- Thus, as a condition of ordination and consecration, all bishops of the Diocese promise to “conform to the Doctrine, Discipline, and Worship of the Episcopal Church.”¹⁸⁹ Indeed, the Church’s Canons require that “*any person accepting any office* in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church”¹⁹⁰
- Trustees of the Corporation must be members of the Diocese, are elected by the Diocese, and must conduct their affairs in accordance with the Constitution and Canons of the Diocese.¹⁹¹ Thus, they are leaders within the Diocese, which, obligates them to follow the Church’s Constitution and Canons.¹⁹²
- ***Before this dispute, Defendants and their predecessors told another court:*** “[E]ach parish within The Episcopal Diocese of Fort Worth has acknowledged that they are governed by and recognize the authority of the General Convention and the Constitution and Canons of the Episcopal Church in the United States of America.”¹⁹³
- ***Before this dispute, Defendants and their predecessors told another court:*** “[N]o person may be a member of a parish who is not a member of The Episcopal Church.”¹⁹⁴

¹⁸⁷ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

¹⁸⁸ A3930, Dep. of Def. Diocese at 79:17–20; 81:4–7, 16–18.

¹⁸⁹ JA00448-49, 452-453, Constitution and Canons, The Episcopal Church, arts. II, VIII (2006).

¹⁹⁰ JA00500-01, Constitution and Canons, The Episcopal Church, tit. I, canon 17, § 8 (2006) (“Fiduciary responsibility”) (emphasis added).

¹⁹¹ A3950, Dep. of Def. Corp. at 47:21–48:13; JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

¹⁹² A3964, Dep. of Def. Trustee Bates at 7:15-24 (“Q. Okay. And when were you on the board of trustees? A. November of 1999 to current. Q. And that is the board of trustees of the Corporation of the Episcopal Diocese -- A. That’s correct. Q. -- of Fort Worth? Okay. And you consider that an office within the Episcopal Diocese of Fort Worth? A. That’s correct.”); JA00728, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984) (Corporation must hold property “pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth.”); JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), art. 1 (“acced[ing] to the Constitution and Canons of the Episcopal Church in the United States of America”).

¹⁹³ 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).

¹⁹⁴ 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).

- ***Before this dispute, Defendants and their predecessors told another court:*** Those who “abandon[] the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a member of the Vestry under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”¹⁹⁵
- ***Before this dispute, Defendant Iker told another court*** that “Episcopal bishop[s] are] governed by the constitution and canons of the Church” and “must adhere to the constitution and canons of the Church or be subject to discipline,” and that “dioceses have canons that cannot be inconsistent with national canons.”¹⁹⁶
- ***Before this dispute, Defendant Iker told another court*** that breakaway groups that have “abandoned communion with The Episcopal Church” are “a new creation” and have “no relation to” the continuing subordinate entity “and no right to its property.”¹⁹⁷
- ***Before this dispute, Defendants and their predecessors told another court*** that the “national canons” created an “express trust” enforceable by that court “even if title had been in [a breakaway faction].”¹⁹⁸
- ***Before this dispute, Defendants and their predecessors told another court*** that “it was never the[] intent” of “loyal parishioners” that their “gifts and memorials be converted to the use of” another denomination by “Schismatic” defendants that “have abandoned communion with The Episcopal Church.”¹⁹⁹
- ***Before their lawyers “corrected” them, Defendant Corporation testified in this case:*** When the Diocese and Corporation told the Dallas district court the Corporation would hold property “for the Church in the Diocese” that (obviously) meant “for the use of The Episcopal Church in the Diocese.”²⁰⁰

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.

¹⁹⁵ 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).

¹⁹⁶ A1054-56, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

¹⁹⁷ A1015, Pls.’ Mot. for Summ. J., *Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Dec. 8, 1993), ex. A (Aff. of Bishop Jack Iker).

¹⁹⁸ 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).

¹⁹⁹ 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).

²⁰⁰ A3960, Dep. of Def. Corp. at 155:8-156:1.

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

A. Yes.

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

A. Yes.

Q. And that's what that sentence means?

A. Yes.

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

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

A. Yes.

Q. And that's mandatory language?

A. Yes.

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

A. Yes.

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

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

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

A. The Episcopal Church.²⁰¹

- The express stated purpose of the Fort Worth Diocese's primary convention was to "fulfill the requirements of the National Constitution and Canons," including "acced[ing] to the National Constitution and Canons."²⁰²
- Upon making these and other commitments, Defendants and their predecessors accepted:
 - formation and union with The Episcopal Church Diocese under Article V of the Church's Constitution,²⁰³

²⁰¹ A3940-41, Dep. of Def. Diocese at 173:20-174:21.

²⁰² JA00789, Journal of the Eighty Seventh Annual Meeting of the Diocese of Dallas 12 (Oct. 1-2, 1982).

- transfer of property and funds worth millions previously “acquired for the use of the Episcopal Church in the Diocese of Dallas”²⁰⁴ over more than a century by persons committed to secure it “from the danger of alienation . . . from those who profess and practice the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America”,²⁰⁵
- participation in the governance of the Church, consistently sending representatives to meetings of both houses of the Church’s General Convention through 2006;²⁰⁶
- participation in Church benefit plans and programs available only to Church clerics, employees and institutions, which—based on only a few years of available data and less than half of the programs, have provided nearly \$18,000,000 in medical, pension, and life insurance benefits within the Diocese;²⁰⁷ and
- entrustment with institutions built by the Church under its Constitution and Canons over 145 years by “the pioneers who gave beauty and meaning to worship on the American frontier – the missionaries, the courageous bishops, the loyal parishioners of the first Protestant Episcopal churches of Texas.”^{208, 209}

²⁰³ JA00785-86, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982); JA00063, Certification of Admission of Episcopal Diocese of Fort Worth into Union with the General Convention of The Episcopal Church (1982).

²⁰⁴ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

²⁰⁵ A4117, Digest of the Canons for the Government of the Protestant Episcopal Church in the United States of America, Together with the Constitution, Canon I.26 (1893).

²⁰⁶ A886, Aff. of Kathleen Wells ¶ 10 (Oct. 15, 2010).

²⁰⁷ A2332, Church Pension Group Benefits, Diocese of Fort Worth.

²⁰⁸ A2640, St. Andrews’ Episcopal Church V; A2646, *id.* (noting St. Andrew’s first funds and cornerstone were laid in 1872 by Alexander Charles Garrett, the First Missionary Bishop of Northern Texas of the Missionary Board of the Episcopal Church; later the First Bishop of Diocese of Dallas; finally Presiding Bishop of the Church USA).

²⁰⁹ Defendants are judicially, equitably, quasi-, and otherwise estopped from contradicting these (and other) admissions, which they made to courts, Plaintiffs, and others, regarding the obligations and commitments of the Diocese, Congregations, and Corporation to the Church and Plaintiffs. Plaintiffs incorporate these estoppel arguments throughout the brief by reference here to avoid unnecessary repetition and clutter. *See Baron v. Mullinax, Wells, Mauzy & Baab, Inc.*, 623 S.W.2d 457, 462 (Tex. App.—Texarkana 1981, writ ref’d n.r.e.) (quasi-estoppel may be raised by a plaintiff as a counter-defense that will nullify a defense that constitutes an unconscionable reversal from a former position); *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 396 (Tex. App.—Houston [14th Dist.] 1997, writ dismissed) (judicial estoppel “bars a party, who has successfully maintained a position in a prior judicial proceeding, from later adopting an inconsistent position, unless he can show the prior statement was made inadvertently due to mistake, fraud, or duress”); *Sw. Guar. Trust Co. v. Providence Trust Co.*, 970 S.W.2d 777, 783 (Tex. App.—Austin 1998, pet. denied) (“[E]quitable estoppel prevents parties from asserting claims against another party which arise out of their false representations relied upon by said party.”).

In June 2006, the Church elected its first female Presiding Bishop.²¹⁰ Shortly thereafter, Defendants purported to remove the Episcopal Diocese of Fort Worth from The Episcopal Church. In November 2008, Defendant Iker sent the Church a letter on the Diocesan Bishop's letterhead claiming that the "canonical declarations of the Presiding Bishop of The Episcopal Church pertaining to us are irrelevant and of no consequence" and that the Presiding Bishop "Katharine Jefferts Schori has no authority over me or my ministry."²¹¹

Of course, as Defendants and their predecessors-in-office told another Fort Worth court before the present dispute, in a sworn document: "We, the Undersigned Members of the Standing Committee of the Episcopal Diocese of Fort Worth, Find That [A Member] Of This Diocese Has Openly Renounced the Doctrine, Discipline, and Worship of This Church By Attempting To Take Himself and The People And Property . . . To The Jurisdiction Of . . . A Religious Body Not in Communion With The Episcopal Church[,] . . . Abandoning the Communion of This Church Under National Canon IV.10."²¹² Or, as Defendant Iker himself told another court, having sworn three times in writing to "conform to the Doctrine, Discipline, and Worship of the Episcopal Church,"²¹³ Episcopal Bishops "must adhere to the constitution and canons of the Church or be subject to discipline"²¹⁴

In accordance with Title III, Canon 12, Section 7 of the Constitution and Canons of The Episcopal Church, the Presiding Bishop accepted Bishop Iker's renunciation of ministry within the Church and recognized as vacant the Diocesan positions held by the then-unqualified

²¹⁰ A3825-28, Episcopal News Service Archives (available at http://archive.episcopalchurch.org/3577_77550_ENG_HTM.htm).

²¹¹ A898, Letter from Defendant Iker (Nov. 24, 2008).

²¹² A999, Second Am. Orig. Pet., *Corp. Of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995) ex. B (Aff. of Standing Committee).

²¹³ A3928, Dep. of Def. Diocese at 39:2-24.

²¹⁴ A1054-56, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

breakaway Defendants.²¹⁵ The loyal Episcopalians in Fort Worth organized a Special Meeting of the Convention of the Episcopal Diocese of Fort Worth, called to order by the Presiding Bishop of The Episcopal Church, where the Diocese elected a Provisional Bishop and other qualified Diocesan leaders to fill the vacancies.²¹⁶ The highest judicatories of The Episcopal Church, by resolution of the Church's highest authority, the General Convention, have recognized the Local Episcopal Parties in this case and their successors as the duly-constituted leadership of the Diocese.²¹⁷ The Church recognizes the Local Episcopal Congregations in union with that Diocese as the continuing Congregations of the Diocese.²¹⁸

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

For example:

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

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

A. That is not what I said, but that was the thought of the Diocese, not of me, but of the Diocese, that was the decision that was made.²¹⁹

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

A. Because at the time, it did not enter my mind. I forgot.²²⁰

²¹⁵ 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.

²¹⁶ A900, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth.

²¹⁷ A363, 365-66, Excerpts from *The Episcopal Church Annual* (2010); A4107-10, Buchanan Aff. ¶¶ 5-8.

²¹⁸ See A939-43, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009; A11-22, Report of the Resolutions Committee, 27th Annual Convention, November 13-14, 2009; A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 9-13, Ohl Aff. ¶¶ 4(e), 13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

²¹⁹ A3981, Dep. of Def. Director of Finance Parrott at 93:18-22.

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

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

Q. Did you prepare these books?

A. Yes.²²¹

- Defendants told the Court the money-in-suit had gone up, not down, since the dispute began,²²² then admitted otherwise under oath:

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

A. Pretty much, yes, sir.²²³

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

A. I would not, no, sir.²²⁴

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

A. That's what it adds to, yes, sir.²²⁵

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

A. Yes, sir.²²⁶

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

A. Sure.

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

²²⁰ A3980, Dep. of Def. Director of Finance Parrott at 88:3-6.

²²¹ A3982, Dep. of Def. Director of Finance Parrott at 98:3-7.

²²² A3917, Reporter's Record, Hr'g at 30 (Mar. 31, 2011) (Defendants' Counsel to Court: "And, by the way, the accounts that [Plaintiffs are] talking about, they've got a bigger value today than they did at the time of separation. They haven't gone down, they've gone up.").

²²³ A3977A, Dep. of Def. Director of Finance Parrott at 54:14-18.

²²⁴ A3977A, Dep. of Def. Director of Finance Parrott at 55:9-12.

²²⁵ A3978, Dep. of Def. Director of Finance Parrott at 63:12-64:4.

²²⁶ A3979, Dep. of Def. Director of Finance Parrott at 84:13-16.

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

Q. Okay. Who asked you to produce that?

A. I was asked by the attorneys to produce that.²²⁷

- Defendants told the U.S. Supreme Court two months ago “the Corporation . . . has never had any relationship with the General Church,”²²⁸ despite having told the IRS, among others, time and again that the Corporation “is a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”²²⁹
- Defendants have apparently used Church funds and assets dedicated for Episcopal ministry and mission—property at the heart of this suit—to fund their attempted defection from the Church:
 - Defendants told the Court on April 28, 2011 that their litigation funds had come “from extraordinary contributions. That is not -- that is from outside the plate.”²³⁰ But under oath, Defendant Trustee Bates testified that his “best understanding of where” over half-a-million dollars went between November 2008 and May 2011 was “to legal fees” coming from “diocesan funds” that “both sides are claiming a right to in this case.”²³¹ By contrast, Defendants’ Director of Finance claimed not to know where most of that money went;²³²
 - Defendants admit to signing oil and gas leases “after the schism” for Congregations that “do not associate with us,” assigning those payments directly to Defendants,²³³ and
 - Defendant Trustee Bates concedes that Defendants placed a \$3.5 million lien on properties subject to this dispute, during the litigation, approved by the Defendant Diocese and Corporation, using a single-purpose shell entity called Jude Funding, formed on the day of the transaction, facilitating a loan from Defendants to Defendants, encumbering disputed property and believing that this encumbrance

²²⁷ A3977, Dep. of Def. Director of Finance Parrott at 50:19-51:3.

²²⁸ A3821, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).

²²⁹ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007) (attaching and affirming same as “full and complete”); A3955, Dep. of Def. Corp. at 88:25-89:21.

²³⁰ A3923, Reporter’s Record, Hr’g at 12 (Apr. 28, 2011) (“The Court: But somehow [Defendants are] coming up, I would assume, with money to pay you. [Defendants’ Counsel]: That has been from extraordinary contributions. That is not -- that is from outside the plate.”).

²³¹ A3971-72, Dep. of Def. Trustee Bates at 146:11-149:3.

²³² A3983, Dep. of Def. Director of Finance Parrott at 103:10-24.

²³³ A3973, Dep. of Def. Trustee Bates at 169:1-171:1; A3984-85, Dep. of Def. Director of Finance Parrott at 161:1-13; 162:9-13 (St. Elisabeth’s); A3974, Dep. of Def. Trustee Bates at 179:13-180:7; A3986, Dep. of Def. Director of Finance Parrott at 207:8-20 (All Saints’ (Fort Worth)).

would pass to Plaintiffs if Defendants lost the case.²³⁴ In other words, Defendants thought they had created a vehicle whereby the Church would have to pay Defendants' legal fees when a Court finally stopped their defection. Defendants did this after three or four title companies refused to provide title policies for conventional lenders to place encumbrances on the disputed property.²³⁵

Even now the Defendants obscure when precisely they began planning their defection from The Episcopal Church, while still accepting the benefits of membership. **While the Defendants have repeatedly testified in this case that they did not contemplate leaving The Episcopal Church until, at the earliest, Summer 2007,²³⁶ the evidence demonstrates their discussions about leaving the Church began earlier:**

- In March 2006, Defendant Iker issued a statement to the Diocese discussing whether the Diocese should “terminate its relationship with the General Convention of the Episcopal Church” and concluding that the Diocese should “continue to count the cost and consider all the options.”²³⁷
- In June 2006, The Most Rev. Dr. Katharine Jefferts Schori was elected as the Presiding Bishop of The Episcopal Church.²³⁸ Immediately following the election of The Most Rev. Dr. Jefferts Schori, Defendants began taking actions plainly intended to facilitate their exit from The Episcopal Church.
- In July 2006, Defendants began seeking insurance coverage specifically to cover them in litigation over defection from the Church (telling another Court, in an insurance coverage dispute, that they specifically relied in 2006 on the insurer's promise that “we've written some policies like this for other dioceses and with the split and everything where some churches didn't want to split but the diocese decided to split so they sued the diocese over splitting because they didn't want to do it. We've been paying those claims.”).²³⁹
- In August 2006, Defendants modified the Corporation's bylaws to delete “Article 1 (Authority)” stating that “[t]he affairs of this nonprofit corporation shall be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of America”—which “shall control”

²³⁴ A3966-69, Dep. of Def. Trustee Bates at 45:18-24; 46:6-8, 83:18-23; 91:1-25, 92:1-93:3.

²³⁵ A3968, Dep. of Def. Trustee Bates at 92:1-93:3.

²³⁶ A3937, Dep. of Def. Diocese at 146:25-147:15; A3951, Dep. of Def. Corp. at 57:1-20.

²³⁷ A3813-14, “A Statement by Bishop Iker: Separation? At What Cost?” (Mar. 8, 2006) (available at <http://www.fwepiscopal.org/bishop/Statement030806.html>).

²³⁸ A3825-29, Episcopal News Service Archives (available at http://archive.episcopalchurch.org/3577_77550_ENG_HTM.htm).

²³⁹ See A3830, Defendant's Original Counterclaim and Intervenor's Original Complaint, *Philadelphia Indemnity Ins. Co. v. The Episcopal Diocese of Fort Worth*, No. 3:11-cv-00853-D (N.D. Tex. Aug. 9, 2011).

over the bylaws in “any conflict” between them.²⁴⁰

- Finally, in 2006, Defendants began to perform title searches to consolidate all property from the Diocese and Congregations into the Corporation,²⁴¹ in preparation of their future false claim that “the Corporation . . . has never had any relationship with the General Church.”²⁴²

And even in the face of this plain evidence, Defendants *continued* to claim, under oath, that they did not consider defection until Summer 2007 and that these acts had *no relation* to the Presiding Bishop’s election or a planned defection:

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

A. That’s my testimony.²⁴³

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

A. That’s correct.²⁴⁴

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

A. That is correct.

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

A. The Corporation has nothing to do with the convention of the diocese. The answer is -- is no.²⁴⁵

²⁴⁰ Compare, JA00090-96, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006), with JA0076-79, Bylaws of the Corporation of The Episcopal Diocese of Fort Worth (May 17, 1983).

²⁴¹ See A3937-38, Dep. of Def. Diocese at 149:11-150:14.

²⁴² A3821, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).

²⁴³ A3970, Dep. of Def. Trustee Bates at 125:8-13.

²⁴⁴ A3970, Dep. of Def. Trustee Bates at 126:4-6.

²⁴⁵ A3937, Dep. of Def. Diocese at 148:4-13.

What Defendants will admit, however, is that during this same time period, Defendants continued swearing in new officers to abide by the Doctrine, Discipline, and Worship of The Episcopal Church and accepting the many benefits of membership in the Church.²⁴⁶

Taken together, the foregoing facts are more than sufficient to establish that Defendants “occupie[d] a position of peculiar confidence” towards The Episcopal Church and its constituent institutions, *Johnson v. Brewer & Pritchard*, 73 S.W.3d at 199, and that Defendants “breach[ed] . . . a special trust[or] fiduciary relationship” with The Episcopal Church and these institutions, *Hubbard*, 138 S.W.3d at 485. These repeated oaths and commitments, the “trust” Defendants admit the Church must place in local officers to manage its regional affairs, the Defendants’ secret maneuverings and overt misstatements and deceptions—it all points to the same conclusion. Defendants have unjustly enriched themselves with property dedicated to the Church and its constituent institutions, in violation of their own repeated averments to the Church and civil courts. If this Court does not enforce Plaintiffs’ express trust, a constructive trust is warranted under basic neutral principles of Texas law.

3. Defendants must return the property under associations law.

Wholly separate and apart from Texas trust law and its requirements, Defendants must return the property under the most basic neutral principles of Texas Associations Law.

Texas Associations Law contemplates what happens when a general association with subordinate local chapters faces a dissident local group. And for over a century, Texas law has disabused breakaway factions of the idea that they can join an association and then take the local chapter’s property for their own new purposes.

²⁴⁶ A3935, Dep. of Def. Diocese at 132:15-133:3.

a. Law.

Local chapters of associations “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization . . . organized for specific purposes, most of which can be accomplished only through subordinate bodies.” *Dist. Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d at 921. “[T]he constitution and [l]aws of Grand Lodge . . . became a part of the contract entered into by the defendants when they became members of the order.” *Id.* at 920.

Where, as here, “[t]he local lodge came into being by virtue of the power conferred upon its members to organize themselves into a subordinate lodge,” that entity exists “for the benefit, not of the individual members then composing [it], but for . . . the use and benefit of this body in carrying out the purposes of its organization under the jurisdiction and authority of the Grand Lodge from which it received the warrant for its existence.” *Minor*, 130 S.W. at 896-97.

A dissenting local majority, “no matter how large,” cannot “destroy the old lodge, and, without any authority from the original parent body, . . . create a new one.” *Id.* Rather, Texas courts hold that the local entity “has never ceased to exist, that enough members thereof to constitute a lodge under the laws of the governing body have always remained, and still remain, preserving their allegiance to the Grand Lodge, and through it the life of the subordinate lodge, and that [the loyal minority] are the true and lawful successors, under the laws of the order, of the original trustees of [the local] Lodge” *Id.* at 897.

Thus, “[i]t is well settled that when a person ceases to be a member of a voluntary association, his interest in its funds and property ceases and the remaining members become jointly entitled thereto, and ***this rule applies where a number of members secede in a body and although they constitute a majority and organize a new association.***” *Progressive Union of Tex.*, 264 S.W.2d at 768 (cited in 6 AM. JUR. 2D Associations and Clubs § 24 (2014) (Rights of

members in organization's property and assets—Effect of loss or termination of membership)) (emphasis added).

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

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

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

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

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

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

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

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

b. Application.

Here, the Diocese was formed as a “subordinate unit of [the] Protestant Episcopal Church in the United States of America,”²⁴⁷ “pursuant to approval of the 67th General Convention of The

²⁴⁷ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003); A2630.1-30.2, Letter from

Episcopal Church.”²⁴⁸ The Diocese “unanimously” and “fully” acceded to the Church’s “Constitution and Canons”²⁴⁹ as a condition of formation,²⁵⁰ which at the time and now includes the relevant property canon,²⁵¹ and “recognize[d] the authority of the General Convention of said Church.”²⁵² The Corporation is an instrumentality of the Diocese²⁵³ and “a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”²⁵⁴

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

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

N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

²⁴⁸ JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 26 (Nov. 13, 1982).

²⁴⁹ *Id.*

²⁵⁰ JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V; JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4; *see also* A3957, Dep. of Def. Corp. at 132:18–133:15.

²⁵¹ A3929, Dep. of Def. Diocese at 47:23–48:7 (“Q. And when the Episcopal Diocese of Fort Worth acceded to the Constitution and Canons of The Episcopal Church, the Dennis Canon was part of those Canons? A. That is correct.”).

²⁵² JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), art. 1.

²⁵³ A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265) (Corporation’s Trustees “must be members of the Diocese, are elected by the Diocese, report to the Diocese, and conduct all affairs by the rules of the Diocese.”); *accord* A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10.

²⁵⁴ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* n.209 and Section VIII.F.3.

regulations and laws of the District Grand Lodge. ²⁵⁵	remains a part of, and subject to this Church and its Constitution and Canons. ²⁵⁶
Deeds: held locally. ²⁵⁷	Deeds: held locally. ²⁵⁸
Texas Supreme Court: “[W]hatever rights defendants had in the lots in controversy were merely incidental to their membership and terminated absolutely with such membership.”²⁵⁹	Here: Whatever rights defendants had in the lots in controversy were merely incidental to their membership and terminated absolutely with such membership.

As in the cases cited above, the Episcopal Diocese of Fort Worth was formed by permission of the larger organization, The Episcopal Church.²⁶⁰ The Diocese subscribed to the Church’s Constitution and Canons, which included a property clause in favor of The Episcopal Church.²⁶¹ Under Texas Supreme Court precedent, that clause “became a part of the contract” between Defendants and The Episcopal Church because the Constitution and Canons are the “articles of agreement to which all members are parties.” *District Grand Lodge*, 160 S.W.2d at 920. Any contrary use of that property, such as Defendants use of it for the benefit of another denomination, violates Texas Associations Law. *See Old Nat’l Life Ins. Co.*, 192 S.W.2d at 925. Under this plain Texas law, Defendants must return the property to Plaintiffs as the continuing members of The Episcopal Church.

4. Defendants have no right to control the Corporation.

Under Texas law, Defendants have no right to control the Corporation and have been

²⁵⁵ 160 S.W.2d at 918.

²⁵⁶ 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.

²⁵⁷ *District Grand Lodge*, 160 S.W.2d at 920.

²⁵⁸ Of course, unlike *Jones*, several deeds here separately and additionally contain express trust language for the national association, as shown in Section VIII.B.1.e.ii, above.

²⁵⁹ *District Grand Lodge*, 160 S.W.2d at 920.

²⁶⁰ JA00785-86, Journal of the General Convention of the Protestant Episcopal Church in the United States of America (1982).

²⁶¹ JA00364-65, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth 25–26 (Nov. 13, 1982); JA00397, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), tit. I, canon 6, § 4.

removed from authority. And if Defendants *were* still Trustees, they would be in gross breach of the Corporation's legal obligations to the Church and Diocese, with numerous remedies available to Plaintiffs and the Court.

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

The Corporation is a subordinate instrument of the Diocese. Defendants concede, to this day, that “the Diocese alone has authority to select Trustees.”²⁶² Only Plaintiffs, as a matter of law, may control the Diocese.²⁶³ And in no uncertain terms, since the Diocesan meeting of February 7, 2009 at the latest, Plaintiffs did not and do not “select [any Defendants as] Trustees.”²⁶⁴

The Texas Business Organizations Code permits non-profit associations to create subordinate corporations whose directors are “elected, and controlled by,” the association. Tex. Bus. Orgs. Code § 22.207(a). Defendants concede: “In some cases, a nonprofit corporation may be controlled by a religious or charitable association [as here] between the Corporation and the Diocese.”²⁶⁵ Defendants concede the Corporation's Trustees “must be members of the Diocese, are elected by the Diocese, report to the Diocese, and conduct all affairs by the rules of the Diocese.”²⁶⁶

There is only one Diocese, and on February 7, 2009, it elected the Plaintiff Trustees to continue the Corporation's work of holding property “subject to the control of the Church in the

²⁶² A3834, Appellants' Reply Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted); *see also* JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* n.209 and Section VIII.F.3.

²⁶³ *See* Section VIII.A.2, above.

²⁶⁴ A3834, Appellants' Reply Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted).

²⁶⁵ *See* A3838, Appellants' Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265) (citing Tex. Bus. Org. Code § 22.207(a)); *see also* JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

²⁶⁶ A3838, Appellants' Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); *accord* A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10; *see also* JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

Episcopal Diocese of Fort Worth.”²⁶⁷ Defendants told the Texas Supreme Court, “the Diocese alone has authority to select Trustees.”²⁶⁸ It has, and this Court should recognize Plaintiffs’ selection of those Trustees under Tex. Bus. Orgs. Code § 22.207(a). Any actions taken by purported Defendant Trustees after February 7, 2009 were unauthorized and without effect.²⁶⁹

b. Defendants are disqualified under the Corporation’s governing documents.

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

i. Defendants are disqualified under the pre-2006 bylaws.

In 2006, Defendants purported to modify the Corporation’s documents to facilitate their planned defection. They added clauses purporting to give the Corporation “sole authority to determine the identity and authority of the Bishop for purposes of the Corporation’s Articles” and to provide for election of Trustees by the Corporation at its “annual meeting.”²⁷⁰

But Defendants have repeatedly conceded that under the Corporation’s governing documents, from inception to now, “the by-laws of the Corporation still require the Corporation’s affairs to be conducted ‘in conformity’ with the Episcopal Diocese of Fort Worth”²⁷¹ As Defendant Corporation testified, the rules of the Diocese set mandatory limits

²⁶⁷ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

²⁶⁸ A3834, Appellants’ Reply Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted); *see also* JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

²⁶⁹ To the extent Defendants can challenge the February Convention because it was a Special Convention and not an Annual Convention—and they cannot because they involve ecclesiastical procedures and rules—then the same acts were ratified at the November 2009 Annual Convention, and then Defendants would be removed from power, with all subsequent acts null and without effect, after November 14, 2009. A963, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009.

²⁷⁰ *See* JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006); JA00073, Revised Articles of the Corporation of the Episcopal Diocese of Fort Worth (Sept. 5, 2006).

²⁷¹ A3839, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265) (footnote omitted); *accord* JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 (Aug. 15, 2006).

on what the Corporate Trustees can and cannot do,²⁷² and “the bylaws of the Corporation must be consistent with the rules of the diocese” and “cannot conflict with the rules of the diocese. . . .”²⁷³

Defendants’ 2006 changes to the Corporate documents “conflict with the rules of the diocese” and do not “conform” to Diocesan requirements for the Corporation. At all relevant times, the Constitution and Canons of the Diocese have required that the Corporation’s affairs “shall be conducted” by “five (5) elected members” and “the Bishop of the Diocese.”²⁷⁴ Diocesan Canon 17.3 requires that the elected Trustees must be either members in good standing in the Diocese or Clergy canonically resident in the Diocese.²⁷⁵ And Canon 17.3 further requires that the elected Trustees of the Corporation “shall be elected” at the Diocese’s “Annual Convention,” at which time any vacancies in the Corporation will also be filled (even if they were temporarily filled by the Corporation in the interim).²⁷⁶ Likewise, Diocesan Canon 2 describes how the Bishop of the Diocese is selected,²⁷⁷ and Church rules, to which the Diocese subscribed, detail how Bishops are removed and replaced.²⁷⁸

Thus, the Corporation cannot give itself “sole authority” to determine the identity of the “Bishop” for Corporate purposes, because its rules “cannot conflict with the rules of the

²⁷² A3952-53, Dep. of Def. Corp. at 66:24-67:13.

²⁷³ A3952, Dep. of Def. Corp. at 64:18-23; *see also* JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 (Aug. 15, 2006). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* n.209 and Section VIII.F.3.

²⁷⁴ JA00130, Constitution and Canons of the Episcopal Diocese of Fort Worth (1982) (Canon 11); *cf.* JA00211, Constitution and Canons of the Episcopal Diocese of Fort Worth (2006) (Canon 17) (same); A3854, ACNA purported “Constitution and Canons of the Episcopal Diocese of Fort Worth” (2013) (Canon 17) (same).

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ JA00195, Constitution and Canons of the Episcopal Diocese of Fort Worth (2006) (Canon 2).

²⁷⁸ JA00446, 564-65 Constitution and Canons, The Episcopal Church, Art. § 1, Title IV, Canon 1 (2006); A1054-56, 1063, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002) (“Episcopal bishop[s] are] governed by the constitution and canons of the Church” and “must adhere to the constitution and canons of the Church or be subject to discipline,” and “dioceses have canons that cannot be inconsistent with national canons.”).

diocese,”²⁷⁹ which require the “Bishop of the Diocese” to serve on the Corporation and provide the procedures for his or her selection and removal. Nor can Defendants override Diocesan Canon 17.3 providing that the 5 elected Trustees will be selected *by* the Diocese and must be members of the Diocese.²⁸⁰ These 2006 changes conflict with the “the rules of the Diocese” by which the Corporation “must,” as Defendants told the Texas Supreme Court, “conduct all affairs.”²⁸¹ These purported 2006 changes are null and void.

Under the pre-2008 Corporate rules, Defendants are no longer Trustees. Trustees must be either the Bishop of the Diocese, members in good standing of a parish in the Diocese, or canonically resident in the Diocese.²⁸² Under the bylaws, each Trustee serves “from the date of his election until his successor shall have been duly elected and qualified, *or until his* death, resignation, *disqualification* or removal.”²⁸³

The elected Trustees were no longer members of the Diocese after November 15, 2008, when they renounced the Church. As Defendants told a previous court, “no person may be a member of a parish who is not a member of The Episcopal Church,”²⁸⁴ and those who “abandon[] the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a member of the Vestry under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”²⁸⁵ And Bishop Iker was no longer Bishop of the Diocese on that date, which was formally recognized two weeks later on December 5, 2008, when the

²⁷⁹ A3952, Dep. of Def. Corp. at 64:18-23.

²⁸⁰ See JA00090-96, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006); JA00071-74, Revised Articles of the Corporation of the Episcopal Diocese of Fort Worth (Sept. 5, 2006).

²⁸¹ A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); accord A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:18–20.

²⁸² JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006).

²⁸³ *Id.* (emphasis added).

²⁸⁴ 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).

²⁸⁵ A988, Second Am. Orig. Pet., *Corp. Of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); see also A1019, Pls.’ Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd).

Presiding Bishop accepted his renunciation.²⁸⁶ Under neutral principles, courts do not second-guess these determinations of “who is or can be a member in good standing of . . . a diocese” or “whether to remove a bishop.”²⁸⁷

Thus, by December 5, 2008, under the bylaws, the Corporate Board was vacant. Defendants were disqualified, as they were neither Bishop of the Diocese nor members or clergy in good standing. As Defendants told the Texas Supreme Court, Trustees “must be members of the Diocese”²⁸⁸ By December 5, 2008, they were not. And disqualification from the Corporation is self-executing under the Corporation’s own bylaws, upon disqualification from the Diocese.²⁸⁹

On February 7, 2009, at a Special Convention, the Diocese again recognized that Defendants had vacated their offices by virtue of their disqualification, and the Diocese reconstituted the vacant Corporation Board with persons qualified to serve as Bishop of the Diocese, members in good standing of the Diocese, or canonically resident clergy in the Diocese.²⁹⁰ These decisions were reaffirmed at the next regularly scheduled Annual Diocesan Convention in November 2009.²⁹¹

Defendants have no authority or role as Trustees, and any actions they took after November 15, 2008, December 5, 2008, and/or, at the latest, February 7, 2009 were unauthorized

²⁸⁶ A608, Letter from The Most Reverend Katharine Jefferts Schori, Presiding Bishop and Primate of The Episcopal Church, to Secretary of the House of Bishops, Secretary of the General Convention, et al. (Dec. 5, 2008).

²⁸⁷ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 650, 652.

²⁸⁸ A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); accord A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10; see also JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. II, § 3 (Aug. 15, 2006).

²⁸⁹ JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006).

²⁹⁰ A941-42, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009.

²⁹¹ A963, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009.

and without any effect.²⁹² Only Plaintiffs, who, in Defendants’ words, are “members of the Diocese, are elected by the Diocese, report to the Diocese, and conduct all affairs by the rules of the Diocese,”²⁹³ are the Trustees of the Corporation as a matter of law.

ii. Defendants are disqualified under the 2006 bylaws.

Even under the improper and void 2006 bylaws, Defendants were disqualified and replaced. Those bylaws still required good standing in the Diocese for elected Trustees and still automatically vacated Trustees’ offices upon disqualification. And so on November 15, 2008, those seats became vacant. And the Bishop’s seat vacated at the latest on December 5, 2008. The 2006 bylaws expressly gave only the Elected Trustees the ability to name a Corporate “Bishop” in the event of a Diocesan dispute or vacancy regarding the Bishop. On December 5, there were no Elected Trustees left to do so, as they were all disqualified. Thus, even under the 2006 Corporate Documents, Defendants were disqualified and their seats vacated—and they remained vacant until Plaintiffs filled them.

c. Even if Defendants were Trustees, the Corporation is bound by its external commitments and is in breach.

But *if* Defendants *were* still Trustees, as they purport, they would be in plain breach of the Corporation’s duties to administer the property for the Church, Diocese, and Congregations, which only Plaintiffs may control as a matter of law. Under Texas law, a corporation cannot violate its external commitments simply by amending its internal documents. *See, e.g.*, Tex. Bus. Orgs. Code § 3.056(b); *In re ReadyOne Indus., Inc.*, 294 S.W.3d 764, 770-72 (Tex. App.—El Paso 2009, no pet.); *Owens Entm’t Club v. Owens Cmty. Improvement Club*, 466 S.W.2d 70, 72 (Tex. Civ. App.—Eastland 1971, no writ). Defendants admit that the Corporation is required

²⁹² Defendants purport to have amended the Corporation’s documents yet again in 2014, to further bolster their positions in this lawsuit. A3956, Dep. of Def. Corp. at 109:19-21, 110:11-13. Since Defendants had no authority to do so, those changes are void and should be struck.

²⁹³ A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); *accord* A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10; *see also* JA00090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 & art. II, § 3 (Aug. 15, 2006).

to honor its legal obligations, regardless of who serves as its Trustees.²⁹⁴

Here, Defendants concede the Corporation holds property in trust, at a minimum, for the Diocese and Congregations, which as a matter of law, only Plaintiffs can control. *See* Sections VIII.A.2–3, above. And the Corporation *further* holds property in trust for the larger Church, having accepted property already “in trust” “for the use of the Episcopal Church in the Diocese of Dallas”²⁹⁵ for “the use of The Episcopal Church in the [successor] Diocese.”²⁹⁶ Only Plaintiffs represent The Episcopal Church, and as a matter of law, only Plaintiffs can represent the continuing Diocese and Congregations of that Church. The Defendant Corporation is thus *not* using the property for the Church *or* the Diocese and Congregations, and is in breach.

And then, under neutral principles of law, this Court would simply remove the errant Corporation as trustee of Plaintiffs’ trusts.²⁹⁷ Removal is justified, for example, “to prevent the trustee from engaging in further behavior that could potentially harm the trust,”²⁹⁸ where trustees have used trust property for their own interests,²⁹⁹ or where hostility exists between the trustee and the beneficiary such that it impedes the trustee’s ability to effectively manage the trust property.³⁰⁰

Likewise, under Texas Associations Law, a corporation can agree to be a subordinate member of an association. *Anambra State Cmty. in Hous., Inc. v. Ulasi*, 412 S.W.3d 786, 792

²⁹⁴ A3961, Dep. of Def. Corp. at 163:1-164:5.

²⁹⁵ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

²⁹⁶ A3960, Dep. of Def. Corp. at 155:19-156:1.

²⁹⁷ 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.”).

²⁹⁸ *Ditta v. Conte*, 298 S.W.3d at 192.

²⁹⁹ *See Conte v. Ditta*, 312 S.W.3d at 959.

³⁰⁰ *Barrientos*, 94 S.W.3d at 288-89. Separately, this Court could further remedy Defendants’ breach through a constructive trust. Texas law provides that a “constructive trust is a relationship with respect to property, subjecting the person by whom the title to the property is held *to an equitable duty to convey it to another*, on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property.” *Talley*, 176 S.W.2d at 160 (emphasis added) (internal quotation marks and citation omitted).

(Tex. App.—Houston [14th Dist.] 2013, no pet.); *Raulston v. Everett*, 561 S.W.2d 635, 638 (Tex. Civ. App.—Texarkana 1978, no writ). Here, the Corporation conceded to the IRS for decades that it “is a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”³⁰¹ Defendants concede even now that the Corporation is required to “conduct all affairs by the rules of the Diocese,”³⁰² which as a matter of law only Plaintiffs can establish.³⁰³ Those rules require the Corporation to hold property “for the use of the Church in this Diocese,” “subject to the control of the Church in the Episcopal Diocese of Fort Worth,” and with “all property hereafter acquired for the use of the Church and the Diocese.”³⁰⁴ The Corporation has breached its agreement as a subordinate entity of the Diocese and the Church and should be ordered to comply under Texas Associations Law.

Finally, for the manifold reasons supporting a constructive trust, *see* Section VIII.B.2, the Court may also hold the Corporation, “by whom the title to the property is held[,] to an equitable duty to convey it to [the Diocese], on the ground that [the Corporation’s] retention of the property is wrongful and that [it] would be unjustly enriched if [it] were permitted to retain the property.”³⁰⁵ As the Fort Worth Court of Appeals has said, the “scope and application” of constructive trusts, “is generally left to the discretion of the court imposing same. . . . The forms and varieties of these trusts, which are termed *ex maleficio* or *ex delicto*, are practically without limit. The principle is applied wherever it is necessary for the obtaining of complete justice,

³⁰¹ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

³⁰² A3838, Appellants’ Br., *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); *accord* A3950, 3952, Dep. of Def. Corp. at 47:9–50:4, 64:9–10; *see also* JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth, art. I, § 1 (Aug. 15, 2006).

³⁰³ *See* Section VIII.A.2, above.

³⁰⁴ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

³⁰⁵ *Talley*, 176 S.W.2d at 160 (emphasis added) (internal quotation marks and citation omitted).

although the law may also give the remedy of damages against the wrong-doer.”³⁰⁶ Here, Defendants consolidated property into the Corporation in 2006 to facilitate their wrongful defection,³⁰⁷ despite the Corporation’s decades of commitments to the Church and the Diocese³⁰⁸—now telling the U.S. Supreme Court “the Corporation . . . has never had any relationship with the General Church,”³⁰⁹ when for decades they admitted the opposite to the IRS and others.³¹⁰ Accordingly, because the property is subject to a constructive trust, the Court has the discretion to convey it to the rightful continuing Diocese, regardless of the identity of the Corporation’s Trustees, to avoid “unjust enrich[ment] if [they] were permitted to retain the property.”³¹¹

In short, under any one of numerous neutral principles of Texas law, Defendants cannot use a corporation to accomplish a violation of plain foundational commitments.

C. Defendants have disclaimed any interest in certain properties.

Deposition testimony in this case has revealed that Defendants are not claiming an interest in certain property ostensibly at issue in this case. Defendants have repudiated any claim to the Corporation of All Saints Episcopal School (Fort Worth) and all property held by it,³¹² the

³⁰⁶ *Wheeler v. Blacklands Prod. Credit Ass’n*, 627 S.W.2d 846, 849 (Tex. App.—Fort Worth 1982, no writ) (internal quotation marks and citation omitted).

³⁰⁷ See A3937-38, Dep. of Def. Diocese at 149:11-150:14.

³⁰⁸ A3960, Dep. of Def. Corp. at 155:19-156:1; JA00728, Petition, *Episcopal Diocese of Dallas v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984); JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982); A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007).

³⁰⁹ A3821, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014).

³¹⁰ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to Tarrant County Appraisal District (Nov. 2, 2007) (attaching and affirming same as “full and complete”); A3955, Dep. of Def. Corp. at 88:25-89:21.

³¹¹ See *Talley*, 176 S.W.2d at 160.

³¹² 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

Corporation of All Saints Episcopal Church (Fort Worth) and all property held by it,³¹³ and donations collected by All Saints Episcopal Church (Fort Worth) and held in its bank accounts.³¹⁴ Defendants disclaimed any objection to Plaintiff All Saints' status as a congregation in The Episcopal Church.³¹⁵ All property that any Defendant holds for the benefit of All Saints Episcopal Church (Fort Worth), or any related entity, must, for these additional reasons, be returned to Plaintiff All Saints Episcopal Church (Fort Worth) and removed from this lawsuit. In addition, Defendants have disclaimed interest in property of—and granted special warranty deeds to—Trinity Episcopal Church (Fort Worth), St. Martin-in-the-Fields Episcopal Church (Keller), and St. Luke's Episcopal Church (Stephenville), all constituent entities of The Episcopal Church and its Episcopal Diocese of Fort Worth. To the extent Defendants assert claims to such property in this case, the Court should clarify that Defendants have no interest in such property.

D. For all of the foregoing reasons, Plaintiffs are entitled to judgment as a matter of law on their trespass-to-try title claim.

Because the property at issue is subject to express and constructive trusts in favor of The Episcopal Church for all of the reasons discussed above, and because Plaintiffs are the representatives and the entities of The Episcopal Church in the Fort Worth area, Plaintiffs are entitled to a judgment that they have a right to possess the property.

A plaintiff may recover on a trespass-to-try-title claim by showing “a superior title out of a common source.” *Bacon v. Jordan*, 763 S.W.2d 395, 396-97 (Tex. 1988) (citing *Plumb v. Stuessy*, 617 S.W.2d 667, 668 (Tex. 1981); *Land v. Turner*, 377 S.W.2d 181, 183 (Tex. 1964)).

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.

³¹³ 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.

³¹⁴ A3942, *id.* at 213:8-12.

³¹⁵ A3945, *id.* at 232:18-25.

“Proof of a common source may be shown by the pleadings of the parties, agreements and stipulations, certified copies of deeds, or evidence offered at trial.” *Bacon*, 763 S.W.2d at 397 (citing *State v. Noser*, 422 S.W.2d 594, 600 (Tex. Civ. App.—Corpus Christi 1967, writ ref’d n.r.e.); Tex. R. Civ. P. 798). An equitable title supports an action of trespass to try title. *Johnson v. Wood*, 157 S.W.2d 146, 148 (Tex. 1941).

Here, the parties do not dispute the common source of their title. The common source of title is evident in the deeds that convey the various parcels of property into The Episcopal Church.³¹⁶ For purposes of Plaintiffs’ trespass-to-try-title claim, the parties dispute whether title is held in express or constructive trust for The Episcopal Church or one of its subordinate entities. As shown above, all of the relevant property is held in both express and constructive trust for The Episcopal Church and, as applicable, its constituent entities. It is undisputed that Plaintiffs are part of The Episcopal Church, and Defendants are not, so Plaintiffs have superior equitable title out of a common source. The Court should enter judgment as a matter of law that Plaintiffs have the right to possess the property.

E. For preservation, Plaintiffs re-urge their arguments under *Watson* deference and *Jones* retroactivity and trust enforcement.

Plaintiffs include this section concerning their *Watson*- and *Jones*-based arguments for preservation purposes. The discussion of this subject will not be repeated here, but the arguments set forth above in Grounds Section V.2.6 and more fully in Table G and Appellees’ Brief at 8-41, *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); Motion for Rehearing 3-5, *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646 (2013) (No. 11-0265); and Petition for Writ of Certiorari, *Episcopal Church et al. v. Episcopal Diocese of Fort Worth et al.*, 2014 WL 6334170, at *28-36 (No. 13-1520), are incorporated by reference.

³¹⁶ See JA873–JA2521.

F. For all of the reasons set forth above, and for the additional reasons herein, Defendants' claims and defenses fail as a matter of law.

Defendants' declaratory/injunctive claims and their defenses are largely the inverse of Plaintiffs' claims and fail as a matter of law in light of the foregoing arguments. Defendants are not entitled to the declarations/injunctions they seek as a matter of law for these same reasons. Plaintiffs respond to a few ancillary, frivolous Defense assertions below. The Court should grant summary judgment against Defendants on all of their claims and defenses.

1. Defendants' eleventh-hour adverse possession claim fails.

After five years of litigation, Defendants suddenly pleaded a novel and desperate eleventh-hour theory, less than a week before these motions were originally due: that the Congregations have really been squatting on this property since the 1980s and now own it through adverse possession.³¹⁷

This is nonsense. Defendants' new theory fails to meet even the most basic tenets of adverse possession under Texas law, including that the property be held "by another."³¹⁸ Here, before November 2008, the Congregations occupying the property were indisputably constituent entities of The Episcopal Church and its Diocese. They continued participating in and accepting the benefits of Church membership. By contrast, after November 2008, breakaway Defendants occupied much of the property. And the Church and local Episcopalians promptly filed suit in 2009 to address this conduct.

Moreover, before November 2008, adverse possession had no application because there were no facts triggering limitations or giving rise to a civilly-justiciable case. Under Texas law, mere statements claiming absolute title by a party authorized to use the property do not trigger limitations. And separately, particular to these facts, Defendants' "evidence" of adverse

³¹⁷ See First Supp. Am. Third-Party Pet. of Intervener the Corporation of the Episcopal Diocese of Fort Worth.

³¹⁸ See, e.g., Tex. Civ. Prac. & Rem. Code § 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)).

possession—a 1989 local diocesan canon void under Church law—was a non-justiciable matter of internal church discipline until, in 2008, Defendants took property, giving rise to a civil cause of action.³¹⁹

And in addition, as a matter of law, any purported adverse possession would have terminated when, after 1989, the Diocese, Corporation, and congregational leaders brought suit in another Tarrant County court *affirming* Episcopal property rights contrary to this newly-claimed adversity.³²⁰

Thus, as set forth in more detail below, Plaintiffs’ 2009 lawsuit—concerning a 2008 defection and seizure of property—is timely. Defendants’ new claims fail as a matter of law.

a. Church property cannot be adversely possessed by the Church.

In Texas, the adverse possession statutes place limitations on when “[a] person must bring suit to recover real property held *by another*”³²¹ Until at least November 2008, the property in this case was not held *by another*: it was held by continuing members and subordinate entities of The Episcopal Church.

Until that time, the disputed property was possessed by the Diocese and Congregations, which undisputedly “were part of The Episcopal Church.”³²² Under Texas law, a local chapter of a larger organization “is not an independent organization, existing solely for the benefit of its

³¹⁹ See *Masterson*, 422 S.W.3d at 601 (“The Free Exercise clause of the First Amendment to the United States Constitution . . . prohibit[s] civil courts from inquiring into matters concerning . . . ‘church discipline [or] ecclesiastical government.’” (quoting *Milivojevich*, 426 U.S. at 713–14)).

³²⁰ 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); 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); A1015, Pls.’ Mot. for Summ. J., *Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Dec. 8, 1993), ex. A (Aff. of Bishop Jack Iker); A988-89, 991, 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); A1028, ex. D (Aff. of Robert J. Rigdon).

³²¹ 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); *id.* § 16.028 (same for 25-year limitations period).

³²² See A3929.1, Dep. of Def. Diocese at 60:12-16.

members, but . . . is a part and parcel of [the] larger organization”³²³ As here, such local entities “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization”³²⁴

Before November 2008, the Diocese and Congregations—which actually possessed the property at issue—and The Episcopal Church were indisputably part of the same entity.³²⁵ The Diocese and the Congregations continued to participate robustly in the Church and to accept the benefits of Church membership.³²⁶ Indeed, in 2007, the Diocese represented to the IRS that it “consist[s] of those Clergy and Laity of the Episcopal Church in the United States of America resident in that portion of the State of Texas.”³²⁷ After November 2008, the breakaway Defendants possessed many of the properties. And the Church and local Episcopalians promptly filed suit in 2009 to address this conduct.

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.³²⁸ That did not occur until at least November 2008. And even if limitations began to run on that date, Plaintiffs filed this suit in 2009, well within even the shortest limitations period pleaded by Defendants.

b. No claim against Defendants accrued before November 2008.

“[S]tatutes of limitation only begin to run from the time that the right of action

³²³ *Minor*, 130 S.W. at 896.

³²⁴ *Dist. Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d at 921.

³²⁵ *See Minor*, 130 S.W. at 896

³²⁶ *See, e.g.*, A886, *Aff. of Kathleen Wells* ¶ 10 (Oct. 15, 2010); A2332, *Church Pension Group Benefits, Diocese of Fort Worth*.

³²⁷ A3789.75, *Episcopal Diocese of Fort Worth, Application to Internal Revenue Service for Tax-Exempt Status (2007)* (attaching Constitution and Canons of the Episcopal Diocese of Fort Worth (2001)).

³²⁸ *See Minor*, 130 S.W. at 896.

accrues.”³²⁹ “Causes of action accrue, and statutes of limitations begin to run, when facts come into existence that authorize a claimant to seek a judicial remedy.”³³⁰ 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.”³³¹

Defendants assert that a claim against them accrued before they purported to break away from The Episcopal Church in 2008 because Defendants made claims to own the property outright before then.³³² But that is incorrect, for several reasons.

First, Defendants in the Congregations had a right to use and possess the property until they purported to break away from the Church in 2008.³³³ Prior possession thus did not expose any Defendants to liability until they acted to break away from the Church and seize the property for use outside the Church. Indeed, Texas courts have long found that “limitations 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.”³³⁴ A possessor’s mere “claim of ownership” over the property does not change this conclusion or trigger a cause of action.³³⁵

For example, in considering a case where a widow with a homestead right to possess property claimed to have adversely possessed the property against its ultimate owner, the Texas

³²⁹ *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))).

³³⁰ *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 202 (Tex. 2011).

³³¹ *Niendorff v. Wood*, 149 S.W.2d 161, 164 (Tex. Civ. App.—Amarillo 1941, writ ref’d).

³³² *See* First Supp. Am. Third-Party Pet. of Intervener the Corporation of the Episcopal Diocese of Fort Worth at 1.

³³³ 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”).

³³⁴ *State v. Beeson*, 232 S.W.3d 265, 277 (Tex. App.—Eastland 2007, pet. dismissed).

³³⁵ *See Perkins v. Perkins*, 166 S.W. 917, 917 (Tex. Civ. App.—Galveston 1914, writ ref’d).

Supreme Court agreed³³⁶ with an appellate court that held that this “claim of ownership” was insufficient to trigger the running of the limitations period:

If it be conceded that the evidence was sufficient to sustain a finding that [the widow’s] claim of ownership of all of the property was known to [the landowner] for more than ten years before the suit was brought, that such claim was continuous during all of said time, and that [the widow’s] possession was continuous during said ten years, no title by limitation could be acquired by [the widow] because her possession of the property as a homestead being lawful was not adverse to [the landowner.] *The [widow’s] claim of ownership of the whole of the property did not affect her right to its use and occupancy as a homestead, and [the landowner] could not because of such claim recover possession of any part thereof. This being true, [the landowner’s] title would not be lost by his failure to sue within ten years after he received notice of defendant’s claim.*³³⁷

Therefore, no cause of action accrued, and no statute of limitations period began to run against the Church until the Defendants purported to break away from the Church in 2008.

Second, and separately, no claim could have accrued before November 2008 under *Masterson*. Defendants claim that they triggered adverse possession by enacting a 1989 diocesan canon purportedly disavowing the Church’s Dennis Canon.³³⁸ But “[a]dverse possession, to ripen into title, must be such as would expose the possessor to some liability”³³⁹ The 1989 canon was void on its face, since, as Defendant Iker told another Court, diocesan canons “cannot

³³⁶ 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.”).

³³⁷ *Perkins*, 166 S.W. at 917; see also *id.* at 918 (“Plaintiff having no right to possession in this case, he was not required to bring suit in order to prevent the defendant’s claim ripening into a title.”); *Brown v. Wood*, 239 S.W.2d at 200 (holding that life tenant “could not hold adversely to . . . his remainderman” and, therefore, his “claimed fee simple title to the land in question . . . could not, and did not, start the running of the statutes of limitation in his favor, or in favor of his grantee under his warranty deed, until after his death”).

³³⁸ See First Supplemental Second Amended-Third-Party Petition of Intervener the Corporation of the Episcopal Diocese of Fort Worth at 1-2. At the outset, there is no evidence the Church ever received notice of this at the time; Defendants’ trumpeted document contains no date-stamp. See A543-46, Excerpts from The Proceedings of the Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Oct. 6-7, 1989). But in any event, as shown, the issue is moot.

³³⁹ *Niendorff*, 149 S.W.2d at 164.

be inconsistent with national canons.”³⁴⁰ But the validity of a canon, without more, is a matter of internal church governance, which, *Masterson* noted, the U.S. Constitution “prohibit[s] civil courts from inquiring into.”³⁴¹ Defendants did not incur civil liability by passing a void diocesan canon. They incurred civil liability by *taking property*. Then, a civil action did accrue, and Plaintiffs promptly filed suit.

c. Defendants’ acknowledgement of the Church’s beneficial interest defeats Defendants’ claims for adverse possession.

As shown, Defendants’ adverse possession claims fail because, before November 2008, the property was not possessed “by another” as the statute requires, nor, as a matter of law, did any facts exist sufficient to start a limitations or adverse possession period.

But even where such a period does begin to run, “acknowledgment of title in another will defeat the adverse possession claim if the acknowledgment is made before the limitations period passes.”³⁴² Indeed, the Fort Worth Court of Appeals has held that “a single admission of title in another during the limitation period is fatal to a claimant’s title by limitation.”³⁴³

Without repeating every admission set forth above, from 1982 to defection in 2008, Defendants and their predecessors-in-office have repeatedly affirmed their accession to Church law without qualification and the Church’s beneficial interest in the property.³⁴⁴

As one example, in 1994, Diocesan, Corporation, and Congregational leaders stated in court filings that the Church’s “national canons” created an “express trust” over property in the Diocese, enforceable by the civil court “even if [legal] title had been in [a breakaway

³⁴⁰ A1054-56, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

³⁴¹ *Masterson*, 422 S.W.3d at 601 (quoting *Milivojevich*, 426 U.S. at 713–14).

³⁴² *Santa Fe Energy Operating Partners, L.P. v. Carrillo*, 948 S.W.2d 780, 786 (Tex. App.—San Antonio 1997, pet. denied).

³⁴³ *Allen v. Sharp*, 233 S.W.2d 485, 488 (Tex. Civ. App.—Fort Worth 1950, writ ref’d).

³⁴⁴ See, e.g., Section VIII.B.1.a, *supra*. In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. See n.209 and Section VIII.F.3.

faction].”³⁴⁵ They relied expressly on 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.”³⁴⁶

They argued that “under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law,” those who “abandon[] the communion of The Episcopal Church . . . cease[] to be qualified to serve as a priest or as a member of the Vestry”³⁴⁷ and that the entities they purport to represent are “new creation[s]” that, “having abandoned communion with The Episcopal Church,” have “no relation to” the continuing subordinate entity “and no right to its property.”³⁴⁸ They told the Court further that “it was never the[] intent” of “loyal parishioners” that their “gifts and memorials be converted to the use of” another denomination by “[s]chismatic” defendants that “have abandoned communion with The Episcopal Church.”³⁴⁹

In other words, *after* the touted 1989 canon, Defendants and their predecessors-in-office relied on the Dennis Canon and other national canons to recover property from a breakaway schismatic faction, telling the civil court that those national canons created an enforceable express trust. These admissions, along with many similar others, are “fatal to [Defendants’] title by limitation.”³⁵⁰ Any adverse possession period that began to run was interrupted long before Defendants could have acquired title.

³⁴⁵ 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).

³⁴⁶ 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).

³⁴⁷ A988-89, *Second Am. Orig. Pet., Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1019, ex. B (Aff. of Rev. Canon Billie Boyd).

³⁴⁸ A1015, *Pls.’ Mot. for Summ. J., Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Dec. 8, 1993), ex. A (Aff. of Bishop Jack Iker).

³⁴⁹ A991, *Second Am. Orig. Pet., Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-144833-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1028, *id.* ex. D (Aff. of Robert J. Rigdon).

³⁵⁰ *Allen*, 233 S.W.2d at 488.

2. Defendants' standing claim fails.

Defendants have argued, weakly, that the loyal Episcopalians of Fort Worth (the “Local Episcopal Parties”) do not have standing to challenge Defendants’ taking of Episcopal property away from Episcopalians in Fort Worth. (Defendants have not challenged the standing of The Episcopal Church or Local Episcopal Congregations in this case.)

But a party has standing so long as she “allege[s] an interest peculiar to [herself] and distinguishable from the public generally” *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984). The Local Episcopal Parties have alleged such an interest as a displaced minority that formerly enjoyed use of the property in Episcopal congregations, and as the only parties recognized by The Episcopal Church as authorized to lead the Episcopal Diocese—things the general public cannot allege. Thus, they have standing.

Defendants claim that because these individual Plaintiffs seek a declaration of their right to hold office under *Masterson*, they cannot also seek declarations that *if* they are declared officers, *then* they may resume use of the property. This is circular, absurd, and wrong.

Texas law not only permits *but requires* parties to bring such two-step, “contingent” claims in one pleading. *See Getty Oil Co. v. Ins. Co. of N. Am.*, 845 S.W.2d 794, 799 (Tex. 1992) (“Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action” (quoting Tex. R. Civ. P. 51(b))). And parties *must* do so because the doctrine of *res judicata* could otherwise act to bar the second claims later.

For instance, in *Getty*, the court rejected Getty’s attempt to file suit when the claims arose “out of the same subject matter” as a previous lawsuit. *Id.* at 798-99. Getty argued it was not required to bring those claims in the first lawsuit because they “did not accrue until [the first] judgment was rendered” *Id.* at 799. But the Texas Supreme Court rejected this assertion,

noting “Getty could have asserted its present claims in the [first] suit, with their resolution being contingent on the [other] claims.” *Id.* In fact, Getty was required to do so under *res judicata*.

Here, the Local Episcopal Parties’ claims all arise from Defendants’ attempt to wrest the Episcopal Diocese and its institutions from The Episcopal Church. The Local Episcopal Parties may seek to affirm their rights to (1) lead those entities and then (2) use and protect the property of those entities. These claims all arise from Defendants’ same wrongful conduct. And under *res judicata*, “[a]ny cause of action which arises out of [the] same facts should, if practicable, be litigated in the same lawsuit.” *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 630 (Tex. 1992).

In re Salazar, 315 S.W.3d 279, is not to the contrary. Despite Defendants’ repeated assertions, the Fort Worth Court of Appeals did not resolve which party is entitled to control the Diocese and Corporation. Rather, the Court said in no uncertain terms: “The trial court ***did not*** determine on the merits which Bishop and which Trustees are authorized persons within the Corporation and the Fort Worth Diocese, ***nor do we***. The question of ‘identity’ ***remains to be determined*** in the course of the litigation.” *Id.* at 286 (emphases added). That is what this Court did in its 2011 summary judgment, and that is what it is mandated to do again on remand now.

Accordingly, the Local Episcopal Parties have standing to request a ruling that they have authority to represent the Diocese and the Corporation and, contingent on that determination, to enforce those entities’ property rights.

3. Defendants’ argument regarding estoppel fails.

Plaintiffs are entitled to assert estoppel as a defense against Defendants’ affirmative claims and as a counter-defense to nullify Defendants’ defenses. *See, e.g., Lopez v. Muñoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 864 (Tex. 2000) (permitting a party to assert quasi estoppel as a defense against another party’s affirmative claim); *Cook v. Smith*, 673 S.W.2d 232,

235 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) (permitting a plaintiff to invoke equitable estoppel as a counter-defense to prevent a defendant from pleading limitations).

“Judicial estoppel precludes a party who successfully maintains a position in one proceeding from afterwards adopting a clearly inconsistent position in another proceeding to obtain an unfair advantage.” *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 643 (Tex. 2009). The doctrine “prevent[s] parties from playing fast and loose with the judicial system for their own benefit.” *Id.* As described above, Defendants have made numerous judicial statements regarding, among other things, the structure and discipline of The Episcopal Church, the inability of a constituent part of the Church to leave the Church with property, the manner in which one abandons communion with the Church, and the method by which Texas courts must determine the identity of religious entities. *See, e.g.*, Sections VIII.A.1–3. Defendants are judicially estopped from contradicting those statements now.

Defendants are also quasi-estopped from claiming ownership to the disputed property. “Quasi-estoppel precludes a party from asserting, to another’s disadvantage, a right inconsistent with a position previously taken. The doctrine applies when it would be unconscionable to allow a person to maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit.” *Lopez*, 22 S.W.3d at 864 (internal citations omitted). Here, Defendants accepted numerous benefits from their promises to follow the Church’s rules and hold property in trust, including formation as a Diocese, union with the Church under its Constitution, the transfer of millions of dollars of real property and funds, participation in the governance of the Church, participation in Church benefit plans, and entrustment with institutions built by the Church under its Constitution and Canons. *See* Sections VIII.B.1.a–d. But now Defendants have changed position by asserting the right to complete ownership and control of the property.

Accordingly, it would be unconscionable to permit Defendants to retain the property they received through their promises to steward it for the benefit of the Church.

Further, Defendants are equitably estopped from claiming a right to the disputed property. Equitable estoppel prevents a party from benefitting from misrepresentations that induce an opposing party to change position to its detriment. *See Office of Attorney Gen. of Tex. v. Scholer*, 403 S.W.3d 859, 862 (Tex. 2013). As described above, Defendants induced Plaintiffs to permit Defendants to use the disputed property through Defendants' misrepresentations that they would follow the Church's rules and hold the property in trust for the Church. Defendants intended that their promises to hold the property in trust would cause Plaintiffs to permit Defendants to use the property, and Plaintiffs relied on those promises to their detriment. Plaintiffs neither knew, nor had the means to know, that Defendants would break their promises and attempt to secede from the Church with the property. Accordingly, Defendants are equitably estopped from claiming complete ownership of the disputed property.

IX. CONCLUSION AND PRAYER

Plaintiffs respectfully pray that this Court grant partial summary judgment in their favor as follows:

1. Simple Solution. It is undisputed that the Corporation holds the property at issue in trust for the use and benefit of the Diocese and the Congregations. Under *Masterson* and *Episcopal Diocese of Fort Worth*, as a matter of law, only The Episcopal Church can determine who controls those beneficiaries, the Diocese and Congregations, for civil law purposes. The Court should grant summary judgment (1) declaring that it defers to Plaintiff The Episcopal Church's determination that Plaintiffs and their successors represent the Diocese and Congregations, (2) enjoining Defendants to surrender control of the property and return the property to the Diocese and the Congregations, as those entities are defined by Plaintiff The Episcopal Church, and (3) enjoining Defendants from holding themselves out as the Diocese or Congregations for civil law purposes, including as beneficiaries of their trust interests or owners of tangible personal property and bank accounts held by or for those entities. While Defendants are not still Trustees of the Corporation under Texas corporations law, as shown below, if they *were*, they would be in breach of the Corporation's trust obligations to the Diocese and Congregations, and this Court should remove the breaching Corporation as trustee of Plaintiffs' trusts. Tex. Prop. Code § 113.082(a)(1), (4).

2. Express Trust. As part of the Diocese's formation, the Diocese and its Corporation and Congregations agreed to hold all property in trust for the use and benefit of Plaintiff The Episcopal Church. The property transferred to the Diocese and Corporation was already in express trust for the Church. And in addition, numerous individual deeds also contain trust language consistent with those global declarations of trust and are jointly and separately enforceable. The Court should grant summary judgment (1) declaring that these trusts are legally enforceable and (2) enjoining Defendants to surrender control of the property and return the property to Plaintiffs.

3. Constructive Trust. The conveyance of property to the Diocese and its subordinate Corporation was induced by the Diocese's agreement to hold the property in trust for The Episcopal Church. Defendants have breached this fiduciary commitment by purporting to break away from The Episcopal Church while keeping the property for themselves. The Court should grant summary judgment imposing a constructive trust on all property of the Diocese and Congregations whether held directly or in the Corporation, to restore the property to Plaintiffs' use and benefit.

4. Texas Associations Law. The Diocese accepted property as a subordinate unit of Plaintiff The Episcopal Church, subject to The Episcopal Church's trust clause and the other existing trust obligations. Thus, under Texas Associations Law, the Diocese may not break away from The Episcopal Church and keep the property. Separate and apart from Texas Associations Law, enabling such a faction to take the Episcopal Diocese from The Episcopal Church would be a gross breach of the First Amendment. The Court should grant summary judgment and enjoin Defendants to surrender control of the property and return the property to Plaintiffs.

5. Texas Corporations Law. Defendants have no right to control the Corporation under basic principles of Texas corporations law and the governing documents of the Corporation. The Court should grant summary judgment, declaring that Defendants are not qualified to serve as Trustees of the Corporation, that the Trustees designated by Plaintiffs are entitled to serve, that Plaintiffs are entitled to control the corporation as a matter of law, and that Defendants' attempted changes to the Corporation's Articles and Bylaws are void and without effect, and enjoining Defendants to surrender control of the Corporation and property to Plaintiffs. If, in the alternative, the Court finds that Defendants are entitled to control the Corporation, then the Court should order the removal of the Corporation as the trustee of the Diocese's and Congregations' trusts and return the control of any Property held by the Corporation to the use and benefit of Plaintiffs.

6. Disclaimer of Interest. Defendants have repudiated any claim to the Corporation of All Saints Episcopal School (Fort Worth) and all property held by it, the Corporation of All Saints Episcopal Church (Fort Worth) and all property held by it, and donations collected by Plaintiff All Saints Episcopal Church (Fort Worth) and held in its bank accounts. Defendants disclaimed any objection to Plaintiff All Saints' status as a congregation in The Episcopal Church. The Court should clarify title to all such property for Plaintiff All Saints Episcopal Church (Fort Worth). And all property that any Defendant holds for the benefit of All Saints Episcopal Church (Fort Worth), or any related entity, must, for these additional reasons, be returned to Plaintiff All Saints

Episcopal Church (Fort Worth) and removed from this lawsuit. In addition, Defendants have disclaimed interest in property of—and granted special warranty deeds to—Trinity Episcopal Church (Fort Worth), St. Martin-in-the-Fields Episcopal Church (Keller), and St. Luke’s Episcopal Church (Stephenville), all constituent entities of The Episcopal Church and its Episcopal Diocese of Fort Worth. To the extent Defendants assert claims to such property in this case, the Court should clarify that Defendants have no interest in such property.

7. Watson Deference and Jones Retroactivity and Trust Enforcement. For preservation purposes, Plaintiffs restate their arguments that (1) this case should be decided in Plaintiffs’ favor under the *Watson v. Jones* deference approach, because the hierarchical Episcopal Church indisputably recognizes Plaintiffs as the only parties authorized to use the identity and property of the subordinate local Church entities; (2) the First Amendment and *Jones v. Wolf* require courts to enforce express trusts recited in general-church governing documents irrespective of state law, and here the Dennis Canon resolves the case in Plaintiffs’ favor on those grounds; (3) the application of the neutral-principles approach in this case infringes free-exercise rights because it is unconstitutionally retroactive under *Jones v. Wolf*, and this case must therefore be resolved in Plaintiffs’ favor under the *Watson* deference doctrine; and (4) the neutral-principles approach endorsed in *Jones v. Wolf* does not remain a constitutionally viable means of resolving church-property disputes, especially in light of *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S. Ct. 694 (2012), and this case must therefore be resolved in Plaintiffs’ favor under the deference doctrine. As a matter of law, the Court should therefore resolve this case in Plaintiffs’ favor on federal constitutional grounds.

8. Denial of Defendants’ Claims and Defenses. For the foregoing reasons, and for the additional reasons asserted in Section VIII.F, including the failure of Defendants’ adverse possession and standing claims/defenses, and their being estopped as a matter of law from contradicting earlier commitments, conduct, and positions, the Court should grant summary judgment against Defendants on all of Defendants’ claims and defenses.

9. Trespass to Try Title. For the foregoing reasons, the Court should grant summary judgment on Plaintiffs’ trespass to try title claim, declaring that Plaintiffs hold title to, and are entitled to possession of, the property at issue and enjoining Defendants to surrender control of the property and return the property to Plaintiffs.

9. Attorneys’ Fees. Plaintiffs are entitled to the declaratory relief described herein, and Defendants are entitled to no declaratory relief. Thus, the Court should award Plaintiffs reasonable and necessary attorneys’ fees as are equitable and just and should award no attorneys’ fees to Defendants.³⁵¹

10. Declaratory and Injunctive Relief. For all of these reasons, Plaintiffs pray for declaratory and injunctive relief to enforce Plaintiffs’ rights, including as follows:

1. The Court declares that Plaintiffs and their duly elected or appointed

³⁵¹ The parties have agreed to postpone discovery on attorneys’ fees until after the Court has ruled on cross-motions for summary judgment. See Rule 11 Agreement Regarding Discovery on Attorneys’ Fees (Sept. 19, 2014).

successors, as recognized and determined by The Episcopal Church, are the proper authorities of the Diocese, the bishops, the members of the Standing Committee, the Trustees of the Diocesan Corporation and the Endowment Fund, and the Congregations, respectively, and are entitled to the exclusive use and control of the Property;³⁵² that, as recognized and determined by The Episcopal Church, Defendants and their successors do not hold those offices and are not entitled to the use or control of the Property; and that Defendant Diocese and Congregations, when controlled by Defendants, were not the continuing Episcopal Diocese of Fort Worth or its Congregations.

2. The Court declares that all of the Property is held in trust for and may be used only for the Church and its Diocese and Congregations, subject to the Constitutions and Canons of the Church and its Diocese.
3. The Court declares that, to the extent that the Corporation holds title to the Property, it does so in trust for the use and benefit of the Diocese and the Congregations, as represented by the Local Episcopal Parties and their successors and the Local Episcopal Congregations.
4. The Court declares for civil law purposes that the Defendants' actions seeking to withdraw the Episcopal Diocese of Fort Worth, its Corporation, its Endowment Fund, its Congregations, parishes or missions, or other Diocesan institutions or any property of any character or kind from The Episcopal Church were and are unauthorized, void, and without effect, as recognized and determined by The Episcopal Church.
5. The Court declares that Defendants have no rights to or authority over any of the Property, and that Defendants have no right or authority to possess, divert, encumber, alienate, transfer, or use any of the Property.
6. The Court orders that Plaintiffs recover from Defendants title to and possession of the Property and have a writ of possession over the Property.
7. The Court declares that the August 15, 2006 (filed September 5, 2006) and April 21, 2009 attempted changes by the Defendants to the Articles and Bylaws of the Diocesan Corporation, any other similar changes, and any

³⁵² The phrase "the Property," as used herein, refers to (1) the real and personal property listed in table D of the Motion (which Table is hereby incorporated herein by reference), and (2) any and all real or personal property, of any character or kind, type or description, including all bank accounts and financial assets, that were held by or for the benefit of The Episcopal Church, the Diocese, the Diocesan Corporation, the Fund for the Endowment of the Episcopate, any of the parishes or missions of the Diocese (including but not limited to the congregations listed in Table F of the Motion), or any other constituent entity of the Diocese, as of November 15, 2008, as well as any property acquired using, or as a result of, the Property in any way, including but not limited to income generated by selling, investing, encumbering any with debt, leasing, or placing liens on any of the Property, and property purchased with the Property or with funds derived from the Property. The Property also includes any and all property that originated as part of the Property, including any and all of the Property that Defendants have re-characterized, transferred to different accounts, placed under different names, transferred to new entities, or commingled with other property.

changes by Defendants after November 16, 2008 were ultra vires, unauthorized, void, and/or without effect.

- 8.** The Court enjoins Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them to vacate and surrender possession of the Property, to surrender control of the Diocese and the Diocesan Corporation to Plaintiffs and to the authorized leaders of the parishes and missions listed in Table D of Plaintiffs' July 15, 2014 Amended Petition, as recognized and determined by The Episcopal Church, to cease holding themselves out as the Diocese, Corporation, or Congregations, or using their names or seals, and to return and to execute any necessary documents to accomplish the surrender of such control and such Property.
- 9.** If, in the alternative, the Court finds that Defendants are entitled to control the Corporation, then the Court orders the removal of the Corporation as the trustee of the Diocese's and Congregations' trusts and orders the return of the control of any Property held by the Corporation to the use and benefit of Plaintiffs.
- 10.** The Court imposes a constructive trust on the Property and orders that the Property be restored to Plaintiffs' use and benefit.
- 11.** The Court denies Defendants' claims and defenses made and all relief sought by Defendants in any and all pleadings filed by Defendants in this action.
- 12.** The Court finds that Defendants are estopped as a matter of law from raising their claims and defenses.
- 13.** The Court orders that Defendants pay Plaintiffs their reasonable and necessary attorneys' fees to be determined by the Court in subsequent proceedings.
- 14.** The Court denies Defendants' request for attorneys' fees.

Further, Plaintiffs pray that this Court grant them such other and further relief to which they are entitled.

Respectfully submitted,

By: /s/ Mary E. Kostel w/ permission

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CERTIFICATE OF SERVICE

I certify that on December 1, 2014, the foregoing document was filed and served electronically on all counsel.

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