

NO. 18-0438

IN THE SUPREME COURT OF TEXAS

**THE EPISCOPAL DIOCESE
OF FORT WORTH**

v.

THE EPISCOPAL CHURCH

On Petition for Review from Cause No. 02-15-00220-CV
in the Second Court of Appeals, Fort Worth, Texas

PETITIONERS' REPLY BRIEF

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2018-with-bookmarks-for-website.pdf](https://www.pcaac.org/wp-content/uploads/2018/09/BCO-2018-with-bookmarks-for-website.pdf))37

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REFERENCES TO THE PARTIES, RECORD, & CASES

the Diocese	Petitioner The Episcopal Diocese of Fort Worth
the Corporation	Petitioner The Corporation of The Episcopal Diocese of Fort Worth.
Plaintiffs	All Respondents, real or purported, regardless of how they were designated in the trial court
Defendants	All Petitioners, regardless of how they were designated in the trial court
TEC	The Episcopal Church
LTEC	Parties self-identified as the Local Episcopal Parties and Local Episcopal Congregations
29CR10094	Clerk’s Record, volume 29, page 10094
2SCR144	Second Supplemental Clerk’s Record, page 144
EDFW	<i>Episcopal Diocese of Fort Worth v. The Episcopal Church</i> , 422 S.W.3d 646 (Tex. 2013)
Masterson	<i>Masterson v. The Diocese of Northwest Tex.</i> , 422 S.W.3d 594 (Tex. 2013)
Salazar	<i>The Episcopal Church v. Salazar</i> , 547 S.W.3d 353 (Tex. App. – Fort Worth 2018, pet. filed)
Jones v. Wolf	<i>Jones v. Wolf</i> , 443 U.S. 595 (1979)
Def. Br.	Defendants’ (Petitioners’) Brief on the Merits filed April 10, 2019
Resp. to Cond. Br.	Response to Cross-Petitioners’ Conditional Brief on the Merits filed June 7, 2019

INTRODUCTION

Six years ago, the Court remanded this case to the lower courts to resolve based on neutral principles of Texas law. A single judge signed the opinion below, rendering judgment on only 2 of 121 disputed deeds, and none of the 11 disputed endowment funds. All parties – Plaintiffs and Defendants – agree the opinion is erroneous, and all have appealed.

If this Court does not take this case now, several more years will be wasted trying to comply with this erroneous opinion. Meanwhile, churches and ministers on both sides must continue devoting time and money to this litigation rather than their ministries. *For heaven's sake*, something needs to be done *now*. This Court should grant review.

A note on Plaintiffs' briefs

Plaintiffs filed a single motion for summary judgment in the trial court,¹ and a single conditional cross-petition for review in this Court. It is unclear why they believed they could file *two* briefs in response to the Defendants' brief on the merits, except perhaps this allowed them

¹ 30CR10793.

to use 19,676 words rather than 15,000 under the rules.² They certainly present the same arguments, since each response brief incorporates the other *in its entirety* by reference.³

To avoid duplication, references herein to “Plaintiffs” refer to all of them, and citations are limited to the longer Local TEC brief unless otherwise noted. Similarly, where Plaintiffs merely incorporate “additional reasons” from a previous brief,⁴ Defendants incorporate their previous responses thereto.⁵

ARGUMENT

Plaintiffs open with a complaint: “For ten years, Defendants have asked courts to begin and end with the assumption that they are the Episcopal Diocese of Fort Worth.”⁶ This is a brave charge, coming as it does from those who for ten years have asked the courts to simply hand over this entire case to TEC. As in all their briefs over those ten years,

² See TEX. R. APP. P. 9.4(i)(2)(B).

³ See *TEC Resp. Br.* at 1 n.1; *LTEC Resp. Br.* at 1.

⁴ See *LTEC Br.* at 39–42.

⁵ See *Resp. to Cond. Br.* at 46–54.

⁶ *LTEC Br.* at 1; see also *id.* at 13–14, 35–36.

the heart of every one of the Plaintiffs' argument is still Deference.⁷ This Court should reject it for the second time.

I. Defendants hold all property under Neutral Principles

A. All agree the property is subject to the Diocesan trust

The Court's request for full briefing was remarkably successful in narrowing the issues. All parties now agree legal title is held by the Corporation. All now agree that equitable title is governed by the trust stated in the Diocese's charters⁸ – contrary to the *opposite* conclusion of the court of appeals.⁹ Defendants fully agree to the list of uncontested issues in the Local TEC Response Brief:

- legal title to all disputed properties is held by the Corporation;¹⁰
- the Corporation holds all properties in a valid and enforceable trust as stated in the Diocese's charters;¹¹

⁷ Plaintiffs briefs use cognates of “defer” 35 times. *See LTEC Br.* at *xiii*, 8–9, 12, 18; *TEC Resp. Br.* at 3–8, 23, 27–34, 37.

⁸ *LTEC Br.* at 8 (“The parties agree that the Diocesan Trust is the relevant instrument of ownership”); *TEC Br.* at 4–5 (“[W]e agree that the Court could have resolved the case by applying the Diocesan trust provision”).

⁹ *See Salazar* at 435 n.104, 437.

¹⁰ *LTEC Br.* at 6.

¹¹ *Id.* at 2, 6.

- this trust modifies and supersedes any trusts stated in individual deeds;¹²
- the trust places equitable title for most properties in the Parish or Mission for which each was acquired, defining “Parish” and “Mission” as the unincorporated association in union with the Diocese’s Convention;¹³
- the trust places all remaining properties in trust for the Diocese itself;¹⁴
- equitable title is the only remaining issue;¹⁵ and
- the only issue on equitable title is which side represents the beneficiaries: the Diocese and the congregations in union with its Convention.¹⁶

The court of appeals held the express trust in the Diocese’s charters did not supersede deeds that originally stated a different trust (like the 1947 deed) or no trust at all (like the 1950 deed).¹⁷ All parties agree that was error (though Plaintiffs argue it reaches the right result),

¹² *Id.* at 31.

¹³ *Id.* at 6 & n.3.

¹⁴ *Id.* at 6 n.3.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 12 (“The parties dispute only which side may control the continuing pre-dispute Diocese and its Congregations.”). Control of the Corporation remains an issue in this case if the Court denies review. *See part II.C, infra.*

¹⁷ *Salazar* at 435 n.104, 437.

and both seek to establish equitable title under the Diocesan trust alone. So one of the two primary points in Defendants' opening brief is no longer contested: "No deeds impose a different trust."¹⁸

The only remaining issue is equitable title. That issue has also been narrowed, since all parties agree equitable title is held by the Diocese and congregations in union with its Convention.¹⁹ The only remaining issue is this: do Plaintiffs or Defendants represent the Episcopal Diocese of Fort Worth, its Convention, and its Corporation?²⁰

Defendants showed in their opening brief why they alone represent all three under neutral principles of Texas law.²¹ Plaintiffs have responded with no trust text or state laws otherwise; they simply claim that disaffiliation is an ecclesiastical issue, so the court of appeals

¹⁸ See *LTEC Br. part I; Defs. Br. part I; see also Gunn v. McCoy*, 554 S.W.3d 645, 677 (Tex. 2018) ("Every issue presented by a party must be supported by argument and authorities in the party's brief on the merits, or it is waived.").

¹⁹ TEC's assertion that it too holds equitable title along with the local entities is incorrect for reasons previously stated. See *Resp. to Cond. Br.* at 38–45.

²⁰ See *LTEC Br.* at 14.

²¹ See *Defs. Br.* at 21–22, 28.

was right to defer to TEC.²² But since the trust text does not say beneficiaries must be affiliated with TEC, why does disaffiliation make any difference? Neutral Principles courts stick with the trust text, since otherwise they would have nothing but each judge's personal opinion of how a church ought to hold property. That is none of a judge's business. The beneficiaries are all Texas legal entities,²³ and the Court said in 2013 that Texas law dictates who represents a Texas legal entity and is entitled to its property.²⁴ To stay true to what was said in 2013, this Court should reverse and grant judgment for the Defendants.

B. The trust requires affiliation with the Diocese, not TEC

The Neutral Principles approach to church property disputes has but one rule: courts construe trusts, deeds, organizational charters, and state laws just as in all other cases.²⁵ The gist of Plaintiffs' response briefs is the antithesis: no matter what these texts say, civil courts must defer

²² *LTEC Br.* at 2, 7-8, 12, 20.

²³ A nonprofit unincorporated association in Texas "is a legal entity separate from its members." TEX. REV. CIV. STAT. art. 1396–70.01, § 7(a) (currently TEX. BUS. ORGS. CODE § 252.006(a)).

²⁴ *See EDFW* at 652; *Masterson* at 613.

²⁵ *Jones v. Wolf*, 443 U.S. 595, 603 (1979).

to TEC's notion of who represents the named beneficiaries. That fits Plaintiffs' definition of the Deference approach: "courts generally award all property to whomever the hierarchical church identifies as the prevailing party, without analysis of governing documents under neutral principles."²⁶ But it disregards settled Texas law.

This Court held in *this* case that neutral principles of Texas law must be used "in determining which faction of a religious organization is entitled to the property when the organization splits."²⁷ Who represents a corporation or unincorporated association is usually not an ecclesiastical question. In *Jones v. Wolf*, the U.S. Supreme Court rejected the argument that "the true representative of the Vineville church is an ecclesiastical question that cannot be answered by a civil court";²⁸ it instead instructed the state courts the true representative was the local majority if state law and the church charters so provided.²⁹

²⁶ *TEC Br.* at 23

²⁷ *EDFW* at 651.

²⁸ *Masterson* at 607.

²⁹ *Id.*; see also *Jones v. Wolf*, 260 S.E.2d 84, 85 (Ga. 1979).

This Court made Neutral Principles mandatory in Texas in 2013; Texas courts do not decide who is entitled to property by deferring to an external religious hierarchy “[a]bsent specific, lawful provisions” granting it such authority.³⁰ As shown by the following church charters, deeds, and state laws TEC does not have authority to decide who holds equitable title to these properties.

The local church charters. All parties agree the trust text places equitable title in congregations “in union” with the Convention of the local Diocese.³¹ Congregations “in union” with the Convention are those entitled to send delegates to that Convention:³²

ARTICLE 2

MEMBERS OF CONVENTION

. . . Every Parish and Mission in union with the Convention shall be entitled to Lay Delegates determined by the number of confirmed communicants reported in the Annual Parochial Report for the year ending December 31 next preceding the Diocesan Convention, as provided by Canon.

³⁰ *Masterson* at 610.

³¹ *See Defs. Br.* at 12-16; *LTEC Br.* at 6.

³² *17CR6242, 17CR6249, 17CR6262.*

* * *

ARTICLE 9

CONGREGATIONS IN UNION WITH CONVENTION

Every Parish and Mission which shall have been created or admitted in accordance with the Constitution and Canons of this Diocese, shall be deemed to be in union with and entitled to representation in the Convention of the Diocese, unless deprived of such right either through suspension or dissolution. . .

Only Defendants have sent delegates to the Diocese’s Convention for the last ten years.³³ The appellate record contains the list of delegates who attended the Convention since suit was filed, and *none* of the individual Plaintiffs who claim to represent the beneficiary congregations are listed as attendees.³⁴ Plaintiffs have attended their own convention since,³⁵ which they concede was not called in compliance with the Diocese’s charters.³⁶ Since the Plaintiffs do not represent the Parishes and Missions in union with the Diocese’s

³³ 29CR10170(§10)-10172(§14).

³⁴ 39CR13813-24.

³⁵ Compare 20CR7019 (Plaintiffs’ convention) with 29CR10466 (Defendants’ Convention).

³⁶ 20CR7028 (conceding special convention was not called pursuant to “strict application of the provisions of the diocesan constitution and canons”).

Convention, they cannot be the trust beneficiaries.

TEC's charters. The only trust in TEC's charters was the Dennis Canon. The court of appeals correctly held it was never enforceable under Texas trust law.³⁷ This Court has held it was a revocable trust,³⁸ and the Diocese's Convention revoked it 30 years ago:³⁹

CANON 18

TITLE TO PROPERTY

Sec. 18.4 . . . Property held by the Corporation for the use of a Parish, Mission or Diocesan School belongs beneficially to such Parish, Mission or Diocesan School only. No adverse claim to such beneficial interest by the Corporation, by the Diocese, or by **The Episcopal Church** of the United States of America is acknowledged, but rather **is expressly denied**.

The deeds. Of the 121 deeds awarded to Defendants in the trial court, 65 stated no trust, 20 stated a trust for a specific congregation, and 36 stated a trust for affiliates of TEC.⁴⁰ As Plaintiffs concede, all were

³⁷ See *Salazar* at 424 (citing TEX. PROP. CODE § 112.004).

³⁸ See *EDFW* at 653, *Masterson* at 613 (both citing TEX. PROP. CODE § 112.051).

³⁹ *17CR6202-§18.4, 29CR10199, 29CR10205; Resp. to Cond. Br. at 38-45.*

⁴⁰ See *Defs. Br.* at 26, 33, 36-37.

modified and superseded by the trust in the Diocese's charters.⁴¹

Texas associations law. State law does not require that "second-tier" entities hold property in trust for TEC; it instead restricts the beneficiaries of a trust to those stated in the trust itself.⁴²

C. The Diocese is represented by the majority: the Defendants

Plaintiffs repeatedly claim the parties ordered their affairs so that ecclesiastical decisions "effectively determine the property issue."⁴³ To the contrary, they ordered their affairs so that the **majority** of the Diocese and its Convention determine the property issue.

The Diocese is unquestionably governed by a majority vote of its Convention:⁴⁴ (1) the majority elects the officers of the Diocese and the Corporation;⁴⁵ (2) the majority can amend its Constitution, Canons, and

⁴¹ See *Defs. Br.* at 34–37; *LTEC Br.* at 31.

⁴² TEX. PROP. CODE § 111.0035(b) ("The terms of a trust prevail.").

⁴³ *LTEC Br.* at 9, 13, 21, 24 (quoting *Masterson* at 606–07); *TEC Br.* at 1–2, 28, 37.

⁴⁴ 17CR6242 ("The Diocese of Fort Worth entrusts its legislation to a Convention"); 17CR6248 ("a majority of the aggregate votes shall be decisive").

⁴⁵ 17CR6257 (Bishop); 17CR6250 (Standing Committee); 17CR6323–¶14 (Diocese officers); 17CR6278 (Corporation Trustees).

Convention rules;⁴⁶ and (3) the majority can admit or suspend Parishes and Missions.⁴⁷ Plaintiffs admit they represent only a minority of the Convention, and TEC was never a member of it.⁴⁸ Under the plain text of the charters of the Diocese, Convention, and Corporation, Plaintiffs have represented none of them since this dispute arose because they are not the majority that counts.

Nor do Plaintiffs claim their congregations are “in union” with the Diocese and Convention controlled by that majority.⁴⁹ As the records of the parties’ different conventions show, only Defendants have sent delegates to the Diocese’s Convention since 2008.⁵⁰ Plaintiffs have

⁴⁶ 17CR6259 (Constitution); 17CR6258 (Canons); 17CR6325 (Convention Rules).

⁴⁷ 17CR6239 (authorizing Convention to create, admit, suspend, and dissolve Parish or Mission, and deeming those admitted to be “in union” with the Convention); 17CR6248 (providing that majority vote of Convention “shall be decisive”); 17CR6284-¶22.4 (requiring new parishes to apply to Convention for admission).

⁴⁸ *TEC Br.* at 7 (“when the Episcopal Diocese of Fort Worth voted in 2008 to disassociate from The Episcopal Church, leaving a minority of loyal Episcopalians wishing to remain with the denomination ...”); 29CR10170- §9; 29CR10169-¶5.

⁴⁹ *See Defs. Br.* at 16-19.

⁵⁰ 29CR10170(§10)-10172(§14).

attended their own convention,⁵¹ starting with a “special convention” for “reorganization, restoration and reconnection” of their diocese.⁵²

As they cannot claim to represent a majority of the Diocese or its Convention, Plaintiffs offer several arguments to override the majority. All would violate settled law from this Court and the U.S. Supreme Court by nullifying the church charters.

Majority is not an ecclesiastical question. First, Plaintiffs complain that who represents the majority vote is irrelevant because courts have no jurisdiction to ask: “the First Amendment limits the jurisdiction of secular courts regarding the extent to which they may inquire into . . . whether [a religious] entity has followed its own procedures regarding controversies *within the exclusive jurisdiction* of the ecclesiastical authorities.”⁵³ But who represents a majority is not “within the exclusive jurisdiction” of churches. The U.S. Supreme Court said so expressly in *Jones v. Wolf*: “a presumptive rule of majority

⁵¹ Compare 20CR7019 (Plaintiffs’ convention) with 29CR10466 (Defendants’ Convention).

⁵² 20CR7020; *Defs. Br.* at 16–19.

⁵³ *LTEC Br.* at 22 (emphasis added) (quoting *Masterson* at 607–08).

representation ... would be consistent with both the neutral-principles analysis and the First Amendment,” as “the majority faction generally can be identified without resolving any question of religious doctrine or polity.”⁵⁴ TEC admits it chose the minority,⁵⁵ but under Neutral Principles the civil courts cannot.

An outsider cannot veto a local majority. Second, Plaintiffs say majority rule is irrelevant because a “second-tier” majority cannot violate “first-tier rules.”⁵⁶ But this Court held in *Masterson* that TEC could not control a local parish corporation “absent corporate documents and law so providing.”⁵⁷ Nothing in the local charters here grants such control to a minority group or TEC. If banks, vendors, and others who do business with churches cannot count on the integrity of their organizational charters, they cannot know who they must actually deal with.

⁵⁴ *Jones v. Wolf* at 607.

⁵⁵ *TEC Br.* at 11 (“[T]he Church determined ... the historic Diocese and its congregations [were] now represented by the loyal Episcopalian minority.”).

⁵⁶ *LTEC Br.* at 21 n.7, 24, 29–30.

⁵⁷ *Masterson* at 609–10.

Additionally, nothing in TEC's own charters allows it to control the local entities. TEC's charters expressly *prohibit* it from controlling a diocese by calling a local Convention or electing local leadership absent permission from the local officers.⁵⁸ It cannot review or veto amendments to a diocese's charters, as Plaintiffs have conceded.⁵⁹ Plaintiffs point instead to affidavits by their allies stating unwritten policies,⁶⁰ but unwritten policies are not "specific, lawful provisions" recognized by neutral principles of Texas law.⁶¹ Indeed, this is the heart of the difference between Neutral Principles and Deference: must a

⁵⁸ 12CR4356-III.12.3(e) ("No Bishop shall perform episcopal acts ... in a Diocese other than that in which the Bishop is canonically resident, without permission or a license to perform occasional public services from the Ecclesiastical Authority of the Diocese"); 12CR4252-II.3 ("A Bishop shall confine the exercise of such office to the Diocese in which elected, unless requested to perform episcopal acts in another Diocese by the Ecclesiastical Authority thereof"); *see also* 12CR4420-IV.15 ("**Ecclesiastical Authority** shall mean the Bishop of the Diocese or, if there be none, the Standing Committee or such other ecclesiastical authority established by the Constitution and Canons of the Diocese.").

⁵⁹ 34CR11860-¶7; 2SCR358-59 (Gulick depo. pp. 52-53: "Based on your understanding as Bishop, do you recall anything in the Constitution or Canons that required you to submit that prior to annual convention to the Episcopal Church or the Presiding Bishop for approval before annual convention could vote on it? A: No"). The TEC brief says local charters "may not conflict with those of [TEC]." *TEC Br.* at 9. This is simply false; the associated record citations say nothing of the sort.

⁶⁰ *LTEC Br.* at 15-16, 26-27.

⁶¹ *Masterson* at 609-10.

church's property provisions be stated in specific, legally cognizable form, or can they be improvised as the need arises during a lawsuit?

Plaintiffs claim their minority became the "majority" at a new convention which TEC's rules allow the Presiding Bishop to call to "ensure that adequate interim Episcopal Services are provided."⁶² To put it politely, this is a half-truth; the actual TEC rule says she may only *consult* with local leaders unless *they* ask her to do more.⁶³ When pressed for a "specific, lawful provision" allowing TEC to control the Diocese, Plaintiffs can only prevaricate.

Impossibility does not make a minority the majority. Third, Plaintiffs say the majority doesn't count because the Defendants' actions made it impossible for them to control the Diocese.⁶⁴ But it is always impossible for a *minority* to outvote the *majority*; that is what "majority" means.

⁶² LTEC Br. at 22.

⁶³ 12CR4277-I.2.4(a)(3) (allowing Presiding Bishop to "*consult with the Ecclesiastical Authority* to ensure that adequate interim Episcopal Services are provided") (emphasis added); 12CR4362-III.13.1 ("A Diocese without a Bishop may, *by an act of its Convention*, and in consultation with the Presiding Bishop, be placed under the provisional charge" (emphasis added)); *see also* 12CR4420-IV.15 (defining "Ecclesiastical Authority" as locally elected officials).

⁶⁴ LTEC Br. at 23.

Plaintiffs' inability to *legally* control the Diocese, Convention, or Corporation is not a license for a minority to *illegally* control them. When the court of appeals said the Defendants' majority "became something else" upon disaffiliation,⁶⁵ it was clearly wrong as to the *Diocese* because the majority *is* the Diocese under its own rules.

The majority determines who left and who stayed. Fourth, Plaintiffs say the Defendants have no standing to complain about a minority controlling the Diocese because they "left the association."⁶⁶ Defendants dropped affiliation with TEC, but never "left" the Diocese; that is simply the minority's viewpoint. A minority cannot become the majority simply by claiming everybody else "left"⁶⁷; that would render majority rule meaningless.

To the court of appeals, it did not matter who was the local majority. The court simply replaced the Diocese's charters providing for majority rule with a prior-affiliation requirement: since the trust

⁶⁵ *Salazar* at 434.

⁶⁶ *LTEC Br.* at 29.

⁶⁷ *See, e.g., De Zavala v. Daughters of the Republic of Tex.*, 124 S.W. 160, 166 (Tex. Civ. App. – Galveston 1909, writ ref'd).

beneficiaries were affiliated with TEC *before* 2008, only those affiliated with TEC *after* 2008 were trust beneficiaries.⁶⁸ If the trust text required affiliation with TEC that would be true—but it doesn't. Since the Diocese's 1982 Primary Convention superseded any trusts requiring TEC affiliation, requiring TEC it now conflicts with the trust text.

Texas law long ago settled which of two competing conventions represents a legal entity: the one that complied with the convention's rules.⁶⁹ That is not the Plaintiffs, and they never claim otherwise. *Jones v. Wolf* holds that civil courts have jurisdiction to decide who represents the majority, since that "can be identified without resolving any question of religious doctrine or polity."⁷⁰ There is no question who represents the majority here: it is the Defendants.

II. Plaintiffs cannot claim the property under Deference

Plaintiffs rely entirely on deference, as they have for ten years. Having lost the initial fight to prevent Texas from adopting Neutral

⁶⁸ *Salazar* at 434-47.

⁶⁹ *De Zavala v. Daughters of the Republic of Texas*, 124 S.W. 160, 166 (Tex. Civ. App.—Galveston 1909, writ ref'd).

⁷⁰ *Jones v. Wolf* at 607.

Principles like the majority of other states,⁷¹ Plaintiffs try to squeeze this case into one of its two exceptions: (1) religious **subject matter**, or (2) religious **terms**. These are two different questions. First, is the lawsuit a church property dispute rather than a church relationship dispute? Second, if it is a property dispute, can a court to decide ownership without reaching doctrinal questions? If the answer to both questions is “yes,” Texas courts decide the case without deference to TEC. As this Court wrote in *Masterson*, “what happens to the **relationship** between” two religious organizations “is an ecclesiastical matter over which civil courts generally do not have jurisdiction. But what happens to the **property** is not, unless the congregation’s affairs have been ordered so ecclesiastical decisions effectively determine the property issue.”⁷²

A. Subject matter: this is a church property dispute

The first step asks whether the subject matter of a dispute is **church property** or **church relationships**. As this Court wrote in this case: “courts applying the neutral principles methodology defer to religious entities’

⁷¹ See *Masterson* at 606–07.

⁷² *Masterson* at 607 (emphasis added).

decisions on ecclesiastical and church polity issues such as *who may be members* of the entities and *whether to remove a bishop or pastor*, while they decide non-ecclesiastical issues such as *property ownership* and whether *trusts exist* based on the same neutral principles of secular law that apply to other entities.”⁷³ The numerous examples the Court listed in this case and *Masterson* show the dividing line between ecclesiastical and non-ecclesiastical issues lies between **property disputes** and **relationship disputes** (see Table A).

This line “will not always be distinct,”⁷⁴ but this case clearly falls in the property category. Relationship disputes are those involving expelling a member,⁷⁵ disciplining members for moral failure,⁷⁶ or inherently religious practices that harm a member.⁷⁷ In such cases, courts intervene only if religious practices “threaten the public’s health,

⁷³ *EDFW* at 650 (emphasis added).

⁷⁴ *Masterson* at 606.

⁷⁵ See *Minton v. Leavell*, 297 S.W. 615, 622 (Tex. Civ. App. – Galveston 1927, writ ref’d)

⁷⁶ See *Westbrook v. Penley*, 231 S.W.3d 389, 400 (Tex. 2007).

⁷⁷ See *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 11 (Tex. 2008).

safety, or general welfare.”⁷⁸ But the public interest is different in property disputes: “The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.”⁷⁹ If civil courts cannot entertain property disputes within or against a church, churches could take the property of their members or neighbors with impunity.

This distinction is illustrated by the cases on which Plaintiffs and Defendants rely in their briefs. The two cases Plaintiffs cite most frequently were both issued by the U.S. Supreme Court some years before it approved Neutral Principles. In *Serbian Eastern Orthodox Diocese v. Milivojevich*, the property was controlled by the Diocesan Bishop;⁸⁰ the Court deferred to the church because who could serve as the Bishop “essentially involves not a church property dispute, but a

⁷⁸ *Id.* at 12.

⁷⁹ *Jones v. Wolf* at 602.

⁸⁰ 426 U.S. 696, 709, 720 (1976) (“the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations.”).

religious dispute.”⁸¹ Similarly, in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, the cathedral was “held in trust for the benefit of the accredited Archbishop” of the church;⁸² the Court deferred to the church because who could serve as the Archbishop was “strictly a matter of ecclesiastical government.”⁸³

By contrast, in *Jones v. Wolf* the property was held by a nonprofit corporation for use and benefit of the Vineville Presbyterian Church;⁸⁴ the Court did not defer to the presbytery because the dispute was who could use the property, not who could lead the church.⁸⁵ Similarly, this Court in *Masterson* did not defer to TEC, because who was entitled to the property was not inextricably linked to who TEC recognized as its members and parishes.⁸⁶

Had the properties here been held by the Bishop for use by anyone

⁸¹ *Id.* at 709.

⁸² 344 U.S. 94, 1265 (1952) (Frankfurter, J., concurring).

⁸³ *Milivojevich*, 344 U.S. at 115.

⁸⁴ *Jones v. Wolf* at 602.

⁸⁵ *Id.* at 605–06.

⁸⁶ *Masterson* at 608.

he designated, the Plaintiffs' cases might be persuasive. That *was* how property was held by the Dallas Diocese before the division of the dioceses.⁸⁷ But at the Primary Convention in 1982, the Diocese and its congregations all agreed to a different trust benefitting Parishes and Missions in union with its Convention.⁸⁸ Because that can be decided without telling any church who its bishops or members should be, the issues here are non-ecclesiastical and cannot be deferred to TEC.

B. Subject matter: this is not a membership dispute

Yet Plaintiffs say it is “demonstrably false” that this case concerns only property.⁸⁹ They could easily prove this claim is made in good faith by dropping their property claims. But they won't. Plaintiffs and Defendants agree they have no relationship with each other, and no plans otherwise. That proves the actual dispute in this case is not about the principle of disaffiliation, but about the property. None of the Plaintiffs' arguments prove otherwise.

⁸⁷ 33CR11804-05 (*Arts. IX & XIII.1*).

⁸⁸ 17CR6350.

⁸⁹ *LTEC Br.* at 20.

Disaffiliation is not at issue. Plaintiffs claim this case is about the propriety of disaffiliation rather than property. Disaffiliation is a relationship issue that civil courts cannot address. But it does not affect this *property* dispute because none of the property documents require affiliation with TEC (*see part I.B*). The trust text requires no TEC affiliation, and superseded any deeds that did. Plaintiffs respond with affidavits stating that “schism” is not just improper but sinful,⁹⁰ a notable confession from a church that grew out of two of the most famous schisms in Western religious history.⁹¹ But Neutral Principles courts do not decide cases based on the relative morals of the claimants, but on the property documents in “legally cognizable form.”

“Pre-dispute entities” are not named beneficiaries. Plaintiffs also claim this is a membership dispute because both sides claim to be members of “pre-dispute entities” that were affiliated with TEC.⁹² But the trust text does not name “pre-dispute entities” as beneficiaries; it

⁹⁰ TEC Br. at 7, 13–14, 35; LTEC Br. at 26–28.

⁹¹ See Salazar at 361.

⁹² LTEC Br. at 7, 11, 20, 38; TEC Br. at 7, 13–14.

names unincorporated congregations in union with the Convention *now*, not pre-dispute. Thus, for example, when the vestry of All Saints voted to remain with TEC and disaffiliate from the Convention majority in 2008,⁹³ equitable title remained with the part of that unincorporated congregation that remained in union with the Convention.⁹⁴ “What happened” when the local Convention removed references to TEC is irrelevant to equitable title, since affiliation with TEC is irrelevant in the property documents.

Property disputes between religious groups are not ecclesiastical.

Finally, Plaintiffs say this is a relationship dispute because it concerns control of two religious entities: a Diocese “formed under religious law for religious purposes,”⁹⁵ and a Convention whose “definition is literally canonical.”⁹⁶ But virtually all church property disputes involve

⁹³ 39CR13636.

⁹⁴ 39CR13811 (“The Defendant Congregation that formerly met at All Saints’ property continued to meet at a different location under new leadership, but remained in union with the Convention of the Defendant Diocese ... it remains the parish that is entitled to beneficial use and equitable title”).

⁹⁵ LTEC Br. at 18.

⁹⁶ LTEC Br. at 15, 18.

competing religious groups. *Jones v. Wolf* was a dispute between two groups claiming to represent a religious entity (Vineville Presbyterian Church), but the U.S. Supreme Court declared it a “dispute over the ownership of church property.”⁹⁷ *Masterson* was a dispute between a diocese and a parish claiming to control a parish corporation (The Episcopal Church of the Good Shepherd), but this Court decided it as a “church property dispute.”⁹⁸ That the dispute here involves religious entities does not make it a membership dispute.

C. Property terms: good standing doesn’t affect equitable title

Even if the subject matter of a lawsuit is property, a second step requires distinguishing between ecclesiastical and non-ecclesiastical **terms** governing property ownership. Thus, courts must defer to the church if “the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy.”⁹⁹ But courts apply state law if the property documents can be construed “based on

⁹⁷ *Jones v. Wolf* at 597.

⁹⁸ *Masterson* at 601–02.

⁹⁹ *See Jones v. Wolf* at 604.

the same neutral principles of secular law that apply to other entities.”¹⁰⁰

In *Jones v. Wolf*, the Supreme Court distinguished cases where property belongs to the **majority** from cases where property belongs to those loyal to **church law and regulations**: “the majority faction generally can be identified without resolving any question of religious doctrine or polity,” while the laws and regulations of the church “would appear to require a civil court to pass on questions of religious doctrine.”¹⁰¹

According to the Plaintiffs, this case involves religious doctrine since officers of the Corporation must be “lay persons in good standing of a parish or mission in the body now known as the Episcopal Diocese of Fort Worth, or members of the clergy canonically resident within the geographical region now known as the Episcopal Diocese of Fort Worth.”¹⁰² Plaintiffs claim that when the Defendants “defied” TEC (but not its written charters¹⁰³) by disaffiliating, they lost good standing and

¹⁰⁰ *EDFW* at 650.

¹⁰¹ *Jones v. Wolf* at 608–09.

¹⁰² *17CR6080*–§3.

¹⁰³ *2SCR602* (Deposition of TEC’s Presiding Bishop: “Q. Are you aware of any Canon that addresses a diocese within the United States withdrawing? A. No.”).

were automatically disqualified from office.¹⁰⁴

But none of this injects ecclesiastical terms into this property dispute for three reasons. First, while good standing in a church is an ecclesiastical decision, Texas law “dictates ... the terms of office of corporate directors.”¹⁰⁵ Under the local charters, the Diocese elects the Trustees,¹⁰⁶ but only the Corporation’s board can remove them.¹⁰⁷ An “outside entity” has no authority to remove or replace them “absent specific, lawful provision in the corporate documents.”¹⁰⁸ The Legislature has said so in the Texas statutes that govern both nonprofit corporations and unincorporated associations.¹⁰⁹ It is not enough for Plaintiffs to allege that ecclesiastical terms might affect some other case;

¹⁰⁴ *LTEC Br.* at 23, 27.

¹⁰⁵ *EDFW* at 652.

¹⁰⁶ 17CR6278-§17.3; 17CR6080-§3.

¹⁰⁷ 17CR6081-§10.

¹⁰⁸ *See Masterson* at 610.

¹⁰⁹ TEX. BUS. ORGS. CODE § 1.002(35)(A) (providing that an organization’s “governing authority” are those entitled to manage its affairs under “the governing documents of the entity”); *id.* at § 252.017(b) (applying Chapter 1’s definitions to unincorporated nonprofit associations); *id.* § 22.211 (providing that director of nonprofit corporation “may be removed from office under any procedure provided by the certificate of formation or bylaws of the corporation.”).

they must show a “specific, lawful provision” in the corporate charters allows a minority group or outside entity to remove the Trustees.¹¹⁰ Plaintiffs point to nothing other than Deference that does so.

Second, good standing and clerical residence refer to relationships *with the Diocese*, not with TEC. TEC cannot control good standing or canonical residency because each is determined locally: canonical residence is decided by the Diocese’s Bishop, and good standing by the minister of each congregation.¹¹¹ TEC is an association of dioceses,¹¹² so it has *no* individual members, in good standing or not. Both sides claim their own Trustees meet the requirements in the corporate bylaws; the only disagreement is to which diocese those qualifications apply—Plaintiffs’ or Defendants’. As the only issue is which side represents the Diocese (the majority or the minority), deciding that issue determines

¹¹⁰ *Masterson* at 609–10. Even under the deference approach, civil courts “utilize neutral principles of law to determine where the religious organization has placed authority to make decisions about church property.” *EDFW*, 422 S.W.3d at 650 (citing *Jones v. Wolf* at 603–04).

¹¹¹ *Resp. to Cond. Br.* at 22; 17CR6262–§1.5 & 17CR6302–§III.A.1.b (canonical residence); 17CR6262–§1.1, 17CR6289–26.4(a), 17CR6291–§28.1 (good standing).

¹¹² 29CR10172–¶15; 12CR4294–I.10.

which Trustees have good standing or canonical residence in it.¹¹³

Third, the Corporation has no power to change who holds equitable title. Under the trust terms, property is held for congregations in union with the Convention or for the Diocese itself.¹¹⁴ The Corporation's Trustees cannot change the beneficiaries because only the Convention can amend the Diocese's charters containing the trust.¹¹⁵ This is why the Plaintiffs say that "issues of corporate control are irrelevant," and that the Court need not conduct "any corporate-control analysis."¹¹⁶ This is not entirely true, at least not yet: under the court of appeals' opinion, perhaps as many as 65 properties are held in fee by the Corporation free of any trust.¹¹⁷ But should this Court agree with

¹¹³ There is no "inherent power" in stockholders to disqualify corporate directors or replace them. *LTEC Br.* At 37. The Corporation has no stockholders, and the 1942 common law rule Plaintiffs cite was superseded by statute in 1959, which limits the power to fill vacancies on a nonprofit board to the board itself or another method stated in the articles or by-laws. *See* TEX. BUS. ORGS. CODE § 22.212.

¹¹⁴ 17CR6280-¶18.4.

¹¹⁵ 17CR6258-59.

¹¹⁶ *LTEC Br.* at 34; *see also* *TEC Resp. Br.* at 36 (conceding that once it is decided who represents the Diocese, "the question of which individuals are qualified is fairly straightforward").

¹¹⁷ *See Salazar* at 437; *Defs. Br.* at 26-33.

Defendants *and* Plaintiffs that the court of appeals was mistaken, control of the Corporation is not as material as it appeared six years ago.

Defendants have shown in previous briefs why only the Defendants' Trustees were properly elected to the Corporation's Board.¹¹⁸ Officers of a Texas nonprofit corporation can be limited to those affiliated specified by a religious association,¹¹⁹ and the Corporation's bylaws required that Trustees be affiliated with the Diocese as governed by the majority of its Convention, not TEC. TEC has never owned, controlled, or been affiliated with the Corporation;¹²⁰ the court of appeals simply rewrote the corporate bylaws to allow TEC to designate its officers. That was error.

D. Associations law reflects Neutral Principles, not Deference

Finally, Plaintiffs claim that Texas law of unincorporated associations is nothing but a secular version of Deference: "Where

¹¹⁸ See *Defs. Br.* at 27–30.

¹¹⁹ TEX. REV. STAT. art. 1396-2.14(B) ("Boards of directors of religious, charitable, educational, or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association") (currently TEX. BUS. ORGS. CODE § 22.207(a))

¹²⁰ 30CR10531-¶7.

hierarchical organizations are involved, the rules of higher tiers control over those of lower tiers.” Not even close. Texas has no law requiring “second tiers” in an association to abide by the rules of a “first tier,” except in the curious 18th-century law governing benevolent lodges like the Masons, Knights Templar, or Moose.¹²¹

If this really were Texas law of associations, it would set up a direct conflict with *Masterson*, which held that a higher-tier entity *cannot* control a lower-tier entity in Texas “absent specific, lawful provisions” to that effect.¹²² Plaintiffs cannot point to a single *specific* provision in the Diocese’s charters granting TEC such control. They point to a long list of regulations in TEC’s charters,¹²³ which contain over 200 pages of rules about business methods,¹²⁴ marriages,¹²⁵ and the Book of Common

¹²¹ See TEX. BUS. ORGS. CODE, § 23.104.

¹²² See *Masterson* at 610; TEX. BUS. ORGS. CODE § 22.207 (providing that nonprofit corporation may be controlled by an outside entity if its certificate of formation or bylaws so provide).

¹²³ *TEC Br.* at 11.

¹²⁴ 12CR4287–89.

¹²⁵ 12CR4306–07.

Prayer.¹²⁶ But *Masterson* requires a *specific*, lawful provision giving TEC control of the Diocese; Plaintiffs cannot cite a single regulation allowing it to call a Convention of the Diocese, control its election of officers, or veto amendments to its charters.

Plaintiffs claim that Texas courts do not interfere with an association's interpretation and administration of its rules.¹²⁷ But as explained adequately elsewhere, TEC cannot misinterpret the charters of the Diocese and Corporation for several reasons.¹²⁸ *Neutral Principles* places jurisdiction for interpreting civil property documents in civil courts, not churches.

Plaintiffs claim *Masterson* doesn't apply to associations like the Diocese, because an association is "meaningfully distinct from a corporation" and the Diocese "did not file articles of incorporation with the Secretary of State."¹²⁹ But under Texas law an unincorporated

¹²⁶ 12CR4257-58.

¹²⁷ *LTEC Br. at 28-29.*

¹²⁸ *Resp. to Cond. Br. at 31-38.*

¹²⁹ *LTEC Br. at 17-18.*

association is “a legal entity separate from its members.”¹³⁰ All legal entities formed and operating in Texas, both filing or nonfiling entities, are governed by the same neutral principles of Texas law.¹³¹

Plaintiffs claim it would be “plainly unconstitutional” for Texas law to “dictate” the representatives of a church, or displace rules governing its “internal affairs with secular law.”¹³² But Texas law cannot be accused of doing so, since it merely provides that church property belongs to those *the church* designates as its representatives in *its own charters*.¹³³ The U.S. Supreme Court plainly held this constitutional in *Jones v. Wolf*.¹³⁴ The problem for Plaintiffs is they want the property

¹³⁰ See TEX. REV. CIV. STAT. art. 1396–70.01, § 7(a) (currently TEX. BUS. ORGS. CODE § 252.006(a)).

¹³¹ See TEX. BUS. ORGS. CODE §1.002(43), -(57); compare § 1.101 with § 1.103; see also 29CR10168– §4.

¹³² LTEC Br. at 17, 19.

¹³³ See *Dist. Grand Lodge No. 25 v. Jones*, 160 S.W.2d 915, 922 (Tex. 1942) (“the constitution and by-laws of a voluntary association, whether incorporated or not, are controlling as to its internal management.”); see also *Jones v. Maples*, 184 S.W.2d 844, 847-48 (Tex. App.—Eastland 1944, writ ref’d) (holding that officers “as provided in the constitution and by-laws” of an unincorporated association control its property); see also See TEX. BUS. ORGS. CODE § 1.002(35)(A).

¹³⁴ *Jones v. Wolf* at 606 (“The neutral-principles approach cannot be said to ‘inhibit’ the free exercise of religion, any more than do other neutral provisions of

awarded to a minority and outside entity that are *not* named as beneficiaries in the church charters. Neutral Principles prevents that.

Finally, Plaintiffs claim “over a century of hornbook Texas associations law” provides that members who leave a voluntary association lose any interest in its property.¹³⁵ They must mean the century *before* 1995, since before then property held in an association’s name vested title in its members.¹³⁶ Since 1995, associations can hold title directly.¹³⁷ So today, members have no ownership interest in an association’s property, either before or after they leave. The question here is who represents the association: the majority or the minority.

There is nothing unconstitutional in requiring churches that benefit from owning property to comply with neutral state laws that govern it. Unincorporated associations like the Diocese and its

state law governing the manner in which churches own property, hire employees, or purchase goods.”).

¹³⁵ *LTEC Br.* at 32.

¹³⁶ *See U. S. Royalty Ass'n v. Stiles*, 131 S.W.2d 1060, 1063 (Tex. Civ. App.—Amarillo 1939, writ dism'd judgm't cor.).

¹³⁷ *See* Act of June 16, 1995, 74th Leg., R.S., ch. 919, §5, 1995 TEX. GEN. LAWS 4567, 4567 (currently TEX. BUS. ORGS. CODE § 252.004(a)).

congregations enjoy many benefits under Texas law: the right to buy and sell property;¹³⁸ to enforce contracts, trusts, and wills;¹³⁹ and to limit the liability of their members for tort or contract claims against the association.¹⁴⁰ Churches benefit from streets, police, and other public services even though they are generally exempt from the property taxes that pay for them.¹⁴¹ Neutral Principles requires that they place their property rules in “legally cognizable form,” because “[t]he burden involved in taking such steps will be minimal.”¹⁴²

CONCLUSION

Under Plaintiff’s theory, it will *never* matter what entity the deeds or property documents name as the owner of church property – TEC alone can declare who represents that entity. Even if it is a handful of people who have never represented the entity before, courts must defer to that declaration. Adopting that rule would have far-reaching

¹³⁸ TEX. BUS. ORGS. CODE § 252.004

¹³⁹ *Id.* § 252.004

¹⁴⁰ *Id.* § 252.006.

¹⁴¹ *See* TEX. TAX. CODE § 11.20.

¹⁴² *Jones v. Wolf* at 606.

consequences. Among them, it would make it impossible for a church to be hierarchical in religious matters but congregational in property ownership (as in the Presbyterian Church in America¹⁴³), since the hierarchy would always have the power to say who represents the congregation even if its church charters said otherwise.

This dispute stems from a mistake TEC or its counsel made 40 years ago. In 1979, *Jones v. Wolf* stated clearly that TEC could ensure a local diocese was *not* represented by a majority of the local Convention “by providing in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way.”¹⁴⁴ It did not. Ten years before that, the U.S. Supreme Court stated that “States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.”¹⁴⁵ TEC tried, but for

¹⁴³ See THE BOOK OF CHURCH ORDER OF THE PRESBYTERIAN CHURCH IN AMERICA §§ 25-9 & 25-10 (available online at <https://www.pcaac.org/wp-content/uploads/2018/09/BCO-2018-with-bookmarks-for-website.pdf>).

¹⁴⁴ *Jones v. Wolf* at 607-08.

¹⁴⁵ *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

whatever reason adopted a trust that was invalid *and* revocable under Texas law. TEC never objected to the express trust the Diocese adopted in 1982 placing equitable title in congregations in union with the Diocese, at least not until this suit was filed. That was too late.

Neutral Principles adopts an objective test based on what property documents and state laws say.¹⁴⁶ Plaintiffs' approach would make it entirely subjective, depending on the current views of the current officers at the top. Churches can do that, but most do so in some legally cognizable form. The church here did not. This Court should grant review, reverse, and reinstate the trial court's judgment.

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¹⁴⁶ See *Jones v. Wolf* at 603.

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CERTIFICATE OF COMPLIANCE

I certify that this Petitioners' Reply Brief contains 6,956 words as calculated per Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure.

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TABLE A
Ecclesiastical and Non-ecclesiastical Issues
Listed in *Masterson & EDFW*

Ecclesiastical Issues	Non-ecclesiastical Issues
<p>“who may be members of [religious] entities and whether to remove a bishop or pastor” (EDFW at 650)</p>	<p>“property ownership and whether trusts exist” (EDFW at 650)</p>
<p>“who is or can be a member in good standing of TEC or a diocese” (EDFW at 652)</p>	<p>“how [a] corporation can be operated, including determining the terms of office of corporate directors, the circumstances under which articles and bylaws can be amended, and the effect of the amendments” (EDFW at 652)</p>
<p>“matters concerning ‘theological controversy, church discipline, ecclesiastical government, or the conformity of the members of a church to the standard of morals required of them.’” (Masterson at 601)</p>	<p>“issues such as land titles, trusts, and corporate formation, governance, and dissolution, even when religious entities are involved.” (Masterson at 606)</p>
<p>“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” (Masterson at 607)</p>	<p>But what happens to the property is not, unless the congregation’s affairs have been ordered so that ecclesiastical decisions effectively determine the property issue” (Masterson at 607)</p>
<p>“which faction of believers was recognized by and was the ‘true’ church loyal to the Diocese and TEC” (Masterson at 610)</p>	<p>“whether the vote by the parish members to amend the bylaws and articles of incorporation was valid under Texas law” (Masterson at 610)</p>

Ecclesiastical Issues	Non-ecclesiastical Issues
<p>“Whether Bishop Ohl was authorized to form a parish and recognize its membership, whether he could or did authorize that parish to establish a vestry, and whether he could or did properly recognize members of the vestry” <i>(Masterson at 608)</i></p>	<p>“whether the corporation’s bylaws were complied with when the vote occurred to disassociate the corporation from the Diocese and TEC” <i>(Masterson at 608)</i></p>
<p>“which worshipers are loyal to the Diocese and TEC, whether those worshipers constituted a parish, and whether a parish properly established a vestry” <i>(Masterson at 608)</i></p>	<p>“whether and how a corporation’s directors or those entitled to control its affairs can change its articles of incorporation and bylaws” <i>(Masterson at 609)</i></p>