

ORAL ARGUMENT REQUESTED

NO. _____

In The Court Of Appeals
For The Second District Of Texas
Fort Worth, Texas

In re

**FRANKLIN SALAZAR; JO ANN PATTON;
WALTER VIRDEN, III; ROD BARBER; CHAD BATES;
JACK LEO IKER; CORPORATION FOR THE
EPISCOPAL DIOCESE OF FORT WORTH; AND
THE EPISCOPAL DIOCESE OF FORT WORTH,**

Relators

The Honorable John P. Chupp,
141st Judicial District Court of Tarrant County, Texas, Respondent
Arising out of Cause No. 141-237105-09

**RELATORS' MOTION FOR STAY
PENDING MANDAMUS**

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CORPORATION FOR THE EPISCOPAL DIOCESE OF FORT WORTH ;
AND THE EPISCOPAL DIOCESE OF FORT WORTH**

LIST OF PARTIES AND COUNSEL

Relators (*Defendants below*) "The Diocesan Majority"

Franklin Salazar; Jo Ann Patton; Walter Virden, III; Rod Barber; Chad Bates; Jack Leo Iker (the "Individual Relators"), Corporation for the Episcopal Diocese of Fort Worth (the "Corporation") and The Episcopal Diocese of Fort Worth (the "Diocese")

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Real Parties in Interest¹

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¹ Mr. Nelson and Ms. Wells are, procedurally, the real parties in interest. Rule 12 stipulates that the respondents to a motion to show authority are the counsel whose authority is challenged. Tex. R. Civ. P. 12. Mr. Nelson and Ms. Wells contend that they represent the Diocese and the Corporation who bring this original proceeding in which the Diocese and the Corporation argue that they have no such authority.

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Other Parties With An Interest In The Outcome (*Plaintiffs Below*)

The Episcopal Church

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Relators the Diocesan Majority file this motion and ask the Court to stay the underlying trial court proceedings pending resolution of their petition for writ of mandamus, which is filed contemporaneously herewith. The Diocesan Majority would respectfully show:

I. INTRODUCTION AND PROCEDURAL BACKGROUND

As detailed more fully in the petition for writ of mandamus,² the “Episcopal Diocese of Fort Worth” is organized under Texas law as the Corporation (a non-profit corporation) and the Diocese (an unincorporated association). Individual Relators are the trustees of the Corporation and the Bishop and Treasurer of the Diocese. In the underlying case, the Relators (the Diocesan Majority) have been sued by TEC and two other plaintiffs (“the Diocesan Minority”) who purport to bring suit in the names of the Corporation and Diocese that the Individual Relators serve.

The Diocesan Majority filed a motion under Rule 12 of the Texas Rules of Civil Procedure, challenging the authority of the Diocesan Minority’s attorneys to prosecute suit on behalf of the Diocese or the Corporation. Rule 12 required the Diocesan Minority’s attorneys to show sufficient authority to prosecute or defend the suit in the name of

² The contents of the petition for writ of mandamus are incorporated herein by reference.

the Corporation and the Diocese, absent which the trial court was required to ban them from appearing and strike the pleading.³ The trial court effectively denied the Rule 12 motion—the Episcopal Diocese of Fort Worth is still purportedly on both sides of the case.

Unless the underlying proceedings are stayed pending resolution of the Diocesan Majority's mandamus, therefore, the Diocesan Minority will continue to prosecute their claims with the appearance of the imprimatur of the Corporation and the Diocese. A stay is thus necessary to preserve the question this Court is called upon to answer: which persons are the duly elected representatives of the Corporation and the unincorporated association that is the Diocese?

II. COMPLIANCE WITH TEX. R. APP. P. 52.10(a)

On October 12, 2009, the Diocesan Majority notified the Real Parties in Interest, via certified mail, return receipt requested, that they would request temporary relief pending a ruling on their petition for writ of mandamus.

³ Tex. R. Civ. P. 12 ("A party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act. . . . At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to prosecute or defend the suit on behalf of the other party. Upon his failure to show such authority, the court shall refuse to permit the attorney to appear in the cause, and shall strike the pleadings if no person who is authorized to prosecute or defend appears.").

writ of mandamus). Absent a stay, the Diocesan Majority will have lost their rights under Rule 12.⁴

Moreover, allowing the underlying proceedings to continue while mandamus is pending would be a waste of judicial resources. The Diocesan Majority has well-founded arguments for why the Diocesan Minority has no authority to engage attorneys to prosecute suit in the name of the Corporation and the Diocese. Should this Court or the Supreme Court of Texas agree with the Diocesan Majority (and they should), the Plaintiffs' attorneys must be refused permission to appear and their pleadings in the name of the Corporation and the Diocese must be stricken. *See* Tex. R. Civ. P. 12. Any and all proceedings in the interim on those pleadings should be a nullity. Thus, the Diocesan Majority should not be required to defend the underlying suit while appellate review continues regarding whether it was filed in fictitious names by persons with no authority to file them.

IV. CONCLUSION AND PRAYER

If "Exxon Corporation" filed suit against Exxon Corporation, the underlying proceedings would presumably be stayed to sort out who, exactly, are the duly elected representatives of the corporation able to

⁴ *See* Petition for Writ of Mandamus at § III.B.1 (explaining the purposes behind Rule 12).

authorize and prosecute suit in its name. The same result should obtain here.

Relators the Diocesan Majority therefore respectfully request that the Court order all proceedings in the trial court stayed during the pendency of their mandamus, and grant all such further relief, at law or in equity, to which they may be entitled.

Respectfully submitted,

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IKER; AND THE EPISCOPAL DIOCESE
OF FORT WORTH

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document were served on all counsel of record by hand delivery or FedEx as indicated below on this 13th day of November, 2009, as follows:

Jonathan D.F. Nelson (*via hand delivery*)⁵
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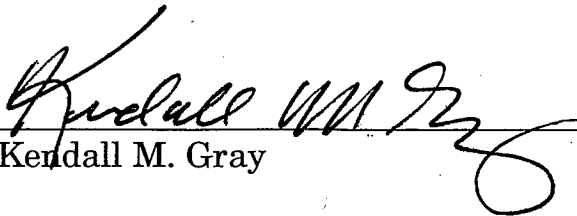
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