

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

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ SECOND MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendants are former Episcopalians purporting to take an Episcopal Diocese and property committed “for the use of The Episcopal Church in the Diocese” out of The Episcopal Church for their own use.¹ Defendants’ motion ignores basic Texas law and must be denied.

I. PLAINTIFFS PREVAIL ON THE UNDISPUTED FACTS

Defendants’ brief is based on assertions so foreign to the undisputed record and law that they are fantasy. By contrast, this Court can rule for Plaintiffs on undisputed facts. For example:

1. *Simple Solution*

- a. Defendants judicially admit that the Corporation holds *all property in trust for* the Diocese and its Congregations.²
- b. The Texas Supreme Court has already ruled that dioceses and congregations are “subordinate Episcopal affiliate[s]” of the “conclusively . . . hierarchical” Episcopal Church.³
- c. Defendants judicially admit that when “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

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

² Defs.’ Second Mot. for Partial Summ. J. at 41; Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth ¶ 5 (Oct. 29, 2014).

³ *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 600, 608 (Tex. 2013) (“*Masterson*”).

Supreme Court held [in *Masterson*], ‘*remains the appropriate method for Texas courts.*’⁴

- d. The Church recognizes only Plaintiffs as the Diocese and Congregations.⁵
- e. Conclusion: Only Plaintiffs are entitled to the trust in favor of the Diocese and Congregations.

2. *Corporate Control*

- a. Defendants admit “only the Diocese . . . can decide who serves as Trustees of the Corporation.”⁶
- b. Defendants state that the 2006 Bylaws control the Corporation⁷ and require Corporate Trustees to be “members in good standing of parishes or missions in the Diocese.”⁸
- c. The Texas Supreme Court already held that only The Episcopal Church⁹ can identify “who is or can be a member in good standing of . . . a diocese.”¹⁰
- d. The 2006 Bylaws say Corporate directors only serve until “disqualification.”¹¹
- e. Once Defendants left the Church, the Diocese no longer recognized

⁴ 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) (citations omitted) (quoting *Masterson*, 422 S.W.3d at 605 (emphasis added)).

⁵ A4107-10, Aff. of the Rt. Rev. John Clark Buchanan ¶¶ 5-8 (Oct. 22, 2014) (“Buchanan Aff.”); A4227, Aff. of The Rev. Canon Waggoner ¶ 1 (Dec. 1, 2014) (“Waggoner Aff.”).

⁶ Defs.’ Second Mot. for Partial Summ. J. at 25.

⁷ *Id.* at 28.

⁸ *Id.* at 20-21.

⁹ “TEC is a hierarchical organization,” *Masterson*, 422 S.W.3d at 608, with “three structural tiers[; the] highest is the General Convention,” *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 647 (Tex. 2013) (“*Episcopal Diocese*”). This Court must “accept as binding the decision of the highest authority of a hierarchical religious organization” on who is or can be the diocese. *Masterson*, 422 S.W.3d at 607.

¹⁰ *Episcopal Diocese*, 422 S.W.3d at 652.

¹¹ JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (2006).

Defendants as members in good standing,¹² and they were disqualified from Corporate service under the 2006 Bylaws.

- f. Conclusion: While Corporate control is irrelevant because the Corporation holds all property in trust, Defendants also cannot control the Corporation; and the Court is permitted to appoint qualified Trustees.

3. ***Express Trust for Church – At the Diocese’s Founding***

- a. The Diocese “fully” acceded to Church law on joining.¹³
- b. Church law contained a trust clause for the Church.¹⁴
- c. An association’s rules are contractual, including trust clauses.¹⁵
- d. The Fort Worth Court of Appeals has held that “attempted revocation” of “a trust that is created by contract” is “wholly ineffective.”¹⁶
- e. Conclusion: The Diocese and Congregations hold all property in trust for the Church.

4. ***Express Trust for Church – Before the Diocese***

- a. Defendants and their predecessors have judicially admitted that all property transferred in 1984 was already “in trust” and already “acquired for the use of the Episcopal Church in the Diocese of Dallas.”¹⁷
- b. Deeds for the individual properties contain express trusts for the Church

¹² A4227, Waggoner Aff. ¶ 1; See A941-43, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009).

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

¹⁴ 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.

¹⁵ *Int’l Printing Pressmen & Assistants’ Union of N. Am. v. Smith*, 198 S.W.2d 729, 736 (Tex. 1947); *District Grand Lodge No. 25 Grand United Order of Odd Fellows v. Jones*, 160 S.W.2d 915, 918, 920 (Tex. 1942).

¹⁶ *Shellberg v. Shellberg*, 459 S.W.2d 465, 470–71 (Tex. Civ. App.—Fort Worth 1970, writ ref’d n.r.e.).

¹⁷ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

predating the Fort Worth Diocese by up to a century.¹⁸

- c. Defendants judicially admit, and the Texas Supreme Court already held, that “[t]he 1984 judgment vested **legal title** of the transferred property in the Fort Worth Corporation.”¹⁹
- d. The “**separation of the legal and equitable estates** in the trust property is the basic hallmark of the trust entity.”²⁰
- e. Transfer of legal title does not transfer equitable title and divest an existing beneficiary.²¹
- f. Conclusion: Before and after the Diocese’s formation, the property was in trust for The Episcopal Church.

5. *Associations law*

- a. In Texas, “subordinate” local chapters are “part and parcel” of the larger association,²² and a dissenting local majority, “no matter how large,” cannot “destroy”²³ the subordinate chapter by “shak[ing] loose from the Supreme Council.”²⁴ In such cases, the loyal minority are, as a matter of law, “the true and lawful successors” to the local chapter’s rights, including to property held by or for it.²⁵
- b. The Diocese formed, in its own words in undisputed documents, “pursuant to

¹⁸ JA01799-01801, Deed to St. Andrews Property (Apr. 26, 1883); *see also* Pls.’ Mot. for Partial Summ. J., tbl. E.

¹⁹ Defs.’ Second Mot. for Partial Summ. J. at 14 (quoting *Episcopal Diocese*, 422 S.W.3d at 648 (emphasis added)).

²⁰ *Perfect Union Lodge No. 10 v. InterFirst Bank of San Antonio, N.A.*, 748 S.W.2d 218, 220 (Tex. 1988) (emphasis added).

²¹ *See Binford v. Snyder*, 189 S.W.2d 471, 473 (Tex. 1945).

²² *Minor v. St. John’s Union Grand Lodge of Free & Accepted Ancient York Masons*, 130 S.W. 893, 896 (Tex. Civ. App.—Galveston 1910, writ ref’d); *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).

²³ *Minor*, 130 S.W. at 896-97.

²⁴ *Progressive Union of Tex. v. Indep. Union of Colored Laborers of Tex., Lodge No. 1*, 264 S.W.2d 765, 767–68 (Tex. Civ. App.—Galveston 1954, writ ref’d n.r.e.) (internal quotation marks omitted).

²⁵ *Minor*, 130 S.W. at 897.

approval of the 67th General Convention of The Episcopal Church.”²⁶

- c. The Texas Supreme Court already ruled that dioceses and congregations are “subordinate Episcopal affiliate[s]” of the three-tier “conclusively . . . hierarchical” Episcopal Church.²⁷
- d. Here, a dissenting local majority, as in *Progressive Union*, purported to “shake loose from the Supreme Council [*i.e.*, the General Convention].”²⁸
- e. Conclusion: Under basic Texas associations law, “the life of the subordinate lodge” continues, having “never ceased to exist,” with Plaintiffs as the “true and lawful successors.”²⁹ The breakaway ex-members have no authority to act on behalf of the local association,³⁰ and “whatever rights [they] had in the lots [titled to the subordinate entities] were merely incidental to their membership and terminated absolutely with such membership.”³¹

6. *Constructive trust*

- a. Constructive trusts remedy unjust enrichment.³²
- b. Before November 2008, Defendants admit they were officers of The Episcopal Church’s Episcopal Diocese of Fort Worth.³³

²⁶ JA00365, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

²⁷ *Masterson*, 422 S.W.3d at 600, 608.

²⁸ *Progressive Union*, 264 S.W.2d at 767 (internal quotation marks omitted).

²⁹ *Minor*, 130 S.W. at 897.

³⁰ *See Progressive Union*, 264 S.W.2d at 766–67; *Minor*, 130 S.W. at 897.

³¹ *Dist. Grand Lodge v. Jones*, 160 S.W.2d at 920.

³² *Hubbard v. Shankle*, 138 S.W.3d 474, 485 (Tex. App.—Fort Worth 2004, pet. denied).

³³ *See, e.g.*, A4404, 4408, Dep. of Def. Bates at 6:17-8:17, 22:6-24:4.

- c. Defendants admit the Diocese and Corporation represented to the IRS that these entities are “subordinate” to the Church and accepted tax benefits as such.³⁴
- d. The undisputed documents show the property in question was acquired over the century-and-a-half before the Diocese was formed “for the use of the Episcopal Church in the Diocese of Dallas”³⁵ and before that by “the loyal parishioners of the first Protestant Episcopal churches of Texas.”³⁶
- e. Defendants and their predecessors told another Fort Worth Court, “it was never the[] intent” of “loyal parishioners” that their “gifts and memorials be converted to the use of” another denomination by those who “have abandoned communion with The Episcopal Church.”³⁷
- f. Defendants admit the Church must rely on local officers “to act in compliance with [their] oath” and “trust[s] . . . [them] to run the day-to-day affairs of the diocese” without the Church having to “micromanage” them.³⁸
- g. Defendants admit they vowed to follow the Church’s discipline.³⁹
- h. Defendants admit they moved large sums of money out of state during this litigation specifically to make it harder for this Court to reach.⁴⁰
- i. Defendants told the Court that Diocesan accounts had gone up during this

³⁴ See, e.g. A4376, Dep. of Def. Corp at 125:3-126:18.

³⁵ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

³⁶ A2640, St. Andrews’ Episcopal Church V.

³⁷ 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).

³⁸ A3930, Dep. of Def. Diocese at 79:17-20; 81:4-7, 16-18.

³⁹ A4270-71, 4283, Dep. of Def. Diocese at 33:21-34:3, 83:6-84:25.

⁴⁰ A3981, Dep. of Def. Director of Finance Parrott at 93:18-22.

dispute, but admit that in reality over half-a-million dollars was gone.⁴¹

- j. Conclusion: Defendants have been unjustly enriched, and a constructive trust returning the property to the Church is proper.

Any one of these grounds—based on undisputed documents, Defendants’ admissions, and Texas Supreme Court findings—is sufficient alone to grant Plaintiffs’ motion.

II. DEFENDANTS’ GROSS MISSTATEMENTS

By contrast, Defendants’ motion for partial summary judgment relies on misstatements of the law and record that are so unhinged from reality that they constitute fantasy.

These are not genuine issues of fact. They are lawyers’ assertions that bear no resemblance to the documentary record, which is undisputed.

Below are just a sample of Defendants’ false assertions. Defendants’ reliance on such bald assertions demonstrates (1) that they cannot prevail under the actual law and facts, and (2) that their motion should be denied.

Defendants’ Claim	Truth
“The Corporation has never had any affiliation or relationship to TEC [The Episcopal Church].” ⁴²	<ul style="list-style-type: none">• The Corporation’s founding documents required that its affairs “shall be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of

⁴¹ Compare 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.”), with A3979, Dep. of Def. Director of Finance Parrott at 84:13-16 (“Q. [W]e established there was over half a million dollars missing from bank accounts, correct? A. Yes, sir.”).

⁴² Defs.’ Second Mot. for Partial Summ. J. at 51.

Defendants' Claim	Truth
	<p>America,” which “control” over its bylaws.⁴³</p> <ul style="list-style-type: none"> • The Corporation represented to the IRS for over 20 years that it “is a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”⁴⁴ • Defendants admitted under oath that these representations were “truthful”⁴⁵ and would be “illegal” if false.⁴⁶ • The Corporation reaffirmed these representations to Tarrant County in 2007 as “full and complete.”⁴⁷ • In 1994, the Corporation told another Fort Worth court it holds property for “Episcopalian congregation[s]” under

⁴³ JA00076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (1983).

⁴⁴ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984); A3955, Dep. of Def. Corp. at 88:20-89:21.

⁴⁵ 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).

⁴⁶ A4367, Dep. of Def. Corp. at 89:11-20.

⁴⁷ A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to LayVonnia Gant, Exemption Division, Tarrant County Appraisal District (Nov. 2, 2007).

Defendants' Claim	Truth
	The Episcopal Church's "national canons." ⁴⁸
"There is no such thing as a 'contractual trust' in Texas." ⁴⁹	<ul style="list-style-type: none"> • Fort Worth Court of Appeals: the "attempted revocation" of "a trust that is created by contract and based on a valuable consideration" is "wholly ineffective."⁵⁰ • Vernon's Texas Codes Annotated, Property Code § 112.051 (2013), cmt. 3: "Contractual trusts."⁵¹ • Johanson's Texas Estates Code Annotated § 112.051: the presumption of revocability "does not apply to trust[s] created by agreement and supported by consideration; such a trust is irrevocable even if it does not expressly so state."⁵² • Restatement (Third) of Trusts: "Where consideration is involved in the creation

⁴⁸ A1043, Aff. of the Rt. Rev. William C. Wantland ("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).

⁴⁹ Defs.' Second Mot. for Partial Summ. J. at 42.

⁵⁰ *Shellberg*, 459 S.W.2d at 470–71.

⁵¹ Tex. Prop. Code Ann. § 112.051 n.3 (West, Westlaw through end of 2013 Third Called Session of 83d Legislature).

⁵² Johanson's Texas Estates Code Annotated § 112.051 (2014) (citing *Shellberg*, 459 S.W.2d 465, in "Leading Cases" discussion).

Defendants' Claim	Truth
	<p>of a trust, the rules governing transfers for value and contracts are applicable.”⁵³</p> <ul style="list-style-type: none"> • Bogert’s <i>The Law of Trusts and Trustees</i> § 998 n.8 (2014): “Section 41 of the Texas Trust Act, providing that every trust is revocable unless expressly made irrevocable, [does] not apply to a contractual trust based on valuable consideration.” • Professor Beyer, author, <i>Texas Trust Law</i>: “A trust supported by consideration is a contractual trust, which is irrevocable even without an express statement of irrevocability in the instrument.”⁵⁴
<p>“[C]ourts must exercise jurisdiction to decide who holds a particular [ecclesiastical] office when property ownership is contested.”⁵⁵</p>	<p>Texas Supreme Court (2013):</p> <ul style="list-style-type: none"> • Courts are “constitutionally required” to “accept” the Church’s choice of officers “as binding” even where this deference

⁵³ Restatement (Third) of Trusts § 62 (2003).

⁵⁴ A4091, Aff. of Professor Gerry W. Beyer ¶ 8.

⁵⁵ Defs.’ Second Mot. for Partial Summ. J. at 28.

Defendants' Claim	Truth
	“effectively determine[s] the property rights in question.” ⁵⁶
The property “went to the Corporation without any stated conditions.” ⁵⁷	<p>The property was</p> <ul style="list-style-type: none"> • “acquired for the use of the Episcopal Church in the Diocese of Dallas,”⁵⁸ • transferred to the Corporation “for the use of The Episcopal Church in the [new] Diocese,”⁵⁹ • to “be held subject to control of the Church in the Episcopal Diocese” and “for the use of the Church and the Diocese,”⁶⁰ and • to be used for only those purposes “approved by this Church, and for no other use.”⁶¹
The Diocese “qualified” its accession to the Church on formation. ⁶²	The Diocese “fully” acceded. ⁶³ “Fully” means “completely.” ⁶⁴

⁵⁶ *Masterson*, 422 S.W.3d at 607.

⁵⁷ Defs.’ Second Mot. for Partial Summ. J. at 50.

⁵⁸ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁵⁹ JA00720, *id.*; *see also* A3959-60, Dep. of Def. Corp. at 154:3–156:1.

⁶⁰ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

⁶¹ JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

⁶² Defs.’ Second Mot. for Partial Summ. J. at 37.

Defendants' Claim	Truth
"Nothing in . . . TEC's charters authorizes" the "removal of the Diocese's bishop" by the Presiding Bishop of The Episcopal Church. ⁶⁵	Title III, Canon 12, § 7(c) authorizes the Presiding Bishop to issue "a declaration of removal" of a diocesan bishop. ⁶⁶
Constructive trusts must "conform to . . . statutory mandates." ⁶⁷	The statute Defendants wish to apply specifically <u>excludes</u> "constructive trust." ⁶⁸

These are just examples of the blatantly false assertions Defendants make and rely on. More are set forth below. Defendants' motion should be denied.

By contrast, Plaintiffs' motion relies on undisputed facts from the record and Defendants' own admissions—as well as the plain law that Defendants neglect *even to cite* to this Court. Plaintiffs' motion can and should be granted.

III. WHY DEFENDANTS CANNOT PREVAIL

This brief sets out in detail why Defendants cannot prevail. But in simple terms, Defendants cannot prevail because:

- 1. Defendants cannot control the Diocese and Congregations as a matter of law**
 - a. The Texas Supreme Court said only The Episcopal Church can identify the true and proper representatives of an Episcopal Diocese and Episcopal Congregations under the First Amendment, even where that determination

⁶³ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

⁶⁴ MERRIAM WEBSTER, <http://www.merriam-webster.com/dictionary/fully> (last visited Dec. 10, 2014).

⁶⁵ Defs.' Second Mot. for Partial Summ. J. at 32.

⁶⁶ JA00555, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. III, canon 12, § 7(c); A239, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2009), tit. III, canon 12, § 7(c).

⁶⁷ Defs.' Second Mot. for Partial Summ. J. at 46.

⁶⁸ *See* Tex. Prop. Code § 111.003(2).

effectively determines a property issue. *See* Sections VII.A.3 and VII.B, *infra*.

- b. When Defendants tell this Court to apply associations law to identify the true and proper representatives of the Diocese and Congregations, even they know that approach violates *Masterson* and *Episcopal Diocese*—they told the U.S. Supreme Court the truth just three months ago: that those cases require courts to defer to the national denomination’s determination of the local church bodies’ identity (and Defendants are judicially estopped from contradicting that now). *See* Section VII.B, *infra*.
- c. And even under Texas associations law, a majority faction cannot take a subordinate local chapter out of the larger association, and the loyal minority are that subordinate entity’s true and lawful successors. *See* Section VII.C.1, *infra*.

2. Defendants cannot control the Corporation as a matter of law

- a. Under a plain application of the 2006 Bylaws—the very bylaws that *Defendants* assert are controlling—Defendants were disqualified from Corporate service, which under the Bylaws vacated their seats on the board. *See* Section VII.C.2, *infra*.
- b. Even if Defendants could retain control of the Corporation, it would be irrelevant, because the Corporation would then be in breach of the trust that Defendants admit the Corporation owes to the Diocese and Congregations. At that point, this Court would remove any Defendant-controlled Corporation as trustee of those trusts and return the property to Plaintiffs under the Texas Property Code. *See* Section VII.A.4, *infra*.

3. Defendants cannot control the Property as a matter of law

- a. Defendants concede the Corporation holds all property in trust for the Diocese and Congregations, which only Plaintiffs may control as a matter of law. *See* Sections VII.A.1 and VII.B, *infra*.
- b. And the Corporation also holds all property in express irrevocable trust for The Episcopal Church, under trusts formed both at the Diocese's formation and predating the Diocese by up to a century. Texas law recognizes these trust commitments as contractual and therefore irrevocable as a matter of law, regardless of express language of irrevocability. *See* Section VII.C.3.a, *infra*.
 - i. When Defendants tell this Court there is “no such thing” as a contractual trust in Texas, they fail even to *cite* the controlling Fort Worth case on point or every leading Texas trust authority since that has approved that holding. *See* Section VII.C.3.a.ii, *infra*.
 - ii. Defendants' purported “revocation” was wholly ineffective for several reasons, including that the trust was contractual, the purported means of revocation was improper, and the Defendants or their predecessors were not the settlors and thus had no power of revocation. *See id.*
 - iii. And Defendants' eleventh-hour “adverse possession” claim, added after five years of litigation, fails for numerous reasons including:
 - (1) the statute requires possession by “another”—until November 2008 Defendants concede they were part of The Episcopal Church;
 - (2) no legal claim accrued until November 2008 when Defendants

took property—and Plaintiffs filed suit in early 2009; and (3) the Diocese and Corporation’s intervening court statements affirming national property canons are “fatal” to any adverse possession claim. *See* Section VII.C.3.e, *infra*.

- iv. Finally, Defendants’ adverse possession claim is irrelevant to the Simple Solution, as it seeks to rebut the *Church’s* interest and says nothing about who may control the Diocese and Congregations, which as a matter of law is Plaintiffs. *See* Section VII.A.3, *infra*.
- c. The Episcopal Church and its constituent entities are also entitled to a constructive trust under decades of plain commitments and representations that Defendants blatantly try to reverse and ignore now. Defendants’ argument that a constructive trust must follow statutory requirements is bogus when *the statute itself* expressly exempts “constructive trust” from its purview. *See* Section VII.C.3.b, *infra*.
- d. And under basic Texas associations law, individuals can leave an association, but they cannot take a subordinate local entity of the association away from that association, and whatever interest those individuals had in the subordinate entity’s property terminated with their membership upon defection. *See* Sections VII.C.1 and VII.C.3.c, *infra*.
- e. Any one of these neutral principles is sufficient to return the property to its rightful beneficiaries, The Episcopal Church and its constituent entities. So many apply because, under any lens, Texas law does not tolerate oath-breaking and land-grabbing.

Defendants' motion for partial summary judgment should be denied, and Plaintiffs' cross-motion should be granted as a matter of law.

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IV. OVERVIEW

Reading Defendants' motion, three things become clear:

1. Defendants' focus on the Corporation is irrelevant, because they admit the Corporation holds all property in trust for the Diocese and Congregations.
2. Defendants cannot prevail without violating the Texas Supreme Court's controlling opinions, *Episcopal Diocese* and *Masterson*.
3. Defendants cannot prevail without violating neutral principles of Texas law.

This Court should deny Defendants' motion and grant Plaintiffs' cross-motion.

V. SUMMARY OF ARGUMENT

The Texas Supreme Court remanded this case for resolution under neutral principles, within the parameters set by *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 650, 652 (Tex. 2013) ("*Episcopal Diocese*"), and *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594, 607-08 (Tex. 2013) ("*Masterson*").

Defendants' brief shows that they cannot prevail without violating the basic principles of *Episcopal Diocese* and *Masterson* and without ignoring controlling neutral principles of law.

A. **Defendants' focus on the Corporation is irrelevant.**

Defendants spend most of their brief trying to establish control of the Corporation of the Episcopal Diocese of Fort Worth. But Defendants admit that the Corporation holds *all property in trust* for the Diocese and Congregations.⁶⁹ And so Defendants' claim for corporate control is not only wrong but irrelevant. Even if Defendants *did* control the Corporation, the Corporation would be in breach of its obligation to hold that property in trust for the Diocese and Congregations. And then, under Texas law, this Court would return control of the property to

⁶⁹ See, e.g., Defs.' Second Mot. for Partial Summ. J. at 41 ("The Corporation holds real property in an express trust for the use and benefit of the congregations that use them, and all other property in an express trust for the use and benefit of the Diocese.").

Plaintiffs.

B. Defendants cannot prevail without violating *Episcopal Diocese and Masterson*.

Defendants' motion makes something else abundantly clear: They cannot prevail under the plain First Amendment requirements that the Texas Supreme Court recognized and mandated for this case in 2013.

Every one of Defendants' arguments—even their corporate control argument—turns on the false assumption that *they* are the current officials of the Diocese and Congregations that existed before November 15, 2008.

But Defendants cannot prevail on this point under the plain mandate of the Texas Supreme Court: “courts applying the neutral principles methodology defer to religious entities’ decisions on ecclesiastical and church polity issues such as who may be members of the entities and whether to remove a bishop or pastor, while they decide non-ecclesiastical issues such as property ownership and whether trusts exist based on the same neutral principles of secular law that apply to other entities.”⁷⁰ “Further, deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question,”⁷¹ such as when a neutral principles instrument (like a trust or deed) names as its beneficiary a religious entity that two parties claim to represent.⁷²

This deference is not a choice: under neutral principles, civil courts are still “constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization”⁷³ on “who is or can be a member [of] a diocese”⁷⁴ and “the

⁷⁰ *Episcopal Diocese*, 422 S.W.3d at 650 (Tex. 2013).

⁷¹ *Masterson*, 422 S.W.3d at 606.

⁷² *Id.* at 605-06 (discussing *Brown v. Clark*, 160 S.W. 360, 365 (Tex. 1909)).

⁷³ *Id.* at 607.

⁷⁴ *Episcopal Diocese*, 422 S.W.3d at 652.

true and proper representatives” of these entities.⁷⁵ And that Court has already held that The Episcopal Church is “conclusively” a “hierarchical organization”⁷⁶ with dioceses at the middle, not the top.⁷⁷

And since Defendants know they cannot control the Diocese and Congregations under *Episcopal Diocese* and *Masterson*, they tell this Court something patently false: that “issues concerning [the Diocese’s] officers and control are governed by the Texas Uniform Unincorporated Nonprofit Association Act.”⁷⁸

But even Defendants do not believe this. And they knew better than to try that line with the U.S. Supreme Court just three months ago, instead admitting the obvious: “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 [in Masterson], ‘remains the appropriate method for Texas courts.’*”⁷⁹

Knowing they have lost otherwise, Defendants invite this Court to go down an unconstitutional and patently wrong road. The Court should decline that invitation and deny Defendants’ motion.

C. Defendants cannot prevail without violating neutral principles of Texas law.

It is clear from the above that Defendants’ claims fail under the First Amendment mandates of *Episcopal Diocese* and *Masterson*. But suppose for a moment there were no First Amendment. Suppose that the Texas Supreme Court had not just issued controlling opinions on

⁷⁵ *Masterson*, 422 S.W.3d at 608 (internal quotation marks omitted).

⁷⁶ *Id.*

⁷⁷ *Episcopal Diocese*, 422 S.W.3d at 647-48.

⁷⁸ Defs.’ Second Mot. for Partial Summ. J. at 3-4.

⁷⁹ 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) (emphasis added) (citations omitted) (quoting *Masterson*, 422 S.W.3d at 605) (emphasis added); *accord Brown v. Clark*, 116 S.W. 360, 364–65 (Tex. 1909).

point. Suppose that Defendants had not just admitted those First Amendment limitations to the U.S. Supreme Court three months ago.

Even then, Defendants' claims fail. Having asked for neutral principles of law, Defendants now try to get the Court to ignore those neutral principles to get the result they want:

- **Associations law.** Defendants claim to apply associations law, but they fail to cite the entire body of that law dealing with this exact scenario—what happens when a majority in a local chapter tries to defect from its parent organization? As the Texas Supreme Court put it, 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.”⁸⁰ Individual members may come and go, but a local majority, “no matter how large,” cannot take the subordinate unit out of “the original parent body”—in such cases, the “the life of the subordinate lodge” continues and “never ceased to exist,” with those members “preserving their allegiance” to the parent organization as the “true and lawful successors.”⁸¹ The Diocese has admitted and represented to others for decades that it is a “subordinate” body of the Church. And it was known for over a century before the Diocese asked to be formed under Church rules that there was no “impl[ie]d right of any diocese to *secede* from the union established by the Constitution.”⁸² Having ignored the First Amendment, Defendants end up right back in the same place under Texas associations law.

⁸⁰ *District Grand Lodge v. Jones*, 160 S.W.2d at 921.

⁸¹ *Minor*, 130 S.W. at 896-97.

⁸² A4531, Francis Vinton, *A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States* 143 (1870).

- **Express trust.** Defendants are bound by an express trust over the property in favor of The Episcopal Church and its constituent entities. This trust is irrevocable because the Diocese and Congregations accepted it as a condition of receiving legal consideration. Defendants argue weakly that “[t]here is no such thing as a ‘contractual trust’ in Texas”⁸³ and decline to cite the controlling Fort Worth Court of Appeals opinion—issued before the Diocese was even formed by the Church in Fort Worth—holding that “attempted revocation” of “a trust that is created by contract and based on a valuable consideration” is “wholly ineffective.”⁸⁴ Separate and apart from contractual trust, any purported revocation was ineffective under controlling Fort Worth Court of Appeals opinions because the method of revocation was beyond the Diocese’s reserved powers, by Defendants’ own admission.⁸⁵ Moreover, all of the properties were *already* in express trust for the Church *before* the Diocese accepted them, as the Corporation and the Diocese have judicially admitted.⁸⁶ To that, Defendants argue (again weakly) that “the 1984 judgment supersedes the previous deeds and places title in the Corporation”—but their very next sentence gives up the farm: “As the Texas Supreme Court said here: ‘The 1984 judgment vested **legal title** of the transferred property in the Fort Worth Corporation.’”⁸⁷ That judgment did not purport to transfer **equitable title**, which remained with The Episcopal Church. As

⁸³ Defs.’ Second Mot. for Partial Summ. J. at 42.

⁸⁴ *Shellberg*, 459 S.W.2d at 470–71.

⁸⁵ A4301, Dep. of Def. Diocese at 154:7-12 (agreeing that, under the Diocesan constitution, “any canon adopted by the Episcopal Diocese of Fort Worth in the future would have to be consistent with the Constitution and Canons of the General Convention”).

⁸⁶ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984) (stating that the property “acquired for the use of the Episcopal Church in the Dallas of Dallas” was held “in trust”).

⁸⁷ Defs.’ Second Mot. for Partial Summ. J. at 14 (emphasis added).

Defendants usefully point out, “That question having been decided by the court of last resort, it governs this case in all subsequent stages.”⁸⁸ Finally, since the Diocese was not the settlor, it had no right or ability to revoke the trust.

- ***Constructive trust.*** Constructive trusts are an equitable remedy specifically used where express trusts fail. Defendants must ignore reality to avoid the thirteen pages of their broken promises, fraudulent conveyances, and false representations documented in this case⁸⁹—instead relying on yet more overt falsehoods.⁹⁰ Defendants further argue that “equitable doctrines [must] conform to contractual and statutory mandates.”⁹¹ And this one does, since the legislature *specifically excluded* “constructive trust” from the very statute that Defendants try to apply.⁹² And ironically, Defendants claim there has been no injustice by attempting to impute to the parties a knowledge of the presumption of revocability;⁹³ however, they fail to impute a similar legal knowledge of the controlling Fort Worth case on point, holding that Defendants cannot make a deal exchanging a trust for legal consideration, take all the benefits of the deal, and then revoke the trust.
- ***Corporations law.*** Corporate control is irrelevant—because Defendants admit the Corporation holds all property in trust for the Diocese and Congregations. But Defendants’ claims for corporate control fail on their own terms. Defendants admit that under the Corporation’s governing documents, “only the Diocese . . .

⁸⁸ *Id.*

⁸⁹ Pls.’ Mot. for Partial Summ. J. at 55-67.

⁹⁰ See Section II, *supra*.

⁹¹ *Id.* at 46.

⁹² See Tex. Prop. Code § 111.003(2).

⁹³ Defs.’ Second Mot. for Partial Summ. J. at 43.

can decide who serves as Trustees of the Corporation.”⁹⁴ Because these breakaway individual Defendants cannot control the Diocese, they cannot decide who serves as Corporate Trustees. Defendants try to muddy the waters by claiming that, once elected, no one outside the Corporation can “remove or replace” them until their terms expire.⁹⁵ But this fails, too, under a plain reading of the Corporation’s Bylaws, including even their 2006 bylaws secretly crafted in anticipation of their actions in 2008. Those rules require that each Trustee “*shall hold office* from the date of his election until his successor shall have been duly elected and qualified, *or until his* death, resignation, *disqualification* or removal.”⁹⁶ Defendants admit Corporate Trustees must be “members in good standing of the Diocese or canonically resident within it”⁹⁷ or “the bishop of the diocese.”⁹⁸ And under the bylaws, once Defendants were no longer members or bishop of the Diocese, they were disqualified and did not “hold office” under the Corporation’s bylaws. At that point, the Board was vacant, and under basic neutral principles, either the Diocese or this Court could fill those vacancies with *qualified* candidates from the Episcopal Diocese.⁹⁹

Defendants arguments’ fail for many reasons, among them the unsurprising notion that

⁹⁴ *Id.* at 25.

⁹⁵ *Id.* at 21.

⁹⁶ JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (Aug. 15, 2006) (emphasis added); JA00077, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (May 17, 1983) (emphasis added).

⁹⁷ Defs.’ Second Mot. for Partial Summ. J. at 21.

⁹⁸ A4364, Dep. of Def. Corp. at 75:10-15; *see also* A4357, *id.* at 50:6-22, 53:1-54:8.

⁹⁹ *Byerly v. Camey*, 161 S.W.2d 1105, 1111 (Tex. Civ. App.—Fort Worth 1942, writ ref’d w.o.m.). Even under Defendants’ improper “Corporation chooses the Bishop” clause, they cannot prevail, because Defendant Corporation conceded under oath that the Corporation never followed that Corporate Article II procedure under which the other Trustees could purportedly determine the issue; and since Defendants were since disqualified, it is too late to do so now. *See* A4443, Dep. of Def. Bates at 163:18-164:15.

officers of an organization cannot leave that organization and take its name and property. Defendants cannot prevail (1) under the simple solution mandated by their own admissions of a Diocesan and Congregational trust, (2) under *Episcopal Diocese* and *Masterson*, and (3) under any one of numerous other neutral principles of law.¹⁰⁰

VI. SUMMARY JUDGMENT EVIDENCE

In accordance with the parties’ Rule 11 Agreement Regarding Summary Judgment evidence—filed December 4, 2014—Plaintiffs rely on, and incorporate by reference as though fully set forth herein, Plaintiffs’ individual appendix, which was filed on December 1, 2014; certain sworn statements of Defendant Bishop Iker, which were filed as part of Defendants’ individual appendix on December 1, 2014; and the parties’ joint appendix, which was filed on November 24 and 26, 2014. Plaintiffs also rely on, and incorporate by reference as though fully set forth herein, the following responsive evidence, which Plaintiffs filed on December 22, 2014:

	DESCRIPTION	APPENDIX PAGE(S)
EXHIBIT VV	Affidavit of Joseph A. Magliolo	A4254-4255
TAB 1	Transcript of Oral and Videotaped Deposition of the Defendant Appearing as “Episcopal Diocese of Fort Worth” by Its Designated Representative Jack Leo Iker (Sept. 9, 2014)	A4256-4340
TAB 2	Transcript of Oral and Videotaped Deposition of the Defendant Appearing as “Corporation of Episcopal Diocese of Fort Worth” by Its Designated Representative Walter Virden (Sept. 10, 2014)	A4341-4399
TAB 3	Transcript of Oral and Videotaped Deposition of Christopher Chad Bates (Sept. 11, 2014)	A4400-4449
TAB 4	Transcript of the Testimony of Jane R. Parrott (May 10, 2011)	A4450-4512

¹⁰⁰ As additional grounds for denying Defendants’ motion, Plaintiffs hereby incorporate by reference, as if set forth fully herein, their Objections to and Motion to Strike Defendants’ Summary Judgment Affidavits and Exhibits, which was filed separately on December 22, 2014 under the parties’ Rule 11 Agreement Regarding Agreed First Amended Docket Control Order.

	DESCRIPTION	APPENDIX PAGE(S)
TAB 5	Excerpts from Appellants’ Brief in <i>The Episcopal Diocese of Fort Worth v. The Episcopal Church</i> , No. 11-0265 in the Supreme Court of Texas	A4513-4519
TAB 6	Excerpts from Appellants’ Reply Brief in <i>The Episcopal Diocese of Fort Worth v. The Episcopal Church</i> , No. 11-0265, in the Supreme Court of Texas	A4520-4523
TAB 7	Defendants’ November 3, 2014 Press Release – “U.S. Supreme Court denies TEC petition”	A4524
EXHIBIT WW	Affidavit of Mark J. Duffy	A4525-4526
TAB 1	Excerpts from Murray Hoffman, <i>Treatise on the Law of the Protestant Episcopal Church</i> (1850)	A4527-4528
TAB 2	Excerpts from Francis Vinton, <i>A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States</i> (1870)	A4529-4531
TAB 3	Excerpts from Francis L. Hawks, <i>Contributions to the Ecclesiastical History of the United States</i> (1841)	A4532-4534

VII. ARGUMENT AND AUTHORITIES

Defendants cannot prevail because:

1. **Corporate control is irrelevant.** The Corporation holds all property in trust for the Diocese and Congregations, which only the Plaintiffs may control as a matter of law. Even if Defendants control the Corporation, that Corporation must be removed as trustee of Plaintiffs’ trusts.

2. ***Episcopal Diocese and Masterson.*** Defendants cannot prevail without violating the plain holdings of the Texas Supreme Court’s controlling opinions in this case, which set the boundaries on a valid neutral principles analysis involving religious entities.

3. **Other neutral principles.** Defendants cannot prevail without violating Texas law of associations, express trust, constructive trust, and corporations, any one of which would be sufficient to defeat their claims. So many apply because Texas law does not tolerate oath-breaking and land-grabbing under any lens.

This Court should deny Defendants' motion and grant Plaintiffs' cross-motion.

A. Corporate control is irrelevant

Defendants spend much of their brief trying to establish a right to control the Corporation. The reason is obvious: Defendants think they have a better chance of taking the Corporation away from the Church than they do taking the Diocese away from the Church. But ultimately, corporate control is irrelevant.

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

As Defendants tell this Court: "The Corporation holds real property in an express trust for the use and benefit of the congregations that use them, and all other property in an express trust for the use and benefit of the Diocese."¹⁰¹ Defendant "Corporation" testified the same.¹⁰² Defendant "Diocese" testified the same.¹⁰³ Defendant Iker averred by affidavit the same.¹⁰⁴ And Defendants admit this in their live pleadings as well,¹⁰⁵ which, as Defendants tell the Court, is a "formal judicial admission[that] not only relieves [a party] from having to prove the fact but also

¹⁰¹ Defs.' Second Mot. for Partial Summ. J. at 41.

¹⁰² A3948, Dep. of Def. Corp. at 17:16-19.

¹⁰³ A4274, Dep. Def. Diocese at 49:2-5.

¹⁰⁴ Aff. of Jack Iker ¶ 6 (attached in support of Defs.' Second Mot. for Partial Summ. J.).

¹⁰⁵ See Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth ¶ 5 (Oct. 29, 2014) ("The Diocesan Corporation continues to hold the property received from this Dallas court along with all other property acquired since 1984 for the use of the congregations of the Fort Worth Diocese.").

bars the [Defendants] from disputing it.”¹⁰⁶ Defendant Corporation testified that the Corporation has so-held all property in trust for the Diocese and Congregations since its formation.¹⁰⁷

2. As trustee, the Corporation must use the property solely for the benefit of its beneficiaries—not for itself.

Defendants concede the Corporation is trustee for the Diocese and Congregations and holds all property as such. A “trustee owes a trust beneficiary an unwavering duty of good faith, fair dealing, loyalty and fidelity over the trust’s affairs and its corpus.”¹⁰⁸ The trustee must “manage the trust assets *solely in the interest of the beneficiaries.*”¹⁰⁹ A trustee is flatly prohibited from using the property for his own purposes.¹¹⁰ Thus, here, the beneficiaries, the Diocese and Congregations—not the Corporation—are entitled to the use of the property held in trust by the Corporation.

Under Defendants’ own admissions, the Corporation holds all property in trust for the Diocese and Congregations. And it has for decades before this dispute arose over which parties may control those beneficiaries, the Diocese and Congregations. The question, then, is which party is legally entitled to control those entities. And the Texas Supreme Court instructed exactly how to answer that question.

3. Under *Episcopal Diocese and Masterson*, Plaintiffs represent the beneficiaries of the property held in trust by the Corporation as a matter of law.

¹⁰⁶ Defs.’ Second Mot. for Partial Summ. J. at 17 (citing *Houston First Am. Sav. v. Musick*, 650 S.W.2d 764, 767 (Tex. 1983); *Gevinson v. Manhattan Constr. Co.*, 449 S.W.2d 458, 466 (Tex. 1969)).

¹⁰⁷ A3948, Dep. of Def. Corp. at 17:16-18:2. Defendants argue that only certain Plaintiff Congregations have individual representatives in this case. That argument is ironic considering that *none* of Defendants’ Congregations have individuals appearing in this case. Obviously, the entity is the necessary party. Moreover, the governing documents of the Diocese, which Defendants claim control, state that upon dissolution of any congregation, the property associated with that congregation reverts to the Corporation *for the use of the Diocese*. JA00213, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 18, § 18.4 (2006). As explained below, Plaintiffs are the representatives of the Diocese, as a matter of law. See Section VII.A.3.

¹⁰⁸ *Herschbach v. City of Corpus Christi*, 883 S.W.2d 720, 735 (Tex. App.—Corpus Christi 1994, writ denied).

¹⁰⁹ Tex. Prop. Code § 117.007 (emphasis added).

¹¹⁰ See *Kinney v. Shugart*, 234 S.W.2d 451, 452 (Tex. Civ. App.—Eastland 1950, writ ref’d) (“[A] trustee or a person clothed with a fiduciary character shall not be permitted to use his position so as to obtain for himself any advantage or profit inconsistent to his duty to his beneficiary . . .”).

The Texas Supreme Court could not have been more clear. And *Defendants* summarized the relevant holding well to the U.S. Supreme Court three months ago: when a “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.”¹¹¹ Quoting *Masterson*, *Defendants* affirmed: “[This], the Texas Supreme Court held, ‘*remains the appropriate method for Texas courts.*’”¹¹²

That is exactly the situation here. *Defendants* testify the Corporation holds all property in trust for the Diocese and Congregations. Thus, as the Texas Supreme Court put it, “whatever body is identified as being the church” is the beneficiary of that interest.¹¹³ And on that question—of who are “the true and proper representatives”¹¹⁴ and “who may be members of the entities”¹¹⁵—“courts applying the neutral principles methodology defer to religious entities’ decisions”¹¹⁶ and are “constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization,”¹¹⁷ even where, as here, “deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment . . . effectively determine[s] the property rights in question.”¹¹⁸

The Texas Supreme Court expressly approved such a result under neutral principles, concluding: “Nevertheless, in our view the neutral principles methodology simply requires courts to conform to fundamental principles: they fulfill their constitutional obligation to exercise

¹¹¹ 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) (emphasis added); accord *Brown v. Clark*, 116 S.W. at 364–65.

¹¹² 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) (quoting *Masterson*, 422 S.W.3d at 605 (emphasis added)).

¹¹³ *Masterson*, 422 S.W.3d at 604-05 (citations omitted); accord *Brown v. Clark*, 116 S.W. at 364–65.

¹¹⁴ *Masterson*, 422 S.W.3d at 608.

¹¹⁵ *Episcopal Diocese*, 422 S.W.3d at 650-52.

¹¹⁶ *Id.*

¹¹⁷ *Masterson*, 422 S.W.3d at 607.

¹¹⁸ *Id.* at 606-07.

jurisdiction where it exists, yet refrain from exercising jurisdiction where it does not exist.”¹¹⁹

Here, the Texas Supreme Court has already determined that The Episcopal Church is “conclusively . . . a hierarchical organization,”¹²⁰ with “three structural tiers[, t]he first and highest [of which] is the General Convention,” with dioceses in the middle and congregations at the base of the hierarchy.¹²¹ The General Convention has already indisputably and unconditionally determined that only Plaintiffs are the true and proper representatives and members of the Diocese and Congregations.¹²² This Court “lack[s] jurisdiction to decide [these] ecclesiastical questions” and must “accept [them] as binding” in this case;¹²³ such “‘deference’ is not a choice” but “compulsory”¹²⁴ as to these Diocesan and Congregational issues.

As a matter of law, only Plaintiffs can represent the Diocese and Congregations, which are the beneficiaries of the trust administered by the Corporation.

4. If Defendants control the Corporation, then the Corporation must be removed as trustee of Plaintiffs’ trusts.

Defendants argue throughout their brief that they, led by Defendant Iker, control the Corporation. As demonstrated below, this is incorrect. *See* Section VII.C.2, *infra*.

But even if it were correct, it is entirely irrelevant. Even if Defendants *were* Trustees of the Corporation, as they purport, they would be in breach of the Corporation’s trust obligations to the Diocese and Congregations. And then, under neutral principles of law, this Court would remove the errant Corporation as trustee of the trusts benefitting Plaintiffs.¹²⁵ Removal would be

¹¹⁹ *Id.* at 606.

¹²⁰ *Id.* at 608.

¹²¹ *Episcopal Diocese*, 422 S.W.3d at 647-48.

¹²² A4107-10, Buchanan Aff. ¶¶ 5-8; A5, 8-10, Ohl Aff. ¶¶ 4(e), 9-13; A4225, Wells Aff. ¶ 3; A4227, Waggoner Aff. ¶ 1.

¹²³ *Masterson*, 422 S.W.3d at 602, 607.

¹²⁴ *Id.* at 602.

¹²⁵ 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

justified, for example, “to prevent the trustee from engaging in further behavior that could potentially harm the trust,”¹²⁶ where trustees have used trust property for their own interests,¹²⁷ or where hostility exists between the trustee and the beneficiary such that it impedes the trustee’s ability to effectively manage the trust property.¹²⁸ There is no question that Defendants cannot effectively manage a trust for Plaintiffs. And Defendants have already engaged in behavior harmful to Plaintiffs and used the property for their own interests, such as transferring funds out of state expressly to make it harder for this Court to reach,¹²⁹ placing a \$3.5 million lien favoring Defendants on disputed property during the litigation,¹³⁰ and dissipating over half-a-million dollars of church funds at the diocesan level alone since the dispute began.¹³¹

As a side note, Defendants are wrong that the Corporation holds *all* property at issue.¹³² Defendant Corporation conceded under oath that the Congregations have, for example, accounts held in their own names and not by the Corporation;¹³³ so, too, personal tangible property and Diocesan accounts.¹³⁴ But the same analysis applies: whoever represents the true and proper representatives of the Diocese and Congregations is entitled to use the property titled in those

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

¹²⁶ *Ditta v. Conte*, 298 S.W.3d 187, 192 (Tex. 2009).

¹²⁷ *See Conte v. Ditta*, 312 S.W.3d 951, 959 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

¹²⁸ *Barrientos v. Nava*, 94 S.W.3d 270, 288-89 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Separately, this Court could further remedy Defendants’ breach through a constructive trust. Texas law provides that a “constructive trust is a relationship with respect to property, subjecting the person by whom the title to the property is held *to an equitable duty to convey it to another*, on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property.” *Talley v. Howsley*, 176 S.W.2d 158, 160 (Tex. 1943) (emphasis added) (internal quotation marks and citation omitted).

¹²⁹ *See* Pls.’ Mot. for Partial Summ. J. at 62-63.

¹³⁰ *Id.* at 64-65; *see also* A1438-54, Deed of Trust (Oct. 13, 2010) (showing \$3.5 million loan from Jude Funding to the Corporation).

¹³¹ Pls.’ Mot. for Partial Summ. J. at 63-64; *see also id.* at 4-12, 55-67.

¹³² Defs.’ Second Mot. for Partial Summ. J. at 12.

¹³³ A4356, Dep. of Def. Corp. at 43:6-13.

¹³⁴ A4463, Dep. of Def. Director of Finance Parrott at 49:10-20 (confirming that there are “other accounts held by the Diocese”).

entities' names.

In sum, this Court should deny Defendants' motion for partial summary judgment and grant Plaintiffs' cross-motion, returning the property to Plaintiffs. This simple solution, based on Defendants' own admissions and on the Texas Supreme Court's holdings (as admitted by Defendants themselves to the U.S. Supreme Court) easily resolves this case in Plaintiffs' favor without further inquiry.

B. Defendants cannot prevail without violating *Episcopal Diocese and Masterson*.

Every one of Defendants' arguments—even their corporate control argument—turns on the false assumption that *they* are the Diocese and Congregations.

But Defendants cannot prevail on this point under the plain mandate of the Texas Supreme Court in *Episcopal Diocese and Masterson*.

And so here they tell the Court something so contrary to those holdings that they did not dare attempt it with the U.S. Supreme Court three months ago, telling that Court the exact opposite.

But Defendants are bound by *Episcopal Diocese and Masterson*. And they are further bound by their judicial admissions to the U.S. Supreme Court and cannot contradict them now.

1. All of Defendants' claims turn on their false assumption that they are the Diocese and Congregations.

Defendants argue that the Corporation holds property in trust for the Diocese and Congregations, then assert that *they* are the Diocese and Congregations.

Likewise, Defendants claim they can control the Corporation because they are the Diocese, telling this Court, “only the Diocese (not TEC) can decide who serves as Trustees of the

Corporation,”¹³⁵ claiming that they are qualified to serve under the Corporation’s bylaws as “members in good standing of parishes or missions in the Diocese” while, in their view, “[n]one of the Plaintiffs’ nominees [to the Corporation] are members in good standing of the Diocese or canonically resident within it.”¹³⁶

Each of Defendants’ claims turns on their ability to establish a right to control the Diocese and Congregations under *Episcopal Diocese* and *Masterson*, which they cannot do.

2. Defendants have no right to control the Diocese or Congregations under *Episcopal Diocese* and *Masterson*.

As shown, the Texas Supreme Court instructed exactly how to resolve the question of who may represent the Diocese and Congregations under neutral principles.

“[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,”¹³⁷ “who is or can be a member in good standing of . . . a diocese,”¹³⁸ and “the true and proper representatives” of religious entities.”¹³⁹

This is not a choice. “Civil courts are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted,”¹⁴⁰ even where “deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment may, in some instances, effectively determine the property rights in question.”¹⁴¹

The Texas Supreme Court has already held that The Episcopal Church is “conclusively”

¹³⁵ Defs.’ Second Mot. for Partial Summ. J. at 25.

¹³⁶ *Id.* at 20-21.

¹³⁷ *Episcopal Diocese*, 422 S.W.3d at 650 (emphasis added).

¹³⁸ *Id.* at 652.

¹³⁹ *Masterson*, 422 S.W.3d at 608.

¹⁴⁰ *Id.* at 607.

¹⁴¹ *Id.* at 606.

a “hierarchical organization,”¹⁴² with “three structural tiers[, t]he first and highest [of which] is the General Convention,” with dioceses in the middle and congregations at the base of the hierarchy¹⁴³ as “subordinate” entities.¹⁴⁴

The Diocese itself has affirmed for decades that it “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.”¹⁴⁵ And, under the past authority of Defendant Iker himself, the Corporation has judicially admitted to a prior Fort Worth court that “no person may be a member of a parish who is not a member of The Episcopal Church”¹⁴⁶ and that parties who have “abandoned the communion of The Episcopal Church . . . cease[] to be qualified to serve [as officers] under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”¹⁴⁷

It is undisputed that the highest levels of The Episcopal Church have consistently and conclusively determined that Plaintiffs, and not Defendants, are the members and true and proper representatives of the Diocese and Congregations.¹⁴⁸ The Texas Supreme Court has determined that this Court “lack[s] jurisdiction to decide [these] ecclesiastical questions” and must “accept

¹⁴² *Id.* at 608.

¹⁴³ *Episcopal Diocese*, 422 S.W.3d at 647-48.

¹⁴⁴ *Masterson*, 422 S.W.3d at 600.

¹⁴⁵ 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)).

¹⁴⁶ 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).

¹⁴⁷ A988-89, Second Am. Orig. Pet., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1019, Pls.’ Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* Pls.’ Mot. for Partial Summ. J. at 60 n.209 & Section VIII.F.3.

¹⁴⁸ A4107-10, *Buchanan Aff.* ¶¶ 5-8; A5, 8-10, *Ohl Aff.* ¶¶ 4(e), 9-13; A4225, *Wells Aff.* ¶ 3; A4227, *Waggoner Aff.* ¶ 1. Further, acting under the authority given him by the Church’s Constitution and Canons, Plaintiff Bishop Ohl pronounced a “Sentence of Deposition” upon Defendant Revs. Christopher Cantrell, Timothy Perkins, Ryan Reed, and Thomas Hightower and other priests and deacons for their abandonment of communion with the Church. A26, *Notice of Deposition of Priests and Deacons for Abandonment of Communion of The Episcopal Church* (Feb. 15, 2010).

[them] as binding” in this case;¹⁴⁹ such “‘deference’ is not a choice” but “compulsory.”¹⁵⁰

As a matter of law, Defendants may not control the Diocese or Congregations under *Episcopal Diocese* and *Masterson*.

3. Defendants misstate *Episcopal Diocese* and *Masterson*.

Knowing they cannot control the Diocese and Congregations under *Episcopal Diocese* and *Masterson*, Defendants tell this Court something patently false: that “issues concerning [the Diocese’s] officers and control are governed by the Texas Uniform Unincorporated Nonprofit Association Act.”¹⁵¹

Thus, the parties present two views of the Texas Supreme Court’s holdings in 2013:

- **Plaintiffs:** Courts applying the neutral principles approach defer to the Church on ecclesiastical issues within the case, even if that deference effectively resolves property issues. (“Defer and Apply”).
- **Defendants:** Courts applying the neutral principles approach override the Church on ecclesiastical issues within the case and adjudicate them if they affect property issues. (“Override and Adjudicate”).

Only one is right. The Texas Supreme Court said “courts applying the neutral principles methodology defer to religious entities’ decisions on ecclesiastical and church polity issues”¹⁵² and “are constitutionally required to accept as binding the decision of the highest authority of a hierarchical religious organization,”¹⁵³ **even where “deferring to decisions of ecclesiastical bodies in matters reserved to them by the First Amendment . . . effectively determine[s] the**

¹⁴⁹ *Masterson*, 422 S.W.3d at 602, 607.

¹⁵⁰ *Id.* at 602.

¹⁵¹ Defs.’ Second Mot. for Partial Summ. J. at 4.

¹⁵² *Episcopal Diocese*, 422 S.W.3d at 650.

¹⁵³ *Masterson*, 422 S.W.3d at 607.

property rights in question.¹⁵⁴ When ecclesiastical issues arise within a neutral principles case, civil courts must Defer and Apply, not Override and Adjudicate.

Thus, under *Episcopal Diocese* and *Masterson*, courts decide ownership questions like whether there is a valid deed or trust using “the same neutral principles of law applicable to other entities.”¹⁵⁵ But if the beneficiary of a valid deed or trust is a religious entity, and the parties dispute who are the “members”¹⁵⁶ and “the true and proper representatives”¹⁵⁷ of that entity, on that question civil courts must “accept as binding the decision of the highest authority of a hierarchical religious organization to which a dispute regarding internal government has been submitted.”¹⁵⁸

Each of Defendants’ claims for Diocesan control come down to arguments about who has authority to do what within The Episcopal Church. Even their claim for corporate control ultimately turns on which party is determined to be the “members in good standing” of the Diocese, and they quibble with Plaintiffs’ ecclesiastical procedure for determining that issue.¹⁵⁹ But the Texas Supreme Court rejected this exact line of argument in *Masterson*, holding that, while “[the breakaway] Leaders urge that the Episcopal Church has not created hierarchical tribunals with authority to remove the vestry [or] exclude people from membership in the local church,” “the First Amendment limits the jurisdiction of secular courts” as to “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

¹⁵⁴ *Id.* at 606 (emphasis added).

¹⁵⁵ *Id.* at 596.

¹⁵⁶ *Episcopal Diocese*, 422 S.W.3d at 650.

¹⁵⁷ *Masterson*, 422 S.W.3d at 608.

¹⁵⁸ *Id.* at 607.

¹⁵⁹ Defs.’ Second Mot. for Partial Summ. J. at 31-33.

the exclusive jurisdiction of the ecclesiastical authorities.”¹⁶⁰

Indeed, not even Defendants believe their own position asserted here. Three months ago, they accurately represented the Texas Supreme Court’s holdings to the U.S. Supreme, stating:

“[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.”¹⁶¹

This, of course, is Defer and Apply, not Override and Adjudicate. And it is the only “appropriate method for Texas courts.”

4. Defendants are bound by their representations to the U.S. Supreme Court.

Defendants are more than just bound by the “appropriate method” of *Episcopal Diocese* and *Masterson*—they are bound also by their representations to the U.S. Supreme Court.

Defendants opposed *certiorari* by presenting the Texas Supreme Court’s decision that where a “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,” telling the U.S. Supreme Court that this “remains the appropriate method for Texas courts.”¹⁶² After securing a denial of *certiorari*, Defendants thanked their attorneys “for presenting our response to the Court,” noting that “we

¹⁶⁰ *Id.* at 607-08 (emphasis added) (citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 720 (1976)).

¹⁶¹ 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) (citations omitted) (quoting *Masterson*, 422 S.W.3d at 605); accord *Brown v. Clark*, 116 S.W. at 364–65.

¹⁶² 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); accord *Brown v. Clark*, 116 S.W. at 364–65.

are assured that the Texas Supreme Court ruling will govern the outcome of our case” and “now move forward to a resolution of this case under neutral principles of law as applied in the State of Texas.”¹⁶³

Now, on remand, Defendants ask this Court to apply a polar opposite version of “the Texas Supreme Court ruling” they told the U.S. Supreme Court “will govern the outcome of our case.”¹⁶⁴ But the “judicial estoppel doctrine prevents parties from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.” *Ex parte Dangelo*, 339 S.W.3d 143, 153 n.13 (Tex. App.—Fort Worth 2010), *aff’d*, 376 S.W.3d 776 (Tex. Crim. App. 2012).

Defendants are bound by what they embraced as “our response” before the U.S. Supreme Court and judicially estopped from contradicting it now. This doctrine “prevent[s] parties from playing fast and loose with the judicial system for their own benefit.”¹⁶⁵

Thus, under the Texas Supreme Court’s holding on “the appropriate method for Texas courts,”¹⁶⁶ and under Defendants’ own admissions, this Court must defer to The Episcopal Church’s conclusive determination that Plaintiffs, not Defendants, are entitled to represent the Episcopal Diocese of Fort Worth and its Congregations and apply that fact as binding in this case.

¹⁶³ See A4524, Defendants’ Nov. 3, 2014 Press Release (“U.S. Supreme Court denies TEC petition”), <http://www.fwepiscopal.org/news/supremecourt.html> (last visited December 16, 2014).

¹⁶⁴ See *id.*

¹⁶⁵ *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 643 (Tex. 2009). Defendants are also quasi-estopped from contradicting their prior position. *Lopez v. Muñoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 864 (Tex. 2000) (“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.” (citations omitted)).

¹⁶⁶ 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) (quoting *Masterson*, 422 S.W.3d at 605 (internal quotation marks omitted)); *accord Brown v. Clark*, 116 S.W. at 364–65.

Knowing they cannot prevail otherwise, Defendants invite this Court to go down an unconstitutional and patently wrong road. The Court should decline that invitation and deny Defendants' motion.

C. Beyond *Episcopal Diocese and Masterson*, Defendants' claims and defenses fail under numerous neutral principles of law.

It is clear from the above that Defendants' claims fail under the First Amendment mandates of *Episcopal Diocese* and *Masterson*, which set the boundaries of a neutral principles analysis. Under those limits, the Court could resolve this case without further inquiry.

But suppose for a moment there were no First Amendment. Suppose that the Texas Supreme Court had not just issued controlling opinions on point. Suppose that Defendants had not just admitted those First Amendment limitations to the U.S. Supreme Court months ago.

Even then, Defendants would not prevail. Having asked for neutral principles of law, Defendants now ignore those very principles to get the result they want.

Defendants' claims and defenses fail under any of several doctrines: Texas associations, express trust, contractual trust, constructive trust, and corporations law. Defendants' arguments and responses on point bungle and ignore those doctrines.

1. Even without *Episcopal Diocese* and *Masterson*, Defendants would *still* have no right to control the Diocese and Congregations under Texas associations law.

Defendants claim to rely on Texas associations law, but they ignore the entire body of associations law dealing with the precise question at hand: what happens when a subordinate local chapter tries to defect from the parent association that granted "the warrant for its existence"?¹⁶⁷ Under a century of Texas associations law, Defendants' claims again fall apart.

¹⁶⁷ *Minor*, 130 S.W. at 896-97.

a. Under Texas law, majority factions cannot break subordinate local chapters away from the parent body.

As the Texas Supreme Court held, local chapters “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization.”¹⁶⁸ They are “part and parcel of a larger organization [whose] purposes are to be accomplished by and through such subordinate bodies.”¹⁶⁹ Such a local chapter exists “by virtue of the power conferred upon its members to organize themselves into a subordinate lodge.”¹⁷⁰

Individuals may come and go as they please. But local majorities cannot, “no matter how large,” effectively “destroy” the subordinate local chapter by purporting to take it out of “the original parent body” for their own purposes.¹⁷¹ In such cases, regardless of what the breakaway group calls itself, “the life of the subordinate lodge” continues, having “never ceased to exist,” with those minority members “preserving their allegiance” to the parent organization as the “true and lawful successors.”¹⁷² The breakaway ex-members have no authority to act on behalf of the local association.¹⁷³ “[W]hatever rights [they] had in the [association’s property] were merely incidental to their membership and terminated absolutely with such membership.”¹⁷⁴

That rule of law holds even if the breakaway faction represents a majority of the members of the local association and regardless of the size of such a majority.¹⁷⁵ In *Progressive Union*, a local lodge with over 1,000 members was affiliated with a superior organization called the Supreme Council.¹⁷⁶ A faction within the local lodge decided to “shake loose from the

¹⁶⁸ *Dist. Grand Lodge v. Jones*, 160 S.W.2d at 921.

¹⁶⁹ *Minor*, 130 S.W. at 896.

¹⁷⁰ *Id.* at 896-97.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Progressive Union*, 264 S.W.2d at 766–67; *Minor*, 130 S.W. at 897.

¹⁷⁴ *Dist. Grand Lodge v. Jones*, 160 S.W.2d at 920.

¹⁷⁵ *Progressive Union*, 264 S.W.2d at 768; *Minor*, 130 S.W. at 897.

¹⁷⁶ *Progressive Union*, 264 S.W.2d at 766–67.

Supreme Council,” and 96% of the membership of the local lodge withdrew from affiliation with the Supreme Council.¹⁷⁷ The Court upheld the jury’s findings that the majority had withdrawn from the Supreme Council and from the loyal minority and had no authority to act on behalf of the local lodge, even though the majority represented 96% of the membership of the local lodge.¹⁷⁸ The Court explained: “It is well settled that when a person ceases to be a member of a voluntary association, his interest in [it] 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.”¹⁷⁹

Similarly, in *Minor*, a local lodge that operated by dispensation from a grand lodge attempted to disaffiliate from the grand lodge and realign with another grand lodge.¹⁸⁰ The grand lodge recognized the loyal members of the local lodge as that lodge’s continuing members.¹⁸¹ Thus, the court held that the loyal members were the “true and lawful successors” of the trustees of the local lodge.¹⁸²

b. Under Texas law, Defendants cannot control the Diocese here.

Having ignored the First Amendment, Defendants end up right back in the same place under Texas associations law.

i. The Diocese is subordinate.

The Diocese has represented for decades, to the IRS and others, that it is a “subordinate” unit of The Episcopal Church.¹⁸³ At its Primary Convention, the Diocese and every Congregation within it “fully” acceded by signed writing to the Constitution and Canons of The Episcopal

¹⁷⁷ *Id.* at 767–68.

¹⁷⁸ *Id.* at 767–69.

¹⁷⁹ *Id.* at 768.

¹⁸⁰ *Minor*, 130 S.W. at 894-95.

¹⁸¹ *Id.* at 895.

¹⁸² *Id.* at 897.

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

Church.¹⁸⁴ The Diocese’s founding Constitution and Canons recognized the authority of the General Convention and committed to hold title to all real property “for the use of the Church and the Diocese”¹⁸⁵ and only for the purposes “authorized or approved by this Church, and for no other use.”¹⁸⁶ In *Masterson*, The Texas Supreme Court described dioceses and congregations as “subordinate Episcopal affiliate[s].”¹⁸⁷

And while the Court need not reach it, since the Texas Supreme Court and Defendants and their predecessors have already affirmed the subordinacy of the Diocese and Congregations, it was known for more than a century before the Diocese asked the Church to be formed that the Church is “not a fugitive coalition, but a perpetual union,”¹⁸⁸ and that dioceses “surrender” “[s]uch an exercise of independency as would permit them to withdraw from the union at their own pleasure.”¹⁸⁹ The Church’s Constitution contains a departure option only for missionary (extraterritorial) dioceses, requiring the prior consent of the General Convention or Presiding Bishop, and no departure option for dioceses within the United States.¹⁹⁰ And for over a century before the Diocese’s formation, it was recognized that there was no “impl[ied] right of any Diocese to *secede* from the union established by the Constitution.”¹⁹¹

Thus, as in *Minor*, a case with the force of Texas Supreme Court precedent,¹⁹² a local majority within a subordinate Episcopal Diocese cannot, “no matter how large,” effectively

¹⁸⁴ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

¹⁸⁵ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

¹⁸⁶ JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

¹⁸⁷ *Masterson*, 422 S.W.3d at 600.

¹⁸⁸ A4528, Murray Hoffman, Treatise on the Law of the Protestant Episcopal Church 110 (1850).

¹⁸⁹ A4533, Francis L. Hawks, Contributions to the Ecclesiastical History of the United States 11 (1841).

¹⁹⁰ A4108-09; Aff. of the Rt. Rev. John Clark Buchanan ¶ 7 (Oct. 22, 2014).

¹⁹¹ A4531, Francis Vinton, A Manual Commentary on the General Canon Law and the Constitution of the Protestant Episcopal Church in the United States 143 (1870).

¹⁹² *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.”).

“destroy” the subordinate local chapter by purporting to take it out of “the original parent body” — and in such cases, “the life of the subordinate lodge” continues, having “never ceased to exist,” with the loyal minority as the “true and lawful successors.”¹⁹³ As Defendant Iker told a prior Fort Worth court, “no person may be a member of a parish who is not a member of The Episcopal Church.”¹⁹⁴ And parties who have “abandoned the communion of The Episcopal Church . . . cease[] to be qualified to serve [as officers] under the Constitution and Canons of the Diocese and of The Episcopal Church and canon law.”¹⁹⁵

Defendants try to paint a picture of a free-floating Diocese that formed itself out of whole cloth and then, seven weeks later, decided to join up with The Episcopal Church.¹⁹⁶ This argument would be irrelevant if true, because at whatever point the Diocese joined the Church, it “fully” acceded to the Church’s rules.¹⁹⁷

But the picture Defendants paint is also just wrong. It bears no relation to the undisputed documentary record:

- In June 1982, the Episcopal Diocese of Dallas petitioned the Church under Article V of its Constitution to divide its territory and form a new diocese—expressly and only “[u]pon ratification by the General Convention” of the Church, after affirming “the new diocese meets the Church’s constitutional requirements.”¹⁹⁸

¹⁹³ *Minor*, 130 S.W. at 896-97.

¹⁹⁴ 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).

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

¹⁹⁶ Defs.’ Second Mot. for Partial Summ. J. at 6-7, 24 (“The Diocese was created at a Primary Convention in November 1982 by division of the Diocese of Dallas. Seven weeks later, the Diocese was admitted into union with TEC’s governing body TEC did not form the Fort Worth Diocese.”).

¹⁹⁷ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

¹⁹⁸ JA00783, Minutes of the Special Convention of the Diocese of Dallas (June 19, 1982).

- Under Article V, the new diocese could be formed “by the division of an existing diocese” only “with the consent of the General Convention and under such conditions as the General Convention shall prescribe.”¹⁹⁹
- In September 1982, the Church’s “67th General Convention ratifie[d] the division” after affirming “the Constitution and Canons of the General Convention of the Episcopal Church in the USA . . . have been fully complied with.”²⁰⁰
- Only then did the new Fort Worth Diocese convene its Primary Convention, in which they expressly organized “**pursuant to [the] approval of the 67th General Convention of The Episcopal Church,**” and “unanimously” and “fully” acceding to the Church’s rules.²⁰¹
- The new Diocese’s Constitution, on its face, did not “commence and [go into] full force and effect” until “January 1, 1983,”²⁰² *after* the Diocese’s submission to the Church of its “Resolution of Accession to the Constitution and Canons of the Episcopal Church signed by all clergy and lay delegates,”²⁰³ and *after* the Church’s certification in return of the Diocese’s compliance with Article V, all “pursuant to [the] Resolution adopted by The General Convention September 11, 1982.”²⁰⁴

Having formed “pursuant to” the Church’s approval and conditions, and upon

¹⁹⁹ JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V.

²⁰⁰ JA00785-86, Journal of the General Convention, September 1982; A3932.2, Dep. of Def. Diocese at 98:12-21.

²⁰¹ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982 (emphasis added); *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

²⁰² JA00118, The Constitution and Canons of the Episcopal Diocese of Fort Worth (“Enabling Clause”).

²⁰³ JA0065, Letter from The Rev. Logan E. Taylor, Secretary of the Episcopal Diocese of Fort Worth, to The Rev. Canon James R. Gundrum, Secretary of the General Convention of The Episcopal Church (Nov. 24, 1982); *see also* JA00364-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982.

²⁰⁴ JA0063, The General Convention of The Episcopal Church, Certificate of Union (Dec. 31, 1982).

“unanimously” and “fully” acceding to its rules,²⁰⁵ the Diocese received “the warrant for its existence”²⁰⁶ as an Episcopal Diocese of The Episcopal Church. And it came into being as “part and parcel of a larger organization [whose] purposes are to be accomplished by and through such subordinate bodies.”²⁰⁷

Defendants also plainly misrepresent the rules and regulations of the Church. Defendants claim “[n]othing in . . . TEC’s charters authorizes” the “removal of the Diocese’s bishop” by the Presiding Bishop of The Episcopal Church.²⁰⁸ But Title III, Canon 12, § 7(c) expressly authorizes the Presiding Bishop to issue “a declaration of removal” of a diocesan bishop.²⁰⁹ The Church’s Constitution and Canons further address the situation in which a diocese is without a Bishop and expressly permit precisely what happened here: “in consultation with the Presiding Bishop,” the Convention of the Fort Worth Diocese “placed [the Diocese] under the provisional charge and authority of a Bishop of another Diocese or of a resigned Bishop.”²¹⁰

Accordingly, the Church “accepted the renunciation” of Defendant Iker,²¹¹ and the Church’s Presiding Bishop, with the assistance of the Church’s Disciplinary Board for Bishops, as directed by the Church’s highest authority, the General Convention, removed Defendant Iker from authority within the Church and recognized as vacant the positions formerly held by

²⁰⁵ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982 (emphasis added); *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

²⁰⁶ *Minor*, 130 S.W. at 896-97.

²⁰⁷ *Id.* at 896.

²⁰⁸ Defs.’ Second Mot. for Summ. J. at 32.

²⁰⁹ JA00555, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. III, canon 12, § 7(c); A239, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2009), tit. III, canon 12, § 7(c).

²¹⁰ JA00558, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (2006), tit. III, canon 13, § 1; *see also* A900, Notice of Special Meeting of the Convention of the Episcopal Diocese of Fort Worth; A940, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009).

²¹¹ *Episcopal Diocese of Fort Worth*, 422 S.W.3d at 648.

Defendants,²¹² who, as the Diocese told an earlier court, “ceased to be qualified to serve [as officers] under the Constitution and Canons . . . of The Episcopal Church and canon law.”²¹³ 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.²¹⁴ There, the loyal members of the Diocese—not the Presiding Bishop as Defendants incorrectly assert²¹⁵—nominated and elected Bishop Gulick as Provisional Bishop and declared and filled other leadership vacancies.²¹⁶

And this is precisely consistent with Texas associations law: “the life of the subordinate lodge” continued, having “never ceased to exist,” with the loyal minority acting as the “true and lawful successors.”²¹⁷

ii. The Diocese did not “qualify” its accession.

Defendants’ claim that the Diocese “qualified” its accession in 1982 likewise strains belief. In its “Resolution of Accession to the Constitution and Canons of the Episcopal Church signed by all clergy and lay delegates,”²¹⁸ the Diocese “*fully*” acceded.²¹⁹ “Fully” means “in a

²¹² 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.

²¹³ A988-89, Second Am. Orig. Pet., *Corp. of Episcopal Diocese of Fort Worth v. McCauley*, No. 153-14483-92 (Dist. Ct. Tarrant Cnty. 153d Jud. Dist. Feb. 15, 1995); *see also* A1019, Pls.’ Mot. for Summ. J., ex. B (Aff. of Rev. Canon Billie Boyd). In addition, Defendants are estopped from contradicting the repeated commitments and court statements made by them and their predecessors in office. *See* Pls.’ Mot. for Partial Summ. J. at 60 n.209 & Section VIII.F.3.

²¹⁴ *See* A934-73, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009).

²¹⁵ Defs.’ Second Mot. for Partial Summ. J. at 32-33.

²¹⁶ A940, 948, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009).

²¹⁷ *Minor*, 130 S.W. at 896-97.

²¹⁸ JA0065, Letter from The Rev. Logan E. Taylor, Secretary of the Episcopal Diocese of Fort Worth, to The Rev. Canon James R. Gundrum, Secretary of the General Convention of The Episcopal Church (Nov. 24, 1982); *see also* JA00364-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982.

²¹⁹ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982 (emphasis added); *see also* A4291-92, Dep. of Def. Diocese at 117:25-121:22.

full manner: to a full degree: COMPLETELY, ENTIRELY, THOROUGHLY.”²²⁰ Thus, the Diocese’s accession left no room for qualification.

Even if one *could* qualify a “full” accession, no one did so here. The only “qualification” Defendants point to is Article 13 of the new Diocese’s Constitution, which Defendants describe as “prohibiting any trust interests not signed by the local parishes.”²²¹ That purported qualification says nothing about Diocesan identity or who may control the Diocesan entity under Texas associations law.

Even if Article 13 were relevant, what it actually says is that the *Corporation* cannot encumber parish property without parish permission.²²² The Diocese and parishes were free to do so, which they did *with seven pages of signatures* “unanimously” and “fully” acceding to the Church’s rules, including the trust clause.²²³ Since there is no inconsistency between the accession and the article, there is no “qualification.” Moreover, while Defendants do not mention it, *it is Article 13 itself* that also states, quite consistently with the Church’s trust clause, that property held locally is to be held “subject to control of the Church in the Episcopal Diocese of Fort Worth” and “for the use of the Church and the Diocese.”²²⁴

As a side note, Defendants rely for these arguments on the “international law of treaties,”²²⁵ which at last check was not a neutral principle of Texas law. Having ignored the relevant provisions of the First Amendment and Texas associations law, it is unclear why recourse to the Restatement (3d) of Foreign Relations Law is apt.²²⁶

²²⁰ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 919 (unabridged ed. 1986).

²²¹ Defs.’ Second Mot. for Partial Summ. J. at 12.

²²² JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth art. 13 (1982).

²²³ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* Dep. of Def. Diocese at 117:25-121:22.

²²⁴ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth art. 13 (1982).

²²⁵ Defs.’ Second Mot. for Partial Summ. J. at 39.

²²⁶ *Id.* at 39 & n.180.

Finally, Defendants argue that the Diocese became active one day before the effective date of the Church provision that added the word “unqualified” to the accession requirement. But this too, while wrong,²²⁷ is irrelevant: regardless of what Defendants claim the Diocese was *required* to do, what it *did* do was “fully” accede.

iii. Defendants’ reliance on the *Boy Scouts* case is absurd.

Defendants cannot control the Diocese under the First Amendment, and they cannot take the Diocese under Texas associations law. And so, in a last-ditch effort, they cite a completely unrelated U.S. Supreme Court case, *Boy Scouts of America v. Dale*, 530 U.S. 640, 648 (2000), purportedly for the proposition that, in Defendants’ words: “The Diocese withdrew from TEC as it had a constitutional right to do.”²²⁸ The irony is almost unbearable: having ignored the U.S. Supreme Court’s controlling First Amendment doctrine directly on point (*see Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-25 (1976) (civil courts must “accept . . . as binding” Church resolution of “disputes over the government and direction of subordinate bodies”)), Defendants then *ignore* Texas associations law and appeal to another, less relevant prong of the First Amendment, the right of association.

But the case Defendants cite says nothing about the proposition they claim. Defendants pull one sentence out of context: “Freedom of association . . . plainly presupposes a freedom not to associate.” *Dale*, 530 U.S. at 648. This is no doubt true: the individual Defendants were

²²⁷ Defendants try to argue that “[t]his qualified accession to TEC’s charters was allowed until January 1, 1983, and the Diocese was admitted into union *the day before* — December 31, 1982.” Defs.’ Second Mot. for Partial Summ. J. at 39-40 (footnotes omitted). But the Diocese was admitted into union based on the representation in its submitted Constitution that this Constitution—acceding to the Church’s Constitution—“**shall commence and be in full force and effect on January 1, 1983.**” JA00118, The Constitution and Canons of the Episcopal Diocese of Fort Worth, Enabling Clause (emphasis added). Moreover, under Church rules, even if the Diocese had become part of the Church before 1983, it would have been “subject to the Constitution and Canons of the Diocese out of which it was formed”—the Diocese of Dallas—until the new Diocese’s Constitution took effect on January 1, 1983; the Diocese of Dallas had acceded to the Church’s Constitution and Canons without qualification. *See* A3939, Dep. of Def. Diocese at 162:5-20; JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V. Thus, regardless of when the Fort Worth Diocese became a part of the Church, it fully acceded to the entire Constitution, including the trust clause.

²²⁸ Defs.’ Second Mot. for Partial Summ. J. at 32.

certainly free to leave their church and join another. But the question in *Dale* was whether the Boy Scouts had to “accept certain members” under New Jersey’s public accommodations law. *Id.* *Dale* said nothing about whether individual members of an organization can remove a subordinate unit of that organization and claim its assets and legal identity for their own purposes that are contrary to that of the organization.

Moreover, having told this Court that Texas associations law governs the Diocese,²²⁹ Defendants cannot then appeal to the First Amendment to subvert the association’s rules. As the Texas Supreme Court has held, “When . . . persons enter into organizations for purposes of social intercourse or pleasure or amusement, and lay down rules for their government, these must form the measure of their rights in the premises, and *it is vain to appeal to the Bill of Rights against their own agreements.*”²³⁰

In short, Defendants can no more take the Episcopal Diocese out of The Episcopal Church under Texas associations law than they can under the First Amendment.

This Court should deny Defendants’ motion to grant it control of the Diocese and Congregations and grant Plaintiffs’ cross-motion affirming Plaintiffs’ right as a matter of law to the same.

2. Defendants have no right to control the Corporation

Under a plain application of the Corporation’s bylaws—even under the 2006 bylaws that *Defendants* say apply—Defendants cannot control the Corporation of the Episcopal Diocese of Fort Worth.

This conclusion does not depend on the First Amendment rights of any ecclesiastical

²²⁹ *Id.* at 3-4.

²³⁰ *Manning v. San Antonio Club*, 63 Tex. 166, 171 (1884) (emphasis added); *District Grand Lodge v. Jones*, 160 S.W.2d at 922 (quoting *Manning*).

entity. Instead, Plaintiffs are entitled to control the Corporation on entirely neutral principles of Texas law—and would be even if none of the entities involved in this case were ecclesiastical.

a. Big picture: Defendants cannot control the Corporation because they cannot control the Diocese.

Defendants concede that “only the Diocese . . . can decide who serves as Trustees of the Corporation.”²³¹ Defendants confirm that the 2006 bylaws—which they say control²³²—require the five elected directors of the Corporation to be “members in good standing of parishes or missions in the Diocese.”²³³

The Corporation’s founding documents required that its affairs “shall be conducted in conformity with the Constitution and Canons of the Episcopal Church in the United States of America,” which “control” over its bylaws.²³⁴ The Corporation represented to the IRS upon formation in 1984 and since that it “is a subordinate unit of [the] Protestant Episcopal Church in the United States of America.”²³⁵ And it affirmed that representation to Tarrant County in 2007 as “full and complete.”²³⁶ Defendants testified in this case that these representations were “truthful”²³⁷ and would be “illegal” if false.²³⁸

Neutral principles of Texas allow a non-profit corporation to submit itself to the control of an outside charitable entity in this way. *See* Tex. Bus. Org. Code § 22.207(a) (“The board of directors of a religious, charitable, educational, or eleemosynary corporation may be affiliated with, elected, and controlled by an . . . unincorporated . . . association . . .”). Defendants have

²³¹ Defs.’ Second Mot. for Partial Summ. J. at 25.

²³² *Id.* at 29.

²³³ *Id.* at 20-21.

²³⁴ JA00076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (1983).

²³⁵ A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984).

²³⁶ A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to LayVonia Gant, Exemption Division, Tarrant County Appraisal District (Nov. 2, 2007).

²³⁷ 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).

²³⁸ A4367, Dep. of Def. Corp. at 89:11-20.

admitted that this section applies in this case as between the Diocese and Corporation.²³⁹ There is no dispute on this point.

Yet Defendants claim that the Corporation is not (and never was) subordinate to The Episcopal Church.²⁴⁰ That is obviously false from the undisputed documents above.²⁴¹ Regardless, Defendants concede that the Corporation always has been, and still is, *controlled by the Diocese*. They have judicially admitted this²⁴² and are estopped²⁴³ from contradicting it now:

- “In this case, the [Corporation’s] Board on which the Trustees serve was created by the Fort Worth Diocese. The 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.”²⁴⁴
- “In some cases, a nonprofit corporation may be controlled by a religious or charitable association [citing Tex. Bus. Org. Code § 22.207(a)], but that must appear somewhere in the corporate and association charters, as it does between the Corporation and the Diocese.”²⁴⁵
- “[T]he by-laws of the Corporation still require the Corporation’s affairs to be

²³⁹ A4517, Defendants-Appellants’ Br. at 47, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265) (citing Tex. Bus. Org. Code § 22.207(a) for the proposition that “a nonprofit corporation may be controlled by a religious or charitable association, but that must appear somewhere in the corporate and association charters, **as it does between the Corporation and the Diocese**” (emphasis omitted and added) (footnotes omitted)).

²⁴⁰ Defs.’ Second Mot. for Partial Summ. J. at 51 (“The Corporation has never had any affiliation or relationship to TEC.”).

²⁴¹ Plaintiffs further argue that it was beyond the Corporation’s authority under Tex. Bus. Org. Code § 22.207(a) to sever its subordinate relationship to The Episcopal Church. Otherwise, the statutory language placing a corporation under the control of an entity would be mere surplusage if, at any point after submitting, the Corporation could disregard that submission. The Texas Supreme Court has repeatedly made clear that “[s]tatutory language should not be read as pointless if it is reasonably susceptible of another construction.” *Franka v. Velasquez*, 332 S.W.3d 367, 393 (Tex. 2011); *see also Haygood v. De Escabedo*, 356 S.W.3d 390, 396 (Tex. 2011) (same). Thus, this Court “must avoid, when possible, treating statutory language as surplusage.” *Sultan v. Mathew*, 178 S.W.3d 747, 751 (Tex. 2005).

²⁴² *See Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980) (judicial admissions).

²⁴³ *See Ex parte Dangelo*, 339 S.W.3d 143, 153 n.13 (Tex. App.—Fort Worth 2010), *aff’d*, 376 S.W.3d 776 (Tex. Crim. App. 2012) (judicial estoppel).

²⁴⁴ A4514, Defendants-Appellants’ Br. at 27, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted).

²⁴⁵ A4517, *id.* at 47 (emphasis omitted).

conducted ‘in conformity’ with the Episcopal Diocese of Fort Worth,²⁴⁶ and “the Diocese alone has authority to select Trustees.”²⁴⁷

As shown, Defendants have no legal right to control the Diocese. This is true under the First Amendment,²⁴⁸ and it is true independently under Texas associations law.²⁴⁹ Because Defendants cannot control the Diocese, and because “the Diocese alone has authority to select Trustees” of the Corporation,²⁵⁰ Defendants cannot control the Corporation.

b. In detail: Defendants cannot control the Corporation under a plain application of its governing documents.

The Corporations’ articles and bylaws designate six directors (called “Trustees” of the Corporation). Five Trustees are elected by the Diocese and must be, in Defendants’ words, “members in good standing of the Diocese or canonically resident within it.”²⁵¹ Also in Defendants’ words, “there is a sixth member of the Corporation’s Board who serves *ex officio*: the Diocese’s Bishop.”²⁵²

Trustees must maintain their qualifications in the Diocese to manage the affairs of the Corporation: “The management of its affairs **shall be conducted and administered** by a Board of Trustees of five (5) elected members, all of whom **are** either Lay Communicants in good standing of a Parish or Mission in the Diocese or members of the Clergy canonically resident in

²⁴⁶ A4516, *id.* at 44 (emphasis omitted) (footnotes omitted).

²⁴⁷ A4521, Defendants-Appellants’ Reply Br. at 13, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted).

²⁴⁸ See Sections VII.A.3 and VII.B, *supra*; see also *Episcopal Diocese*, 422 S.W.3d at 652 (“[W]e agree that determination of who is or can be a member in good standing of TEC or a diocese is an ecclesiastical decision . . .”).

²⁴⁹ See Section VII.C.1, *supra*.

²⁵⁰ A4521, Defendants-Appellants’ Reply Br. at 13, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted).

²⁵¹ Defs.’ Second Mot. for Partial Summ. J. at 21.

²⁵² A4514-15, Defendants-Appellants’ Br. at 27-28, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265); see also Defs.’ Second Mot. for Partial Summ. J. at 29 (“The Corporation’s articles and bylaws both provide that the sixth member of the Board of Trustees is the Diocese’s Bishop.”).

the Diocese in addition to the Bishop of the Diocese”²⁵³

Likewise, under the 2006 Bylaws, each Corporate Trustee “**shall hold office from the date of his election until his successor shall have been duly elected and qualified, or until his death, resignation, disqualification or removal.**”²⁵⁴

It is undisputed that on November 15, 2008, each of the Defendant Trustees severed his or her relationship with the Church.²⁵⁵ As Defendant Iker told a previous court, “no person may be a member of a parish who is not a member of The Episcopal Church.”²⁵⁶

On February 7, 2009, “the true and lawful successors” of the Diocese under Texas associations law, those “preserving their allegiance”²⁵⁷ to the parent organization, formally recognized that Defendants, having left the Church, were no longer members, clergy, or bishop of the Diocese.²⁵⁸

Under the bylaws, Corporate Trustees cease to serve upon “disqualification.”²⁵⁹ By February 7, 2009 at the latest, the Corporate Board was thus vacant.²⁶⁰

The one wrinkle is that Defendants, planning their defection in advance, added a 2006 clause to the Corporate documents, “Article II,” purporting to grant the Corporation sole

²⁵³ JA00211, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 17 (emphasis added).

²⁵⁴ JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (2006) (emphasis added).

²⁵⁵ Dep. of Def. Corp. at 29:20-30:3 (“Q. After November 2008, none of the trustees of the Corporation were affiliated with congregations of a diocese of The Episcopal Church? A. That’s correct.”).

²⁵⁶ 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).

²⁵⁷ *Minor*, 130 S.W. at 896-97.

²⁵⁸ See A941-42, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009). They are also, of course, the true and lawful successors under the deference required by *Episcopal Diocese* and *Masterson* in the first instance.

²⁵⁹ JA00091, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (2006).

²⁶⁰ See A934, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009). Because the Corporate Board was vacant by February 7, 2009 at the latest, any later purported revisions to the Corporation’s governing documents by Defendants were *ultra vires*, unauthorized, void, voidable, or otherwise without any force or effect. See, e.g., A35-39, Amended and Restated Articles of Incorporation of Corporation of the Episcopal Diocese of Fort Worth (Apr. 14, 2009).

authority “to determine the identity of the Bishop” in the event of a dispute or vacancy.²⁶¹

While it ultimately does not change the result, this particular revision is void, because, as Defendants concede, the Corporation “must . . . conduct all affairs by the rules of the Diocese,”²⁶² which require that the “Bishop of the Diocese,” not a Corporate Bishop (whatever that is) sit on the Board.²⁶³ Defendant Corporation admitted this inconsistency, as well as the Corporation’s superseding requirement to seat the Bishop chosen by the *Diocese*.²⁶⁴ Under its own rules, the Corporation cannot supersede Diocesan rules for naming “the Diocese’s Bishop.”²⁶⁵

But the issue is moot: under the 2006 bylaws, such a Corporate determination of the identity of the Bishop “pursuant to this Article II” “shall be decisive” upon the “vote of a majority of members” at “a special meeting of the Board, subject to the notice provisions set forth in these Bylaws, for the purpose of making the determination.”²⁶⁶ Defendant Corporation testified under oath that the Defendant Trustees never followed this procedure and, importantly, never did so prior to their disqualification.²⁶⁷

²⁶¹ JA00090, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (2006).

²⁶² A4514, Defendants-Appellants’ Br. at 27, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265); *see also* JA00211 The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 17; A4361, Dep. of Def. Corp. at 64:18-23 (“Q. So the bylaws of the Corporation must be consistent with the rules of the diocese? A. Yes. Q. The bylaws cannot conflict with the rules of the diocese? A. That’s my understanding, yes.”); *id.* at 63:23-64:1 (“Q. So the bylaws of the 2006 amended Corporation must be consistent with the diocese’s Constitution and Canons, correct? A. Yes.”).

²⁶³ JA00211, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 17 (emphasis added).

²⁶⁴ A4358, Dep. of Def. Corp. at 52:7-11 (“Q. And so the next sentence says, accordingly, the person entitled to sit on the Corporation’s board ex officio must be decided based on the diocese’s Constitution and Canons. Did I read that correctly? A. Yes.”); *id.* at 52:18-22 (“Q. So it’s -- it’s not optional whether the person entitled to sit on the Corporation’s board is to be decided based on the Constitution and Canons, correct? A. It’s not optional, no.”).

²⁶⁵ A4514-15, Defendants-Appellants’ Br. at 27-28, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265); *see also* Defs.’ Second Mot. for Partial Summ. J. at 29 (“The Corporation’s articles and bylaws both provide that the sixth member of the Board of Trustees is the Diocese’s Bishop.”).

²⁶⁶ JA0090-91, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (2006).

²⁶⁷ A4443, Dep. of Def. Bates at 163:22-164:15 (“Q. [] Has the board of the Corporation of the Episcopal Diocese of Fort Worth, since November 2008, ever taken any action to declare the identity of the bishop? A. No. Q. Okay. And certainly it didn’t do so before the initiation of this lawsuit? A. No. Q. And today -- A. Unless it was when the prior bishop left and the new bishop came on, then we would normally obviously acknowledge that Bishop Iker was

Thus, in early 2009 the Corporate board was entirely vacant. Under the bylaws, vacancies arising through “any” cause are temporarily filled by majority vote of the board.²⁶⁸ But since the board was entirely vacant, it fell to the Diocese, which—in Defendants’ words—“alone has authority to select Trustees.”²⁶⁹ That is precisely what the Diocese did in February 2009, selecting new Trustees under Diocesan rules.²⁷⁰ These decisions were reaffirmed at the next regularly scheduled Annual Diocesan Convention in November 2009.²⁷¹

This Court should recognize the Plaintiff Trustees nominated as such at the Special Convention (and their successors) as the proper Trustees of the Corporation. Contrary to the sorts of arguments Defendants make here, the Fort Worth Court of Appeals has long recognized that where a corporation’s entire board has become vacant by death or disqualification, Texas courts “are inclined to believe” that the stockholders or other controlling members of the corporation “have the inherent power to elect new directors” even where the governing documents do not set forth this power explicitly.²⁷² Here, Defendants concede that the Corporation is “controlled by” the Diocese under Tex. Bus. Org. Code § 22.207(a), and the Diocese has the ultimate right to elect the Trustees.²⁷³ Recognizing the Diocese’s February 2009 elections to fill a vacant board is proper.

And, as the Fort Worth Court of Appeals continued, even “[i]f this conclusion be wrong,

replacing Bishop Pope. Q. Okay. But that was -- A. So aside -- Q. -- a long time ago? A. Aside from that, no. Q. Long before November 2008? A. That’s correct.”).

²⁶⁸ JA0092, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (2006).

²⁶⁹ A4521, Defendants-Appellants’ Reply Br. at 13, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265) (footnote omitted).

²⁷⁰ A953, Excerpts from the Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth (Nov. 13-14, 2009) & Special Meeting of Convention (Feb. 7, 2009).

²⁷¹ A963, Journal of the Twenty-Seventh Annual Convention of the Episcopal Diocese of Fort Worth, November 13-14, 2009.

²⁷² *Byerly*, 161 S.W.2d at 1111.

²⁷³ A4517, Defendants-Appellants’ Br. at 47, *Episcopal Diocese*, 422 S.W.3d 646 (No. 11-0265).

then certainly a proper court could bring about the selection of new directors.”²⁷⁴ In either case, this Court should now recognize the Plaintiff Trustees because only Plaintiffs are qualified to serve as Trustees, under the Corporation’s bylaws, as the Bishop, members, and clergy of the Diocese.

While Corporate control—and therefore much of Defendants’ motion—is ultimately irrelevant, because the Corporation holds all property in trust for Plaintiffs, it is also true that Defendants have no legal right to control the Corporation under neutral principles of law.

This Court should deny Defendants’ motion and grant Plaintiffs’ cross-motion affirming Plaintiffs’ right as a matter of law to control the Diocesan Corporation as the only Trustees qualified under its Bylaws through membership and office in the Diocese.²⁷⁵

3. Defendants have no right to the property.

As shown, even without reference to *Episcopal Diocese, Masterson*, and the First Amendment, Defendants still have no right to control the Diocese, Congregations, and Corporation. Defendants also have no right to control the property held by or for those entities.

This is true under basic neutral principles of Texas express trust, contractual trust, constructive trust, and associations law.

a. Express and Contractual Trust

Defendants have conceded that the Corporation holds the Property in trust for the Diocese and the Congregations and, as explained above, only Plaintiffs may represent those

²⁷⁴ *Byerly*, 161 S.W.2d at 1111.

²⁷⁵ And even if Defendants, for whatever reason, were awarded control of the Corporation, the Court should remove the Corporation as trustee of the Church’s, Diocese’s, and Congregations’ trusts and return control of the property in suit to Plaintiffs. 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.”).

entities as a matter of law. But even if the Court disagrees, the property is further in trust for The Episcopal Church, and Defendants make no claim to represent that entity.

First, the Diocese and Congregations promised to hold the property in trust for The Episcopal Church and the Diocese “thereof” as a condition of formation and union as a new Diocese in the Church. Texas law recognizes this commitment as contractual. And parties who agree to a trust as part of a contract cannot revoke that trust after accepting the return benefits, under the controlling Fort Worth Court of Appeals case issued before the Diocese of Fort Worth was formed. This doctrine has been recognized by every leading authority on Texas trust law and was the law of the land at the time the parties made their contract. And the purported revocation in 1989 was wholly ineffective and void as a matter of law, because the trust is contractual, and because the means and method of the purported revocation were impermissible.

Second, this property was already in trust for The Episcopal Church before the property was even transferred. The Diocese and Corporation have judicially admitted this, representing that fact in 1984 to the Dallas District Court and Texas Attorney General in petitioning for the division and transfer. And Defendants concede what the Texas Supreme Court already found: the 1984 judgment transferred “legal title.” A trust involves a separation of legal and equitable title, and a transfer of legal title does not divest an existing beneficiary of equitable title.

Third, well over a hundred deeds, on a parcel-by-parcel basis, contain express trusts favoring The Episcopal Church and its constituent entities. While it is unnecessary for the Court to undertake this effort, as the Diocese and Congregations have already judicially admitted in 1984 that all the property is in trust for The Episcopal Church, these parcel-by-parcel trusts are long-settled by third parties and preclude any alleged revocation by Defendants.

In short, under any analysis, the property was, as Defendant Corporation and Diocese both conceded at deposition under oath, transferred “for the use of The Episcopal Church in the

Diocese.”²⁷⁶

i. Express trust at the formation of the Diocese

The Diocese, Congregations, and Corporation agreed to an express trust in favor of The Episcopal Church in exchange for permission to form a new Diocese of the Church, and for the benefits thereof, including the transfer of property that had been “acquired for the use of the Episcopal Church in the Diocese of Dallas”²⁷⁷ over the last century.

An express trust arises when a property owner manifests an intent 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). Here, the Fort Worth Diocese and its constituent Congregations expressed this intent through their accession to the Church’s Constitution and Canons, which stated plainly: “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”²⁷⁸

During its formation, the Diocese passed a unanimous resolution that “fully subscribe[d] to and accede[d] to the Constitution and Canons of The Episcopal Church,”²⁷⁹ which contained the trust clause in favor of the Church.²⁸⁰ The Diocese’s Constitution, “commenc[ing] in full

²⁷⁶ A3960, Dep. of Def. Corp. at 155:19-156:1 (“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.”); A3941, Dep. of Def. Diocese at 174:11-174:21 (Q. [] 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.”).

²⁷⁷ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

²⁷⁸ 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.

²⁷⁹ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; *see also* A3934.1, Dep. of Def. Diocese at 118:15-18.

²⁸⁰ 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.

force and effect of January 1, 1983,” “accedes to the Constitution and Canons of the Episcopal Church in the United States of America.”²⁸¹

Moreover, both the Diocese and its subordinate Corporation expressed their intent to hold the property in trust for the Church through their joint petition to the Dallas District Court. In the petition, the Diocese represented that it was “organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America,”²⁸² which included the trust clause.²⁸³ And the Corporation represented that it would hold property “pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth,”²⁸⁴ which in Article 1 acceded to the Church’s Constitution and Canons,²⁸⁵ and which further required that the Corporation “shall” hold property “subject to control of the Church in the Episcopal Diocese,” “for the use of the Church and the Diocese,” and for only those purposes “approved by this Church, and for no other use.”²⁸⁶ The petition stated that the property had been “acquired for the use of the Episcopal Church in the Diocese of Dallas”²⁸⁷ and was now being transferred to the Corporation “for the use of the Church in the [new] Diocese”²⁸⁸ As further evidence of intent, the Corporation’s bylaws stated that the Corporation would conduct its affairs “in conformity with

²⁸¹ JA00101, 118, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 & Enabling Clause (1982).

²⁸² JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

²⁸³ 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.

²⁸⁴ JA00728, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

²⁸⁵ JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

²⁸⁶ JA00113, 145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 & canon 25 (1982).

²⁸⁷ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984); *see also* A1204, Affidavit of R. Donald Davies in Support of Plaintiffs’ Original Petition ¶ 13.

²⁸⁸ JA00720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984). Defendant Corporation testified that meant (obviously) “for the use of The Episcopal Church in the [new] Diocese.” A3959-60, Dep. of Def. Corp., at 154:3–156:1.

the Constitution and Canons of the Episcopal Church in the United States of America,” which “shall control” over the Corporation’s bylaws.²⁸⁹

The resolution of accession was signed by representatives of the Diocese and the Congregations;²⁹⁰ the Diocese’s founding constitution was signed by representatives of the Diocese;²⁹¹ and the civil petition was signed by the representatives of the Diocese and the Corporation.²⁹² Accordingly, those documents permissibly incorporated by reference the Church’s Constitution and Canons, including the trust clause, *see In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004), and the trusts they created satisfy the Statute of Frauds, *see* Tex. Prop. Code § 112.004.

As the Corporation later told another Fort Worth Court, those “national canons” created an “express trust” that was legally enforceable by that court “even if title had been in [a breakaway faction].”²⁹³ Defendants are judicially estopped from contradicting that now.²⁹⁴

Defendants raise a number of arguments to deny a trust in favor of the Church, but none of them withstand scrutiny.

The parties agreed.

Defendants argue that the Church has unilaterally named itself the beneficiary of someone else’s property.²⁹⁵ It is hard to see how: the Church’s trust provision was in place

²⁸⁹ JA00076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (1983).

²⁹⁰ JA00365-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982.

²⁹¹ JA00164, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982).

²⁹² JA00734, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

²⁹³ 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).

²⁹⁴ *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 6 (Tex. 2008) (“The doctrine of judicial estoppel precludes a party from adopting a position inconsistent with one that it maintained successfully in an earlier proceeding.” (internal quotation marks omitted)).

²⁹⁵ Defs.’ Second Mot. for Partial Summ J. at 38.

before the Diocese asked to be admitted under those rules.²⁹⁶ As shown, the Diocese, its subordinate Corporation, and the Congregations all expressed their intent that the property be held in trust for the Church.²⁹⁷ Defendants' assertion that Plaintiffs have not pleaded that the Corporation manifested any intent to create a trust for the Church is simply false on the undisputed documents.²⁹⁸

The parties signed.

Defendants argue that the Statute of Frauds precludes any trust because there is no trust for the Church that is signed by the property owners—either the Diocese of Dallas before its division for civil purposes or the Corporation thereafter.²⁹⁹ As explained above and more fully in Plaintiffs' Motion for Partial Summary Judgment (at 36, 40-41), however, the trusts satisfy the Statute of Frauds because the documents that establish them bear the necessary signatures.

But even assuming that signatures of both the Diocese of Dallas and the Corporation were required, the civil petition requesting division of the Diocese *bears the signatures of the authorized agents of the Diocese of Dallas and the Corporation.*³⁰⁰ See Tex. Prop. Code § 112.004 (permitting signatures of “authorized agent[s]”). Chancellor Paul W. Eggers, Assistant Chancellor Harold B. Pressley, Jr., and Attorney Orrin Harrison, III, signed on behalf of the Diocese of Dallas; and Chancellor Michael Kenseel, Assistant Chancellor Robert M.

²⁹⁶ A3929, Dep. of Def. Diocese at 47:23-48:7.

²⁹⁷ Although the Diocese, the Corporation, and the Congregations expressed their intent to create a trust of the disputed property and thus satisfy the requirements of Texas trust law, Plaintiffs do not concede that such agreement was required for enforcement of the trust. As explained in Plaintiffs' Motion for Partial Summary Judgment (at 20), Plaintiffs continue to maintain that *Jones v. Wolf*, 443 U.S. 595 (1979), requires courts to enforce trusts recited in general-church governing documents irrespective of state law, and that the trust clause in the Church's constitution requires judgment in Plaintiffs' favor on that ground.

²⁹⁸ See Pls.' the Episcopal Parties' July 15, 2014 Am. Pet. ¶ 90.

²⁹⁹ Defs.' Second Mot. for Partial Summ. J. at 35.

³⁰⁰ JA00734, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

Randolph, and Attorney John B. McClane signed on behalf of the Corporation.³⁰¹ Thus, the Statute of Frauds does not bar the trust that was established in favor of the Church.

Odd analogies.

Defendants argue: “That the Diocese was organized under TEC’s rules is a statement of how it was *organized*, not who owned its property.”³⁰² Thus, Defendants conclude, the “organizations were also duly organized under Texas law, but that gave the state no interest in their property.”³⁰³ But Texas law does not contain a trust clause in favor of the state. The Church’s rules did. An organization duly organized under Texas law *does* have to follow the Texas rules that *do* exist, like, say, paying taxes. The same is true for the Diocese and Congregations that agreed to form under Church rules.

One transaction.

Defendants try to make something of the time elapsed between the Diocese’s accession and the transfer of property to the Corporation. But Defendants have testified that this was all part of the same Article V process dividing the Diocese.³⁰⁴ And the pleadings and the judgment from the 1984 case expressly say so. As a matter of law, a series of related events constitutes a single transaction, though separated by time.³⁰⁵

No “qualified” accession.

As shown, Defendants’ claim that the Diocese “qualified” its accession in 1982 strains belief. In its “Resolution of Accession to the Constitution and Canons of the Episcopal Church

³⁰¹ *Id.*

³⁰² Defs.’ Second Mot. for Partial Summ. J. at 37.

³⁰³ *Id.*

³⁰⁴ A4382, Dep. of Def. Corp. at 149:25-150:14.

³⁰⁵ See *World Help v. Leisure Lifestyles, Inc.*, 977 S.W.2d 662, 675-76 (Tex. App.—Fort Worth 1998, pet. denied) (holding that two related transactions, though occurring many months apart, were a “single transaction,” especially where they were part of “a two-step process”).

signed by all clergy and lay delegates,”³⁰⁶ the Diocese “*fully*” acceded.³⁰⁷ “Fully” means “in a full manner: to a full degree: COMPLETELY, ENTIRELY, THOROUGHLY.”³⁰⁸ The Diocese’s accession left no room for qualification.

But even if one *could* qualify a “full” accession, no one did so here. The only “qualification” Defendants point to is Article 13 of the new Diocese’s Constitution, which Defendants describe as “prohibiting any trust interests not signed by the local parishes.”³⁰⁹ What Article 13 actually says is that the *Corporation* cannot encumber Congregational property without permission.³¹⁰ The Diocese and Congregations were free to do so, which they did *with seven pages of signatures* “unanimously” and “fully” acceding to the Church’s rules, including the trust clause.³¹¹ Since there is no inconsistency between the accession and the article, there is no “qualification.” Moreover, while Defendants do not mention it, *it is Article 13 itself* that also states, quite consistently with the Church’s trust clause, that property held locally is to be held “subject to control of the Church in the Episcopal Diocese of Fort Worth” and “for the use of the Church and the Diocese.”³¹²

³⁰⁶ JA0065, Letter from The Rev. Logan E. Taylor, Secretary of the Episcopal Diocese of Fort Worth, to The Rev. Canon James R. Gundrum, Secretary of the General Convention of The Episcopal Church (Nov. 24, 1982); *see also* JA00364-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982.

³⁰⁷ JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982 (emphasis added); *see also* A4291-92, Dep. of Def. Diocese at 117:25-121:22.

³⁰⁸ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 919 (unabridged ed. 1986).

³⁰⁹ Defs.’ Second Mot. for Partial Summ. J. at 12.

³¹⁰ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth art. 13 (1982).

³¹¹ JA00364-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982 (emphasis added); *see also* A4291-92, Dep. of Def. Diocese at 117:25-121:22.

³¹² JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth art. 13 (1982).

Defendants purport that the Diocese became active one day before the Church added the word “unqualified” to the accession rule. But this, too, while wrong,³¹³ is irrelevant: regardless of what Defendants claim the Diocese was *required* to do, what it *did* do was “fully” accede.

ii. No revocation.

Defendants claim that Tex. Prop. Code § 112.051(a) makes any trust that existed revocable, in the absence of express language of irrevocability, and that the Diocese revoked any such trust in 1989.³¹⁴ That argument fails for at least three reasons.

(1) Contractual Trust.

First, the “attempted revocation” of “a trust that is created by contract and based on a valuable consideration” is “wholly ineffective,” regardless of whether the trust contains express language of irrevocability.³¹⁵

In response, Defendants declare to the Court: “There is no such thing as a ‘contractual trust’ in Texas.”³¹⁶ In making this claim, Defendants fail to direct the Court to:

- The binding Fort Worth Court of Appeals precedent on point, *Shellberg v. Shellberg*, 459 S.W.2d 465, 470–71 (Tex. Civ. App.—Fort Worth 1970, writ ref’d n.r.e.) (“[Tex. Prop. Code § 112.051(a)] is inapplicable to a trust that is created by contract and based on a valuable consideration. It follows that . . . the trust

³¹³ Defendants try to argue that “[t]his qualified accession to TEC’s charters was allowed until January 1, 1983, and the Diocese was admitted into union *the day before* — December 31, 1982.” Defs.’ Second Mot. for Partial Summ. J. at 39-40 (footnotes omitted). But the Diocese was admitted into union based on the representation in its submitted Constitution that this Constitution—acceding to the Church’s Constitution—“**shall commence and be in full force and effect on January 1, 1983.**” JA00118, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), Enabling Clause (emphasis added). Moreover, under Church rules, even if the Diocese had become part of the Church before 1983, it would have been “subject to the Constitution and Canons of the Diocese out of which it was formed”—the Diocese of Dallas—until the new Diocese’s Constitution took effect on January 1, 1983; the Diocese of Dallas had acceded to the Church’s Constitution and Canons without qualification. *See* A3939, Dep. of Def. Diocese at 162:5-20; *see also* JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V. Thus, regardless of when the Fort Worth Diocese became a part of the Church, it fully acceded to the entire Constitution, including the trust clause.

³¹⁴ Defs.’ Second Mot. for Partial Summ. J. at 36, 40-41.

³¹⁵ *Shellberg*, 459 S.W.2d at 470-71.

³¹⁶ Defs.’ Second Mot. for Partial Summ. J. at 42.

instruments involved in this case . . . can only be terminated . . . by the agreement or consent of a majority of the beneficiaries.”).

- Vernon’s Texas Codes Annotated, Property Code § 112.051 cmt. 3 (2013) (discussing “Contractual Trusts”).³¹⁷
- Johanson’s Texas Estates Code Annotated § 112.051 (2014) (the presumption of revocability “does not apply to trust[s] created by agreement and supported by consideration; such a trust is irrevocable even if it does not expressly so state.”).
- The Restatement (Third) of Trusts § 62 (2003) (“Where consideration is involved in the creation of a trust, the rules governing transfers for value and contracts are applicable.”).
- Bogert’s The Law of Trusts and Trustees § 998 n.8 (2013) (“[Tex. Prop. Code § 112.051(a)], providing that every trust is revocable unless expressly made irrevocable, [does] not apply to a contractual trust based on valuable consideration.”).

While they decline to cite it, Defendants obliquely attack the Fort Worth Court of Appeals’ holding in *Shellberg* by arguing that courts cannot create contractual trusts contrary to the Trust Code.³¹⁸ But that is not what *Shellberg* did. Rather, the Fort Worth Court ruled, based on a considered history of the statute and its model, that the presumption of revocability does not apply to trusts supported by consideration.³¹⁹ Indeed, after passage of the Texas Trust Act in 1943, Texas trust experts immediately recognized that the Act raised the question of whether the presumption applied “in those cases where the creation of the trust was induced by a

³¹⁷ Tex. Prop. Code Ann. § 112.051 cmt. 3 (West, Westlaw through end of 2013 Third Called Session of 83d Legislature).

³¹⁸ Defs.’ Second Mot. for Partial Summ. J. at 42.

³¹⁹ 459 S.W.2d at 470; cf. Gerry Beyer, *Texas Trust Law: Cases and Materials* 33 (2d ed. 2009) (defining “trust” generally to mean a “gratuitous property transfer,” as opposed to a “contractual arrangement” to hold property for another that, due to valid consideration, can be enforced as a contract).

consideration passing to the trustor,” R. Dean Moorhead, *The Texas Trust Act*, 22 Tex. L. Rev. 123, 131 (1943-1944), and argued that the presumption was “not intended to be applicable to any trust created for a consideration,” Arthur Yao, *Revocation of Trust Under Section 41 of the Texas Trust Act*, 7 S. Tex. L.J. 22, 29 (1963-1964).

The Fort Worth Court of Appeals agreed.³²⁰ Recognizing that Section 41 of the Texas Trust Act (now Tex. Prop. Code § 112.051(a)) “was borrowed from the Oklahoma Trust Act,” the court looked to *Harrison v. Johnson*, 312 P.2d 951 (Okla. 1956), in which the Oklahoma Supreme Court held that a contractual trust is irrevocable where the trust was silent as to its revocability.³²¹ The Fort Worth court then applied the long-established rule that a later construction of an adopted statute by the courts of the state from which the statute was adopted is “strongly persuasive” of the meaning of the statute within the adopting state.³²² Seeing “no reason why Texas should not follow the holding of the Oklahoma courts in the *Harrison* case,” the court concluded “that the decision in that case is sound.”³²³ And it is easy to see why: permitting someone to revoke a trust that she established in exchange for consideration would “subvert the ends of justice by allowing her to take what she was not entitled to.”³²⁴ The Texas Supreme Court declined to review *Shellberg*, and authorities on Texas Trust Law have universally affirmed it since.³²⁵

Shellberg was settled law and binding precedent when the Fort Worth Diocese asked to be formed under the Church’s rules, which included its trust clause. The Church required the

³²⁰ *Shellberg*, 459 S.W.2d at 469-70.

³²¹ *Id.* at 469.

³²² *Id.* at 469 (quoting *Koy v. Schneider*, 221 S.W. 880, 890 (1920)).

³²³ *Id.*

³²⁴ Yao, *supra*, at 29.

³²⁵ In addition to the sources cited above, Professor Beyer of Texas Tech and previously of St. Mary’s School of Law, author of *Texas Trust Law*, and Professor Tate of the SMU Dedman School of Law, author of *A Texas Companion for the Course in Wills, Trusts, and Estates*, both affirmed that application of the fixed legal measures of Texas trust law to the facts of this case support contractual irrevocable trusts. A4091-92, 4096-98, Aff. of Professor Gerry W. Beyer ¶¶ 8, 17-21; A4079-80, Aff. of Dr. Joshua C. Tate ¶¶ 8-9.

Diocese's commitment to those rules as a condition of formation and union within the Church.³²⁶ That commitment is contractual as a matter of law. As the Texas Supreme Court has held, "the constitution and by-laws of an organization . . . constitute a contract between the organization and its members."³²⁷ It is again easy to see why; as several Congregations described it here, "being desirous of obtaining the services of the Protestant Episcopal Church, . . . [w]e promise conformity to the Constitutions of the General Convention"³²⁸

The Court should reject Defendants' unconvincing arguments:

Defendants propose a straw man: that enforcing contractual trusts will turn gratuitous trusts into contractual trusts.³²⁹ But their argument fails because courts (and first-year law students) are perfectly capable of identifying what constitutes a contract and what does or does

³²⁶ See JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V; JA00783, Minutes of the Special Convention of the Diocese of Dallas (June 19, 1982); JA00785-86, Journal of the General Convention, September 1982; A3932.2, Dep. of Def. Diocese at 98:12-21; JA00364-65, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; A3934.1, Dep. of Def. Diocese at 118:15-18; JA0065, Letter from The Rev. Logan E. Taylor, Secretary of the Episcopal Diocese of Fort Worth, to The Rev. Canon James R. Gundrum, Secretary of the General Convention of The Episcopal Church (Nov. 24, 1982); JA0063, The General Convention of The Episcopal Church, Certificate of Union (Dec. 31, 1982).

³²⁷ *Int'l Printing Pressmen & Assistants' Union of N. Am. v. Smith*, 198 S.W.2d 729, 736 (Tex. 1946); see also *Int'l Union of Operating Engineers, AFL-CIO v. Pierce*, 321 S.W.2d 914, 917 (Tex. Civ. App.—Beaumont 1959, writ ref'd n.r.e) (holding that an organization's rules "are considered contracts between the members thereof and between the members and the organization and will be upheld"); *Smith v. Int'l Printing Pressmen & Assistants' Union of N. Am.*, 190 S.W.2d 769, 777 (Tex. Civ. App.—Dallas 1945), *rev'd on other grounds*, 198 S.W.2d 729 (Tex. 1946) ("[W]hen rules and regulations have been promulgated to govern his conduct, such become in effect a contract of membership which the courts will enforce—if not immoral, or contrary to law or public policy.").

³²⁸ A2634, Petition for Organization, St. John the Divine, Burkburnett (Oct. 10, 1961); A2802, Petition for an Organized Mission, St. Joseph's, Grand Prairie (Sept. 17, 1972); A3551, Declaration of Intention to Become an Organized Mission, St. Anne's, Fort Worth (Dec. 11, 1947); A3624, Petition for Organization, St. Francis Mission Station (May 30, 1982); A3632, Petition for Mission Status, Ascension & St. Mark's, Bridgeport (n.d.); A3740, Petition for Organization, Good Shepherd, Brownwood (Jan. 21, 1955); A3754, Petition for Mission Status, St. Stephen's, Colleyville; cf. A2787, Article of Conformity, Good Shepherd, Brownwood (n.d.); A3494, Article of Conformity, St. Mark's, Arlington (n.d.); A3552, 3557, Article of Conformity, St. Anne's, Fort Worth (n.d.); A3572, Article of Conformity, St. Gregory the Great, Mansfield (Aug. 26, 1990); A3591, Article of Conformity, St. Francis of Assisi, Willow Park (n.d.); Article of Conformity, St. Andrews, Breckenridge (Jan. 4, 1948); Article of Conformity, Good Shepherd, Brownwood (n.d.).

³²⁹ See Defs.' Second Mot. for Partial Summ. J. at 42 (warning that "most beneficiaries could allege they gave something," such as "time" or "acts of kindness").

not constitute valid consideration.³³⁰ And the Texas Supreme Court has already held that the exchange of benefits, such as those here, does so.³³¹

Defendants also argue that there is no new consideration, because the Congregations were already part of the Church.³³² But those Congregations wanted to form a new Diocese of The Episcopal Church, something they could only do with new permission from the General Convention. And accepting the rules of the Church was a condition of that permission.

Defendants claim that “all parties are deemed to know Texas law,” and so they were deemed to know “any contract the Dennis Canon created was made with the parties’ understanding that Texas law allowed it to be revoked.”³³³ But Defendants forget to impute a similar legal knowledge of the controlling Fort Worth case holding that parties cannot make a deal involving a trust, take the benefits, then revoke the trust.³³⁴ Thus the parties are deemed to have understood such a commitment was irrevocable under binding Fort Worth precedent.

Defendants claim that there was no contract signed by the Corporation,³³⁵ but, as explained above, the commitments to hold property in trust for the Church were signed by all the parties at issue, including the Corporation, Diocese, and Congregations.³³⁶

Defendants also suggest that the Texas Supreme Court foreclosed the possibility of a contractual trust when it noted that the Church’s trust clause does not contain express language

³³⁰ Indeed, Defendants’ “kindness” hypothetical is dispensed with in the course book *Texas Trust Law: Cases and Materials* 33 (2d ed. 2009) by Professor Beyer.

³³¹ *Int’l Printing Pressmen & Assistants’ Union*, 198 S.W.2d at 736; *see also Pierce*, 321 S.W.2d at 917 (holding that an organization’s rules “are considered contracts between the members thereof and between the members and the organization and will be upheld”).

³³² Defs.’ Second Mot. for Partial Summ. J. at 43.

³³³ *Id.*

³³⁴ *Shellberg*, 459 S.W.2d at 470.

³³⁵ Defs.’ Second Mot. for Partial Summ. J. at 43.

³³⁶ JA00734, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984); JA00365-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; JA00164, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982).

of irrevocability.³³⁷ But Defendants’ argument gets it exactly backwards. As Johanson’s Texas Estates Code Annotated § 112.051 notes, the requirement of express language “does not apply to trust[s] created by agreement and supported by consideration; *such a trust is irrevocable even if it does not expressly so state.*”³³⁸ The issue of contractual trust was not before the Texas Supreme Court, and the Texas Supreme Court rendered no opinion on it.³³⁹

Defendants also argue that the alleged “qualified accession” means that the Diocese made a “counteroffer” or otherwise did not agree to the trust clause.³⁴⁰ As explained above, there was no qualification.³⁴¹ The Diocese “fully” acceded in plain English to the Church’s Constitution and Canons, including the trust clause, and the Diocese’s founding Constitution and Canons were in no way inconsistent with that clause.³⁴² The same clause Defendants assert negates the trust clause (it does not) notes that property is held “for the use of the Church and the Diocese.”³⁴³

In sum, the disputed property is held under an express, irrevocable, contractual trust in favor of the Church. Having accepted the benefits, Defendants’ claimed revocation is “wholly ineffective.”³⁴⁴

³³⁷ Defs.’ Second Mot. for Partial Summ. J. at 40-42.

³³⁸ Johanson’s Texas Estates Code Annotated § 112.051 (2014) (emphasis added) (citing *Shellberg*, 459 S.W.2d at 465).

³³⁹ *Episcopal Diocese*, 422 S.W.3d at 653.

³⁴⁰ Defs.’ Second Mot. for Partial Summ. J. at 37-43.

³⁴¹ See Section VI.C.3.a.i, *supra*.

³⁴² See *id.*

³⁴³ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

³⁴⁴ *Shellberg*, 459 S.W.2d at 470-71.

(2) Impermissible Method.

Separate and apart from contractual trust, the purported revocation was ineffective because—under Defendants’ own admissions—the alleged act was beyond the Diocese’s reserved powers.

As the Fort Worth Court of Appeals has held, “if the settlor reserves a power to modify the trust only in a particular manner or under particular circumstances, he can modify the trust only in that manner or under those circumstances.”³⁴⁵

The Church’s trust clause is a canon in the Church’s Constitution and Canons (“the Church Canon”).³⁴⁶ The alleged revocation of that trust clause is a canon in the 1989 Diocesan Constitution and Canons (“the Diocesan Canon”).³⁴⁷

As Defendant Iker told the United States Court of Appeals for the Fourth Circuit in 2002, diocesan canons “cannot be inconsistent with national canons.”³⁴⁸ This is a binding judicial admission, which is “conclusive on the party making it; thus, it relieves his adversary from proving the fact admitted to and further bars the party from disputing it.”³⁴⁹ Likewise, Defendants state: “Texas law provides that any property rights or interests of an unincorporated association like the Diocese must be determined by its constitution or other governing

³⁴⁵ *Runyan v. Mullins*, 864 S.W.2d 785, 788 (Tex. App.—Fort Worth 1993, writ denied) (quoting Restatement (2d) of Trusts § 331 cmt. d (1959) (modification omitted); see also *McClure v. JPMorgan Chase Bank*, 147 S.W.3d 648, 653 (Tex. App.—Fort Worth 2004, pet. denied).

³⁴⁶ 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.

³⁴⁷ Defs.’ Second Mot. for Partial Summ. J. at 40 (citing JA00213, The Constitution and Canons of the Episcopal Diocese of Fort Worth, Canon 18.4 (2006)).

³⁴⁸ A1063, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

³⁴⁹ *Brown v. Lanier Worldwide, Inc.*, 124 S.W.3d 883, 900 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (“[P]leadings in other actions which contain statements inconsistent with the party’s present position can also be received as admissions. . . . A judicial admission must be (1) made in the course of a judicial proceeding; (2) contrary to an essential fact for the party’s defense; (3) deliberate, clear, and unequivocal; (4) related to a fact upon which judgment for the opposing party could be based; and (5) the enforcement of the admission would be consistent with public policy.” (citations omitted)). Preventing Defendants from switching positions on this clear, deliberate, and unequivocal prior statement of fact that is essential to their revocation claim serves the public policy of judicial admissions, which is to “protect the integrity of the judicial system.” *Id.*

documents.”³⁵⁰ The Diocesan Constitution provided: “Canons not inconsistent with . . . the Constitution and Canons of the General Convention, may be adopted”³⁵¹

The Church Canon says all property is held in trust for the Church. The Diocesan Canon says the Church’s “claim to such beneficial interest” is “expressly denied.”³⁵² If a Diocesan Canon “expressly denies” a Church Canon, the two are “inconsistent.”

The Diocese could “modify the trust only in that manner or under those circumstances” reserved by the Diocese.³⁵³ The Diocese did not reserve the power to negate a Church Canon with a Diocesan Canon. In fact, the Diocese expressly repudiated that ability in its governing constitution. The 1989 purported revocation was thus beyond the Diocese’s reserved powers and was without effect as a matter of law.³⁵⁴

(3) Not the Settlor.

Finally, the Diocese did not, and could not, revoke the trust in 1989 because, as a matter of law, it was not the settlor. When a trust is induced by consideration, rather than created gratuitously, the party providing the consideration is deemed the settlor, even if, in form, the trust is created by another. *See* Bogert’s *The Law of Trusts and Trustees* § 41 (2014) (“One who furnishes the consideration necessary to induce another to create a trust is the settlor of the trust

³⁵⁰ Defs.’ Second Mot. for Partial Summ. J. at 19; *see also id.* at 7 (“The Diocese is a Texas unincorporated association, and is governed by its Constitution and Canons as amended from time to time.” (citations omitted)); *id.* at 4 n.6 (“It is generally held that the constitution and by-laws of a voluntary association, whether incorporated or not, are controlling as to its internal management.” (quoting *District Grand Lodge v. Jones*, 160 S.W.2d at 922)).

³⁵¹ JA00118, *The Constitution and Canons of the Episcopal Diocese of Fort Worth*, art. 18 (1982); JA00190, *The Constitution and Canons of the Episcopal Diocese of Fort Worth*, art. 18 (2006) (“Canons consistent with this Constitution, and the Constitution and Canons of the Episcopal Church, may be adopted . . .”).

³⁵² Defs.’ Second Mot. for Partial Summ. J. at 40 (emphasis omitted) (quoting JA00213, *The Constitution and Canons of the Episcopal Diocese of Fort Worth*, canon 18, § 18.4 (2006)).

³⁵³ *Runyan*, 864 S.W.2d at 788.

³⁵⁴ Moreover, when the Diocese acceded to the Church’s Constitution and Canons, it thereby reserved the power to modify the trust clause only in accordance with the procedure for modifying Church Canons, which requires that amendments or repeal can occur only by concurrent Resolution of the two Houses of the General Convention. *See* JA00438, *The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America* (1979), tit. V, canon 1, § 1. Because Defendants also did not modify the trust clause through that process, their purported revocation was outside their reservation of powers and therefore ineffective under *Runyan*, 864, S.W.2d at 788.

when it is created.”). The Diocese did not sign the Resolution of Accession to the Church’s trust clause gratuitously; it did so pursuant to Article V of the Church’s constitution, as part of its request to be approved as a new Diocese of the Church.³⁵⁵ The party that furnished this consideration inducing the trust was the Church. Accordingly, the Church is the settlor of the trust. Only a settlor can revoke a trust. *See* Tex. Prop. Code § 112.051(a). Therefore, the Diocese could not revoke the trust, and its purported revocation was ineffective.

Thus, just as the Corporation told another Fort Worth Court, the Church’s “national canons” created an “express trust” over the property in suit, which is legally enforceable against a breakaway faction “*even if title had been in*” that faction.³⁵⁶ Just as those breakaways could not revoke the trust then, so Defendants must honor their commitments to the Church now.³⁵⁷

iii. Express trust before the Diocese existed.

Trusts in favor of the Church predate the existence of the Fort Worth Diocese by a century.³⁵⁸ That is because, contrary to Defendants’ myopic view of history, these properties have been assembled over the past 145 years by “the pioneers who gave beauty and meaning to worship on the American frontier – the missionaries, the courageous bishops, the loyal

³⁵⁵ *See* Pls. Mot. for Partial Summ. J. at 37-44.

³⁵⁶ 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) (emphasis added). These pleadings noted that the express trust favored the Diocese, because it was the Diocese and Corporation seeking return of property from a breakaway parish. And the “national canons,” *id.*, create a trust for the Church and “Diocese *thereof*,” 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). But the so-called 1989 revocation, Canon 18.4, purported to deny any trust over congregational property in favor of the Church *or* the Diocese. JA00213, *The Constitution and Canons of the Episcopal Diocese of Fort Worth*, canon 18, § 18.4 (2006). By endorsing that express trust to the Fort Worth Court then as legally enforceable, the parties were necessarily taking the position that the 1989 canon did not effectively repudiate the Dennis Canon.

³⁵⁷ *Pleasant Glade Assembly of God*, 264 S.W.3d at 6 (“The doctrine of judicial estoppel precludes a party from adopting a position inconsistent with one that it maintained successfully in an earlier proceeding.” (internal quotation marks omitted)).

³⁵⁸ JA01799-01801, *Deed to St. Andrews Property* (Apr. 26, 1883).

parishioners of the first Protestant Episcopal churches of Texas.”³⁵⁹ Or, as Defendants and their predecessors told another Fort Worth Court, “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 who “have abandoned communion with The Episcopal Church.”³⁶⁰

As the Fort Worth Diocese, the Dallas Diocese, and the Corporation told the district court in 1984, the properties transferred by the Dallas Diocese were already held “for the use of the Episcopal Church in the Diocese of Dallas.”³⁶¹ Moreover, as explained more fully in Plaintiffs’ Motion for Partial Summary Judgment (at 45–49), 47 of the 55 Congregations within the Diocese have deeds that create express trusts in favor of The Episcopal Church or one of its constituent entities.

Defendants’ attempt to erase the Church’s beneficial interest in the disputed property through the 1984 judgment fail. When the Dallas district court transferred title to the property to the Corporation, its judgment affected only *legal title* to the property, as confirmed by both the plain text of that judgment and the opinion of the Texas Supreme Court. The judgment “record[ed] and declare[d] that *legal title* to the . . . real and personal property” would be placed in the Corporation of the Episcopal Diocese of Fort Worth.³⁶² Thus, the Texas Supreme Court recognized that “[t]he 1984 judgment vested *legal title* of the transferred property in the Fort Worth Corporation.” *Episcopal Diocese*, 422 S.W.3d at 648 (emphasis added). It is black letter Texas law that the “separation of the legal and equitable estates in the trust property is the basic

³⁵⁹ A2640, *St. Andrews’ Episcopal Church V*; A2646, *id.* at 7 (noting St. Andrew’s first funds and cornerstone were laid in 1877 by Alexander Charles Garrett, the First Missionary Bishop of Northern Texas of the Missionary Board of the Episcopal Church; later the First Bishop of Diocese of Dallas; finally Presiding Bishop of the Church USA).

³⁶⁰ 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).

³⁶¹ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

³⁶² JA00006, Judgment, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. Aug. 22, 1984) (emphasis added).

hallmark of the trust entity.” *Perfect Union Lodge*, 748 S.W.2d at 220. Therefore, because the district court transferred only legal title, beneficial title remained in The Episcopal Church and its constituent entities. *See Binford v. Snyder*, 189 S.W.2d 471, 473 (Tex. 1945).

Even if Defendants do not wish to acknowledge the commitments they and their predecessors made upon formation of the Diocese, Defendants have no right or ability to revoke pre-existing trusts settled by others, for which they inherited, at most, legal title only.

In short, under neutral principles of Texas law, the property in suit is held in express trust for The Episcopal Church, and Defendants have not revoked and cannot revoke that trust as a matter of law.

Defendants have no right to control the Diocese, Congregations, and Corporation. But if they did, they would *still* be in breach of the *Church’s* trust, and under neutral principles, this Court would remove any Defendant-controlled entity as trustee.³⁶³

b. Constructive Trust

Constructive trusts prevent unjust enrichment from the breach of a special relationship.³⁶⁴ They apply where express trusts fail.³⁶⁵ And they apply absent any express trust at all³⁶⁶ and even contrary to the intent of the parties.³⁶⁷ They “correct[] improper conduct of church officers which defrauded the church of its assets.”³⁶⁸

³⁶³ *See* Section VII.A.4, *supra*; *see also* Tex. Prop. Code § 113.082(a)(1), (4) (removal of trustee); *Ditta v. Conte*, 298 S.W.3d at 192; *Conte v. Ditta*, 312 S.W.3d at 959; *Barrientos*, 94 S.W.3d at 288-89; *see also*, in the alternative, *Talley*, 176 S.W.2d at 160 (constructive trust to convey property from corporation).

³⁶⁴ *See Hubbard*, 138 S.W.3d at 483; *Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 199 (Tex. 2002).

³⁶⁵ *See Murphy v. Johnson*, 439 S.W.2d 440, 442 (Tex. Civ. App.—Houston [1st Dist.] 1969, no writ) (“[A] constructive trust may be imposed to prevent unjust enrichment of one in a confidential relationship even though such person refuses to perform an unenforceable express trust.” (citing *Omohundro v. Matthews*, 341 S.W.2d 401, 405 (Tex. 1960)).

³⁶⁶ *Mills v. Gray*, 210 S.W.2d 985, 988-89 (Tex. 1948).

³⁶⁷ *Pope v. Garrett*, 211 S.W.2d 559, 561 (Tex. 1948).

³⁶⁸ *Libhart v. Copeland*, 949 S.W.2d 783, 804 (Tex. App.—Fort Worth 2004, pet. denied).

Defendants tell this Court there has been no unjust enrichment. They base that conclusion on an imagined history that bears no relation to the undisputed documents:

- They say the Diocese acceded “qualified[ly].” But it acceded “fully.”³⁶⁹
- They say the Diocese formed itself. But it formed “pursuant to” the Church’s permission.³⁷⁰
- They say the Diocese is independent. But it is “subordinate.”³⁷¹
- They say the Corporation has no relation to the Church. But it is “subordinate” to the Church.³⁷²
- They say the Diocese “revoked” the trust in 1989. But they told a Court under oath in 1994 it was valid.³⁷³
- They say the property had no conditions. But it was “for the use of The Episcopal Church in the Diocese” for only those purposes “approved by this Church, and for no other use.”³⁷⁴

Defendants tell this Court they owe no duty to The Episcopal Church, even though:

- They and their predecessors inherited over \$100 million dollars of property that had been “acquired for the use of the Episcopal Church in the Diocese of

³⁶⁹ Compare Defs.’ Second Mot. for Partial Summ. J. at 37, with JA00365, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982, and A3934.1, Dep. of Def. Diocese at 118:15-18.

³⁷⁰ Compare Defs.’ Second Mot. for Partial Summ. J. at 6, 24, with JA00365, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982, and A1273, Archives of The Episcopal Church, Acts of Convention 1976-2006, Resolution No. 1982-B018.

³⁷¹ Compare Defs.’ Second Mot. for Partial Summ. J. at 23-24, with A2633, Letter from John E. Ricketts, Director, Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

³⁷² Compare Defs.’ Second Mot. for Partial Summ. J. at 51, with A2631-32, Letter from Glenn Cagle, District Director, Internal Revenue Service, to Corporation of the Episcopal Diocese of Fort Worth (Aug. 13, 1984), and A3955, Dep. of Def. Corp. at 88:20-89:21.

³⁷³ Compare Defs.’ Second Mot. for Partial Summ. J. at 40, with 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).

³⁷⁴ Compare Defs.’ Second Mot. for Partial Summ. J. at 50, with A3959-60, Dep. of Def. Corp. at 154:3–156:1, and JA00145, The Constitution and Canons of the Episcopal Diocese of Fort Worth, canon 25 (1982).

Dallas”³⁷⁵ and was transferred to the Corporation “for the use of The Episcopal Church in the [new] Diocese.”³⁷⁶

- Lead Defendant Jack Leo Iker swore in writing, three times to abide by the Doctrine, Discipline, and Worship of The Episcopal Church,³⁷⁷ as a condition of assuming office and having access to the Church property and other benefits in the first place.³⁷⁸
- 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”³⁷⁹ 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.³⁸⁰ Defendants concede under oath that such representations, if false, were illegal.³⁸¹
- Defendants and their predecessors 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.³⁸²

³⁷⁵ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

³⁷⁶ JA00720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984); *see also* A3959-60, Dep. of Def. Corp. at 154:3–156:1.

³⁷⁷ A3928, Dep. of Def. Diocese at 39:2-6; *see also* A542, Declaration of Conformity, Jack L. Iker.

³⁷⁸ A3928, Dep. of Def. Diocese at 39:21-24.

³⁷⁹ 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.

³⁸⁰ A2630.1-30.2, Letter from N. Michael Kensel, Chancellor Emeritus, Episcopal Diocese of Fort Worth, to LayVonnia Gant, Exemption Division, Tarrant County Appraisal District (Nov. 2, 2007).

³⁸¹ A3955, Dep. of Def. Corp. at 88:25-89:21.

³⁸² A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

- The Diocese’s founding Constitution reaffirmed the Diocese’s commitment to the Church’s rules, 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.”³⁸³
- 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.”³⁸⁴
- 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.”³⁸⁵ That Constitution affirms that “[t]he title to all real estate acquired for the use of the Church in this Diocese, including the real property of all parishes and missions, as well as Diocesan Institutions, shall be held subject to control of the Church in the Episcopal Diocese of Fort Worth acting by and through a corporation known as ‘Corporation of the Episcopal Diocese of Fort Worth.’”³⁸⁶
- 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.”³⁸⁷

³⁸³ JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth (1982), art. 1.

³⁸⁴ JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

³⁸⁵ *Id.*

³⁸⁶ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

³⁸⁷ A3930, Dep. of Def. Diocese at 79:17–20; 81:4–7, 16–18.

- 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,”³⁸⁸ or, as Defendant Iker acknowledged in 2002 to the United States Court of Appeals for the Fourth Circuit, be subject to discipline.³⁸⁹ Indeed, the Church’s Canons require that “[a]ny 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”³⁹⁰
- 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.³⁹¹ Thus, they are leaders within the Diocese, which obligates them to follow the Church’s Constitution and Canons.³⁹²
- Defendants and their predecessors told another Fort Worth Court, “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 who “have abandoned communion with The Episcopal Church.”³⁹³

³⁸⁸ JA00452, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America, art. VIII (2006).

³⁸⁹ A1056, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

³⁹⁰ JA00500-01, *id.* tit. I, canon 17, § 8 (2006) (“Fiduciary responsibility”) (emphasis added); *see also* A1263-64, Letter from Katharine Jefferts Schori, Presiding Bishop, The Episcopal Church, to The Rev. Christopher Cantrell et al. (Dec. 15, 2008).

³⁹¹ 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).

³⁹² 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 . . .”).

³⁹³ 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).

- “[T]he pioneers who gave beauty and meaning to worship on the American frontier [were] the missionaries, the courageous bishops, [and] the loyal parishioners of the first Protestant Episcopal churches of Texas.”³⁹⁴

The foregoing is just a brief sample of the commitments, representations, and understandings that created a “relationship of trust and confidence” between Defendants and their predecessors on the one hand and the Church on the other. *Hubbard*, 138 S.W.3d at 483. To argue no such relationship exists, Defendants must ignore reality to avoid thirteen pages of their broken promises, fraudulent conveyances, and false representations documented in this case³⁹⁵—instead relying on yet more overt falsehoods.³⁹⁶

Defendants toss out a number of specious arguments in an attempt to avoid a constructive trust, but none of them stick:

- They argue that the statutory presumption of revocability precludes imposition of a constructive trust.³⁹⁷ But the legislature *specifically excluded* “*constructive trust*” from the precise statute that Defendants wish to apply.³⁹⁸
- They argue that Plaintiffs’ lack standing,³⁹⁹ but all Plaintiffs need for standing is an allegation of some individualized interest separate from that of the general public which, as members of the Church, and members and leaders of the Diocese and the Congregations, Plaintiffs have.⁴⁰⁰ Moreover, the Church itself obviously has standing because Defendants breached their relationship of trust and

³⁹⁴ A2640, *St. Andrews’ Episcopal Church V*; A2646, *id.* at 7 (noting St. Andrew’s first funds and cornerstone were laid in 1877 by Alexander Charles Garrett, the First Missionary Bishop of Northern Texas of the Missionary Board of the Episcopal Church; later the First Bishop of Diocese of Dallas; finally Presiding Bishop of the Church USA).

³⁹⁵ Pls.’ Mot. for Partial Summ. J. at 55-67.

³⁹⁶ *See* Section II, *supra*.

³⁹⁷ *Id.* at 46.

³⁹⁸ *See* Tex. Prop. Code § 111.003(2).

³⁹⁹ Defs.’ Second Mot. for Partial Summ. J. at 48.

⁴⁰⁰ *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984).

confidence with it to try to divest it of its equitable interest in the property.

- They argue that the 1984 Judgment cannot form the basis for a constructive trust “[f]or the same reasons [it] did not create an express trust.”⁴⁰¹ But imposition of a constructive trust does not require satisfaction of the requirements of an express trust.⁴⁰² The significance of the 1984 action to a constructive trust is that the Petition and Judgment show the “moral, social, domestic or purely personal relationship of trust and confidence”⁴⁰³ between Defendants and the Church: the Diocese was organized under the Church’s rules, and the Corporation was organized under the Diocese’s rules, which unqualifiedly acceded to the Church’s rules.⁴⁰⁴ 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.”⁴⁰⁵
- They argue that Defendants’ fiduciary duty to the Corporation cancels out any fiduciary duty to the Church because the two duties would conflict.⁴⁰⁶ But the Texas Business Organizations Code explicitly allows non-profit corporations to subordinate themselves to charitable and religious associations, which this Corporation did. And under Texas law, a Corporation is bound by its external

⁴⁰¹ Defs.’ Second Mot. for Partial Summ. J. at 49.

⁴⁰² See *Hubbard*, 138 S.W.3d at 483, 485 (explaining that a constructive trust requires (1) constructive or actual fraud, which may be satisfied by breach of a fiduciary relationship; (2) unjust enrichment of the wrongdoer; and (3) tracing to an identifiable *res*).

⁴⁰³ *Id.* at 483.

⁴⁰⁴ JA00717, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984); JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

⁴⁰⁵ A3930, Dep. of Def. Diocese at 79:17–20; 81:4–7, 16–18.

⁴⁰⁶ Defs. Second Mot. for Partial Summ. J. at 46-47.

commitments.⁴⁰⁷ Even Defendant Corporation testified the Corporation is required to honor its legal obligations, regardless of who serves as its Trustees.⁴⁰⁸ As long as the Corporation honored the commitments it made, there would be no conflict between the duties *of* the Corporation and the Trustees' duties *to* the Corporation. It is only through the Defendant Trustees' personal desire to disavow those commitments and facilitate a breach of those duties that any conflict arose.⁴⁰⁹

- They impute to the parties knowledge of the presumption of revocability of an express trust,⁴¹⁰ but they neglect to impute a similar knowledge of the controlling Fort Worth case on point, which holds that the presumption of revocability does not apply under these facts.⁴¹¹ And in any event, rules regarding express trusts would not preclude a constructive trust, which may be applied where an express trust fails.⁴¹² If satisfaction of express trust conditions was a requirement of constructive trusts, then there would be no need for constructive trusts—and no reason for the Legislature to exempt constructive trusts from the express trust statute, which it did.⁴¹³
- They argue that fiduciary duties to the Diocese and the Congregation preclude a higher duty to the Church,⁴¹⁴ but that argument relies on the false assumption that

⁴⁰⁷ 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).

⁴⁰⁸ A3961, Dep. of Def. Corp. at 163:1-164:5.

⁴⁰⁹ *Lesley v. Veterans Land Bd.*, 352 S.W.3d 479, 490 (Tex. 2011) (“A fiduciary duty . . . requires a party to place the interest of the other party before his own.” (internal quotation marks omitted)).

⁴¹⁰ Defs.’ Second Mot. for Partial Summ. J. at 50-51.

⁴¹¹ See *Shellberg*, 459 S.W.2d at 470.

⁴¹² *Mills*, 210 S.W.2d at 988-89.

⁴¹³ See Tex. Prop. Code § 111.003(2).

⁴¹⁴ Defs.’ Second Mot. for Partial Summ. J. at 51-55.

Defendants still represent the Diocese and the Congregations.⁴¹⁵ They insist that the language “the body *now known* [in 2006] as the Episcopal Diocese of Fort Worth” in certain corporate documents means that any duty is to them.⁴¹⁶ However, the body known as the Diocese in 2006 was indisputably a part of the Church, as Defendants have admitted.⁴¹⁷ Thus, duties to the Diocese and Congregations, which were constituent entities of the Church, are consistent with a duty to the Church and in no way preclude such a duty. Those duties only came into conflict when Defendants began breaching them for personal gain.

- They argue that the Church’s Constitution and Canons do not impose a fiduciary duty on Trustees of the Corporation. That’s wrong,⁴¹⁸ but at any rate a formal fiduciary duty is not necessary to the imposition of a constructive trust. Rather, breach of a “moral, social, domestic or purely personal relationship of trust and confidence” will suffice.⁴¹⁹ Moreover, a constructive trust can be separately premised on situations where a party accepts property for the benefit of another then seizes it for his own benefit, which is exactly what happened here.⁴²⁰
- They argue that “it is impossible to tell whether the contributor of each dollar used to build and maintain these churches intended to benefit a local parish, the Diocese, or TEC.”⁴²¹ But Defendants and their predecessors had no problem telling a prior court that “it was never the[] intent” of “loyal parishioners” that

⁴¹⁵ See Section VII.B, *supra*.

⁴¹⁶ Defs.’ Second Mot. for Partial Summ. J. at 51-52.

⁴¹⁷ *Id.* at 7-8; A4359, Dep. of Def. Corp. at 57:21-58:7.

⁴¹⁸ JA00500-01, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America, tit. I, canon 17, § 8 (2006) (“Fiduciary responsibility”).

⁴¹⁹ *Hubbard*, 138 S.W.3d at 483.

⁴²⁰ *Mills*, 210 S.W.2d at 988-89.

⁴²¹ Defs.’ Second Mot. for Partial Summ. J. at 45.

their “gifts and memorials be converted to the use of” those who “have abandoned communion with The Episcopal Church.”⁴²² And they told yet another court that all property transferred to the Diocese had been “acquired for the use of the Episcopal Church in the Diocese”⁴²³ and that they would hold any property “[t]hereafter acquired for the use of the Church and the Diocese.”⁴²⁴ Defendants are bound by these judicial admissions and judicially estopped from contradicting them now. And both the Corporation and Diocese maintained tax-exempt status as subordinate entities of The Episcopal Church, meaning donations were tax deductible *because of* that status in the Church. Defendants solemnly warn this case will “invite similar claims by many other donors,”⁴²⁵ but unless Defendants have breached repeated obvious commitments and court statements to some other denomination that gave the Diocese its charter for existence, it is hard to see how.

- They claim they have not been unjustly enriched, but they or their predecessors accepted benefits from the Church—permission for division, formation, membership, grants, loans, and more—in exchange for the equitable interest in the property.⁴²⁶ Now they are trying to snatch back the interest that they provided

⁴²² 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).

⁴²³ JA00718, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁴²⁴ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

⁴²⁵ Defs. Second Mot. for Partial Summ. J. at 45.

⁴²⁶ *See* A2332, Church Pension Group Summary (showing nearly \$18 million in benefits flowing to the Diocese). For additional financial benefits flowing from the Church to the Diocese or Congregations, *see* A2343-45, Excerpts of Records of the United Thank Offering, Awarded Grants (1986); A2348-49, Excerpts of Records of United Thank Offering Grants (1991); A2350-51, Excerpts of Records of United Thank Offering Grants (1994); A2353-54, Excerpts of Records of United Thank Offering Grants (1996); A2355-59, Excerpts of Records of the United Thank Offering (1996); A2362-66, Excerpts of Records of the Episcopal Church United Thank Offering (2004-2005); A2367-68, Excerpts of Annual Report of the Presiding Bishop’s Fund for World Relief (1991); A2369-70, Excerpts of the Annual Report of the Presiding Bishop’s Fund for World Relief (1996); A2371-2408, Excerpts of Records of the Presiding Bishop’s Fund for World Relief (1996-1999); A2409-50, Excerpts of Records of the Episcopal Church Building Fund; A2451-52, Excerpts of List of Grants, Presiding Bishop’s Fund for World Relief (1982-1986); A2453-54, Excerpts of List of Grants, Presiding Bishop’s Fund for World Relief (through June 1994).

to the Church as an inducement for those benefits. Defendants cannot have their cake and eat it, too—that’s called unjust enrichment. Moreover, Defendants have transferred money to out-of-state bank accounts to make it harder for this Court to reach.⁴²⁷ In 2011, they told the Court that the diocesan funds involved in this suit had increased, while under oath they admitted that the assets had been depleted by more than half a million dollars.⁴²⁸ And Defendants appear to have used Church funds in order to fight litigation against the institution, The Episcopal Church, to which they have made repeated commitments.⁴²⁹ This is precisely the type of unjust enrichment the constructive trust doctrine is designed to prevent.⁴³⁰

Therefore, the facts are “more than sufficient” to show that a constructive trust is warranted to prevent the unjust enrichment of Defendants through their breach of their relationship of trust and confidence with the Church.⁴³¹ Accordingly, the Court should deny Defendants’ motion and grant Plaintiffs’ cross-motion, imposing a constructive trust over all disputed property.

c. Associations Law

For well over a century, Texas law has recognized that when “persons enter into organizations for purposes of social intercourse or pleasure or amusement, and lay down rules

⁴²⁷ A3981, Dep. of Def. Director of Finance Parrott at 93:18-22.

⁴²⁸ Compare 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.”), with A3979, Dep. of Def. Director of Finance Parrott at 84:13-16 (“Q. [W]e established there was over half a million dollars missing from bank accounts, correct? A. Yes, sir.”).

⁴²⁹ A3971-72, Dep. of Def. Bates at 146:11-149:3; A1438-54, Deed of Trust (Oct. 13, 2010) (showing \$3.5 million loan from Jude Funding to the Corporation).

⁴³⁰ Defendants’ reliance on *Holmes v. Kent*, 221 S.W.3d 622 (Tex. 2007), is misplaced. That case said nothing about applying constructive trusts where an express trust is alleged to have failed or where there has been a breach of a special relationship. Rather, it involved optional annuity payments under the Teacher Retirement System, and the Court limited its holding to optional annuities, distinguishing them even from other teacher retirement plans. *Id.* at 629. And, unlike in *Holmes*, the statute in this case expressly exempts constructive trusts from its requirements.

⁴³¹ A4104-05, Aff. of Professor Gerry W. Beyer ¶ 36.

for their government, these must form the measure of their rights in the premises.”⁴³² An association’s rules are a contract, which is binding on all members. *See, e.g., Int’l Printing Pressmen & Assistants’ Union*, 198 S.W.2d at 736 (“It is generally held that the constitution and by-laws of an organization, such as this, constitute a contract between the organization and its members.”); *District Grand Lodge v. Jones*, 160 S.W.2d at 920 (holding that a larger association’s constitution and bylaws “became a part of the contract entered into by the defendants when they became members of the order”); *Brazelton v. Slatten*, 255 S.W. 1009, 1011 (Tex. Civ. App.—Fort Worth 1923, no writ) (noting plaintiffs’ obligation to “abid[e] by their contract” as embodied in the constitution and bylaws of the association).

The same principles apply when a larger association is comprised of local, subordinate associations, which are themselves comprised of individual members.⁴³³ Accordingly, in such cases, the individual members and the local, subordinate association are contractually bound to follow the rules of the larger association, including when property is involved.⁴³⁴

The Supreme Court of Texas has already decided what happens to property held by a local, subordinate association when it ceases to be a part of a larger association whose constitution contains a trust clause in favor of the larger association: the property belongs to the larger association because “title in the [local association] is subject to forfeiture to the [larger association] under [the larger association’s] constitution and by-laws.”⁴³⁵ The Fort Worth Court of Appeals has likewise held that a larger association’s trust clause vested “at least the equitable title to th[e] property” in the larger association and that the local association “held the title only

⁴³² *Manning*, 63 Tex. at 171; *District Grand Lodge v. Jones*, 160 S.W.2d at 922 (quoting *Manning*).

⁴³³ *See District Grand Lodge v. Jones*, 160 S.W.2d at 921; *Minor*, 130 S.W. at 896–97; *cf. Progressive Union*, 264 S.W.2d at 766–67.

⁴³⁴ *See District Grand Lodge v. Jones*, 160 S.W.2d at 921-22; *Minor*, 130 S.W. at 896–97.

⁴³⁵ *District Grand Lodge v. Jones*, 160 S.W.2d at 923.

as trustee.”⁴³⁶ Further, *Old National Life Insurance Co.* makes clear that a local association holds “legal title to the property in trust . . . as long as it was alive **and complied with the rules, regulations and laws of the [larger association].**”⁴³⁷ When a local association “violate[s] such rules, regulations and laws,” it “breache[s] its trusteeship” and the property goes to the larger association.⁴³⁸

As explained above in Section VII.C.1.b.i and in Plaintiffs’ Motion for Partial Summary Judgment (at 70-72), the Diocese, the Corporation, and the Congregations are subordinate units of The Episcopal Church. The Diocese and its constituent Congregations fully acceded to the Church’s Constitution and Canons,⁴³⁹ and the Corporation committed to conduct its affairs “in conformity with the Constitution and Canons of the Episcopal Church in the United States of America.”⁴⁴⁰ Accordingly, the Church’s trust clause “became a part of the[ir] contract,” because the Church’s Constitution and Canons are the “articles of agreement to which all members are parties.”⁴⁴¹ Therefore, because Defendants have “breached [their] trusteeship” by using the property contrary to the “rules, regulations and laws” of the Church, they must return the property to the Church.⁴⁴²

Defendants improperly attempt to confine the Court’s associations law analysis at the level of the local association—the Diocese.⁴⁴³ But that is contrary to well-established Texas

⁴³⁶ *District Grand Lodge No. 25, Grand United Order of Odd Fellows of Tex. v. Logan*, 177 S.W.2d 813, 814–15 (Tex. Civ. App.—Fort Worth 1943, writ ref’d); see also *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.); *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.).

⁴³⁷ 192 S.W.2d at 924 (emphasis added).

⁴³⁸ *Id.* at 924–25.

⁴³⁹ JA00365-71, Proceedings of the Primary Convention Together with the Constitution and Canons of the Episcopal Diocese of Fort Worth, Nov. 13, 1982; JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

⁴⁴⁰ JA00076, Bylaws of the Corporation of the Episcopal Diocese of Fort Worth (1983).

⁴⁴¹ *District Grand Lodge v. Jones*, 160 S.W.2d at 920.

⁴⁴² *Old Nat’l Life Ins. Co.*, 192 S.W.2d at 924–25.

⁴⁴³ See, e.g., Defs.’ Second Mot. for Partial Summ. J. at 19.

precedent and ignores the fact that the Diocese was an admittedly subordinate part of a larger association, subject to its rules.⁴⁴⁴ Thus, the Church’s Constitution and Canons, including the trust clause, “became a part of the contract entered into by the defendants when they became members of the [Church].”⁴⁴⁵

And beyond the issue of an association’s property rules, the identity and control principles of Texas associations law provide a separate basis why breakaway defendants have no right to an association’s property. This is true whether property is vested in the parent body or in the subordinate chapter, because once the defectors break ties with the parent, they no longer represent the continuing subordinate entity as a matter of law.⁴⁴⁶ Thus, “whatever rights [they] had in the lots in controversy were merely incidental to their membership and terminated absolutely with such membership.”⁴⁴⁷

d. Quasi-Estoppel Bars Defendants’ Defenses

As shown throughout this Response, Defendants are estopped—judicially and equitably—from contradicting their numerous past representations. In their Second Motion for Partial Summary Judgment, Defendants take particular issue with the doctrine of quasi-estoppel.⁴⁴⁸ But Defendants are estopped under that doctrine from asserting that their promises to hold property at issue in this lawsuit in trust for The Episcopal Church are not legally enforceable. “The doctrine applies when it would be unconscionable to allow a person to

⁴⁴⁴ See *District Grand Lodge v. Jones*, 160 S.W.2d at 920; *Logan*, 177 S.W.2d at 815; *Old Nat’l Life Ins. Co.*, 192 S.W.2d at 924.

⁴⁴⁵ *District Grand Lodge v. Jones*, 160 S.W.2d at 920.

⁴⁴⁶ *Progressive Union*, 264 S.W.2d at 766–67; *Minor*, 130 S.W. at 897-8; *Dist. Grand Lodge v. Jones*, 160 S.W.2d at 920.

⁴⁴⁷ *Dist. Grand Lodge v. Jones*, 160 S.W.2d at 920.

⁴⁴⁸ See Defs.’ Second Mot. for Partial Summ. J. at 93.

maintain a position inconsistent with one to which he acquiesced, or from which he accepted a benefit.”⁴⁴⁹ It thus applies here, for the following reasons.

i. Defendants obtained possession of the property by promising to use the property solely as part of The Episcopal Church.

Defendants (or their predecessors in office), in order to obtain possession of the disputed property, submitted “unanimously” and “fully” to the Constitution and Canons of The Episcopal Church,⁴⁵⁰ 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”⁴⁵¹ The Diocese then attached to its unanimous resolution a Diocesan Constitution and Canons that, in Article 1, again acceded to “the Constitution and Canons of the Episcopal Church in the United States of America,”⁴⁵² 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.”⁴⁵³

The Diocese made these commitments to the Church as required by Article V of The Episcopal Church’s Constitution in order to effect the formation of a new Diocese in Fort Worth “by the division of an existing Diocese [the Diocese of Dallas].”⁴⁵⁴ Then, after receiving Article V approval from the Church, the Dallas and Fort Worth Dioceses and their subordinate Corporations jointly petitioned a civil district court in a “friendly suit”⁴⁵⁵ to legally “effect the

⁴⁴⁹ *Lopez v. Muñoz, Hockema & Reed, L.L.P.*, 22 S.W.3d 857, 864 (Tex. 2000) (citation omitted).

⁴⁵⁰ JA00365, Proceedings of the Primary Convention of the Episcopal Diocese of Fort Worth (Nov. 13, 1982).

⁴⁵¹ 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.

⁴⁵² JA00101, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 1 (1982).

⁴⁵³ JA00113, The Constitution and Canons of the Episcopal Diocese of Fort Worth, art. 13 (1982).

⁴⁵⁴ JA00384, The Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America (1979), art. V.

⁴⁵⁵ A2626-27, Letter from The Rev. Canon Charles A. Hough, III & N. Michael Kensel to The Rev. Steven Pope (Aug. 13, 2007).

Article V division.”⁴⁵⁶

In that suit, both Dioceses represented they were “organized pursuant to the Constitution and Canons of the Protestant Episcopal Church in the United States of America,”⁴⁵⁷ and the Corporation represented it would hold property “pursuant to the Constitution and Canons of the Episcopal Diocese of Fort Worth,”⁴⁵⁸ 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,”⁴⁵⁹ 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”⁴⁶⁰ 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”⁴⁶¹ 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.”⁴⁶² The Diocese and Corporation both signed the petition.⁴⁶³ Defendants concede the court relied on those representations to transfer property worth millions.⁴⁶⁴

⁴⁵⁶ A3958, Dep. of Def. Corp. at 150:3-14.

⁴⁵⁷ JA00716-17, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁴⁵⁸ JA00728, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁴⁵⁹ JA00721, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

⁴⁶⁰ 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.”).

⁴⁶¹ JA00718, 720, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. June 29, 1984).

⁴⁶² A3959-60, Dep. of Def. Corp. at 154:3–156:1.

⁴⁶³ JA00734, Petition, *Episcopal Diocese of Dallas et al. v. Mattox*, No. 84-8573 (Dist. Ct. Dallas Cnty. 95th Jud. Dist. 1984).

⁴⁶⁴ 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).

ii. Defendants are estopped from asserting defenses to the legal enforceability of the promises they made in order to obtain possession of the property.

As a result of Defendants' promises, Defendants received legal title to real property worth millions of dollars as well as thousands of dollars in operating funds.⁴⁶⁵ Defendants were also given grants by The Episcopal Church,⁴⁶⁶ among numerous other benefits, including participation in the Church Pension Fund.

Under the doctrine of quasi-estoppel, having made their promises and accepted these benefits in return, Defendants may not now contend that they are free to disregard these positions because a majority of their members have voted to do so.⁴⁶⁷ Unlike equitable estoppel, quasi-estoppel requires "no concealment or misrepresentation of existing facts on the one side, and no ignorance or reliance on the other."⁴⁶⁸

Defendants nonetheless contend that quasi-estoppel is not applicable here because quasi-estoppel "is a defensive theory."⁴⁶⁹ First, Plaintiffs are also counter-defendants because Defendants have brought claims against Plaintiffs. Second, in any event, Texas courts have made clear that quasi-estoppel may be asserted as a counter-defense; *i.e.* a claim that, rather than seeking affirmative relief, acts to bar one's opponent from asserting a defense that is inconsistent with the position from which he previously received a benefit.⁴⁷⁰ Thus, for example, Texas

⁴⁶⁵ 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).

⁴⁶⁶ See, e.g., A2454-55, Presiding Bishop's Fund for World Relief, Grants Awarded Through June 1994 (noting six grants to the Episcopal Diocese of Fort Worth for a total of \$47,000); A2407, Letter from Mary Becchi, Grants Director, Presiding Bishop's Fund for World Relief, The Episcopal Church, to The Rt. Rev. Jack L. Iker, Diocese of Fort Worth (Mar. 31, 2000) (noting \$25,000 grant to the Diocese).

⁴⁶⁷ *Masterson*, 422 S.W.3d at 623 (Lehrmann, J., dissenting); see also *Lopez*, 22 S.W.3d at 864.

⁴⁶⁸ *Neiman-Marcus Group, Inc. v. Dworkin*, 919 F.2d 368, 371 (5th Cir. 1990) (quoting *Arrington v. Cnty. of Dallas*, 792 S.W.2d 468, 472 (Tex. App.—Dallas 1990, writ denied) (internal quotation marks omitted)).

⁴⁶⁹ Defs' Second Mot. for Partial Summ. J. at 63.

⁴⁷⁰ See *Baron v. Mullinax, Wells, Mauzy & Baab, Inc.*, 623 S.W.2d 457, 462 (Tex. App.—Texarkana 1981, writ ref'd) (holding that appellant cannot claim contingent fee contract invalid for pending case while treating it as valid and receiving substantial benefits under it for other purposes); *Cook v. Smith*, 673 S.W.2d 232, 234-35 (Tex. App.—Dallas 1984, writ ref'd n.r.e.) (employing equitable estoppel as a counter-defense); cf. *Transcon. Realty Investors*,

courts have held that a client should be estopped from raising the (otherwise dispositive) defense that its fee agreement with an attorney was never signed and thus unenforceable where “the attorney ha[s] performed and the [client] ha[s] accepted, used, and enjoyed the attorney’s services and the product of those services.”⁴⁷¹

Likewise, in the *Masterson* opinion, no less an authority than Texas Supreme Court Justice Debra Lehrmann (joined by then-Chief Justice Wallace Jefferson) agreed that this principle applies here.⁴⁷² Justice Lehrmann pointed out that the Defendants promised to abide by the Church’s doctrine and polity, accepted benefits from the Church, and declared that the church property was secured from alienation: “Having made these promises and accepted these benefits, [Defendants] may not now contend [they are] free to disregard these positions because a majority of its members have voted to do so.”⁴⁷³

Therefore, Defendants’ Motion should be denied by this Court. As Justice Lehrmann observed, Defendants are estopped from presenting their defenses pursuant to the doctrine of quasi-estoppel.

e. Defendants’ adverse possession and limitations claims fail.

In a last-ditch response to Plaintiffs’ right to possession of the disputed property, Defendants now allege that the Congregations have really been squatting on this property since the 1980s and now own it through adverse possession. This is incorrect for several reasons.

Inc. v. John T. Lupton Trust, 286 S.W.3d 635, 648 (Tex. App.—Dallas 2009, no pet.) (“There are numerous cases discussing estoppel as a counter-defense . . .”).

⁴⁷¹ *Garza v. Gray & Becker, P.C.*, No. 03-02-00136-CV, 2002 WL 31769034, *8 (Tex. App.—Austin Dec. 12, 2002, pet. den’d) (citing *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *overruled on other grounds*, *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003)).

⁴⁷² See *Masterson*, 422 S.W.3d at 622-23 (Lehrmann, J., dissenting).

⁴⁷³ *Id.* at 623.

i. The actual possessor of the property was The Episcopal Church itself.

In Texas, the adverse possession statutes place periods of limitations within which “[a] person must bring suit to recover real property held *by another*.”⁴⁷⁴ The undisputed facts of this case, however, reveal that no entity separate from The Episcopal Church possessed the property at issue until at least November 2008.

Until that time, the disputed property was possessed by the Congregations, which, as Defendants concede, “were part of The Episcopal Church.”⁴⁷⁵ A local chapter of a larger organization “is not an independent organization, existing solely for the benefit of its members, but . . . is a part and parcel of [the] larger organization”⁴⁷⁶ That is, such local organizations “come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization.”⁴⁷⁷

Thus, at least until they purported to break away from The Episcopal Church in November 2008, the Congregations—who actually possessed the property at issue—and The Episcopal Church were two parts of the same entity.⁴⁷⁸ 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.⁴⁷⁹ This 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.

⁴⁷⁴ Tex. Civ. Prac. & Rem. Code § 16.024 (three-year statute) (emphasis added); *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).

⁴⁷⁵ A4277, Dep. of Def. Diocese at 60:12-16.

⁴⁷⁶ *Minor*, 130 S.W. at 896.

⁴⁷⁷ *District Grand Lodge v. Jones*, 160 S.W.2d at 921.

⁴⁷⁸ *See Minor*, 130 S.W. at 896.

⁴⁷⁹ *Id.*

ii. No claim against Defendants accrued before November 2008.

“[S]tatutes of limitation only begin to run from the time that the right of action accrues.”⁴⁸⁰ “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.”⁴⁸¹ 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.”⁴⁸²

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.⁴⁸³ But this is incorrect. The Congregations had a right to use and possess the property until they broke away from the Church in 2008.⁴⁸⁴ Their possession of the property thus did not expose any entity to any liability until Defendants purported to break away from the Church—and seize the property possessed by the Congregations in trust for the Church—in 2008.

Indeed, Texas courts have long found that “limitations does not accrue” against a party like The Episcopal Church that “does not have a possessory interest that would allow him to institute a trespass to try title action seeking the ouster of the trespasser.”⁴⁸⁵ A rightful

⁴⁸⁰ *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)).

⁴⁸¹ *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 202 (Tex. 2011).

⁴⁸² *Niendorff v. Wood*, 149 S.W.2d 161, 164 (Tex. Civ. App.—Amarillo 1941, writ ref’d).

⁴⁸³ See First Supp. Second Am. Third-Party Pet. of Intervenor the Corporation of the Episcopal Diocese of Fort Worth ¶ 1 (Oct. 29, 2014).

⁴⁸⁴ 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 (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”).

⁴⁸⁵ *State v. Beeson*, 232 S.W.3d 265, 277 (Tex. App.—Eastland 2007, pet. dismissed).

possessor's mere "claim of [outright] ownership" over the property does not change this conclusion.⁴⁸⁶

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.⁴⁸⁷ But "[a]dverse possession, to ripen into title, must be such as would expose the possessor to some liability"⁴⁸⁸ The 1989 canon was void on its face, since, as Defendant Iker told another Court, diocesan canons "cannot be inconsistent with national canons."⁴⁸⁹ 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."⁴⁹⁰ 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.

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

⁴⁸⁶ See *Perkins v. Perkins*, 166 S.W. 915, 917 (Tex. Civ. App.—Galveston 1914, writ ref'd) ("The [possessor'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.").

⁴⁸⁷ 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.

⁴⁸⁸ *Niendorff*, 149 S.W.2d at 164.

⁴⁸⁹ A1054-56, Amicus Brief of Rt. Rev. Jack Leo Iker, *Dixon v. Edwards*, No. 01-2337 (4th Cir. Jan. 8, 2002).

⁴⁹⁰ *Masterson*, 422 S.W.3d at 601 (quoting *Milivojevich*, 426 U.S. at 713-14).

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

Even where a person begins to possess some property adversely, his “acknowledgment of title in another will defeat the adverse possession claim if the acknowledgment is made before the limitations period passes.”⁴⁹¹ 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.”⁴⁹²

Here, during the relevant adverse possession periods, the Congregations, Diocese, and their subordinate Corporation repeatedly admitted that ultimate beneficial title to the property was held by The Episcopal Church. For example, Diocesan, Corporation, and Congregational leaders stated in court filings in 1994 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 faction].”⁴⁹³ 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.”⁴⁹⁴

They argued in 1995 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”⁴⁹⁵ and that

⁴⁹¹ *Santa Fe Energy Operating Partners, L.P. v. Carrillo*, 948 S.W.2d 780, 786 (Tex. App.—San Antonio 1997, pet denied).

⁴⁹² *Allen v. Sharp*, 233 S.W.2d 485, 488 (Tex. Civ. App.—Fort Worth 1950, writ ref’d).

⁴⁹³ 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).

⁴⁹⁴ 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).

⁴⁹⁵ 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).

the entities they purport to represent are “new creation[s]” that, “hav[ing] abandoned communion with The Episcopal Church,” have “no relation to” the continuing subordinate entity “and no right to its property.”⁴⁹⁶ 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.”⁴⁹⁷

In other words, *after* the touted 1989 canon seeking to revoke any canonical trusts, Defendants and their predecessors-in-office still relied on the Dennis Canon and other national canons to recover property from another breakaway schismatic faction, representing in 1994 to the civil court, without qualification, that those national canons created an enforceable express trust. These admissions, along with many similar others, are “fatal to [Defendants’] title by limitation.”⁴⁹⁸ Any adverse possession period that began to run was interrupted long before Defendants could have acquired title.⁴⁹⁹

⁴⁹⁶ 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).

⁴⁹⁷ 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).

⁴⁹⁸ *Allen*, 233 S.W.2d at 488.

⁴⁹⁹ Defendants’ adverse possession argument fails under the three-year statute because it is not made under “color of title.” Tex. Civ. Prac. & Rem. Code § 16.024. One who lacks full equitable title cannot make a claim under the three-year statute against an equitable title holder because he lacks “color of title” for such a claim. *See Logan*, 177 S.W.2d at 814-15 (“A deed from one who has the bare legal title, without authority to convey, where the beneficial ownership is in some one [sic] else, is not a sufficient link in the chain of title to bring the case under the three year statute.”). Similarly, while Defendants’ argument under the five-year statute fails because of the statements noted in this section, it also fails because it is not made “under a duly registered deed.” Tex. Civ. Prac. & Rem. Code § 16.025. An interest in property may only be adversely possessed under the five-year statute if a “duly registered deed” purports to convey *that interest*. *See Porter v. Wilson*, 389 S.W.2d 650, 654 (Tex. 1965) (holding that a deed purporting to convey a partial interest in property “will not support a claim to the entire tract under the five-year statute but will only operate as a claim to the interest which the instrument on its face purports to convey”); *Dolenz v. Banda*, No. 02-08-456-CV, 2009 WL 1815778, *4 (Tex. App.—Fort Worth, June 25, 2009, pet. denied) (following *Porter*) (unpublished). Here, as has been explained above, the 1984 judgment conveys only legal title. Thus any claim to Plaintiffs’ equitable title in the property by Defendants is not made “under a duly registered deed.”

iv. Even if Plaintiffs had the option to sue earlier, the running of limitations did not begin until 2008.

Further, because Defendants' trust obligations here are contractual, any pre-emptive disclaimer of these obligations is governed by the doctrine of anticipatory repudiation. Under that doctrine, any attempt by Defendants to disclaim their trust obligations failed to start the running of any limitations period. "It is true that limitations may begin to run upon a promisor's anticipatory repudiation, but only if the repudiation is adopted by the nonrepudiating party."⁵⁰⁰ That is, "the law is well-settled in Texas that when one party repudiates a contract, the other party may then elect to either (1) accept the repudiation and bring a suit to recover damages for its breach; or (2) treat the repudiation as inoperative and sue for damages as they accrue when the time for performance under the contract is due."⁵⁰¹

Here, Plaintiffs took the second option. Plaintiffs did not accept or sue upon any of Defendants' alleged repudiations of their trust obligations prior to 2008. Indeed, Plaintiffs could not have done so even if they wanted to: As was noted above, before 2008 any such dispute would have been a non-justiciable matter of ecclesiastical discipline.⁵⁰² Thus, Plaintiffs treated all of Defendants' alleged repudiations as inoperative. Once performance under the trusts became due in November 2008, however, Plaintiffs promptly and timely sued to recover the property in 2009. Thus, even if Defendants' pre-2008 claims of ownership of the property were "repudiations" of their trust interests, they did not trigger the running of the limitations period, and this case was timely filed.

⁵⁰⁰ *Ingersoll-Rand Co. v. Valero Energy Corp.*, 997 S.W.2d 203, 211 (Tex. 1999); *see also id.* ("[T]he effect of such an anticipatory repudiation is to give the nonrepudiating party the option of treating the repudiation as a breach or ignoring the repudiation and awaiting the agreed upon time of performance.").

⁵⁰¹ *America's Favorite Chicken Co. v. Samaras*, 929 S.W.2d 617, 626 (Tex. App.—San Antonio 1996, writ denied).

⁵⁰² *See Masterson*, 422 S.W.3d at 601 (quoting *Milivojevich*, 426 U.S. at 713–14).

f. Neutral principles is unconstitutionally retroactive; Defendants' approach is worse.

The Texas Supreme Court left open the question of whether applying neutral principles in this case is unconstitutionally retroactive: “Because neutral principles have yet to be applied in this case, we cannot determine the constitutionality of their application.”⁵⁰³

But the Texas Supreme Court suggested that, in its view, retroactivity would not be a problem, because its “analysis and holding” in *Brown v. Clark*, 116 S.W. 360 (Tex. 1909) “substantively reflected the neutral principles methodology.”⁵⁰⁴

In other words, if this Court follows the “analysis and holding” of *Brown*, the Texas Supreme Court believes that the outcome of this case will be constitutional and not improperly retroactive.

So it is important, then, to detail the “analysis and holding” of *Brown*.

In *Brown*, the Texas Supreme Court began by looking for deeds and trusts. The relevant deed named the local church entity as sole titleholder. But there was a schism in that local church entity, and two groups claimed to represent it. One of those groups recognized the authority of the national Church entity, and the other did not.⁵⁰⁵ The Court deferred to the national Church as to which group was right about being the local church entity, then enforced the deed for that group.⁵⁰⁶

Defendants cannot and do not contest this description of *Brown*. They described *Brown* to the U.S. Supreme Court in exactly this way three months ago:

- (1) “In *Brown*, the deed to church property vested title in a local church.”

⁵⁰³ *Episcopal Diocese*, 422 S.W.3d at 651.

⁵⁰⁴ *Id.* at 653.

⁵⁰⁵ *Brown*, 116 S.W. at 362.

⁵⁰⁶ *Id.* at 364-65.

- (2) “*Brown* concluded that ‘whatever body is identified as being the church to which the deed was made must still hold the title.’”
- (3) **“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.”**
- (4) “‘The method by which this Court addressed the issues in *Brown*,’ the Texas Supreme Court held, ‘remains the appropriate method for Texas courts.’”⁵⁰⁷

The Texas Supreme Court distinguished its approach in *Brown* from a pure hierarchical deference approach. Under pure deference, a court “simply defer[s] to the ecclesiastical authorities with regard to the property dispute”—without even looking at neutral principles of law like deeds or trusts.⁵⁰⁸ By contrast, under *Brown*, the Texas Supreme Court said it began with neutral principles and “addressed the merits of the title question by examining the deed.”⁵⁰⁹ Only when that analysis bumped into an ecclesiastical question—which party may act as the local church body—did the Court defer to the national Church on that point.

As in *Brown*, there are two local factions asserting a right to represent the local church bodies here. In *Brown*, the Texas Supreme Court expressly recognized the local church body as a “subordinate part” of the national Church.⁵¹⁰ Here, the Texas Supreme Court expressly recognized the local church bodies—the Diocese and Congregations—as “subordinate” parts of

⁵⁰⁷ A3822-23, Br. in Opp’n of Resp’ts The Episcopal Diocese of Fort Worth, *Episcopal Church v. Episcopal Diocese of Fort Worth*, No. 13-1520 (U.S. Sept. 26, 2014) (emphasis added) (quoting *Masterson*, 422 S.W.3d at 605 (citations omitted)); accord *Brown v. Clark*, 116 S.W. at 364–65.

⁵⁰⁸ *Masterson*, 422 S.W.3d at 605 (discussing *Brown*, 116 S.W. at 365).

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.* (citing *Brown*, 116 S.W. at 365).

the national Church.⁵¹¹ As in *Brown*, one local faction recognizes the authority of the national Church, and the other does not.

If this Court follows the “analysis and holding” of *Brown*, even as Defendants themselves have characterized that analysis, this Court should grant at least Plaintiffs’ Simple Solution:

Defendants’ Description of <i>Brown</i>	This Case, Assuming Defendants’ Facts
(1) “In <i>Brown</i> , the deed to church property vested title in a local church.”	(1) Deed to church property vested legal title in Corporation and equitable title in Diocese/Congregations.
(2) “ <i>Brown</i> concluded that ‘whatever body is identified as being the church to which the deed was made must still hold the title.’”	(2) Whatever bodies are identified as being the Diocese/Congregations must still hold equitable title.
(3) “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.”	(3) Because the property dispute’s resolution turns, under neutral principles of Texas law, on the local diocese and congregations’ identity—an ecclesiastical matter—the court must defer to the national denomination’s understanding of the church’s identity.
(4) “The method by which this Court	Defendants: this <i>Brown</i> method “remains the

⁵¹¹ *Id.* at 600. And the Diocese has accepted decades of tax benefits under the same representation. See A2633, Letter from John E. Ricketts, Director of Customer Account Services, Internal Revenue Service, to Episcopal Diocese of Fort Worth (Oct. 22, 2003).

addressed the issues in <i>Brown</i> ,’ the Texas Supreme Court held, ‘remains the appropriate method for Texas courts.’”	appropriate method for Texas courts.” ⁵¹²
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Of course, as shown, Defendants are now singing a very different tune about what the Texas Supreme Court said. If *Brown* advocates a “Defer and Apply” approach to the Church’s resolution of ecclesiastical identity questions, Defendants now ask this Court to do the opposite: “Override and Adjudicate.” See Section VII.B.3, *supra*. Defendants ask this Court to ignore the Church’s resolution of who may represent the ecclesiastical entities and apply Texas associations law to the question: a process entirely foreign to *Brown*.

Why is this distinction important here? Because the Texas Supreme Court suggested that *Masterson* and *Episcopal Diocese* are not unconstitutionally retroactive **because** they require the very same approach mandated by *Brown*—i.e., that *Brown* “substantively reflected” *Masterson* and *Episcopal Diocese* in advance. If this Court correctly applies the “analysis and holding” of *Brown* in this case, then, the Texas Supreme Court implied, it will not be unconstitutionally retroactive in the Texas Supreme Court’s view. By contrast, *Brown* in no way “substantively reflected” the approach Defendants urge and would be unconstitutionally retroactive under the Texas Supreme Court’s analysis.

Plaintiffs do not waive their arguments, set forth in detail in their cross-motion, that even a faithful application of *Brown* is unconstitutionally retroactive here.⁵¹³

⁵¹² 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.

⁵¹³ It was the U.S. Supreme Court that raised the issue of unconstitutional retroactivity *sua sponte*—and the standard it suggested was “clearly enunciated,” not “substantively reflected.” *Jones v. Wolf*, 443 U.S. at 606 n.4. As the Texas Supreme Court noted, appellate courts have consistently read *Brown* in a way that, according to *Masterson*, was not intended, believing *Brown* required the pure deference approach of *Watson v. Jones*, 80 U.S. 679 (1871).

But one thing is clear: what Defendants ask this Court to do bears no resemblance to *Brown*, was not “substantively reflected” by *Brown*, and would be unconstitutionally retroactive under the Texas Supreme Court’s holding.

VIII. CONCLUSION AND PRAYER

In short, under any analysis, Defendants cannot take the Episcopal Diocese and property committed “for the use of The Episcopal Church in the Diocese” out of The Episcopal Church.

Defendants ask this Court to ignore the plain mandates of *Masterson* and *Episcopal Diocese* that only Plaintiffs may represent the Diocese and Congregations as a matter of law, even if that “effectively determine[s] the property rights in question.”⁵¹⁴ Defendants can decry this interpretation all they want: they admitted these mandates to the U.S. Supreme Court, just not to this Court. And they are judicially estopped from contradicting their admissions now.

And having asked for neutral principles, it is now clear that Defendants cannot prevail without ignoring the controlling Fort Worth and Texas case law on trusts and associations. They tell this Court that associations law is key, then ignore the associations law holding that a majority faction, no matter how large, cannot destroy the subordinate chapter by “taking” it out of the association. They tell this Court there is no such thing as a contractual trust but then fail even to cite the controlling Fort Worth authority on point.

And Defendants cannot prevail in light of their own repeated admissions to courts, government agencies, the Church, and others. The Diocese told the Church it “fully” acceded;

And so *Brown*, without the further elucidation of *Masterson* and *Episcopal Diocese*, did not “clearly enunciate” the relevant standard in advance for churches. In addition to the retroactivity point, Plaintiffs’ maintain, and do not waive, the following arguments: (1) that this case should be decided in Plaintiffs’ favor under *Watson*’s deference approach; (2) that 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; and (3) 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). See Pls.’ Mot. for Partial Summ. J. at 20, 83, & tbl. G., incorporated as if set forth fully herein.

⁵¹⁴ *Masterson*, 422 S.W.3d at 606-07.

now Defendants claim it was “qualified,” without identifying any actual qualification. They conceded to past courts and agencies that the Diocese and Corporation were subordinate entities of the Church, that “it was never the[] intent” of “loyal parishioners” that their “gifts . . . be converted to the use of” “[s]chismatic” defendants who “have abandoned communion with The Episcopal Church,”⁵¹⁵ and that the Church’s “national canons” give rise to legally enforceable trusts.⁵¹⁶ But they tell this Court the opposite.

Defendants close their brief by saying they want only “to be left alone”—which is the wish of every person who takes something that does not belong to them. At the end of the day, the gist of Defendants’ position is that they were the majority. But if rights were determined by majority vote, there would be no need for courts or law, only bean counters.

In the language of *Masterson*, Plaintiffs are the “trustees of the local church that was a subordinate part of the [larger] Church,” “entitled to possession and use of the property.”⁵¹⁷ Or, in the parlance of Texas associations law, Defendants, “no matter how large,” cannot take the subordinate unit out of “the original parent body,” and Plaintiffs, “preserving their allegiance,” are the “true and lawful successors.”⁵¹⁸

Under any and every analysis, this Court should deny Defendants’ motion and grant Plaintiffs’ cross-motion.

⁵¹⁵ 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).

⁵¹⁶ 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). These pleadings noted that the express trust favored the Diocese, because it was the Diocese and Corporation seeking return of property from a breakaway parish. And the “national canons,” *id.*, create a trust for the Church and “Diocese *thereof*,” 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). But the so-called 1989 revocation, Canon 18.4, purported to deny any trust over congregational property in favor of the Church *or* the Diocese. JA00213, *The Constitution and Canons of the Episcopal Diocese of Fort Worth*, canon 18, § 18.4 (2006). By endorsing that express trust to the Fort Worth Court then as legally enforceable, the parties were necessarily taking the position that the 1989 canon did not effectively repudiate the Dennis canon.

⁵¹⁷ *Masterson*, 422 S.W.3d at 605.

⁵¹⁸ *Minor*, 130 S.W. at 896-97.

Plaintiffs respectfully pray that this Court deny Defendants' Second Motion for Partial Summary Judgment; grant Plaintiffs' Motion for Partial Summary Judgment and issue the declarations, injunctions, and other relief requested therein; and award Plaintiffs' such other and further relief to which they are entitled.

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

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

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

Attorneys for The Episcopal Church

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

***Attorney for the Local Episcopal
Congregations***

Respectfully submitted,

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

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

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

***Attorneys for Plaintiffs the Local
Episcopal Parties***

CERTIFICATE OF SERVICE

I certify that on December 22, 2014, the foregoing document was filed and served electronically on all counsel.

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

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

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

/s/ Thomas S. Leatherbury
Thomas S. Leatherbury