

THE EPISCOPAL DIOCESE OF
FORT WORTH, THE CORPORATION OF
THE EPISCOPAL DIOCESE OF FORT WORTH,
and THE EPISCOPAL CHURCH,

Plaintiffs

VS.

FRANKLIN SALAZAR, JO ANN PATTON,
WALTER VIRDEN, ROD BARBER, CHAD
BATES, JACK LEO IKER, and THE
ANGLICAN PROVINCE OF THE SOUTHERN
CONE'S DIOCESE OF FORT WORTH,
holding itself out as "THE EPISCOPAL DIOCESE
OF FORT WORTH,"

Defendants

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

141st JUDICIAL DISTRICT

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come **The Episcopal Diocese of Fort Worth, The Corporation of The Episcopal Diocese of Fort Worth and The Episcopal Church**, Plaintiffs in the above entitled and numbered cause and file this their Response to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and would respectfully show the Court as follows:

I.

Defendants' Motion is without merit and is in direct conflict with judicial decisions across the nation where courts have routinely exercised jurisdiction over disputes like this one. In the case of The Episcopal Church, moreover, that precedent overwhelmingly demonstrates that the plaintiffs should prevail in this case.

A BRIEF HISTORY OF THE CAUSE OF THIS DISPUTE

II.

The Episcopal Diocese of Fort Worth was formed in 1982, through the action of The Episcopal Church's General Convention, with territory and property that had been acquired and maintained by past generations of Episcopalians who gave to support various subordinate parts of The Episcopal Church. As a condition of its formation, the Diocese was required to promise and did promise an unqualified accession to the Constitution and Canons of The Episcopal Church and the authority of the General Convention. Throughout its existence, the bishops of the Diocese have been required to execute similar oaths as a condition of attaining their offices. Despite this history and these commitments, at some point prior to 2008, the then-Bishop of the Diocese, defendant Iker, decided to break away and attempt to take the Diocese, the Corporation, the Parishes and other Diocesan assets with him. Accordingly, at the Diocesan Convention in November of 2008, a vote was taken in an attempt to abandon the Episcopal Church and align with the Anglican Province of the Southern Cone.

Since that time, although neither defendant Iker nor the other defendants have any right to do so and even though defendant Iker has renounced his ordained ministry in the Episcopal Church, the Defendants have continued to use the names, seal and other symbols of the Diocese and Diocesan Corporation, hold themselves out as the "Episcopal Diocese of Fort Worth," assert authority over Episcopal Parishes, Congregations, and other organizations in the Diocese, and assert exclusive possession and control over the Diocesan Corporation and substantially all of the real or personal property, including funds, of the Diocese. This action forced the Plaintiffs to bring this lawsuit to recover the name and property of the Episcopal Diocese of Fort Worth, a subordinate part of The Episcopal Church, for that continuing entity.

Because of defendants' continued unlawful use and control of Diocesan property and the attendant usurpation of the rights of loyal Episcopalians, relief by way of this lawsuit is the only means of reversing the defendants' unlawful actions.

DEFENDANTS' JURISDICTIONAL ARGUMENTS AND PLAINTIFFS' RESPONSES

III.

Defendants argue that this Court lacks subject-matter jurisdiction because the legal and equitable relief that plaintiffs seek requires the Court to “decide whether defendants rightly or wrongly exercised authority given to them in unambiguous ecclesiastical documents.” Amended Motion at p. 2. Defendants are mistaken. The Episcopal Church has determined that defendants violated their duties and authority as ecclesiastical officers, and no longer serve as clergy or lay leaders within The Episcopal Church or its Diocese of Fort Worth. This is not an issue that the Court need – or may – decide. See, e.g., *Jones v. Wolf*, 443 U.S. 595, 602 (1979)(The First Amendment “requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.”); *Westbrook v. Penley*, 231 S.W.3d 389, 399 (Tex. 2007)(recognizing that courts may exercise jurisdiction over property disputes, but dismissing former parishioner’s tort claim against pastor because “Courts have no jurisdiction to ‘revise or question ordinary acts of church discipline’ and ‘cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church.’”).

This case, then, is not an essentially ecclesiastical dispute, but a property dispute. The States have “an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined

conclusively.” *Jones v. Wolf*, 443 U.S. at 602 (1979)(citing *Presbyterian Church v. Hull Church*, 393 U.S. 440, 445 (1969)). Thus, for decades, the U. S. Supreme Court and the courts of Texas and of other states have taken subject matter jurisdiction over the same or substantially similar issues raised in this case.

A. Texas Courts Routinely Exercise Jurisdiction Over These Disputes.

Texas courts have frequently exercised jurisdiction over and decided church property disputes such as this one. See, e.g., *Brown v. Clark*, 116 S.W. 360 (Tex. 1909)(considering a dispute between two factions of a local church that arose after the hierarchical church of which the local church was a constituent part entered into union with another denomination, and ruling in favor of the faction loyal to the newly-merged denomination). See also *Westbrook v. Penley*, 231 S.W.3d at 399. In the course of their inquiries, these courts have routinely reviewed both secular documents such as corporate documents and deeds, and also ecclesiastical documents like the Constitution and Canons of the Episcopal Church, and have uniformly concluded:

(1) That a constituent part of a hierarchical church, entitled to the continued use of property held by that religious entity, is comprised of individuals who remain part of the hierarchical church, regardless of whether a majority of the local entity's current membership wishes to leave the church. See *Brown v. Clark*, 116 S.W. 360 (Tex. 1909); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d 865, 871 (Tex. Civ. App.--Texarkana 1977, no writ) (“When a division occurs in a church congregation affiliated with a hierarchical religious body, . . . the fundamental question as to which faction is entitled to the property is answered by determining which of the factions is the representative and successor to the church as it existed prior to the division, and that is determined by which of the two factions

adheres to or is sanctioned by the appropriate governing body of the organization.”); *Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 551 (Tex. App.--Austin 1991, writ denied); *Templo Ebenezer v. Evangelical Assemblies*, 752 S.W.2d 197, 199 (Tex. App.--Amarillo 1988, no writ); *Schismatic and Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery*, 70 S.W.2d 700, 705 (Tex. App.-- Dallas 1986, pet. denied, 484 U.S.823 (1987)); *Norton v. Green*, 304 S.W.2d 424 (Tex. Civ. App.--Waco 1957, writ refused n.r.e.) (“where there has been a division in a congregation, those members who renounce their allegiance to the church lose any rights in the property involved, and the property and the use thereof belong to the members which remain loyal to the church.”); *Browning v. Burton*, 273 S.W.2d 131, 136 (Tex. Civ. App.--Austin 1954, writ refused n.r.e.) (a faction “could not destroy the identity of the local church and could not take the properties of that church with them into an independent organization.”). *See also Church of God in Christ v. Cawthon*, 507 F.2d 599, 602 (5th Cir. 1975) (applying Texas law and holding that, where “local church was a member of and subservient to the national church,” withdrawing faction may not “exercise acts of possessory control over the local church property [or] interfer[e] with local church property and with the conduct of services therein by the local faction loyal to the national church”).

(2) That constituent parts of a hierarchical church, like other voluntary associations, are bound by the rules of the general church of which they are a part. *Browning v. Burton*, 273 S.W.2d at 134-35 (citing 45 Am Jur. Religious Societies §§ 13-14, 16 (1943)); *Presbytery of the Covenant v. First Presbyterian Church*, 552 S.W.2d at 871-72 (“[T]he members of a church organization which is hierarchical as to church governance cannot

dissolve a local church in contravention of the governing rules or edicts of the mother church.”); *Templo Ebenezer v. Evangelical Assemblies*, 752 S.W.2d at 198.¹

B. Courts Across the Country Have Ruled in Favor of The Episcopal Church in Similar Disputes.

The Texas precedent is in line with authority from across the country in similar church property disputes. The various state courts, using either the “principles of government” or a four-factor “neutral principles” analysis approved by the U.S. Supreme Court in *Watson v. Jones*, 80 U.S. 679, 727 (1871) and *Jones v. Wolf*, 443 U.S. 595, respectively, have reviewed corporate documents, deeds, and church rules such as The Episcopal Church’s Constitution and Canons and have determined the following issues:

(1) That property held by or for a constituent part of The Episcopal Church must remain with The Episcopal Church in the event of a dispute. See *Episcopal Church Cases*, 198 P.3d 66 (Cal. 2009); *Diocese of Rochester v. Harnish*, 899 N.E.2d 920 (N.Y. 2008); *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005); *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Diocese of Conn.*, 620 A.2d 1280 (Conn. 1993); *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85 (Colo. 1986); *Episcopal Diocese of Mass. v. DeVine*, 797 N.E.2d 916 (Mass. App. Ct. 2003); *Daniel v. Wray*, 580 S.E.2d 711 (N.C. Ct. App. 2003); *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 684 N.Y.S.2d 76 (N.Y. App. Div.

¹ Authority from other states is in accord. See, e.g., *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 542 (2004) (“the members of a church, by joining, implicitly consent to the church’s governance in religious matters; for civil courts to review the church’s judgments would ‘deprive these bodies of the right of construing their own church laws’ and, thus, impair the right to form voluntary religious organizations.”); *Adickes v. Adkins*, 215 S.E.2d 442, 445 (S.C. 1975) (“[A]ppellants voluntarily associated themselves with the First Presbyterian Church of Rock Hill and became subject to the discipline and government of the Presbyterian Church in the United States.”); *Daniel v. Wray*, 580 S.E.2d 711, 714 (N.C. Ct. App. 2003) (“As a parish within the Diocese’s boundaries, St. Andrews was bound by the Constitution and Canons of that diocese, as well as the Constitution and Canons of [The Episcopal Church].”).

1999); *Bennison v. Sharp*, 329 N.W.2d 466 (Mich. Ct. App. 1982); *Tea v. Protestant Episcopal Church in the Diocese of Nev.*, 610 P.2d 182 (Nev. 1980); *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19 (N.J. 1980), *cert. denied*, 449 U.S. 1131 (1981).

(2) That the Episcopal Church is a hierarchical church in which dioceses and parishes accede to the Constitution and Canons of the Episcopal Church and are subject to the authority of the Church's General Convention. See, e.g., *Dixon v. Edwards*, 290 F.3d 699, 715-716 (4th Cir. 2002); *Episcopal Church Cases*, 198 P.3d at 71, 79-80; *Diocese of Rochester v. Harnish*, 899 N.E.2d at 920; *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d at 1285-86; *New v. Kroeger*, 167 Cal.App.4th 800, 84 Cal.Rptr.3d 464 (2008); *Episcopal Diocese of Mass. v. DeVine*, 797 N.E.2d at 918-919; *Protestant Episcopal Church v. Graves*, 417 A.2d at 21, 24; *Daniel v. Wray*, 580 S.E.2d at 714, 718; *Bennison v. Sharp*, 329 N.W.2d at 472-473; *Tea*, 610 P.2d at 183-184; *In re Church of St. James the Less*, 2003 Phila. Ct. Com. Pl. LEXIS 91 (Pa. Comm. Ct. 2003), *aff'd*, 833 A.2d 319, *aff'd in pertinent part*, 888 A.2d 795 (Pa. 2005).²

(3) That once an individual decides to leave The Episcopal Church he or she can no longer hold offices within or act on behalf of an Episcopal Church entity, and that attempts to amend bylaw and articles of incorporation in contravention of the Episcopal Church's Constitution and Canons are null and void. *New v. Kroeger*, 167 Cal.App.4th at 819-820, 84 Cal.Rptr.3d 464 (“We conclude that (1) . . . defendants lacked the power and

² Defendants' motion repeatedly asks the court to take “judicial notice” that the Episcopal Church is not hierarchical, as supposedly evidenced by their own erroneous characterization of certain Church constitutional or canonical provisions. This would plainly be improper. As will be evident from undisputed evidence in this case, and as the cases just cited have unanimously affirmed, The Episcopal Church in fact is hierarchical. There are no judicial decisions holding to the contrary.


authority to amend the bylaws and articles of incorporation of the Parish corporation to make it part of the Anglican Church, and their actions in this regard are a legal nullity; [and] (2) by taking the actions they did defendants were no longer a part of the Episcopal Church and could not be the lawful directors” of the parish corporation.); *Graves*, 417 A.2d at 24-25 (the “individual defendants have disaffiliated themselves from The Protestant Episcopal Church and thereby automatically terminated their eligibility to hold office as Wardens and Vestrymen of [the parish].”). See also *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific*, 230 Cal.App.3d 480, 505-506, 81 Cal.Rptr. 396 (1991) (amendments to religious corporation’s bylaws by church official who had “renounced the jurisdiction of [the denomination] over him and persuaded his followers to vote to leave” the denomination were “immaterial” because official and his followers thereby had “in effect, renounced their membership in the plaintiff nonprofit corporation”). *Cf.* Texas cases cited at pp. 4-5, *supra*.

CONCLUSION

IV.

Plaintiffs are seeking declarations that have to do with secular matters such as who can use the name, seal, and other intellectual property of the Episcopal Diocese, including the name of the Diocesan Corporation; who is entitled to the use and control of real and personal property of the Dioceses, including property held by the Diocesan Corporation; and who controls the Diocesan Corporation or other assets of the Diocese. This Court has subject matter jurisdiction over these issues, and can resolve them as other courts across the nation have done.

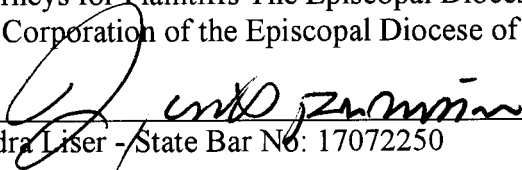
WHEREFORE, premises considered, Plaintiffs pray that upon hearing the Court deny Defendants' Motion to Dismiss.


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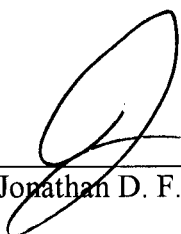
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Certificate of Service

This is to certify that a true and correct copy of the foregoing Response to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction has been sent this 16th day of June, 2009, by Certified Mail, Return Receipt Requested to:

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