

THE EPISCOPAL CHURCH, et al.	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
FRANKLIN SALAZAR, et al.,	§	141ST JUDICIAL DISTRICT
	§	

**OBJECTIONS TO FORM OF SUMMARY JUDGMENT ORDERS**

Defendants object to the form of the Summary Judgment Orders signed by the Court on January 21, 2011 for the reasons set forth below. Defendants request that the Court postpone the effective date of these orders until the disposition of appeals, or alternatively until a final judgment in this Court.

FILED  
 TARRANT COUNTY  
 THOMAS A. WILDER  
 DISTRICT CLERK  
 2011 JAN 25 PM 2:45

**Equitable Reasons for Postponing Enforcement**

1. **Preserving the status quo.** Pending appeal, the Court should preserve the status quo. During the entire pendency of this action, both parties have conducted their own worship services, hired and paid their own staff, retained their own administrative offices, and sponsored their own websites. By the very nature of the church property at issue, it is not going anywhere. In their summary judgment, Plaintiffs presented no evidence that any of these properties were being neglected or falling into disrepair. Since filing suit in April 14, 2009, the Plaintiffs have never asserted that they would suffer any injury (much less irreparable injury) if relief was not granted before final disposition of this case.

2. **Defendants' irreparable injury if property must be surrendered in 60 days.** Defendants will suffer irreparable injury if this

Court's order for the Defendants to "surrender all Diocesan property" to the Plaintiffs is later reversed on appeal. By way of example:

- The Plaintiffs deposed 57 ministers of Defendant congregations in 2010 (see attachment A), and declared that they "shall be deprived of the right to exercise the gifts and spiritual authority of God's word and sacraments." If parishes are immediately transferred to the Plaintiffs, these pastors may not be allowed to minister at these churches pending appeal. Due to the number, it is unclear how TEC can replace them all.
- Parishioners loyal to Bishop Iker may do what parishioners loyal to TEC did in 2008: leave. The Defendant parishes have about 5,600 people in average Sunday attendance; those attending Plaintiff congregations number only a fraction of that amount. The effects of the Court's interim orders on church buildings, budgets, and bank notes could be catastrophic.
- Even if they don't leave, parishioners may stop giving because they do not want to place offerings in TEC's hands. This again could have catastrophic effects on scores of pastors, staff, and families who depend on these gifts for food, clothing, and shelter. How can such hardships be undone if the appellate courts decide the summary judgment orders here were a mistake?
- In many churches, there is **no one** loyal to TEC. For example, in their First Amended Original Plea in Intervention filed on November 2010, the Plaintiffs listed the names of loyal "representatives" for 12 churches, but listed 34 additional churches as to which **nobody** appears to have been willing to be a loyal representative for TEC. Who will occupy these churches? What will happen to their condition if they are abandoned?
- At least 13 families affiliated with the Defendants live in homes owned by the Corporation. As these ministers and staff are no longer recognized by TEC, the Court's orders appear to allow the Plaintiffs to evict them.
- Almost 200 employees, spouses, and children of ministers and staff are covered by a group insurance policy. If a significant number of these are no longer employed by a local church, their insurance and perhaps that of the entire group may lapse.
- The property here includes schools where classes are ongoing. Surrendering these schools immediately is likely to cause losses of both students and teachers, losses that may be unrecoverable if these orders are reversed after these people are enrolled or employed elsewhere.

- The bishops and staff of both sides must move out of their current administrative offices into new ones, a move that will have to be repeated if the summary judgment orders are reversed.
- Defendants will have to relinquish personal property owned by the Diocese or Corporation, such as autos, cell phones, office equipment and supplies, computers, and the like without any promise by the Plaintiffs to pay future rentals or invoices related to them, and which can be replaced only by incurring substantial extra expenses.
- Vendors and creditors have relied on the Corporation's books and records regarding which directors are authorized to promise repayment. By unsettling who that might be, the Court's orders will make it difficult for either side to secure credit until all appeals are concluded and it is finally decided who the authorized directors are.

3. **Balancing the equities.** Injunctions have effects on people, property, and the community. "A court sitting in equity today must consider those effects by balancing the equities before issuing any injunction." *Schneider Nat. Carriers, Inc. v. Bates*, 147 S.W.3d 264, 287 (Tex. 2004). In this case, equity does not support interim delivery of these properties to TEC, which undeniably paid nothing for them. As to the parishioners who did pay for these properties, in most cases involving substantial numbers wishing to remain with TEC, the Plaintiffs already enjoy either sole possession or shared use of parish property. Thus, most properties are already in the use and control of those who paid for them. The primary impact of the Court's interim order will be to transfer use of these properties from those who paid for them to those who didn't. As postponement will cause no additional harm to the Plaintiffs but will cause substantial additional harm to Defendants, the Court sitting in equity should postpone the effective date of its surrender order.

4. **Defendants will not holdover if appeals are unsuccessful.** If the appellate courts finally determine that Plaintiffs are entitled to all the property at issue herein, it has always been the Defendants' intention to comply with such a final order (as presumably the Plaintiffs will too). Injunctive relief is thus not only unnecessary but unwarranted, as the Plaintiffs have an adequate remedy at law in their action for declaratory relief. *See Town of Palm Valley v. Johnson*, 87 S.W.3d 110, 111 (Tex. 2001) (holding permanent injunction requires showing of irreparable injury).

### **Legal Reasons for Postponing Enforcement**

5. **The TEC order.** The decretal portion of the TEC order states:

The Court hereby ORDERS the Defendants to surrender all Diocesan property, as well as control of the Diocesan Corporation, to the Diocesan plaintiffs and to provide an accounting of all Diocesan assets within 60 days of this Order.

The Court hereby ORDERS the Defendants not to hold themselves out as leaders of the Diocese.

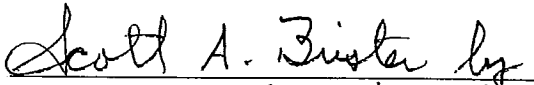
6. **The orders are interlocutory.** Numerous issues remain pending, and will take time to resolve. The Plaintiffs have asserted tort claims for conversion, use of trade-names, breach of fiduciary duty, trespass to try title, quiet title, damages, and attorney's fees, none of which were included in their summary judgment motions. While some of these might be amenable to a second round of motions, others (like damages or reasonable attorney's fees) must be tried to a jury. Currently nothing has been set for trial, and local rules require 75-days' notice of an initial setting.

7. **The TEC order is a temporary injunction.** Because the TEC order requires surrender of property before final judgment, it is a temporary injunction. *Qwest Commc'ns Corp. v. AT & T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000) (“Because the trial court's order places restrictions on Qwest and is made effective immediately so that it operates during the pendency of the suit, it functions as a temporary injunction.”); *In re Johnson*, 961 SW2d 478, 480 n.1 (Tex. App.—Corpus Christi 1997, no writ) (treating partial summary judgment as temporary injunction because it granted “essentially injunctive relief.”)

8. **As a temporary injunction, the TEC order is void — and immediately appealable.** A temporary injunction order that does not set a bond or contain a trial setting “is subject to being declared void and dissolved.” *Qwest Commc'ns Corp.*, 24 S.W.3d at 337. It is also void if it does not “defin[e] the injury and describe[e] why it is irreparable.” *In re Office of Attorney General*, 257 S.W.3d 695, 697 (Tex. 2008). As the order here does none of these things, it is void and immediately appealable. Tex. Civ. Prac. & Rem. Code § 51.014(a)(4).

Respectfully submitted,

J. Shelby Sharpe  
State Bar No. 18123000  
SHARPE TILLMAN & MELTON  
6100 Western Place, Suite 1000  
Fort Worth, Texas 76107  
Telephone: (817) 338-4900  
Facsimile: (817) 332-6818

  
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Scott A. Brister *permission JAS*  
State Bar No. 00000024  
ANDREWS KURTH LLP  
111 Congress, Suite 1700  
Austin, Texas 78701  
(512) 320-9200  
(512) 320-9292 (fax)

ATTORNEYS FOR DEFENDANTS

**NOTICE OF HEARING**

The foregoing *Objections to Form of Summary Judgment Orders* has been set for oral hearing in the 141st District Court on Tuesday, February 1, 2011 at 10 a.m.

**CERTIFICATE OF CONFERENCE**

On January 25, 2011, opposing counsel notified me by email that they oppose the merits of this motion. Therefore it is presented to the Court for determination.

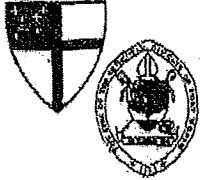
Scott A. Brister by  
Scott A. Brister permission *ASB*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of January, 2011, a true and correct copy of the foregoing *Objections to Form of Summary Judgment Orders* was forwarded to all counsel of record by facsimile.

Scott A. Brister by  
Scott A. Brister permission *ASB*

## ATTACHMENT A



## THE EPISCOPAL DIOCESE OF FORT WORTH

The Rt. Rev. C. Walls Ohl, Jr., *Provisional Bishop of Fort Worth*

February 15, 2010

To: The Presiding Bishop  
 The Bishops of the Episcopal Church  
 The Ecclesiastical Authorities of Dioceses without Bishops  
 The Secretary of the House of Bishops  
 The Secretary of the House of Deputies  
 The Recorder of Ordinations  
 The Church Deployment Office  
 The Church Pension Fund  
 The Clergy of the Episcopal Diocese of Fort Worth  
 The Vestries of Episcopal Diocese of Fort Worth  
 The Secretary of the Convention of the Episcopal Diocese of Fort Worth  
 The Standing Committee of the Episcopal Diocese of Fort Worth  
 Each of the Priests and Deacons the subject of this Notice of Deposition

**Notice of Deposition of Priests and Deacons  
 For Abandonment of Communion of The Episcopal Church**

On July 2, 2009, in accordance with the determination of the Standing Committee of the Episcopal Diocese of Fort Worth, the following Priests and Deacons were inhibited pursuant to the provisions of Title IV.10.1. The canonically required time of the inhibition having elapsed without reconciliation or renunciation, retraction, or denial as provided by Canon IV.10.2, I hereby adjudge and pronounce upon each of the following Priests and Deacons the Sentence of Deposition, pursuant to Canon IV.10.2.(i) and Canon IV.12.1.(d).(1).(iv), as a result of their having abandoned the Communion of The Episcopal Church:

The Rev. Dewayne M. Adams	The Rev. William R. Dickson
The Rev. H. Jay Atwood	The Rev. Jonathan Duncan
The Rev. J. Ronald Baker	The Rev. James A. Eanes
The Rev. Patricia A. Banks	The Rev. Lana K. Farley
The Rev. Canon William E. Blewett	The Rev. Randall Foster
The Rev. Andrew F.L. Bradley	The Rev. Roger Grist
The Very Rev. Christopher T. Cantrell	The Rev. Dennis W. Helbert
The Rev. Richard A. Cantrell	The Rev. Thomas E. Hightower
The Rev. William A. Crary	The Rev. Charles Hough IV
The Rev. Christopher Culpepper	The Rev. Cecil Dow James
The Rev. Sergio Diaz	The Rev. Stephen W. Jones

ATTACHMENT A

The Rev. Kingsley Obi Jon-Ubabuo  
 The Rev. John W. Jordan  
 The Rev. Terence N. Jordan  
 The Rev. Thomas B. Kennedy  
 The Rev. Dayid F. Klein  
 The Rev. Edward F. Kresowatty  
 The Rev. I. Javier Loyo  
 The Rev. Kenneth W. MacKenzie  
 The Rev. Timothy M. Matkin  
 The Rev. Sandra McCown  
 The Rev. Alan E. McGlauchlin  
 The Rev. George L. Milyor  
 The Rev. Robert O. Mitchell  
 The Rev. Chad Nusbaum  
 The Rev. Canon David E. Nyberg  
 The Rev. William E. O'Connell  
 The Rev. Jonathan Ogujiofor  
 The Rev. Vance C. Page

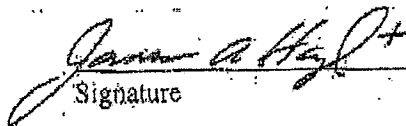
The Rev. Timothy P. Perkins  
 The Rev. John M. Phelps  
 The Rev. Darryl J. Pigeon  
 The Very Rev. Ryan S. Reed  
 The Rev. W. Ann Richards  
 The Rev. Zeke L. Rogers  
 The Rev. Stuart B. Smith  
 The Rev. Micah Snell  
 The Very Rev. Christopher C. Stainbrook  
 The Rev. Mark Stockstill  
 The Rev. S. Philip Swickard  
 The Rev. Louis L. Tebola  
 The Rev. Kerwin K. Wade  
 The Rev. Nancy S. Weaver  
 The Rev. Joshua Whitfield  
 The Very Rev. J. Scott Wilson  
 The Very Rev. Scott R. Wooten

I declare that from and after 12:01 a.m. on Tuesday, February 16, 2010 each of these Priests and Deacons shall be deprived of the right to exercise the gifts and spiritual authority of God's word and sacraments conferred at ordination in this Church.

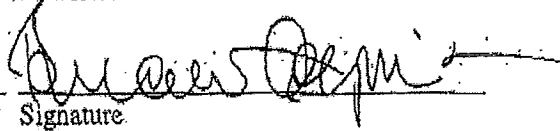


The Rt. Rev. C. Wallis Ohl,  
 Provisional Bishop  
 Episcopal Diocese of Fort Worth

Pronounced and declared in the presence of two Priests:

  
 Signature

James A. Hazel  
 Printed Name

  
 Signature

Bruce W. Cobbin  
 Printed Name