

NO. 18-0438

IN THE SUPREME COURT OF TEXAS

**THE EPISCOPAL DIOCESE
OF FORT WORTH**

v.

THE EPISCOPAL CHURCH

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

**RESPONSE TO CONDITIONAL
CROSS-PETITION FOR REVIEW**

Scott A. Brister – SBN 00000024 HUNTON ANDREWS KURTH LLP 111 Congress Ave., Ste. 510 Austin, TX 78701 Tel: (512) 542-5000 Fax: (512) 542-5049 <i>sbrister@andrewskurth.com</i>	Shelby Sharpe - SBN 18123000 SHARPE & RECTOR, P.C. 6100 Western Place, Ste. 1000 Fort Worth, TX 76107 Tel: (817) 338-4900 Fax: (817) 332-6818 <i>utlawman@aol.com</i>	R. David Weaver–SBN 21010875 WEAVER & WEAVER, PLLC 1601 E. Lamar Blvd., Ste. 102 Arlington, Texas 76011 Tel: 817-460-5900 Fax: 817-460-5908 <i>rdweaver@arlingtonlawfirm.com</i>
--	---	--

ATTORNEYS FOR PETITIONERS

TABLE OF CONTENTS

Introduction	1
Statement of Facts.....	3
Argument	4
I. The trust text requires affiliation with the Diocese, not TEC..	4
II. The alleged ecclesiastical issues are not in the trust text	12
III. Texas associations law does not override the text.....	17
Conclusion.....	21

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Brown v. Clark</i> , 116 S.W. 360 (Tex. 1909)	14
<i>De Zavala v. Daughters of the Republic of Tex.</i> 124 S.W. 160 (Tex. Civ. App. – Galveston 1909, writ ref’d)	8, 9
<i>Dist. Grand Lodge No. 25 v. Jones</i> , 160 S.W.2d 915 (Tex. 1942)	8
<i>Episcopal Church v. Salazar</i> , 547 S.W.3d 353 (Tex. App. – Fort Worth 2018, pet. filed)	1, 2, 18
<i>Episcopal Diocese of Fort Worth v. The Episcopal Church</i> , 422 S.W.3d 646 (Tex. 2013)	<i>passim</i>
<i>Gaines v. Farmer</i> , 119 S.W. 874 (Tex. Civ. App.—Texarkana 1909, writ dism’d)	20
<i>Hyundai Motor Co. v. Vasquez</i> , 189 S.W.3d 743 (Tex. 2006)	9
<i>Jones v. Maples</i> , 184 S.W.2d 844 (Tex. App.—Eastland 1944, writ ref’d)	8, 17, 19, 20
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979)	<i>passim</i>
<i>Matter of Marriage of I.C. & Q.C.</i> , 551 S.W.3d 119 (Tex. 2018)	6
<i>Masterson v. The Diocese of Nw. Tex.</i> , 422 S.W.3d 594 (Tex. 2013)	7, 14
<i>Meyers v. JDC/Firethorne, Ltd.</i> , 548 S.W.3d 477 (Tex. 2018)	16

<i>Ochsner v. Ochsner</i> , 517 S.W.3d 717 (Tex. 2016).....	16
<i>Serbian Eastern Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696 (1976)	9, 10

Statutes

TEX. BUS. ORGS. CODE § 1.002.....	8, 17
TEX. BUS. ORGS. CODE § 1.103.....	7
TEX. BUS. ORGS. CODE § 23.101(a)	17
TEX. BUS. ORGS. CODE § 23.110.....	17
TEX. BUS. ORGS. CODE § 252.017(b)	8, 17
TEX. PROP. CODE § 112.010.....	12
TEX. PROP. CODE § 112.051.....	12
TEX. PROP. CODE § 112.054(d).....	12
TEX. REV. CIV. STAT. art. 1396 – 70.01, § 7(a) (currently TEX. BUS. ORGS. CODE § 252.006(a))	7

Other Authorities

Act of March 6, 1899, 26th Leg., R.S., ch. 138, Art. 713a, 1899 TEX. GEN. LAWS 235, 236	17
TEXAS RULES OF FORM 132 (Texas Law Review Ass’n <i>et al.</i> eds., 13th ed. 2015).....	9

INTRODUCTION

In 2013, this Court ordered that Neutral Principles methodology should govern this case. See *Episcopal Diocese of Fort Worth v. The Episcopal Church*, 422 S.W.3d 646, 652 (Tex. 2013) (“EDFW”). Plaintiffs’ Conditional Cross-Petition is part of a persistent and dogged effort to avoid that mandate and make the Deference approach govern it instead. Perhaps Plaintiffs see no other choice: the trial court found that under neutral principles of Texas property, trust, and business organizations law, Plaintiffs lose and Defendants win (39CR14026). The court of appeals did not find otherwise; it simply deferred to the national church authorities. See *The Episcopal Church v. Salazar*, 547 S.W.3d 353, 435 (Tex. App. – Fort Worth 2018, pet. filed) (“Salazar”).

The Cross-Petition never addresses the text of the only valid trust here. That text requires affiliation with the Convention of the Episcopal Diocese of Fort Worth (“the Diocese”), and only the Defendant congregations meet that condition (39CR14026-¶3). Plaintiffs’ Cross-Petition instead asserts that *affiliation alone* with The Episcopal Church (“TEC”) grants that church a perpetual right to

decide who uses all church property *no matter what* the legal documents say. *See Cross-Pet. at 2-7*. That is not the Neutral Principles method or Texas law. By imposing such a trust anyway, the court of appeals (at least the lone justice who signed an opinion) effectively enforced the so-called “Dennis Canon,” an alleged trust this Court held was revocable,¹ and that even the court of appeals held was unenforceable on state law grounds.²

As the U.S. Supreme Court said in *Jones v. Wolf*, the “peculiar genius” of Neutral Principles methodology is that it combines *flexibility* and *neutrality*, allowing churches to decide “what is to happen to church property in the event of a particular contingency” by stating the result they desire “in some legally cognizable form.”³ The court below ignored the valid trust in the text of the governing church documents, and judicially imposed an invalid one by deferring to TEC. This Court should correct that error.

¹ *See EDFW*, 422 S.W.3d at 653; *see also 29CR10169-¶7, 17CR6202-§18.4* (Diocese’s revocation of Dennis Canon).

² *See Salazar*, 547 S.W.3d at 424 (declaring Dennis Canon invalid since not signed by property owner).

³ 443 U.S. 595, 603, 606 (1979).

STATEMENT OF FACTS

As in Plaintiffs' Cross-Petition, Defendants incorporate by reference the Statement of Facts in their own Petition for Review.

SUMMARY OF ARGUMENT

The Cross-Petition never addresses the actual trust text. That text reserves use of church property for congregations in union with the Convention of the Diocese. The Plaintiffs have not been in union with that Convention since they walked out in 2008.

The Cross-Petition rewrites the trust to reserve property for congregations affiliated with TEC. Under Texas trust law, courts cannot rewrite trusts like this. Without this unwarranted revision of the trust, there are no doctrinal issues requiring courts to defer to TEC.

Texas associations law also does not support rewriting the trust text. Like trust law, the law of unincorporated associations looks to the governing documents of an association to decide who controls its property. The Diocese's governing documents place beneficial title and use in congregations affiliated with the local Diocese, not TEC .

ARGUMENT

I. The trust text requires affiliation with the Diocese, not TEC

The primary defect in the Cross-Petition is that it never considers the trust text. Not once. Despite 8,000 words in two briefs filed so far in this Court, Plaintiffs' never quote the text a single time.

Instead, they once again urge the Court to adopt the Deference approach and allow TEC to decide who wins. *Cross-Pet. at xxiii-xxiv*; 2-7. Under the Deference approach, the only thing that matters is the decision of a church's governing authority.⁴ But under the Neutral Principles approach, the text of a trust is what counts.⁵

Since inception in 1982, the Diocese's Constitution and Canons have provided that the "Corporation of the Episcopal Diocese of Fort Worth shall hold real property acquired for the use of a particular Parish or Mission in trust for the use and benefit of such Parish or Mission."⁶ The proper nouns "Parish" and "Mission" are defined in

⁴ See *EDFW*, 422 S.W.3d at 650.

⁵ See *id.*

⁶ 17CR6102 (1982); 17CR6175 (2006); 17CR6254 (2008); see also 17CR6120 (1982); 17CR6201 (2006); 17CR6279 (2008).

those charters as congregations in union with the local Convention:⁷

CANON 31

CORPORATIONS

Sec. 31.1 Any Parish, Mission or Diocesan Institution which desires to organize a corporation to use in connection with the administration of its affairs may do so upon compliance with the following requirements.

(a) If organized by a Parish or Mission, any such corporation shall be merely an adjunct or instrumentality of such Parish or Mission; the Parish or Mission itself, ***being the body in union with Convention***, shall not be incorporated.

This is the only definition of “Parish” and “Mission” in the Diocese’s charters, and it defines them as unincorporated associations *in union with Convention*. The “Convention” is the governing body of the Diocese, as stated both in its own Constitution,⁸ and in TEC’s Canons.⁹ Parishes and Missions “in union with [the] Convention” are

⁷ 17CR6144 (1982), 17CR6216 (2006), 17CR6294 (2008).

⁸ 17CR6242-43 (providing “The Diocese of Fort Worth entrusts its legislation to a Convention,” and providing for annual meetings).

⁹ 12CR4420 (“**Convention** shall mean the governing body or assembly of a Diocese by whatever name it is styled in that Diocese.”).

those entitled to send delegates to that Convention.¹⁰ Any congregation that does *not* send delegates is *not* in union with it, and is *not* a beneficiary entitled to use the disputed properties. These have been the rules for decades, and no court can rewrite them.¹¹

Deciding which delegates attended the Convention is not an ecclesiastical question – it is a matter of record. Excerpts from the Convention Journals in the appellate record list delegates in attendance for the six years between the filing of this suit and the trial court’s summary judgment (39CR13813-24). No Plaintiffs appear in those lists; they attended a separate convention created for their own minority group.¹²

Plaintiffs never mention the Diocese’s Convention in their briefs. Instead, they say the courts must defer to TEC’s identification of the representatives of the Diocese and the Convention regardless of what the Convention’s records show. *Cross-Pet. at 3-4*. This Court rejected

¹⁰ 2008 (17CR6242, 17CR6249, 17CR6262); 1982 (17CR6091, 17CR6098, 17CR6108).

¹¹ See, e.g., *Matter of Marriage of I.C. & Q.C.*, 551 S.W.3d 119, 124 (Tex. 2018).

¹² Compare 20CR7019 (Plaintiffs’ convention) with 29CR10466 (Defendants’ Convention).

precisely that argument in 2013, holding that the entity (or “faction”) entitled to these properties should be decided by Neutral Principles of state law,¹³ as authorized by the U.S. Supreme Court in *Jones v. Wolf*.¹⁴ Texas courts must apply state law “to issues such as land titles, trusts, and corporate formation, governance, and dissolution, even when religious entities are involved.”¹⁵ Since the trust beneficiaries can be determined from the Diocese’s charters and the Convention’s records, Texas courts do not defer to TEC’s opinion on the beneficiaries.

The Diocese is “a legal entity separate from its members,”¹⁶ and is governed by Texas law.¹⁷ Texas courts identify the representatives

¹³ See *EDFW*, 422 S.W.3d at 651 (holding that Texas courts should utilize Neutral Principles methodology “in determining which faction of a religious organization is entitled to the property when the organization splits.”).

¹⁴ See *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (“The only question presented by this case is which faction of the formerly united Vineville congregation is entitled to possess and enjoy the property There can be little doubt about the general authority of civil courts to resolve this question.”).

¹⁵ *Masterson v. The Diocese of Northwest Tex.*, 422 S.W.3d 594, 606 (Tex. 2013).

¹⁶ See TEX. REV. CIV. STAT. art. 1396–70.01, § 7(a) (currently TEX. BUS. ORGS. CODE § 252.006(a)).

¹⁷ See *id.*; see also TEX. BUS. ORGS. CODE § 1.103 (stating Texas law governs internal affairs of entities formed in Texas). The Diocese is an unincorporated association formed and operating in Texas for 35 years (29CR10168–¶4; 17CR6086-6153).

of an unincorporated association by looking to its constitution and bylaws: “the constitution and by-laws of a voluntary association, whether incorporated or not, are controlling as to its internal management.”¹⁸ The Texas Business Organizations Code codifies this rule, declaring an organization’s “governing authority” is the “person or group of persons who are entitled to manage and direct the affairs of an entity under this code and the *governing documents of the entity*.”¹⁹ The legal officers of an association, church-affiliated or not, are those designated by its governing documents – and no one else.

For decades, Texas courts have analyzed organizational documents to decide which officers could control its property. For example, in *De Zavala v. Daughters of the Republic of Texas*, this Court decided which faction of a legal entity had custody of the Alamo by analyzing the governing documents to determine who could call,

¹⁸ See *Dist. Grand Lodge No. 25 v. Jones*, 160 S.W.2d 915, 922 (Tex. 1942); see also *Jones v. Maples*, 184 S.W.2d 844, 847-48 (Tex. App.—Eastland 1944, writ ref’d) (holding that unincorporated cemetery association “has the right that its funds be paid out only on the order of the president and be paid by check of the treasurer, as provided in the constitution and by-laws.”).

¹⁹ See TEX. BUS. ORGS. CODE § 1.002(35)(A) (emphasis added); see also *id.* at §252.017(b) (providing that the foregoing definition applies to unincorporated nonprofit associations).

preside over, and adjourn its convention.²⁰ The majority of members in *De Zavala* voted to adjourn the convention and left, after which a minority remained behind and purported to elect new officers and call a new convention.²¹ The court of appeals determined the convention had been properly adjourned according to its constitution, so the rump convention held by the minority was a “separate and independent” organization that was not entitled to the property because they were not the proper officers of the original organization.²² This Court adopted that opinion by refusing the writ,²³ and that rule has not been overruled or modified in the 100 years since.

Applying the same rules of law here, identifying the officers of the Diocese and its Convention is neither doctrinal nor difficult.²⁴ The

²⁰ See 124 S.W. 160, 166 (Tex. Civ. App. – Galveston 1909, writ ref’d).

²¹ See *id.* at 163-64.

²² See *id.* at 164, 166.

²³ See TEXAS RULES OF FORM 132 (Texas Law Review Ass’n *et al.* eds., 13th ed. 2015); *cf. Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 754 n. 52 (Tex. 2006) (stating the pre-1927 refusal was during “an amorphous time in our writ practice”).

²⁴ That distinguishes this case from *Serbian Eastern Orthodox Diocese v. Milivojevich*, a case decided three years before *Jones v. Wolf* authorized Neutral Principles. See 426 U.S. 696 (1976). In *Milivojevich*, the “basic dispute” was control

Convention is governed by majority vote (17CR6169, 17CR6097), which U.S. Supreme Court has held is “consistent with both the neutral-principles analysis and the First Amendment” and “generally can be identified without resolving any question of religious doctrine or polity.”²⁵ Plaintiffs’ minority faction was too small to make the Convention do as they wished.²⁶ So when they walked out, they did not take the Convention with them. And when they called a new convention, it was not the Convention of *the Diocese* because only *existing* officers of the Diocese can call a Convention (17CR6244). The journal of Plaintiffs’ “special convention” admitted they had not complied with “the procedures in the diocesan constitution and canons” (20CR7028). Since only the Defendants were elected representatives in accordance with the Convention’s governing rules, they are the only officers of the Diocese and the Convention

of the church itself; *see id.* at 698; that the ruling bishop also controlled property was an “incidental effect” of deciding who controlled the church itself, *see id.* at 720.

²⁵ 443 U.S. at 607.

²⁶ 29CR10170-¶9 (citing 29CR10331 & 29CR10344 (2007 vote on Amendment D) and 29CR10397 & 29CR10430 (2008 vote on Amendment to Article I)).

(29CR10169-72), and the Defendant congregations are the only ones in union with the “Convention” as required by the trust.

The trust text governs all 121 deeds in the trial court’s summary judgment order (39CR14028-45). That includes 35 older deeds in which the Bishop of Dallas originally took title in trust “for the use and benefit of the Protestant Episcopal Church, within the territorial limits of what is now known as the said Diocese of Dallas” (*e.g.*, 11CR3980). The Dallas bishop was the only “Ecclesiastical Authority” of the Protestant Episcopal Church²⁷ in the Dallas region (12CR4420), and had “sole authority” to decide who used each church property (33CR11806-§XIII(2)). So that trust benefitted neither the local parishes in Dallas nor TEC; the only beneficiary was the Dallas Diocese and whoever the Dallas bishop designated.

But when the Dallas Diocese divided, the Dallas bishop became the Bishop of the Fort Worth Diocese (17CR5994-¶12). He, the Diocese, and the Diocese’s congregations — all affiliated with TEC at the time — modified the trust so the beneficiaries became the local congregations

²⁷ The official name of TEC (12CR4250).

in union with the Convention. *See Pet. at 9-19; Reply on Pet. at 7-8.* That modification, authorized by Texas trust law,²⁸ means the older deeds were replaced by the one in the Diocese's charters 35 years ago.

The First Amendment does not require deference to religious authorities "where no issue of doctrinal controversy is involved."²⁹ Identifying the congregations in union with the Convention does not require the Court to decide any doctrinal controversies, and thus is governed Neutral Principles of state law. As Plaintiffs' congregations concede they are not in union with the Convention, they are not beneficiaries of the property trust in its charters.

II. The alleged ecclesiastical issues are not in the trust text

In an attempt to create an ecclesiastical issue that would oust Texas law and Texas courts, Plaintiffs propose two substitutes to replace the actual text of the trust.

First, Plaintiffs propose to substitute affiliation with TEC for affiliation with the Convention. Since the Parishes and Missions that

²⁸ *See* TEX. PROP. CODE §§ 112.010; 112.051; 112.054(d).

²⁹ *Jones v. Wolf*, 443 U.S. 595, 605 (1979).

are beneficiaries of the trust were affiliated with TEC in the past and TEC doesn't recognize disaffiliation, Plaintiffs claim the beneficiaries must still be the ones affiliated with TEC. *Cross-Pet. at 2-8*. That might be relevant if the trust text required affiliation with TEC ... but it does not. The text requires affiliation only with the Convention, so affiliation with TEC is irrelevant.

The Convention made this abundantly clear 30 years ago, long before this dispute arose. In 1989, the Convention of the Diocese amended its Canons to state expressly that affiliation with TEC plays no part in the express trust in its charters:

Property held by the Corporation for the use of a Parish, Mission or Diocesan School belongs beneficially to such Parish, Mission or Diocesan School only. *No adverse claim to such beneficial interest by the Corporation, by the Diocese, or by The Episcopal Church of the United States of America is acknowledged, but rather is expressly denied.*³⁰

Switching the trust from affiliation with the Convention to affiliation with TEC would simply re-write the Diocese's charters, changing the trust that all parties agreed to long ago.

³⁰ 17CR6202 (emphasis added).

Plaintiffs claim the Defendants conceded in a U.S. Supreme Court brief that the identity of the Diocese here is an ecclesiastical question. *Cross-Pet. at 4*. That brief said the identity of the church in *Brown v. Clark* was an ecclesiastical matter *in that case*, since ownership turned on whether conflicting confessions of faith barred the merger of two denominations.³¹ (This Court made the same observation of *Brown* in 2013.)³² But in the same brief, Defendants' plainly said the issue *in this case* was not doctrinal: "*Jones [v. Wolf]* simply recognized that in many cases—**like this one**—no issue of doctrinal controversy is involved."³³ It is disingenuous, perhaps even dishonest, for Plaintiffs to claim Defendants conceded the question here is doctrinal, as they have known for almost 10 years that Defendants' position is the opposite.

³¹ See 116 S.W. 360, 365 (Tex. 1909).

³² See *Masterson v. The Diocese of Northwest Tex.*, 422 S.W.3d 594, 605 (Tex. 2013) ("It is true that in *Brown* the Court determined it lacked jurisdiction over the ecclesiastical questions of whether the doctrines of the two general churches were dissimilar and whether their merger was proper. But it did not simply defer to the ecclesiastical authorities with regard to the property dispute").

³³ *1SCR144* (emphasis added); see also *1SCR145* (noting Plaintiffs' petition in the U.S. Supreme Court "does not allege that this property dispute will require the state court to interpret religious concepts or referee religious controversies in any relevant legal documents.").

Second, Plaintiffs propose to replace the trust text with shorthand references to it interspersed in the 15,000-page record.

Specifically, they claim:

- all parties agree the trust is for congregations “that existed before the parties’ current dispute,” or “that have been using them for 32 years,” *Cross-Pet. at 2*; and
- the property issues here “can be resolved only by deciding who are the Episcopal Diocese and Congregations of The Episcopal Church,” *Cross-Pet. at 4*.

No text in any valid trust says any of this. The congregations using these properties for 32 years did so because they were in union with the Convention; if they no longer are, prior use does not change the express terms of the trust. Nor does affiliation with “an Episcopal Diocese” or TEC matter, since the text requires affiliation with the Convention. Shorthand references to the text cannot replace the text itself: “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.”³⁴

³⁴ *Ochsner v. Ochsner*, 517 S.W.3d 717, 721 (Tex. 2016) (quoting ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 56 (2012)).

It is not enough that Plaintiffs volunteer to inject a doctrinal dispute into this case. Neutral Principles requires deference to church authority only when “the interpretation of the instruments of ownership would **require** the civil court to resolve a religious controversy.”³⁵ That does not include extraneous religious disputes gratuitously insinuated to avoid Neutral Principles. In construing a legal document, civil courts “must take special care to scrutinize the document in purely secular terms,” and cannot “rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust.”³⁶ State law governs this dispute *regardless* of whether dioceses can ecclesiastically withdraw; the Court cannot decide that question in the abstract as it cannot and will not resolve the property controversy before the Court.³⁷

³⁵ *Jones v. Wolf*, 443 U.S. at 604 (emphasis added).

³⁶ *See id.*

³⁷ *See Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 484-85 (Tex. 2018).

III. Texas associations law does not override the text

Plaintiffs' Cross-Petition claims they would still win even if TEC were considered a social club rather than a church. *Cross-Pet. at 8*. But Texas associations law generally defers to what an association's legal documents say.³⁸ Nothing in those documents here says that TEC can decide who uses these church properties— properties for which it never paid a dime (30CR10530-31-¶¶5 & 7). While all parties agree the two sides no longer have any *ecclesiastical* relationship, the question here is which one has a *legal* relationship to these properties.

The primary mistake underlying Plaintiffs' claims about Texas associations law is that they are all based on cases applying a nineteenth-century statute governing "Grand Lodges" like the Masons, Knights Templar, and Order of Odd Fellows.³⁹ Since 1899, that statute has provided that the "grand body" inherits all property if a local chapter is wound up.⁴⁰ Plaintiffs mislead the Court by claiming

³⁸ See *Jones v. Maples*, 184 S.W.2d 844, 847-48 (Tex. App.—Eastland 1944, writ ref'd); see also TEX. BUS. ORGS. CODE §§ 1.002(36)(A) & 252.017(b).

³⁹ See TEX. BUS. ORGS. CODE § 23.101(a).

⁴⁰ See *id.* § 23.110; Act of March 6, 1899, 26th Leg., R.S., ch. 138, Art. 713a, 1899 TEX. GEN. LAWS 235, 236.

Defendants agree this is a general rule, using ellipses to change the meaning of the following sentence from one of Defendants' briefs: "From 1899 till today, Texas statutes have required subordinate chapters of ~~Grand Lodges, Masons, and other ...~~ benevolent societies to forfeit all property to 'the grand body' upon termination." *Cross-Pet. at 14*. Defendants' made this statement in a section of a brief entitled "Churches are not governed by the statute for Grand Lodges and Masons" (35CR12607). By actively concealing that context, the Cross-Petition is plainly misleading.

As even the court of appeals recognized, a law favoring national grand lodges at the expense of local affiliates *could not* apply to churches, since the purpose (strengthening the national organization) "would clearly violate the establishment clause" if applied to churches.⁴¹ Absent that crutch, the Cross-Petition cites nothing but commentary by TEC's adherents to support a "default rule" or "public policy" that "a middle tier cannot remove local chapters," or that

⁴¹ See *Salazar*, 547 S.W.3d at 414 (quoting Patty Gerstenblith, *Civil Court Resolution of Property Disputes Among Religious Organizations*, 39 AM. U. L. REV. 513, 570-71 (1990)).

lower tiers forfeit property upon disaffiliation. *Cross-Pet. at 13-15*. Texas law governing associations looks to their charters to decide property disputes; the Cross-Petition stubbornly avoids that text.

Plaintiffs claim that since TEC is hierarchical, Texas law requires that affiliates of a “larger organization” are bound by its orders, and cannot “secede” with any property. *See Cross-Pet. at 8-12*. There is no such law. Neutral Principles requires that courts give effect to the property rules chosen by a church, but only if “embodied in some legally cognizable form.”⁴² The only legally valid form here is the express trust requiring union with the Convention.

Plaintiffs claim that under Texas associations law, the courts generally “will not interfere with the internal management of a voluntary association.” *Cross-Pet. at 11*. But this rule does not apply when “civil or property rights are involved.”⁴³ In *Jones v. Maples*, a

⁴² *See Jones v. Wolf*, 443 U.S. 595, 606 (1979) (“[C]ivil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.”).

⁴³ *Jones v. Maples*, 184 S.W.2d at 847 (quoting 7 C.J.S., ASSOCIATIONS, p. 79, § 34); *Gaines v. Farmer*, 119 S.W. 874, 877 (Tex. Civ. App.—Texarkana 1909, writ dism’d) (“civil courts will not interfere with the internal operations of such associations ... except for the purpose of protecting some civil or property right”).

Texas court intervened in an unincorporated association's business to determine who should control its funds, and this Court adopted that order by refusing the writ.⁴⁴ Courts do not leave disputes about money and property in limbo just because a club is involved.

Nor does Texas law impose on associations any inflexible rule about when they can disaffiliate. Plaintiffs claim that "for centuries" it has "been recognized" that TEC does not permit disaffiliation. *Cross-Pet. at 10*. This overlooks a lot of history, since TEC itself withdrew from the Church of England, which had withdrawn from Rome – both times with no church property left behind. TEC has no rule permitting or prohibiting withdrawal, which is why Plaintiffs cite commentaries rather than rules. *Cross-Pet. at 10*. TEC can make up its own rules when it comes to those who attend ecclesiastical conventions or ordain clergy; but to claim property, it must point to documents in some legally cognizable form.

The Plaintiffs' appeals to short-sighted history, truncated quotations, and the opinions of its administrators illustrates why

⁴⁴ See *Jones v. Maples*, 184 S.W.2d at 848.

virtually all states have adopted Neutral Principles methodology: it “relies exclusively on objective, well-established concepts of trust and property law” and “promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.”⁴⁵ Texas associations law treats the text of an association’s charters as dispositive; Plaintiffs have avoided engaging with that text here.

CONCLUSION

The only question in this appeal is whether a Texas legal entity can lose its property to a minority faction that withdraws from it. As this Court approved in the *Daughters of the Republic* case, the answer to that must be found in the governing organizational documents and state law. The trust text here requires affiliation with the local Convention, not with TEC. Under Neutral Principles methodology that text counts, and Texas courts do not defer to a church’s interpretation of what the text of this trust plainly says. Forfeiting property due to prior affiliation has no more place in Texas than guilt by association.

⁴⁵ *Jones v. Wolf*, 443 U.S. at 603.

Had this Court intended to defer to TEC to designate the “true” officers of the Diocese and Corporation, it could have done that five years ago.⁴⁶ Surely the Court expected more action and fewer words than the court of appeals expended here. It is a waste of everyone’s time and money that Plaintiffs keep resorting to Deference when this Court rejected it five years ago. Virtually every state now recognizes the Neutral Principles approach – it is time for TEC to do the same.

⁴⁶ See *EDFW*, 422 S.W.3d at 652.

Respectfully submitted,

By: /s/ Scott A. Brister

Scott A. Brister - SBN 00000024
HUNTON ANDREWS KURTH LLP
111 Congress Ave., Suite 510
Austin, TX 78701
Phone: 512-542-5000
Fax: 512-542-5049
sbrister@andrewskurth.com

J. Shelby Sharpe - SBN 18123000
SHARPE & RECTOR, P.C.
6100 Western Place, Suite 1000
Fort Worth, Texas 76107
Phone: 817-338-4900
Fax: 817-332-6818
utlawman@aol.com

R. David Weaver - SBN 21010875
WEAVER & WEAVER, PLLC
1601 E. Lamar Blvd., Suite 102
Arlington, Texas 76011
Phone: 817-460-5900
Phone: 817-460-5908
rdweaver@arlingtonlawfirm.com

ATTORNEYS FOR PETITIONERS

CERTIFICATE OF COMPLIANCE

I certify that this Response to Conditional Cross-Petition for Review contains 4,187 words as calculated per Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure.

/s/ Scott A. Brister
Scott A. Brister

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Response to Conditional Cross-Petition for Review was served on the following counsel of record via electronic transmission on November 21, 2018:

William D. Sims, Jr.
Thomas S. Leatherbury
Vinson & Elkins LLP
2001 Ross Avenue, Suite 3700
Dallas, TX 75201
bsims@velaw.com
tleatherbury@velaw.com

Frank Hill
Frank Gilstrap
Hill Gilstrap, P.C.
1400 W. Abram Street
Arlington, TX 76013-1705
fhill@hillgilstrap.com
fgilstrap@hillgilstrap.com

Sandra Liser
Naman Howell Smith Lee, PLLC
Fort Worth Club Building
306 West 7th Street, Suite 405
Fort Worth, Texas 76102-4911
sliser@namanhowell.com

Kathleen Wells
P.O. Box 101174
Fort Worth, Texas 76185-0174
Kathleen@kwellslaw.com

Jonathan D.F. Nelson
Jonathan D.F. Nelson, P.C.
1400 W. Abram Street
Arlington, TX 76013-1705
jnelson@hillgilstrap.com

Mary E. Kostel
The Episcopal Church
c/o Goodwin | Procter LLP
901 New York Ave., N.W.
Washington, D.C. 20001
mkostel@goodwinprocter.com

David Booth Beers
Goodwin | Procter LLP
901 New York Ave., N.W.
Washington, D.C. 20001
dbeers@goodwinprocter.com

/s/ Scott A. Brister

Scott A. Brister