

DISTRICT COURT, EL PASO COUNTY,
COLORADO
Court Address: 270 S. Tejon (80903), P.O. Box 2980
Colorado Springs, CO 80901
Phone Number: (719) 448-7577

Plaintiff and Counterclaim Defendant:
GRACE CHURCH & ST. STEPHEN'S, a Colorado
nonprofit corporation,

v.

Defendants and Counterclaimants:
THE BISHOP AND DIOCESE OF COLORADO, a
Colorado nonprofit corporation, and THE EPISCOPAL
CHURCH,

and

Third Party Counterclaimants:
THE DIOCESE OF COLORADO IN THE EPISCOPAL
CHURCH; GRACE AND ST. STEPHEN'S
EPISCOPAL CHURCH; and GRACE CHURCH AND
ST. STEPHEN'S, a Colorado religious society and
corporation,

v.

Counterclaim Defendants:
REV. DONALD ARMSTRONG III; CHARLES C.
BROWN; DARELEEN SCHAFFER; JON
WROBLEWSKI; MARGE GOSS; CRAIG WHITNEY;
ROBERT C. BALINK; CHAD FRIESE; MICHAEL
BARBER; KEITH STAMPHER; JASON HUNTLEY;
EMILY KLINE; RIP HOLLISTER; JACK GLORIOD;
EDWIN J. MONTGOMERY, JR.; KEVIN DIBBLE;
SUSAN SPENCER; ALAN CRIPPEN II; ST.
STEPHEN'S CLASSICAL ACADEMY, a Colorado
nonprofit corporation; and GRACE CHURCH & ST.
STEPHEN'S, a Colorado unincorporated nonprofit
association.

Additional Counterclaim Defendant
Rt. Rev. Robert J. O'Neill

Attorneys for The Episcopal Church
Brent E. Rychener, Atty. Reg. # 15372

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Case No. 2007CV1971

Div.: COM5

Holme Roberts & Owen LLP
90 South Cascade Ave., Suite 1300
Colorado Springs, CO 80903-1615
Phone: (719) 381-8400
Fax: (719) 633-1518
E-mail: Brent.Rychener@hro.com

Of counsel:
Heather H. Anderson
Adam M. Chud
Goodwin Procter LLP
901 New York Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 346-4000
Fax: (202) 346-4444
Email: handerson@goodwinprocter.com
achud@goodwinprocter.com

TRIAL BRIEF OF THE EPISCOPAL CHURCH

The central issue in this case is whether a majority of the former vestry members of Grace Church and St. Stephen's – an Episcopal parish that has been a constituent part of the Episcopal Church and the Episcopal Diocese of Colorado (the "Diocese") since the 1800s – are permitted to leave the Episcopal Church and the Diocese and join another religious denomination, while taking property that has been acquired and maintained by generations of faithful Episcopalians, to the exclusion of Grace Episcopal Church's remaining faithful Episcopal vestry and members. Colorado authorities and the Episcopal Church's clearly-expressed rules confirm that the answer to this question is "no." *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85 (Colo. 1986). See also other authority involving the Episcopal Church, including *Episcopal Church Cases*, No. S155094, 2009 Cal. LEXIS 1 (Cal. S. Ct. Jan. 5, 2009); *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340, 2008 N.Y. LEXIS 3296 (N.Y. Ct. App. Oct. 23, 2008); *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005); *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, 250 A.D.2d 282 (N.Y. App. Div. 1999); *Smith v. Church of the Good Shepherd*, No. 04CC-000864 (Cir. Ct. St. Louis County, Mo. Oct. 12, 2004); *Huber v. Jackson*, No. BC351287 (Super. Ct. Los Angeles County, Ca. July 25, 2007 Judgment); *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 417 A.2d 19 (N.J. 1980); *Tea v. Protestant Episcopal Church in the Diocese of Nevada*, 610 P.2d 182 (Nev. 1980); *Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal Church in the Diocese of Connecticut*, 620 A.2d 1280 (Conn. 1993); *Bennison v. Sharp*, 329 N.W.2d 466 (Mich. Ct. App. 1982).

As set forth below, the key facts in this case are undisputed.¹ The organization and governance of the Episcopal Church, which is consistently described and established by countless judicial decisions including *Mote* and the other cases cited above, will be similarly established by the witnesses and documentary evidence, including the Church's Constitution and Canons. Both sides' evidence will also show that Grace Church and St. Stephen's was formed as a constituent part, a "parish," of the Episcopal Church; that it committed to accede to the Episcopal Church's and the Diocese's Constitution and Canons; and that although in recent years it may have violated certain provisions of the Church's or the Diocese's Canons on occasion, it remained an active, constituent part of the Church, subject to the Church's and the Diocese's rules and authority.

The undisputed evidence will further show that the Church's and the Diocese's

¹ On February 22, 2008, the Episcopal Church filed a motion for summary judgment in recognition of this fact. The defendants cross-moved for summary judgment on March 11, 2008. The Court has not heard argument or entered an order on those motions. This Court indicated on May 13, 2008, in the context of other motions filed by the plaintiffs and the Diocese, that it appeared that there were many factual issues in dispute. As shown below, however, those issues that are disputed are issues of law, not fact. The Episcopal Church continues to believe that this case can and should be resolved as a matter of law, without the necessity of a lengthy trial.

Constitutions and Canons contain numerous provisions, including those relied upon in *Mote*, that restrict the use and control of parish property and protect it for the work and ministry of the Episcopal Church and its Diocese. Most specifically, Episcopal Church Canon I.7(4) provides:

“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 in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitutions and Canons.”

Finally, the undisputed evidence will show that the Diocese of Colorado has deposed the former rector of Grace Church and St. Stephen’s and removed him from the ministry of the Episcopal Church, and that despite the departure of many individuals, Grace Church and St. Stephen’s Episcopal Parish continues as an active, constituent part of the Episcopal Church and the Diocese of Colorado, albeit one that has been temporarily dispossessed of its real and personal property by virtue of the actions of plaintiff and the counterclaim defendants.

The Colorado Supreme Court’s ruling in *Mote*; the nationwide authority involving property disputes between a hierarchical church and dissenting members of a local congregation (including the recent decisions involving the Episcopal Church issued by the highest courts of California, New York, and Pennsylvania); neutral principles of Colorado law governing voluntary associations and charitable trusts; and the requirements of the First Amendment all show that, as Episcopal Church Canon I.7(4) states, the property held by or for Grace Episcopal Church is “held in trust for [the Episcopal] Church and the Diocese [of Colorado].”

Further, the Colorado Court of Appeals’ ruling in *Levitt* held that the decisions of a hierarchical religious denomination concerning the composition of its own leadership and membership is “non-reviewable” by a civil court. *Levitt v. Calvary Temple of Denver*, 33 P.3d 1227, 1230 (Colo. App. Ct. 2001). Here, the Bishop of the Diocese has determined that plaintiff

is not the parish entitled to possess and control the property at issue, while the members of the continuing Episcopal parish are entitled to the property.

In the face of the facts described above and the overwhelming authority refuting their position, plaintiffs have principally relied upon a set of articles of incorporation that Grace Church & St. Stephen's filed in 1973, which do not specifically mention the Episcopal Church or the Diocese of Colorado. Plaintiffs are expected to proffer a variety of arguments to the effect that all property of Grace Church and St. Stephen's Episcopal Parish transferred to this 1973 corporation, and that the vanilla terms of those articles defeats the rationale and the result otherwise dictated by *Mote* and all of the other authority discussed herein. It does not.

Neither *Mote* nor any other applicable authority requires that a property restriction or agreement to abide by denominational authority be explicitly stated in a local church's currently-effective articles of incorporation to be enforced. That Grace Church and St. Stephen's remained a parish of the Episcopal Church and subject to its Constitution and Canons after 1973 is indisputable, in the light of Grace Church and St. Stephen's bylaws, adopted in 1974, which state that the bylaws were "adopted to provide for the proper government of the Church, subject to the General Canons of the National Church, and the Canons of the Diocese of the State of Colorado," as well as by Grace Church and St. Stephen's conduct over the subsequent 35 years. Thus, the issues related to the 1973 corporation are a red herring. As set forth below, the Episcopal Church and the Diocese of Colorado are entitled to judgment as a matter of law in this case regardless of that corporation's legal status. For numerous reasons detailed by the Diocesan Defendants, the 1973 Corporation is not currently valid and/or holds none of the property in dispute. *In fact, however, the Court need not reach or resolve those issues.*

Similarly, plaintiff is expected to argue that Grace Church and St. Stephen's has differed

with the Diocese on various issues over the years, and that there thus is no “unity of purpose” sufficient to demonstrate a trust restriction on the parish property. Again, however, the existence of occasional – or even persistent – differences of opinion on various issues is irrelevant. It is indisputable that Grace Church and St. Stephen’s was formed and has existed only as a constituent parish of the Episcopal Church and its Diocese, pursuant to rules which expressly state that all parish property is “held in trust for the Episcopal Church and the Diocese,” and that the Parish may hold and control the property only “so long as [it] remains a part of, and subject to, this Church and its Constitution and Canons.” Episcopal Church Canon I.7(4); see also Diocesan Canon 14.7(#1) (if “a parish ceases to accede” to the Episcopal Church’s or the Diocese’s Constitution and Canons, the Diocese “may dissolve the parish,” in which case title to the parish property reverts to the Diocese). Grace Church and St. Stephen’s is bound by these express rules, regardless of whether its views were always in perfect accord with those of its Bishop or Diocese.

EVIDENCE TO BE PRESENTED AT TRIAL

I. The Episcopal Church and the Diocese of Colorado

The evidence summarized below is already in the record in this case, and is expected to be presented again at trial. As indicated above, both sides’ witnesses and evidence are expected to support and confirm these facts.

A. The Episcopal Church’s Structure

The Episcopal Church is a religious denomination with three democratically-elected levels of organization. See Expert Report of Dr. Robert Bruce Mullin (Oct. 20, 2008) (“Mullin Report”) ¶¶ 13-27. See also, *e.g.*, *Episcopal Church Cases*, No. S155094, 2009 Cal. LEXIS 1, Slip Op. at 3. The Episcopal Church’s governing body is called the “General Convention,” which is comprised of a House of Bishops, consisting of most of the bishops of the Episcopal

Church, and a House of Deputies, consisting of elected clergy and laypersons representing each of the Episcopal Church's 111 geographically-defined "dioceses." Mullin Report ¶¶ 14, 21. The Episcopal Church's governing documents, adopted and amended from time to time by the General Convention, are its Constitution and Canons, which are binding on the Episcopal Church's two subordinate tiers. *Id.* ¶ 14.

The next level of the Episcopal Church's organization and governance is its dioceses, including the Diocese of Colorado. *Id.* ¶ 21. The governing legislative body of each diocese is its "Annual Convention." *Id.* ¶ 22. The ecclesiastical and administrative head of each diocese is its Diocesan Bishop, who is assisted by and on certain matters shares leadership authority with an elected body of clergy and laity called the "Standing Committee." Diocese of Colorado Constitution Arts. II, IV; Colorado Canon 6.

The most basic organizational units within the Episcopal Church are the local congregations, primarily "parishes." Mullin Report ¶ 25. The Episcopal Church's Canons leave the "ascertainment and defining of the boundaries of existing Parishes ... as well as the establishment of a new Parish or Congregation, ... to the action of the several Diocesan Conventions." National Canon I.13(2). Thus, the Canons of each diocese set forth the exclusive means to establish a parish within that diocese or to change a parish's status once formed.

In the Diocese of Colorado, "[e]very parish in this diocese shall be organized from a mission," Canon 14(1), which missions are governed by "the Ecclesiastical Authority" of the Diocese. Canon 13(3). The Ecclesiastical Authority has sole discretion whether to grant a mission status as a parish. Canon 13(7). Once formed, every parish is to be "incorporated under the laws of the State of Colorado as a non-profit corporation," with "articles of incorporation [that] accede to the Constitution and Canons for the Government of the Episcopal Church and to

these canons and the constitution of this diocese” Canon 14(1).

Colorado Canon 14.7(#1) further provides that if “a parish ceases to accede to the Constitution and Canons for the Government of the Episcopal Church or to the ... [diocesan] canons and the constitution of ... [the] diocese, the Ecclesiastical Authority ... may dissolve the parish,” in which case “[t]itle to all real and personal property of the dissolved parish shall revert automatically and immediately to the Bishop and Diocese of Colorado.”

The ecclesiastical and administrative head of each parish is its “rector,” who must be an ordained priest of the Episcopal Church. Mullin Report ¶ 27. The governing body of a parish is called its “vestry,” and is comprised of the rector and elected lay members of the parish. *Id.* ¶ 26. As a condition of ordination, all clergy are required to subscribe to a “Declaration of Conformity,” which affirms that the clergy member will “conform to the Doctrine, Discipline, and Worship of the Episcopal Church.” Episcopal Church Const. Art. VIII. Vestry members are similarly required to “well and faithfully perform the duties of their office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.” Episcopal Church Canon I.17(8).

B. The Episcopal Church’s and the Diocese’s Rules Governing Property

The Episcopal Church’s policy and practice requires that parish property be held and used only for the mission of the Episcopal Church, and not diverted to other purposes. Over the years, the Episcopal Church and the Diocese have adopted several Canons that reflect this understanding.

National Canon II.6(1), adopted in 1871, requires that consecrated real property (that is, parish property dedicated for worship and other ministry) be “secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons.” National Canon II.6(2), adopted in 1868, further subjects the holding

and use of parish property to the oversight of the diocese, and states:

“It shall not be lawful for any Vestry, Trustees, or other body, authorized by laws of any State or Territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.”

National Canon III.9(5)(a)(2), enacted in 1904, provides that it is the ordained Episcopal rector of each parish who is at all times entitled to use and control the parish property “for the purpose of the office,” subject to and consistent with the Episcopal Church’s Book of Common Prayer, the Church’s Constitution and Canons, and the direction of the diocesan bishop under National Canon III.9(5)(a)(1).

National Canon I.7(3), adopted in 1940, likewise prohibits parishes from encumbering or alienating real property without the consent of the diocese, and states:

“No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part, except under such regulations as may be prescribed by Canon of the Diocese.”

Similarly, Colorado Canon 14.4 states:

“No parish shall alienate or encumber any real property or incur any indebtedness secured by such real property except with the written consent of the Ecclesiastical Authority and the Diocesan Standing Committee.”

As noted above, Colorado Canon 14.7(#1) also provides for a reversionary interest in the Diocese, and states that if “a parish ceases to accede to the Constitution and Canons for the government of the Episcopal Church or to the ... [diocesan] canons and the constitution of ... [the] diocese, the Ecclesiastical Authority ... may dissolve the parish,” in which case “[t]itle to all real and personal property of the dissolved parish shall revert automatically and immediately to the Bishop and Diocese of Colorado.”

Some of these are the very same provisions that the Colorado Supreme Court relied upon in *Mote* to hold that Episcopal parish property is held in trust for the general Church.

After the dispute in *Mote* arose, the Episcopal Church further confirmed its longstanding interest in parish property in 1979, when, in response to the U.S. Supreme Court's invitation in *Jones v. Wolf*, the General Convention adopted Canon I.7(4). Royce Expert Report at 3-4.

National Canon I.7(4) provides:

“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 in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitutions and Canons.”

II. Grace Episcopal Church

A. History

In 1865, the Episcopal Church's General Convention created several Missionary Dioceses, one of which was the Missionary Diocese of Colorado. Mullin Supplemental Expert Report (Dec. 31, 2008) at ¶ 2; *1865 Journal of General Convention*, at 127, 201, 207 (Diocese Exh. H-2).² Grace Church Mission was established by the Missionary Diocese of Colorado in 1873, and later became an Episcopal parish. Mullin Supplemental Expert Report at ¶¶ 2-3; *Episcopal Church in Colorado 1860-1963*, at 65 (Diocese Exh. B-2). In its May 1874 affidavit of incorporation, Grace Church stated that it was organized as “a Parish in connexion with the Protestant Episcopal Church in the United States and the Territory of Colorado.” Diocese Exh. J.

² With the exception of certain expert reports submitted pursuant to Rule 26(a)(2), all references to Exhibits in this Trial Brief are references to the like-numbered Exhibits filed by the parties in support of their summary judgment briefs. The Court has copies of all such documents. Additional copies will be provided if the Court requests them.

At the 1887 Annual Convention of the Missionary Diocese of Colorado, the members of the Convention – including the representative from Grace Church – voted to petition the General Convention of the Episcopal Church for the establishment of the Diocese of Colorado. Mullin Supplemental Expert Report at ¶ 9; *Journal of the Primary Council of Colorado*, at 15-17 (Diocese Exh. B-3). This petition was approved by General Convention, and the current Diocese of Colorado was established. *Id.*

In 1893, several parishioners of Grace Church formed a new and separate Episcopal parish, St. Stephen's. Mullin Supplemental Expert Report at ¶ 10; Mary Louise Perkins, *A House Not Made With Hands: A Century of the Episcopal Faith in Colorado Springs, Colorado, 1872-1972*, at 10-13 (1972) (Diocese Exh. B-1). In 1923, the parish of Grace Church and the parish of St. Stephen's reunited and chose the name Grace Church and St. Stephen's. Mullin Supplemental Expert Report at ¶ 11; Diocese Exh. B-1, at 24-25.

Later in 1923, the reunited parish incorporated under Colorado law pursuant to an Affidavit of Incorporation which stated that the corporation “does hereby expressly accede to all the provisions of the constitution and canons adopted by the General Convention of the Protestant Episcopal Church in the United States of America, and to all of the provisions of the constitution and canons of the Diocese of Colorado.” Diocese Exh. K. The Affidavit also stated that Grace Church and St. Stephen's was incorporated “to administer the temporalities of the Protestant Episcopal Church in the United States of America in the parish and to carry on and conduct religious, educational and benevolent institutions and works.” *Id.* See also Mullin Supplemental Expert Report at ¶ 12.

In 1929, the property held by Grace Church and St. Stephen's was consecrated by an Episcopal Bishop according to the *Book of Common Prayer*. At that time, the Rector, Wardens,

and Vestry of Grace Church and St. Stephen's executed an "Instrument of Donation" in which they agreed to "relinquish all claim to any right of disposing of the said building, without due consent given by the Ecclesiastical Authority of the Diocese, according to the Canons of the said Diocese, or allowing the use of it in any way inconsistent with the terms and true meaning of this Instrument of Donation, and with the Form of Consecration hereby requested of the Bishop." Mullin Supplemental Expert Report at ¶ 13; Plaintiffs' Exh. K.

In 1973, three priests of "Grace Church & St. Stephen's" filed another set of corporate articles, which stated that the purpose of the corporation was to be a "Church, a non-profit organization whose members desire to know, to serve and to worship God." Plaintiffs' Exhibit A. In 1974, the Parish adopted "By Laws governing the parish of Grace Church and St. Stephen's," which stated that the parish had originally been incorporated in 1923, and specified that the bylaws were "adopted to provide for the proper government of the Church, subject to the General Canons of the National Church, and the Canons of the Diocese of the State of Colorado." Diocese Exh. C-5.

Since its creation as an Episcopal parish, Grace Church and St. Stephen's has actively participated in the life of the Diocese of Colorado and the Episcopal Church, subject to their Constitutions and Canons. Plaintiffs are expected to present evidence that, in recent years, Grace Church and St. Stephen's occasionally violated certain provisions of the Episcopal Church's or the Diocese's Constitution and Canons. The Diocese's handling of those issues is an internal ecclesiastical issue with which the courts may not interfere. Moreover, these occasional violations are immaterial here. The fact is that Grace Church and St. Stephen's continued to be an Episcopal parish both before and after 1973, including by sending delegates to the Diocesan Convention each year, sending delegates to the Episcopal Church's General Convention, sending

members to serve on boards and committees of the Episcopal Church and the Diocese, and hosting Diocesan Conventions in 1941, 1953, 1974, and 1994. See Woodward Aff. ¶ 22. Grace Church and St. Stephen's annually filed with the Bishop of the Diocese the parochial reports that each parish is required to file (Affidavit of Bishop Robert J. O'Neill ¶¶ 6-7 (Diocese Exh. D)), and sought and received consent of the Diocese to alienate and encumber real property in 1958, 1984, and 1989. See O'Neill Aff. ¶¶ 24, 110, 138, 143.

B. The Current Dispute

On December 27, 2006, the Bishop of the Diocese of Colorado, Bishop Robert O'Neill, temporarily inhibited the Rev. Donald Armstrong, then the Rector of Grace Episcopal Church, prohibiting him from acting as an Episcopal priest or entering the grounds of Grace Episcopal Church. See O'Neill Aff. ¶ 21.

On March 26, 2007, nine of ten members of the vestry of Grace Episcopal Church voted to leave the Episcopal Church and affiliate with a religious denomination associated with the Anglican Church of Nigeria, operating under the name Convocation of Anglicans in North America (or "CANAN"). Affidavit of Robert McJimsey ¶¶ 16-17 (Diocese Exh. P); Diocese Exh. P-13.

On March 28, 2007, over 100 remaining Episcopal members of Grace Episcopal Church met with Bishop of O'Neill. Affidavit of Timothy Fuller ¶ 15 (Diocese Exh. C). During that meeting, Bishop O'Neill recognized that Robert McJimsey was the sole remaining Vestry member of Grace Episcopal Church. O'Neill Aff. ¶ 38; McJimsey Aff. ¶ 21.

On April 11, 2007, acting pursuant to the bylaws of Grace Episcopal Church, Mr. McJimsey, as the lone remaining Vestry member, appointed five individuals to fill vacant positions on the Vestry (this Vestry and its successors are hereafter referred to as the "McJimsey Vestry"). McJimsey Aff. ¶ 23. Bishop O'Neill and the Standing Committee of the Diocese of

Colorado recognize the McJimsey Vestry as Grace Episcopal Church's proper Vestry. O'Neill Aff. ¶ 43.

On or about October 31, 2007, following an ecclesiastical trial, Bishop O'Neill deposed Father Armstrong from his ministry as an Episcopal priest. See Exhibit A hereto (Notice of Deposition and Notice of Sentence of Deposition). Bishop O'Neill also appointed the Rev. Michael O'Donnell to serve as priest in charge of Grace Church and St. Stephen's Episcopal Church. See Second Affidavit of Bishop O'Neill ¶ 16 (Diocese Exh. AD).

THE APPLICABLE LAW

On the facts set forth above, the Episcopal Church and the Diocese prevail in this case as a matter of law.

I. COLORADO'S "NEUTRAL PRINCIPLES OF LAW" ANALYSIS GOVERNING CHURCH PROPERTY DISPUTES CONFIRMS THAT THE PROPERTY OF GRACE CHURCH AND ST. STEPHEN'S IS HELD FOR THE MISSION OF THE EPISCOPAL CHURCH AND THE DIOCESE.

A. The United States Constitution Requires that Church Polity and Rules be Respected in the Context of Civil Litigation.

Church property disputes implicate the First Amendment to the U.S. Constitution, which, through the Fourteenth Amendment, prohibits states from enacting "laws respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amends. I, XIV. The prohibition against deciding religious matters does not, however, preclude a civil court from resolving disputes over church property. *Jones v. Wolf*, 443 U.S. 595, 602 (1979). In order to resolve such disputes while respecting constitutional principles, "the [First] Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by ... a hierarchical church organization." *Id.* See also *Mote*, 716 P.2d at 91 ("the first amendment prohibits civil courts from resolving church property disputes by inquiring into and resolving disputed issues of religious doctrine and practice").

In *Watson v. Jones*, 80 U.S. 679 (1871), the Supreme Court first held that, in accordance with the law generally applicable to voluntary associations, the polity and locus of authority established by a particular denomination would be dispositive in civil litigation involving an issue that the church itself had resolved: “[W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.” *Id.* at 727. Following *Watson*, many state courts adopted what became known as the “principle of government” or “hierarchical” approach to deciding church property disputes, under which, in the case of a hierarchical church, trial courts are instructed to look simply to the larger church’s determinations affecting the resolution of the dispute.³

In a series of later cases, the United States Supreme Court held that the “hierarchical” approach as developed by the various state courts was not the only constitutionally permissible way to analyze a church property dispute. Thus, in *Jones v. Wolf*, the Court approved a particular “neutral principles of law” approach, under which courts could examine the deeds to property, governing documents of the local church, governing instruments of the general church, and applicable state statutes to determine whether property held by a local church is held, and must be used, for the mission of the denomination. 443 U.S. at 602-03.

The Court continued to make clear, however, that the First Amendment requires civil courts to respect a hierarchical church’s determinations and rules, and to abstain “completely” from resolving “questions of religious doctrine, polity, and practice.” *Id.* Accordingly, in *Jones*,

³ See, e.g., *Seldon v. Singletary*, 326 S.E.2d 147, 149 (S.C. 1985) (“The outcome of this [church property] case is dependent upon the simple determination of whether this is or is not a hierarchical church.”).

the Court explained that the “neutral principles” analysis it was approving adequately protected Free Exercise rights under the First Amendment because:

“the outcome of a church property dispute is not foreordained. *At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property.* They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. *Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.... [T]he civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.*” *Id.* at 606 (emphasis added).

As the California Supreme Court recently explained in *Episcopal Church Cases*,

“[a]lthough [*Jones v. Wolf*] permitted the states to use the neutral principles approach, it also made clear that in applying that approach, state courts must neither become entangled in religious matters nor, especially important to the instant dispute, violate the First Amendment right to free exercise of religion Significantly, the [*Jones v. Wolf*] majority did not deny that free exercise rights require a secular court to defer to decisions made within a religious association when local churches have submitted themselves to the authority of that association. Rather, the majority argued that the neutral principles approach is consistent with this requirement.” Opinion at 20-21.

See also *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976) (reversing a ruling that had refused to heed a denomination’s determination affecting the control of property, because “[t]he [First] Amendment ... commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. This principle applies with equal force to church disputes over church polity and church administration.”) (citation and internal quotation marks omitted); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (religious organizations have the constitutional right “to decide for themselves, free from state interference, *matters of church government as well as those of faith and doctrine*”) (emphasis added).

B. As Confirmed by *Mote*, Under a “Neutral Principles of Law” Analysis, Episcopal Parish Property is Held in Trust for the Episcopal Church and the Diocese.

The Colorado Supreme Court has adopted the “neutral principles” analysis approved in *Jones v. Wolf* for property disputes such as this, in which the courts are to consider the deeds, state statutes, the local parish’s articles of incorporation and bylaws, and the constitution and canons of the general church and the relevant diocese. *Mote*, 716 P.2d at 103-04. Consistent with the constitutional limitations identified above, in its landmark property case involving the Episcopal Church, the Colorado Supreme Court made clear that in the Episcopal Church, local parish property is held for the mission of the Episcopal Church and the Diocese and cannot be unilaterally alienated from the Church through a majority vote of a local congregation. *Id.* at 108. The Episcopal Church’s position in this regard has only been strengthened since the dispute in *Mote* arose, with the adoption of National Canon I.7(4), and the issuance of several, more recent appellate decisions from other states, which expressly confirm that in the Episcopal Church,

“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 in which such Parish, Mission or Congregation is located”

In *Mote*, as here, the majority of the members of an Episcopal parish found itself at odds with the Diocese and the larger Church on various issues, and voted to leave the Episcopal Church. As here, the departing group sought to retain possession of property held by the Episcopal parish. *Id.* at 89. The Court thus faced the question whether that majority group, or the minority who wished to continue to worship on the property as an Episcopal church, was entitled to possess the property. *Id.* at 90. The Court applied the neutral principles analysis and held that the group that remained loyal to the Episcopal Church was entitled to possess the property. *Id.* at 96. Based on its consideration of the parish’s “articles of incorporation, the local church bylaws, and the canons of the general church,” the Court found that the parish

congregation held property in trust for the Episcopal Church and the Diocese. *Id.* at 104. It held that the parish's

“articles of incorporation and bylaws, along with relevant provisions in the canons of the general church, demonstrate a unity of purpose on the part of the parish and of the general church reflecting the intent that property held by the parish would be dedicated to and utilized for the advancement of the work of [the Episcopal Church]. These provisions foreclose the possibility of the withdrawal of property from the parish simply because a majority of the members of the parish decide to end their association with [the Episcopal Church]. We hold that the facts specifically found by the trial court or otherwise uncontroverted establish that a trust has been imposed upon the real and personal property of St. Mary's Church for the use of the general church.” *Id.* at 108.

The Colorado Supreme Court's ruling that property held by an Episcopal parish is held in trust for the Episcopal Church and the diocese of which the parish is a part is fully consistent with the great weight of authority nationwide considering this issue, including every such decision that has specifically considered the impact of Episcopal Church Canon I.7(4). Most recently, on January 6, 2009, the Supreme Court of California held in *Episcopal Church Cases* that the parish before it

“agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments. Those instruments make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church. Respect for the First Amendment free exercise rights of persons to enter into a religious association of their choice, as delineated in *Jones v. Wolf* ... requires civil courts to give effect to the provisions and agreement of that religious association.” Opinion at 25.

The Court also relied on “other Episcopal Church cases reaching similar conclusions,” including *Mote*, which although not binding on it, the California Supreme Court found “persuasive, especially in the aggregate.” *Id.* at 27. Thus, the Court “agreed with the Court of Appeal's conclusion ... that when defendants disaffiliated from the Episcopal Church, the local church property reverted to the general church.” *Id.* at 31.

Applying the same neutral principles factors approved in *Jones v. Wolf* and *Mote*, the

New York Court of Appeals also recently affirmed the granting of summary judgment in favor of the Episcopal Diocese of Rochester in a similar Church property dispute. In *Episcopal Diocese of Rochester v. Harnish*, the Court held that property of an Episcopal parish is held in trust for the benefit of the Diocese of Rochester and the Episcopal Church, “such that upon the parish’s separation from the Rochester Diocese its property reverted back to the Rochester Diocese or the National Church.” Slip Op. at 1-2. The court found “dispositive” Episcopal Church Canon I.7(4), which “clearly establish[es] an express trust in favor of the Rochester Diocese and the National Church.” The court also found that the parish had agreed to abide by the rules of the Church not just because its articles said so, but also by the very fact that it was a parish in union with the Church and the Diocese. Slip Op. at 10.

Other decisions involving Episcopal parishes have consistently reached the same result. See *In re Church of St. James the Less*, 888 A.2d 795, 810 (Pa. 2005) (Canon I.7(4) was enforceable where, as here, the parish had historically been subject to numerous national and diocesan canons restricting its control of property); *Episcopal Diocese of Mass. v. Devine*, 797 N.E.2d 916 (Mass. App. Ct. 2003); *Daniel v. Wray*, 580 S.E.2d 711, 719 (N.C. Ct. App. 2003) (“defendants, as the former vestry and clergy of St. Andrew’s, ‘accepted’ ... Canon I.7.4 as establishing a deed of trust in which the [parish] property would be held upon their resignation and withdrawal”); *Trustees of the Diocese of Albany v. Trinity Episcopal Church of Gloversville*, 250 A.D.2d 282, 288-89 (N.Y. App. Div. 1999) (local parish property is held in trust for the larger church, because “[b]y accepting the principles of the Protestant Episcopal Church and the Diocese, defendants [members of the local parish] were subject to their canons, rules and practices”); *Smith v. Church of the Good Shepherd*, No. 04CC-000864 (Cir. Ct. St. Louis County, Mo. Oct. 12, 2004) (under Canons 1.7(4) and (5), “a trust relationship was established in

the national [Episcopal] Church”); *Huber v. Jackson*, No. BC351287 (Super. Ct. Los Angeles County, Ca. July 25, 2007 Judgment) (property “held by or for the benefit of” parish was “held in trust for the Episcopal Church and the Diocese”); *Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 417 A.2d 19 (N.J. 1980); *Tea v. Protestant Episcopal Church in the Diocese of Nevada*, 610 P.2d 182 (Nev. 1980); *Rector, Wardens & Vestrymen of Trinity-St. Michael’s Parish, Inc. v. Episcopal Church in the Diocese of Connecticut*, 620 A.2d 1280 (Conn. 1993); *Bennison v. Sharp*, 329 N.W.2d 466 (Mich. Ct. App. 1982).⁴

C. This Authority Dictates the Result in This Case.

The sources on which the Court in *Mote* and the numerous other cases discussed above relied to hold that parish property was held in trust for the Episcopal Church and the Diocese require the same result here.

⁴ Decisions involving other denominations are in accord. See *Carnes v. Smith*, 222 S.E.2d 322, 324-25, 329 (Ga. 1976) (local Methodist congregation sought to leave the United Methodist Church and take church property; summary judgment granted in favor of the general church, because Methodist Book of Discipline made “clear that church property is held by local trustees for the benefit of the general Church”; cited in *Jones v. Wolf*, 443 U.S. at 600, as an example of the proper way to apply the neutral principles analysis); *Guardian Angel Polish National Catholic Church of Los Angeles, Inc. v. Grotnik*, 13 Cal. Rptr. 3d 552 (Cal. Ct. App. 2004) (property held by local parish of the Polish National Catholic Church held in trust for the national church, and “revert[ed] to the national church” if the parish did not conform to the church’s rules); *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific*, 281 Cal. Rptr. 396 (Cal. Ct. App. 1991) (as a matter of law, property held by local Presbyterian church “was held in trust for the use and benefit of” the national church); *Crumbley v. Solomon*, 254 S.E.2d 330, 332 (Ga. 1979) (Disciplinary Rule stating that the general church “shall hold all church property, regardless if all members [of a local church] vote to change the church to some other faith” sufficient to find a trust in local church property); *Cumberland Presbytery of the Synod of the Mid-West v. Branstetter*, 824 S.W.2d 417 (Ky. 1992) (relying on express trust provision of national church constitution in awarding property to general church body); *Shirley v. Christian Episcopal Methodist Church*, 748 So.2d 672, 677 (Miss. 1999) (enforcing a provision in that general church’s book of discipline that “titles to all property held by local churches are held in trust for CME”); *Brady v. Reiner*, 198 S.E.2d 812, 843 (W. Va. 1973) (property held in trust for general church where, among other things, the Book of Discipline “prescribe[d] that titles to the property held by trustees of a local church are held in trust for The United Methodist Church”); *Wisc. Conf. Bd. of Trustees of the United Methodist Church, Inc. v. Culver*, 614 N.W.2d 523, 528 (Wis. Ct. App. 2000) (provision of Book of Discipline stating that “titles to all properties held ... by a local church ... shall be held in trust for The United

(footnote continued on next page)

1. The deed. Here, as in *Mote* and most property dispute cases involving a hierarchical church, the deed reflects that the property at issue is titled in the name of the local Episcopal parish, which has incorporated under state law.

2. The Parish's Articles of Incorporation and Bylaws. The governing documents of Grace Church and St. Stephen's confirm that it has at all relevant times remained an Episcopal parish. The 1874 certificate of incorporation for Grace Church specified that it was organized as "a Parish in connexion with the Protestant Episcopal Church in the United States and the Territory of Colorado." Diocese Exh. J. The 1923 Affidavit of Incorporation of Grace Church and St. Stephen's similarly states that it was incorporated "to administer the temporalities of the Protestant Episcopal Church in the United States of America in the parish and to carry on and conduct religious, educational and benevolent institutions and works." Diocese Exh. K. Likewise, in *Mote*, the parish's affidavit of incorporation stated that it was incorporated to "administer the temporalities of the Protestant Episcopal Church in the Parish and to carry on and conduct religious, educational and benevolent institutions and works." *Id.* As in *Mote*, the 1923 Affidavit of Incorporation also states that the parish "expressly accede[s] to all the provisions of the constitution and canons adopted by the General Convention of the Protestant Episcopal Church in the United States of America, and to all of the provisions of the constitution and canons of the Diocese of Colorado." Diocese Exh. K.

In 1973, three priests of "Grace Church & St. Stephen's" filed what purported to be an additional set of articles, which stated that the corporation was a "Church, a non-profit organization whose members desire to know, to serve and to worship God." The validity and

Methodist Church . . ." served to "convert[] the local ownership of church property to ownership in trust for the benefit of the UMC").

status of these articles is disputed. In any event, these terms are perfectly consistent with Grace Church and St. Stephen's status as an Episcopal parish and did nothing to alter the parish's previous commitments and obligations in that regard, as the 1974 bylaws themselves irrefutably demonstrate. Grace Church and St. Stephen's adopted bylaws in 1974 specifically "to provide for the proper government of the Church, subject to the General Canons of the National Church, and the Canons of the Diocese of the State of Colorado." Diocese Exh. C-5.

3. The Episcopal Church and Diocesan Canons. The Court in *Mote* focused on the Episcopal Church Canons and the Colorado Canons in effect at the time that dispute arose (approximately 1976), and concluded that the Canons showed "the measure of control over local church property that is intended to be exercised by the general church." 716 P.2d at 105. The Episcopal Church Canons on which the Court relied in *Mote* are currently Episcopal Church Canon I.7.3⁵ (stating that local church property may not be "encumber[ed] or alienate[d] ... without the written consent of the Bishop and Standing Committee of the Diocese of which the [parish] is a part"); Episcopal Church Canon II.13.1 (providing that "[e]very Congregation of this Church shall belong to the Church in the Diocese in which its place of worship is situated"); and Episcopal Church Canon II.6.3 (providing that consecrated property cannot be "removed, taken down, or otherwise disposed of for any worldly or common use" absent the consent of "the Bishop, acting with the advice and consent of the Standing Committee of the Diocese"). 716 P.2d at 105-06.

The Court in *Mote* also identified several Colorado Canons that confirmed the Church and the Diocese's control over parish property. See, e.g., Colorado Canon 14.1 (formerly

⁵ Since *Mote* was decided, the Canons have been renumbered, but remain the same in substance.

reflected in Canons 17.3 and 17.8) (each parish must be incorporated with “articles of incorporation [that] accede to the Constitution and Canons for the Government of the Episcopal Church and to these canons and the constitution of this diocese and shall be approved by the Ecclesiastical Authority and by the chancellor or a vice-chancellor”); Colorado Canon 14.4 (formerly reflected in Canon 17.7) (“No parish shall alienate or encumber any real property or incur any indebtedness secured by such real property except with the written consent of the Ecclesiastical Authority and the Diocesan Standing Committee.”); Colorado Canons 14.7 (formerly reflected in Canon 18) (if the Diocese dissolves a parish, “[t]itle to all real and personal property of the dissolved parish shall revert automatically and immediately to the Bishop and Diocese of Colorado”). 716 P.2d at 106-07. All of these Canons dictate the same conclusion here as the Supreme Court reached in *Mote*.

In addition to those Canons specifically referenced in *Mote*, several other Episcopal Church Canons adopted both before and after *Mote* further evidence control by the Episcopal Church over property held by parishes. For example, Canon II.6.1, adopted in 1871, requires that consecrated parish property be “secured for ownership and use by a [parish] affiliated with this Church and subject to its Constitution and Canons.” Canon II.6.2, adopted in 1868, requires the consent of “the Bishop, acting with the advice and consent of the Standing Committee of the Diocese,” before dedicated or consecrated property can be encumbered or alienated. Canon III.9(5)(a)(2) provides that it is the ordained Episcopal rector of each parish who is at all times entitled to use and control parish property “for the purpose of ... [his or her] office,” subject to and consistent with the Episcopal Church’s *Book of Common Prayer*, the Episcopal Church’s Constitution and Canons, and the “pastoral direction” of the diocesan bishop under Canon III.9(5)(a)(1). And Canon I.17.8 requires that “[a]ny person accepting office in this Church shall

well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.”

Finally, as stated above, Canon I.7(4), adopted in 1979, explicitly affirms:

“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 in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitutions and Canons.”

The Episcopal Church adopted this “express trust” canon in response to the Supreme Court’s decision in *Jones v. Wolf*, which invited hierarchical denominations like the Episcopal Church to adopt such provisions in order to ensure that their rules and interests concerning local church property would be respected. 443 U.S. at 606. See *Episcopal Church Cases*, Slip Op. at 22.

For all of these reasons, the holding in *Mote* that property of an Episcopal parish was held in trust for the Episcopal Church and the Diocese applies with even greater force here. Plaintiff has tried to distinguish *Mote* on grounds that there, the Court found that there was a “unity of purpose” between the parish and the Episcopal Church that is lacking here. That is flat wrong. *Mote* identified the “unity of purpose” it referenced on the basis of the “articles of incorporation and bylaws, along with the relevant provisions in the canons of the General Church.” *Id.* at 108. Since it became an Episcopal parish in the 1870’s, Grace Church and St. Stephen’s has at all times had governing documents – Articles of Incorporation and/or by-laws – that confirmed that it was a parish subject to the Constitution and Canons of the Church, and it has at all times held itself out as an Episcopal parish and participated as a parish in the life of the Church and the Diocese. Moreover, as noted above, the Episcopal Church’s Canons now expressly state a trust restriction on parish property, by which Grace Church and St. Stephen’s is bound.

II. COLORADO LAW GOVERNING VOLUNTARY ASSOCIATIONS ALSO REQUIRES THAT THE CONSTITUTIONS AND CANONS OF THE EPISCOPAL CHURCH AND THE DIOCESE BE ENFORCED.

In *Mote*, the Supreme Court noted that “principles from the common and statutory law of ... voluntary associations might be the basis for a determination that a general church has a right, title or interest in the church property.” 716 P.2d at 101. See also *Watson v. Jones*, 80 U.S. at 724 (rights in church property may be determined “by the ordinary principles which govern voluntary associations”). Here, the result reached under the “neutral principles” analysis above, which was developed specifically for disputes involving church property, is also dictated by principles of law governing voluntary associations.

Under Colorado law, like that of most states, “[t]he relationship between a voluntary association and its members is a contractual one and, by joining such an organization, a member agrees to submit to its rules and regulations and assumes the obligations incident to membership.” *Jorgensen Realty, Inc. v. Box*, 701 P.2d 1256, 1257 (Colo. Ct. App. 1985); see also *Allander v. Carpenters Dist. Council of Denver*, 358 P.2d 8, 11 (Colo. 1960) (member of voluntary association “is not at liberty to disregard [its] constitution and by-laws, [or] ignore its lawful dictates”). Voluntary associations “may seek enforcement of their rules in the civil courts if a dispute involves property rights or is otherwise judicially cognizable.” *Golden Lodge No. 13 v. Grand Lodge of Independent Order of Odd Fellows*, 80 P.3d 857, 859 (Colo. Ct. App. 2003). Moreover, when a member leaves a voluntary association, it “lose[s] [its] rights to associat[ion] property, title to which stays in the members remaining in the association.” 7 C.J.S. Ass’ns § 44 (2004).

Golden Lodge involved a philanthropic fraternal organization consisting of three tiers – a supreme governing body, “grand lodges” that “preside over and govern local lodges in a particular geographic area,” and “local lodges ... which are chartered by their respective grand

lodges.” 80 P.3d at 858. The local lodge in question purchased property, but it later violated the organization’s rules, prompting the grand lodge to revoke the local lodge’s charter and notify it that “its property reverted to Grand Lodge.” *Id.* The court enforced the voluntary association’s rules concerning property, concluding that “[h]ere, it is undisputed that when a grand lodge arrests, suspends, or revokes a charter, the assets and records of the local lodge shall be taken by it, and if a local lodge becomes defunct, all real and personal property owned by it shall pass to and vest in the grand lodge.” *Id.* at 859-60.

By becoming a parish of the Episcopal Church, Grace Church and St. Stephen’s similarly agreed to abide by the rules of the Episcopal Church and the Diocese, including their rules governing the holding of property. Those rules are legally enforceable here just as they would be in any other case. See, *e.g.*, *Watson v. Jones*, 80 U.S. at 724; *St. James the Less*, 888 A.2d at 807-08; 66 Am. Jur 2d, Religious Societies § 19 (“The relations, rights, and obligations arising from membership in a religious society are to be determined according to the constitution, rules, or bylaws of the society, as well as by reference to the statutory provisions governing such religious bodies, because one who becomes a member of a church is presumed to have voluntarily submitted to all the known tenets of congregational discipline, with an implied consent to its government, and is bound by its laws, usages, customs, and principles.”).

III. NEUTRAL PRINCIPLES OF LAW GOVERNING CHARITABLE TRUSTS CONFIRM THAT GRACE CHURCH AND ST. STEPHEN’S PROPERTY IS HELD FOR THE MISSION OF THE EPISCOPAL CHURCH.

The result dictated here by Colorado’s “neutral principles of law” analysis developed for church property disputes, as well as the application of the law of voluntary associations, is also fully consistent with neutral principles of law governing charitable trusts.

In general, “assets of charitable corporations are deemed to be impressed with a charitable trust by virtue of the declaration of corporate purposes” and may not be diverted to

other uses, charitable or otherwise. *Am. Center for Ed., Inc. v. Cavnar*, 80 Cal. App. 3d 476, 486 (1978). See also *Blocker v. State*, 718 S.W.2d 409, 415 (Tex. Ct. App. 1986) (“[P]roperty transferred unconditionally to a [charitable] corporation ... is ... subject to implicit charitable ... limitations defined by the donee’s organizational purpose”); 4A Fratcher, *Scott on Trusts* § 348.1, at 8 (4th ed. 1989).

Grace Church and St. Stephen’s was created and has held itself out throughout its existence as an Episcopal ministry established for the purpose of furthering the Episcopal Church’s mission. It has formally documented its understanding that it could not use its property except to advance the mission of the Episcopal Church. See, e.g., Diocese Exh. K (1923 Affidavit of Incorporation stating that the corporation “does hereby expressly accede to all the provisions of the constitution and canons adopted by the General Convention of the Protestant Episcopal Church in the United States of America, and to all of the provisions of the constitution and canons of the Diocese of Colorado,” and was incorporated “to administer the temporalities of the Protestant Episcopal Church in the United States of America in the parish”); Plaintiffs’ Exh. K (1929 “Instrument of Donation” agreeing to “relinquish all claim to any right of disposing of the said building, without due consent given by the Ecclesiastical Authority of the Diocese, according to the Canons of the said Diocese, or allowing the use of it in any way inconsistent with the terms and true meaning of this Instrument of Donation, and with the Form of Consecration hereby requested of the Bishop”).

Consistent with these general principles, plaintiff and the counterclaim defendants cannot take property and charitable gifts received for use by this parish and divert them for some other purpose of their choosing. See *Episcopal Church Cases*, Slip Op. at 30-31 (“The only intent [regarding the charitable donations received by the Episcopal parish] a secular court can

effectively discern is that expressed in legally cognizable documents. In this case, those documents show that the local church agreed and intended to be part of a larger entity and to be bound by the rules and governing documents of that greater entity.”).

IV. THE INSTRUMENT OF DONATION IS AN ENFORCEABLE CONTRACT.

As discussed above, in 1929, an Episcopal Bishop consecrated the property held by Grace Church and St. Stephen’s. In connection with that consecration, the Rector, Wardens, and Vestry of Grace Church and St. Stephen’s executed an “Instrument of Donation” in which they agreed to “relinquish all claim to any right of disposing of the said building, without due consent given by the Ecclesiastical Authority of the Diocese, according to the Canons of the said Diocese, or allowing the use of it in any way inconsistent with the terms and true meaning of this Instrument of Donation, and with the Form of Consecration hereby requested of the Bishop.” Plaintiff’s Exh. K.

The Instrument of Donation is an enforceable contract. It is signed by the individuals making the donation. It was made in consideration of the Diocese agreeing to consecrate the property. See *Pierce v. St. Vrain Valley Sch. Dist.*, 981 P.2d 600, 603 (Colo. 1999) (an enforceable contract requires an agreement with consideration). The Court should enforce the Instrument of Donation, and rule that plaintiffs may not take the consecrated property at issue and put it to a use inconsistent with the Instrument of Donation, that is, to a use that is other than for the ministry and program of the Episcopal Church and the Diocese.

V. THE CONSTITUTION REQUIRES THE COURT TO DEFER TO THE DECISION OF THE DIOCESE AS TO THE IDENTITY OF THE PARISH AND ITS LEADERS.

Finally, as noted above, the Constitution requires that civil courts defer to the decisions of hierarchical churches regarding ecclesiastical questions. Applicable authority establishes beyond question that the identity of the members and leaders of a local congregation of a hierarchical

church is a core ecclesiastical issue, into which the civil courts may not intrude.

In *Levitt v. Calvary Temple of Denver*, 33 P.3d 1227 (Colo. App. Ct. 2001), the Calvary Temple of Denver expelled a member who sought access to its financial records. *Id.* at 1228. The court held that the expulsion was “non-reviewable,” because “a civil court simply has no authority to reverse” a church’s membership decision. *Id.* at 1230 (citing *Milivojevich*). This conclusion is fully consistent with authority from around the country. See *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929); *Korean United Presbyterian Church of Los Angeles v. Presbytery of the Pacific*, 281 Cal. Rptr. 396 (Cal. App. Ct. 1991); *Episcopal Church In the Diocese of Fla., Inc. v. Lebhar*, No. 16-2006-CA-002361 (Fla. Cir. Ct., Apr. 27, 2007); *St. Mark’s Coptic Orthodox Church v. Tanios*, 572 N.E.2d 283, 291-92 (Ill. App. Ct. 1991); *Episcopal Diocese of Mass. v. Devine*, 797 N.E.2d 916 (Mass. Ct. App. 2003); *Alexander v. Allen*, 2005 WL 3369884 (Tex. Ct. App. 2005).

Here, the Bishop of the Diocese has determined that certain individuals (the McJimsey Vestry) constitute the vestry of the parish (and thus the officers of the parish corporation); that the plaintiff and the counterclaim defendants are no longer members of the vestry and hold no office affiliated with the parish or its parish corporation; that there is a significant group of remaining loyal Episcopalians who constitute the membership of Grace Church and St. Stephen’s; and that the appointed priest-in-charge, and not Father Armstrong, is the clerical leader of this Parish. The Episcopal Church and the Diocese should prevail in this case on this ground as well.

Respectfully submitted this 15th day of January, 2009.

s/Signature on file

Brent E. Rychener, Atty. Reg. # 15372

Holme Roberts & Owen LLP

90 South Cascade Ave., Suite 1300
Colorado Springs, CO 80903-1615
Phone: (719) 381-8400
Fax: (719) 633-1518
E-mail: Brent.Rychener@hro.com

Heather H. Anderson
Adam M. Chud

Goodwin Procter LLP
901 New York Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 346-4000
Fax: (202) 346-4444
Email: handerson@goodwinprocter.com
achud@goodwinprocter.com

Counsel for the Episcopal Church

CERTIFICATE OF SERVICE

I certify that on this 15th day of January, 2009, a true and correct copy of the foregoing **TRIAL BRIEF OF THE EPISCOPAL CHURCH** was served, via LexisNexis file and serve as follows:

Martin L. Nussbaum
Rothgerber, Johnson & Lyons
90 South Cascade Avenue, Suite 1100
Colorado Springs, CO 80903
mnussbaum@rothgerber.com

Bruce Wright
Flynn Wright & Fredman
111 South Tejon, Suite 202
Colorado Springs, CO 80903
bmwright@fmwk.com

Dennis Hartley
1749 South Eighth Street, Suite 5
Colorado Springs, CO 80906
dennis@denniswhartley.com

J. Gregory Walta
J. Gregory Walta, P.C.
105 East Moreno Avenue, Suite 101
Colorado Springs, CO 80903
greg@waltalawfirm.com

Geri O'Brien Williams
Douglas Dent
Dworkin, Chambers, Williams, York,
Benson, & Evans P.C.
3900 E. Mexico Avenue, Suite 1300
Denver, CO 80210

s/ Signature on file
Janine R. Coates