



FPC in their Brief in Opposition—or even just read the quoted passage in the opening of the Brief—they would see that the Supreme Court protects the freedom of association as well as the freedom of religion. Intervenors argue that they do not seek to prevent the *individuals* from practicing their faith as they see fit, but their temporary injunction would abridge FPC’s collective “freedom to engage in association for the advancement of beliefs and ideas.” *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958). First Amendment rights extend to organizations, not just individuals. Therefore, Intervenors’ requested injunction is blatantly **unconstitutional** and **outside the subject matter jurisdiction** of this Court.

2. In advancing this position, FPC is not requesting to “have it both ways” as Intervenors suggest. It is simply requesting that, in accordance with *Masterson v. Diocese of Northwest Texas*, the Court limit its purview to secular matters that are within the subject matter jurisdiction of the civil courts. 422 S.W.3d 594, 610 (Tex. 2013). While *Masterson* says a court must defer to the hierarchy or ecclesiastical authority as to who are the “true believers” it also goes on to clearly state that a court may not defer to the hierarchy or ecclesiastical authority on matters of property rights. *Id.* Ancillary to that, while the Court must rule on issues of property, it does not have the jurisdiction to rule on issues that are religious or ecclesiastical. Whether or not the congregation continues to collectively associate with the Presbyterian Church (U.S.A.) is fundamentally ecclesiastical and fundamentally grounded in the constitutionally protected right to associate as one sees fit.

3. In their Reply, Intervenors again raise their charitable trust issue. In its earlier briefing with the Court, FPC advanced that—whatever the denomination—FPC’s property will be used for the general charitable purposes of the donation. Engaging in *any* argument regarding

Texas charitable trust law is, however, Intervenor's backdoor attempt to get the Court to rule on the merits. *See Morgan Stern Realty Holdings, LLC v. Horizon El Portal, LLC*, No. 04-14-00208-CV, 2014 WL 2531980 at \*2-3 (Tex. App.–San Antonio Jun. 4, 2014, no pet.) (mem. op.) (finding that, when the injunction required a party to transfer its ownership interests, the injunction both impermissibly reached the merits of the claim and “permanently alter[ed] the status quo”). The fact remains that even if the charitable trust theory had any validity in this case, which FPC denies, the property is intact — to be granted to the party that the Court determines has ownership rights under the secular property laws of the State of Texas.<sup>1</sup>

4. Intervenor's seek to prevent a congregation from voting on ecclesiastical matters. Such relief is just not allowed, regardless of whether Intervenor's like it or not. The Court must deny Intervenor's request for a Temporary Injunction.

## VI. PRAYER

WHEREFORE, Plaintiff First Presbyterian Church of San Antonio respectfully prays that the Court deny the Intervenor's Emergency Motion for Reconsideration on Intervenor's Request for Temporary Injunction and for all further relief to which it is entitled.

Respectfully submitted,

/s/ Kent C. Krause

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<sup>1</sup> Contrary to Intervenor's assertion, ECO makes no claim on FPC's property. *See* Excerpts from Deposition of Dana Allen on June 6, 2014, Highland Park Presbyterian Church v. Grace Presbytery, Cause No. DC-13-10605, 298<sup>th</sup> Judicial District of Dallas County, Texas, attached hereto as Exhibit A.

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**ATTORNEYS FOR  
FIRST PRESBYTERIAN CHURCH  
OF SAN ANTONIO**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's Brief in Opposition to Intervenor's Emergency Motion for Reconsideration of Intervenor's Application for Temporary Injunction was served on all counsel of record via service through efile and EFP provider, and/or through some other permissible method, on the 22nd day of October, 2015.

/s/ Kent C. Krause

Kent C. Krause

Dana Allin - June 6, 2014

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CAUSE NO. DC-13-10605

HIGHLAND PARK PRESBYTERIAN ) IN THE DISTRICT COURT  
CHURCH, INC., )

Plaintiff, )

V. ) OF DALLAS COUNTY, TEXAS

GRACE PRESBYTERY, INC., )

Defendant. ) 298TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF  
ECO: A COVENANT ORDER OF EVANGELICAL PRESBYTERIANS  
BY ITS DESIGNATED CORPORATE REPRESENTATIVE  
DANA ALLIN  
JUNE 6, 2014

ORAL AND VIDEOTAPED DEPOSITION of DANA ALLIN,  
produced as a witness at the instance of Defendant,  
and duly sworn, was taken in the above-styled and  
numbered cause on the 6th day of June, 2014, from  
8:59 a.m. to 12:30 p.m., before Kim M. Dickman, CSR in  
and for the State of Texas, reported by machine  
shorthand, at the offices of Craddock, Davis & Krause  
LLP, 3100 Monticello Avenue, Suite 550, in the City of  
Dallas, County of Dallas, State of Texas, pursuant to  
the Texas Rules of Civil Procedure.



Dana Allin - June 6, 2014

<p style="text-align: right;">5</p> <p>1 A. I do.</p> <p>2 Q. And you understand that that oath is the same</p> <p>3 as if you were testifying to the Judge or to the jury</p> <p>4 in this case?</p> <p>5 A. I do.</p> <p>6 Q. Great. And if at any point today you feel</p> <p>7 like you cannot answer truthfully to a question, will</p> <p>8 you let me know?</p> <p>9 A. I will.</p> <p>10 Q. Okay. Thank you. Have you been deposed</p> <p>11 before?</p> <p>12 A. I have not.</p> <p>13 Q. Is property ownership a distinctive element</p> <p>14 of ECO's polity?</p> <p>15 A. ECO does not claim any property ownership.</p> <p>16 Q. Yes. And is ECO's view on property ownership</p> <p>17 a distinctive element of its polity?</p> <p>18 A. It is a question that oftentimes gets asked</p> <p>19 and so times we will label it as such, because we know</p> <p>20 it's a frequently asked question, how we view</p> <p>21 property.</p> <p>22 Q. And do you agree with that statement?</p> <p>23 A. That it's a distinctive? Yes.</p> <p>24 Q. Okay. And why is it a distinctive element of</p> <p>25 ECO's polity?</p>	<p style="text-align: right;">7</p> <p>1 Q. What percentage just generally?</p> <p>2 A. Probably if you count our church plants as</p> <p>3 well that are -- that are independent, probably 95</p> <p>4 percent at this point.</p> <p>5 Q. And what is a church plant?</p> <p>6 A. Church plant is a new church that -- that</p> <p>7 begins and that has not come from a previous</p> <p>8 denomination.</p> <p>9 Q. So excluding church plants, what percent of</p> <p>10 congregations joining ECO are from PCUSA?</p> <p>11 A. Maybe 97 percent.</p> <p>12 Q. Okay. And what -- what are the other</p> <p>13 denominations that these congregations come from?</p> <p>14 A. They're coming from independent status,</p> <p>15 they're coming from Evangelical Presbyterian Church,</p> <p>16 are probably the -- the two larger sources.</p> <p>17 Q. And does the Evangelical Presbyterian Church,</p> <p>18 is -- is that another denomination?</p> <p>19 A. It is.</p> <p>20 Q. And do they have a trust clause to your</p> <p>21 knowledge?</p> <p>22 A. They do not.</p> <p>23 Q. So is it fair to say that when ECO says its</p> <p>24 polity is distinctive as to property ownership, it's</p> <p>25 really contrasting itself to the PCUSA?</p>
<p style="text-align: right;">6</p> <p>1 A. I think because there are a lot of questions</p> <p>2 about property ownership and in congregations</p> <p>3 discerning whether or not they're going to come to ECO</p> <p>4 and how property is related, so it's a frequently</p> <p>5 asked question.</p> <p>6 Q. And what is it distinct compared to?</p> <p>7 A. Other denominations that came -- claim to</p> <p>8 hold trust -- property in trust or that the local</p> <p>9 congregation hold its property in trust.</p> <p>10 Q. And can you give me some examples of those?</p> <p>11 A. I think oftentimes the Catholic Church, the</p> <p>12 Episcopalian Church, Presbyterian Church, USA.</p> <p>13 Q. Do you have congregations from the Roman</p> <p>14 Catholic Church that join ECO?</p> <p>15 A. No.</p> <p>16 Q. And -- and do you have congregations from the</p> <p>17 Episcopal Church that join ECO?</p> <p>18 A. No, but some are inquiring.</p> <p>19 Q. And to this date, there are no Episcopal</p> <p>20 congregations that have come to ECO?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Would -- would you say that the</p> <p>23 majority of congregations that come to ECO are</p> <p>24 formerly of the Presbyterian Church USA?</p> <p>25 A. I would say that was an accurate statement.</p>	<p style="text-align: right;">8</p> <p>1 MR. KRAUSE: Objection, form.</p> <p>2 A. I don't think that's a fair statement. I</p> <p>3 think the statement is it's a distinctive of who we</p> <p>4 are. There -- it's not distinguishing from something</p> <p>5 else, but it's an element that's a frequently asked</p> <p>6 question, so we tend to -- to highlight the answer.</p> <p>7 Q. (By Mr. Tobey) Why is it a frequently asked</p> <p>8 question?</p> <p>9 A. Because there are congregations who have come</p> <p>10 into ECO whose former denomination has asserted a</p> <p>11 trust clause and they want to know if we have or will</p> <p>12 do the same thing.</p> <p>13 Q. And you understand today that -- that you're</p> <p>14 here testifying not as Reverend Allin, but on behalf</p> <p>15 of the ECO entity?</p> <p>16 A. I am.</p> <p>17 Q. Okay. And did you review the notice that was</p> <p>18 sent to you listing certain topics?</p> <p>19 A. I did.</p> <p>20 MR. TOBEY: Could I have a -- okay.</p> <p>21 We'll mark this as -- I believe we're on 19.</p> <p>22 (Exhibit No. 19 marked.)</p> <p>23 MR. KRAUSE: Thanks.</p> <p>24 Q. (By Mr. Tobey) And have you seen this</p> <p>25 document before?</p>

Dickman Davenport, Inc

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Dana Allin - June 6, 2014

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1 we're not making a judgment as to the veracity of that  
 2 particular -- particular statement, but I -- yeah, so  
 3 I mean, again, we haven't -- ECO has not claimed any  
 4 opinion on this statement.  
 5 MR. TOBEY: How much time is remaining?  
 6 THE VIDEOGRAPHER: About 45 seconds.  
 7 MR. TOBEY: Okay. We'll pass the  
 8 witness. Thank you, sir.  
 9 THE WITNESS: Okay, Thank you.  
 10 MR. KRAUSE: We'll reserve our questions.  
 11 Thanks.  
 12 THE VIDEOGRAPHER: We're off the video  
 13 record at 12:30, ending tape number 1 and the  
 14 deposition.  
 15 (Deposition concluded at 12:30 p.m.)  
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1 I, DANA ALLIN, have read the foregoing  
 2 deposition and hereby affix my signature that same is  
 3 true and correct, except as noted above.  
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 6 \_\_\_\_\_  
 7 DANA ALLIN  
 8  
 9  
 10 THE STATE OF \_\_\_\_\_ )  
 11 COUNTY OF \_\_\_\_\_ )  
 12 Before me, \_\_\_\_\_, on  
 13 this day personally appeared DANA ALLIN, known to me  
 14 (or proved to me under oath or through  
 15 \_\_\_\_\_) (description of identity card or  
 16 other document) to be the person whose name is  
 17 subscribed to the foregoing instrument and  
 18 acknowledged to me that they executed the same for the  
 19 purposes and consideration therein expressed.  
 20 Given under my hand and seal of office this \_\_\_\_\_  
 21 day of \_\_\_\_\_, 2014.  
 22  
 23 \_\_\_\_\_  
 24 NOTARY PUBLIC IN AND FOR  
 25 THE STATE OF \_\_\_\_\_  
 My commission expires: \_\_\_\_\_

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1 CHANGES AND SIGNATURE  
 2 WITNESS NAME: DANA ALLIN JUNE 6, 2014  
 3 PAGE LINE CHANGE REASON  
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1 CAUSE NO. DC-13-10605  
 2 HIGHLAND PARK PRESBYTERIAN ) IN THE DISTRICT COURT  
 3 CHURCH, INC., )  
 4 )  
 5 Plaintiff, )  
 6 )  
 7 V. ) OF DALLAS COUNTY, TEXAS  
 8 )  
 9 GRACE PRESBYTERY, INC., )  
 10 )  
 11 Defendant. ) 298TH JUDICIAL DISTRICT  
 12  
 13 REPORTER'S CERTIFICATION  
 14 ORAL AND VIDEOTAPED DEPOSITION OF  
 15 DANA ALLIN  
 16 JUNE 6, 2014  
 17  
 18 I, Kim M. Dickman, Certified Shorthand  
 19 Reporter in and for the State of Texas, hereby certify  
 20 to the following:  
 21 That the witness, DANA ALLIN, was duly sworn  
 22 by the officer and that the transcript of the oral  
 23 deposition is a true record of the testimony given by  
 24 the witness;  
 25 That the deposition transcript was submitted  
 on June 20, 2014, to the witness or to the attorney  
 for the witness for examination, signature and return  
 to me by July 10, 2014.  
 That the amount of time used by each party  
 at the deposition is as follows:

Dana Allin - June 6, 2014

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1 Mr. Daniel L. Tobey - 3 hours, 2 minutes;  
 2 That pursuant to information given to the  
 3 deposition officer at the time said testimony was  
 4 taken, the following includes counsel for all parties  
 5 of record:  
 6 Mr. Kent C. Krause, Attorney for Plaintiff;  
 7 Mr. Daniel L. Tobey, Mr. Robert P. Ritchie, Mr. Kent  
 8 Piacenti, Attorneys for Defendant;

9  
 10 Mr. David N. Soverby, Attorney for the Witness;

11 I further certify that I am neither counsel  
 12 for, related to, nor employed by any of the parties or  
 13 attorneys in the action in which this proceeding was  
 14 taken, and further that I am not financially or  
 15 otherwise interested in the outcome of the action.

16 Further certification requirements pursuant  
 17 to Rule 203 of TRCP will be certified to after they  
 18 have occurred.

19 Certified to by me this 20th day of June  
 20 2014.

21    
 22 Kim M. Dickman, Certified  
 23 Shorthand Reporter No. 2181  
 24 in and for the State of Texas  
 25 Dickman Davenport, Inc.  
 Firm Certification No. 312  
 3131 Turtle Creek, Suite 320  
 Dallas, Texas 75219  
 (214) 855-5100 (800) 445-9548  
 www.dickmandavenport.com  
 e-mail: kd@dickmandavenport.com

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned  
 3 to the deposition officer on \_\_\_\_\_;


4 If returned, the attached Changes and  
 5 Signature page contains any changes and the reasons  
 6 therefor;

7 If returned, the original deposition was  
 8 delivered to Mr. Daniel L. Tobey, Custodial Attorney;

9 That \$ \_\_\_\_\_ is the deposition  
 10 officer's charges to the Defendant for preparing the  
 11 original deposition transcript and any copies of  
 12 exhibits;

13 That the deposition was delivered in  
 14 accordance with Rule 203.3, and that a copy of this  
 15 certificate was served on all parties shown herein on  
 16 \_\_\_\_\_ and filed with the Clerk.

17 Certified to by me this \_\_\_\_\_ day of  
 18 \_\_\_\_\_, 2014.

19  
 20   
 21 Kim M. Dickman, Certified  
 22 Shorthand Reporter No. 2181  
 23 in and for the State of Texas  
 24 Dickman Davenport, Inc.  
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