

Mark L. McCarty [6001]
Zachary E. Peterson [8520]
Kallie A. Smith [12386]
RICHARDS BRANDT MILLER NELSON
Wells Fargo Center, Fifteenth Floor
299 South Main Street
P.O. Box 2465
Salt Lake City, UT 84110-2465
Telephone: (801) 531-2000
Email: mark-mccarty@rbmn.com
zachary-peterson@rbmn.com
kallie-smith@rbmn.com

AND:

Richard A. Marsh [Colo. 14481]
Attorney Pro Hac Vice
PIPIS MARSH LAW LLP
255 Weaver Park Road, Suite 200
Longmont, CO 80501
Telephone: (303) 776-8499
Email: ramarsh@pipismarshlaw.com

Attorneys for Consolidated Plaintiffs

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE SALT LAKE CITY LAUMALIE
MA'ONI' ONI FREE WESLEYAN CHURCH
OF TONGA, a Utah Non-Profit Corporation,

Plaintiff,
vs.

ETIMANI MA'AFU,

Defendant,
AND

ROCKY MOUNTAIN CONFERENCE OF
THE UNITED METHODIST CHURCH

Interpleader Defendant.

**MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT BASED ON THE
FREE EXERCISE CLAUSE OF THE
FIRST AMENDMENT**

Tier II

Consolidated Case No. 120908228

Honorable Richard McKelvie

ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH, etc., et al., Plaintiffs, vs. SALT LAKE CITY LAUMALIE MA'ONI' ONI FREE WESLEYAN CHURCH OF TONGA, etc., et al., Defendants.	Case No. 130902438 [Consolidated with Case No. 120908228]
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The Rocky Mountain Conference of the United Methodist Church (“**Conference**”), the Tongan United Methodist Church of Salt Lake City (“**TUMC**”) and Etimani Ma’Afu (“**Ma’Afu**”) (collectively the “**United Methodist Parties**”), by and through their counsel of record Richard Marsh, admitted *pro hac vice*, of and for the law firm of Pipis Marsh Law, and Mark L. McCarty, Zachary E. Peterson and Kallie A. Smith of and for the law firm of Richards Brandt Miller Nelson, file this Motion for Partial Summary Judgment. This motion is based on the Free Exercise Clause of the First Amendment, and seeks partial summary judgment: (1) declaring that all real, personal, tangible and intangible property acquired or held by TUMC prior to December 6, 2012, is owned by TUMC and its constituent members in trust for the benefit of The United Methodist Church (“**UMC**”) and any of its members; and (2) awarding possession of such property to TUMC.¹ There is no genuine issue as to any material fact and the United Methodist Parties are entitled to judgment as a matter of law.

OVERVIEW

In August 2012, the Bishop of the Rocky Mountain Conference suspended TUMC’s minister, Rev. Havili Mone, for his failure to report child sexual abuse and other acts of

¹ The claims for money damage awards for breach of fiduciary duty and conversion, and for an accounting are left for future adjudication.

ecclesiastical disobedience. A faction of TUMC members was dissatisfied with the suspension and they undertook to orchestrate a member meeting by mail-in ballot in order to amend TUMC's 1978 articles of incorporation. The amendment to the articles of incorporation removed all references to the United Methodist Church or its *Book of Discipline*², and ostensibly appointed five individuals to act as the board of directors. On December 7, 2012, the faction claimed to have reached the 2/3rd majority member vote required under TUMC's 1978 articles. The new board met on the same day and undertook to change TUMC's corporate name to Salt Lake City Laumalie Ma'Oni'Oni Free Wesleyan Church of Tonga. FWCT then filed its action against Ma'Afu.³ FWCT's action seeks to legitimize the mail-in ballot and to obtain control and ownership of TUMC's property.

ISSUES PRESENTED

The ownership and control of TUMC's corporate charter and property are in dispute. Resolution of who owns the corporate charter can be decided on the basis of Utah law without the need to consider any constitutional issues. In a separately filed motion for partial summary judgment, the United Methodist Parties have set forth the argument that the corporate charter remains with TUMC on the additional basis that FWCT's attempt to wrest control of the charter via a mail-in vote violated Utah's Non-profit Corporations Act.

Further, as set forth herein, the process for corporate charter amendment under UMC *Discipline* is protected by the Free Exercise clause of the First Amendment. The mail-in ballot orchestrated by FWCT unconstitutionally violated this process for charter amendment. If FWCT cannot prove a valid mail-in ballot, then FWCT's lawsuit should be dismissed and judgment

² The *Book of Discipline* is described below in the Statement of Facts ("SOF"), ¶¶ 3 & 4.

³ Case No. 120908228.

should enter in favor of the United Methodist Parties. On the other hand, as set forth in this motion, FWCT may claim the corporate charter, but the Court should nonetheless enter judgment in favor of the United Methodist Parties, holding that all property other than the corporate charter is owned and held by TUMC in trust for the UMC.

Regardless of who owns the corporate charter, TUMC's property remains with TUMC. This is because UMC's denominational trust interest in local UMC church property, like TUMC, is constitutionally protected under the Free Exercise clause from efforts by breakaway factions or individuals to defeat the trust interest through the use or manipulation of state nonprofit corporate law, or to otherwise assume title, ownership, possession, use or control of local UMC church property in derogation of the trust interest. Therefore, although the FWCT may claim the corporate charter, the Court should enter judgment in favor of the United Methodist Parties, holding that all property other than the corporate charter is owned and held by TUMC in trust for the UMC.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Nature of The United Methodist Church

1. The United Methodist Church ("UMC") is a worldwide denomination organized through a series of conferences, each covering a wider geographic scope, beginning with the local church and charge conference, and extending through district, annual, jurisdictional and General Conferences. *See* Marvin Vose Aff., ¶7, RMC14-0003, attached hereto as **Exhibit 1**. TUMC⁴ is a local United Methodist church and charge conference located in the Utah/Western Colorado district of the Rocky Mountain annual conference. The Conference is located within

⁴ Also known as "Tongan Laumalie Ma'Oni'Oni United Methodist Church".

the Western Jurisdiction Conference of the United Methodist Church. The General Conference presides and has full legislative power over all lower conferences. *See id.*

2. The governing structure of the UMC is hierarchical or “connectional” in nature with each conference subject to review and oversight by the next higher conference. *See id.*

3. All UMC conferences, local churches and other UMC bodies are subject to the laws and regulations embodied in the *The Book of Discipline of The United Methodist Church* (“*Discipline*”). *See id.* The *Discipline* is

“A body of laws pertaining to Church government, regulating every phase of the life of the life and work of The United Methodist Church, including regulations relating to its temporal economy and to the ownership, use and disposition of church property.”

See UMC Judicial Council Decision No. 886, May 10, 2000, pg. 2, ¶9, RMC 06-0100, attached hereto as **Exhibit 2**.

4. The *Discipline* is published every four years following the quadrennial meeting of the UMC General Conference. The quadrennial years applicable to this case are: 1976, 1980, 1984, 1988, 1992, 1996, 2000, 2004, 2008 and 2012.⁵

Local Church Property and the Denominational Trust

5. Since at least 1797, by the express terms of the *Discipline*, all local UM church property is held in trust by the local church for the benefit of the entire UM denomination:

“[all] properties of United Methodist local churches and other United Methodist agencies and institutions are held, *in trust*, for the benefit of the entire denomination, and ownership and usage of church property is subject to the *Discipline*. This trust requirement is an essential element of the historic polity of The United Methodist Church and has been part of the *Discipline* since 1797.”

⁵ The United Methodist Parties disclosed the property, trust and charge conference provisions for these quadrennial years. (RMC 06-0001 - 0096) Unless otherwise noted, the provisions listed in the Statement of Facts appear in substantially similar form in all *Disciplines* since 1976. Citations are to the 2008 *Discipline*. (**Exhibit 3**, RMC 06-0044-0064, and **Exhibit 4**, RMC 06-0083 – 0092.)

See 2008 Discipline, ¶2501.1, RMC 06-0044(emphasis in original) attached hereto as **Exhibit 5**.

6. This denominational trust extends to “all real, personal, tangible and intangible property owned or held by [Tongan UMC].” *See 2008 Discipline*, ¶2501.1, RMC 06-0044, attached hereto as **Exhibit 3**.

7. The *Discipline* describes how the denominational trust may be stated in deeds of conveyance. *See id.*, ¶¶2503.1 and 2, RMC 06-0045 – 0045.

8. The *Discipline* also provides for situations where a deed or conveyance is silent regarding the denominational trust:

“However, the absence of a trust clause stipulated in §§ 1, 2, 3, 4 or 5 above in deeds and conveyances . . . shall in no way exclude a local church . . . from or relieve it of its connectional responsibilities to The United Methodist Church. Nor shall it absolve a local church . . . of . . . the responsibility to hold all of its property in trust for The United Methodist Church; provided that the intent of the founders and/or a later local church . . . is shown by any or all of the following:

- a) the conveyance of the property to a local church . . . of The United Methodist Church or any predecessors to The United Methodist Church;
- b) the use of the name, customs, and polity of The United Methodist Church or any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; or
- c) the acceptance of the pastorate of ordained ministers appointed by a bishop or employed by the superintendent of the district or annual conference of The United Methodist Church or any predecessor to The United Methodist Church.”

See id., ¶2503.6, RMC 06-0046 – 0047.

9. The *Discipline* expressly provides that “[t]he trust is and always has been irrevocable by a local church, except as provided in the *Discipline*.”⁶ *See id.*, ¶2501.2, RMC 06-0044 – 0045.

⁶ The General Conference added this language to the property provisions of the *Discipline* in 2008.

Organization, Governance and Operation
Of UMC Local Churches

10. Under the *Discipline*, the Charge or Church Conference is the body within a local UMC church that has overall authority for the property, governance and operations of the local church. It is the “basic unit in the connectional system of The United Methodist Church” with “general oversight” over all local church activities and provides “the connecting link between the local church and the [UMC]”. See *2008 Discipline* ¶¶246.1 and 247.1, RMC 06-0086 – 0087, attached hereto as **Exhibit 4**.

11. Charge or Church Conferences are member meetings of the local church, comparable to annual or special member meetings of a nonprofit corporation, at which officers of the local church are elected, transfers of property are authorized and other major church decisions are made. See *id.*, ¶¶246.2, 246.7, and 248, RMC 06-0086 and RMC 06-0090 – 0091.

12. By *Discipline*, the only person authorized to call and to preside at a Charge or Church Conference is a district superintendent of the conference in which the local church is located. See *id.*, ¶¶246.4-246.7, RMC 06-0086.

13. The district superintendent must give written consent to actions approved at a Charge or Church Conference, and in particular transfers of property. See *2008 Discipline*, ¶2540.3, RMC 06-0059 – 0060, **Exhibit 3**. This oversight process establishes the denominational “connection”, serves to protect the denominational trust in local church property and ensures participation in local church governance and operations by only those members and officers of the local church otherwise qualified and entitled to participate in the Charge or Church Conference.

14. The Charge or Church Conference elects the members of the Board of Trustees of

a local UMC church. The Board of Trustees is subject to the direction and authority of the Charge or Church Conference. *See id.*, ¶¶2528, 2532.1, RMC 06-0053, 06-0055. If incorporated, the local church Board of Trustees typically functions as the board of directors under applicable state corporate law. *See id.*, ¶2507, RMC 06-0048. Subject to authorization from a Charge or Church Conference, the Board of Trustees is responsible for all decisions regarding the use, ownership, transfer or other disposition of local church real property. *See id.*, ¶2532.1, RMC 06-0055. Only a duly-constituted Charge or Church Conference can remove a trustee from office. *See id.*, ¶2530, RMC 06-0054 – 0055.

15. Local church actions that require a Charge or Church Conference include the lease, sale, encumbrance or other transfer of any interest in its real property (*see id.*, ¶¶2539, 2540, RMC06-0058 – 0060); the amendment of its articles of incorporation (*see id.*, ¶2528.1, RMC 06-0053); and a decision by local church members to disaffiliate from the UMC. *See 2012 Discipline* ¶2529.1(c), RMC 06 – 0074, attached hereto as **Exhibit 12**; *See also*, Vose Aff. ¶14, RMC 14-0005, **Exhibit 1**.

16. By *Discipline*, the only votes that count at a Charge or Church Conference are those cast by eligible church members “present and voting” at a duly-constituted meeting; No proxy votes or mail-in ballots are allowed. *See 2008 Discipline*, ¶246.6, RMC 06-0086, **Exhibit 4**.

History of TUMC

17. In 1978, the Conference chartered TUMC. The nucleus of the congregation was a Tongan Fellowship at First United Methodist Church of Salt Lake City. The original minister appointed to TUMC was Rev. William R. Obaugh who also served as Senior Pastor at First

UMC of Salt Lake City. *See* MC 1978 & 1979 Annual Conf Jnals, RMC 13-0025 and – 0027, attached hereto as **Exhibit 5**.

18. Arrangements for TUMC’s incorporation were made by the Counselor for Mission of the Utah/Wyoming Sub-District of the United Methodist Church, a Corporation Sole under Utah law. *See* Affidavit of Corporation Sole, August 22, 1978, RMC 01-0019 – 0035, attached hereto as **Exhibit 6**.

19. On June 21, 1978, articles of incorporation as a Utah nonprofit corporation were filed for “The Tongan United Methodist Church of Salt Lake City” (“**1978 Articles**”). *See* 1978 Art., RMC02-0001 – 0007, attached hereto as **Exhibit 7**.

20. The original incorporators were the Senior Pastor of First UMC of Salt Lake City (Rev. William R. Obaugh), a member of the Tongan Fellowship (Finau Mila) and the attorney who prepared the articles (Charles B. Casper). *See id.*, RMC 02-0006 – 0007.

21. The original articles of incorporation acknowledge the primacy of the *Discipline* in all matters concerning TUMC’s property, governance and operations, as follows:

a. Its primary purpose is “to conduct and operate a United Methodist Church according to the Discipline of the United Methodist Church;” *See id.*, Art. III, RMC 02-0001.

b. The corporation . . . and all of its property, both real and personal, shall be subject to the laws, usages, and ministerial appointments of the United Methodist Church as are now or shall be from time to time established, made and declared by the lawful authority of said church;” *See id.*, Art. IVc, RMC 02-0002.

c. “All title to real property bought and sold by the corporation shall be in full conformity with the Discipline of the United Methodist Church” *See id.*, Art. IVb, RMC 02-

0002.

d. “The corporation shall support the doctrine . . . of the United Methodist Church;” *See id.*, Art. IVc, RMC 02-0002.

e. Its corporate powers are limited by and subject to the *Discipline*; *See id.*, Art. IV, RMC 02-0001 – 0003.

f. The “internal affairs of the corporation shall be managed and controlled by the Board of Trustees . . . in accordance with these Articles of Incorporation and with the Discipline of the United Methodist Church as the same may be amended from time to time;” *See id.*, Art. V, RMC 02-0003.

g. Its Board of Trustees shall be “elected and organized as prescribed in the Discipline of the United Methodist Church;” *See id.*, Art. VII, RMC 02-0003 – 0004.

h. Its membership “shall consist of those persons who are then members of the congregation of The Tongan United Methodist Church of Salt Lake City, together with the minister thereof;” *See id.*, Art. VIII, RMC 02-0004.

i. Its Articles of Incorporation may only be amended by the vote of at least two-thirds of the members . . . present at the annual meeting or at a special meeting called for that purpose;” *See id.*, Art. XII, RMC 02-0006.

j. Upon dissolution, net assets and property transfer to the Rocky Mountain Conference of The United Methodist Church; *See id.*, Art. X, RMC 02-0004 – 0005.

22. Since its formation and incorporation in 1978, Tongan UMC has held itself out as a local church within the UMC. It has consistently accepted UMC pastoral appointments; used the name, customs and polity of the UMC; contributed funds to the parent church; borrowed

funds through UMC agencies; sent delegates to participate in UMC regional and other conferences; and, functioned as a corporate entity according to the *Discipline*.

23. Since its formation and incorporation in 1978, Tongan UMC has held annual Charge Conferences, presided over by a Conference District Superintendent, in conformity with the applicable *Discipline*. (Charge Conference documents supporting this paragraph are voluminous and will not be made part of the record on this Motion unless challenged by respondents. These documents were produced as: 2006 RMC 08-0001 - 0044; 2007 RMC 08-0045 - 0095; 2008 RMC 08-0096 - 0143; 2009 RMC 08-0144 - 0189; 2010 RMC 08-0190 - 0213; 2011 RMC 08-0214 - 0236; 2012 RMC 08-0237 – 0253.)⁷

24. On January 29, 2013, at a duly-constituted Charge Conference held under the direct supervision of its district superintendent, Tongan UMC elected church officers, including the members of its Board of Trustees. *See* 2013 TUMC Chg Conf, RMC 08-0254 – 0281, in particularly 0260, attached hereto as **Exhibit 8**. The Board of Trustees thereafter met and elected Etimani Ma’Afu as its President. *See Id.*, RMC 08-0281. The Charge Conference voted to remove all TUMC members who had aligned themselves with FWCT. *See Id.*, RMC 08-0258 – 0259.

TUMC’s Real Property and Connectional Borrowings

25. TUMC owns several parcels of real property. In all cases, the vesting deed to the property is in the name of TUMC as grantee. *See* Vesting Deeds, RMC 01-0081 -0082; 0149 - 0150; 0151 - 0152; 0153 - 0154; 0155; 0156 – 0157, attached hereto as **Exhibit 9**.

26. The original church and parsonage was owned by the Counselor for Mission of

⁷ The United Methodist Parties requested production of historic TUMC documents from FWCT without success. The records for years prior to the church fire in June 2000 were probably destroyed in the fire.

the Utah/Wyoming Sub-District. *See id.*, 1978 Deed, RMC 01-0149 – 0150, **Exhibit 9**; *see also*, documents related to Corporation Sole, RMC 01-0019 – 0020, **Exhibit 6**. He conveyed the property to TUMC in August 1978 following TUMC’s incorporation.

27. The 1978 Deed to the original church and parsonage property contained the following language:

“COUNSELOR FOR MISSION . . . conveys and warrants to THE TONGAN UNITED METHODIST CHURCH OF SALT LAKE CITY . . . the following described tract of land in Salt Lake County [legal description] . . . so long as the said premises are used, kept and maintained as a place of divine worship of the United Methodist ministry and members of The United Methodist Church in accordance with the Discipline, usage, and ministerial appointments of said church . . . and if the said premises ever cease to be so used, kept and maintained, then the said premises shall revert to the grantor or its successor.”

This language is substantially similar to the model deed language in the *1976 Discipline*. (*Compare*, 1978 Deed, RMC 01-0149 – 0150 **Exhibit 9**, with *1976 Discipline*, ¶2403, RMC 06-0002 – 0003, attached hereto as **Exhibit 10**.)

28. TUMC borrowed funds used to purchase the original church and parsonage from the Conference (\$32,800) and the General Board of Global Ministries (GBGM) of The United Methodist Church (\$23,700). *See* 1978 Loan Documents, Conference loan RMC 01-0028 - 0031, GBGM loan RMC 01-0032 – 0035, attached hereto as **Exhibit 6**.

29. In June 2000, the original church was destroyed by fire. *See* Judicial Notice - Deseret News June 6, 2000, RMC 15-0001 – 0002, attached hereto as **Exhibit 11**. TUMC UMC used insurance proceeds from the Conference-wide mandatory insurance plan to build a new church on new property.

Free Wesleyan's Mail-In Ballot
And Amended Articles of Incorporation

30. In November 2012, Free Wesleyan and one or more of the individual Defendants sent a notification to the members of Tongan UMC which called for a special mail-in member meeting purportedly under auspices of the Utah Nonprofit Corporation Code. The stated purpose of the meeting was to amend the Articles of Incorporation of Tongan UMC in order to remove all reference to the UMC and the *Discipline*. The stated deadline for receipt of written ballots was December 6, 2012. *See* FWCT's Notice of Meeting, attached hereto as **Exhibit 13**.

31. Prior to December 6, 2012, the Bishop of the Conference wrote a letter advising the individual Defendants that the mail-in member meeting was in violation of church law process under the *Discipline*, and that its results would be null and void. Notwithstanding, Free Wesleyan's leadership proceeded with its plan. *See* Letter, RMC 13-0001 – 0004, attached hereto as **Exhibit 14**.

32. The Free Wesleyan leadership announced that the membership vote allegedly met the threshold for approval of the amended articles. *See* FWCT Amended Articles of Incorp., Preamble, attached hereto as **Exhibit 15**. They immediately elected a new board of directors and now claim ownership and control of the charter of Tongan UMC and all of its property. *See* FWCT Resolution, attached hereto as **Exhibit 16**.

33. By their actions, the individual Defendants renounced their membership in and disaffiliated from the Tongan UMC and the United Methodist denomination. At the Tongan UMC Charge Conference in January 2013, the loyal members of Tongan UMC approved the removal of the disloyal members from the membership rolls of Tongan UMC. *See* Charge Conf., RMC 08-0258 – 0259, attached hereto as **Exhibit 8**.

34. Since the mail-in member meeting, the individual Defendants have taken possession of real and personal property owned by Tongan UMC; sequestered and spent funds of Tongan UMC; effected name changes to ownership records of real and personal property owned by Tongan UMC; and otherwise purported to assume use of and control over the Tongan UMC's primary place of worship. These actions required the Methodist Parties to record Lis Pendens (A) – (J), which are on record with the Court as exhibits to a prior motion, and have not been included with the present motion which but can be attached if required by the Court or the parties.

LEGAL ARGUMENT

This is a church schism case where the parties are fighting over church governance and church property. The property includes a Utah nonprofit corporate charter. FWCT maintains it owns church property by virtue of its control over the corporate charter of TUMC. The United Methodist Parties maintain that the charter amendments are void or voidable; and that, in any case, ownership of the corporate charter does not determine who owns TUMC property. Instead, TUMC owns church property because it remains an affiliated congregation of, and because it holds its property in trust for, the UMC.

Certificates Issued By Division of Corporations Inconsequential

After the purported amendments to TUMC's corporate charter, FWCT procured Certificates of Existence from the Utah Division of Corporations. FWCT has argued in parallel proceedings in Utah's Federal District Court that these Certificates are conclusive on issues of corporate governance and property ownership. The federal court denied FWCT's argument with the following:

“[All] the certificate of existence establishes is a name, date of incorporation, and that the state acknowledges the continued existence of a corporate entity through payment of fees. It says nothing about who owns the entity, or whether the Free Wesleyans or TUMC is properly in possession of the corporate charter.” *Church Mut. Ins. Co. v. Ma’Afu, et al.*, Case No. 2:13CV672, USDC UT, Order on [FWCT] Motion for Partial Summary Judgment (5/13/2014).

See Order pg 3, ¶3, RMC 16-0003 – 0004, attached hereto as **Exhibit 17**.

FWCT Did Not Comply With Amendment Process
Under TUMC’s 1978 Articles of Incorporation

Article XII of TUMC’s 1978 Articles of Incorporation requires members to be “present at” any member meeting. A mail-in ballot meeting does not satisfy this requirement. Utah Code Ann. §16-6a-302 (general grant of corporate powers may be limited by express provisions in articles of incorporation).

The articles repeatedly refer to the *Discipline* as a governing document. The original incorporators necessarily had reference to the *Discipline* when creating the articles. Any ambiguity in the meaning of “present at” is easily removed by reference to the member meeting provisions in the *Discipline* in effect in 1978. See 1976 Discipline, ¶242.5, RMC 06-0105, attached hereto as **Exhibit 18**. Member meetings are called charge or church conferences. See, SOF ¶11. The voting members of a charge or church conference are “the members present and voting at any duly announced meeting” (emphasis added). There is no provision for proxy voting or mail-in ballots. The only votes that count at a duly announced charge or church conference are those cast by members physically present at the meeting. See, SOF ¶16.

The foregoing is direct evidence that the intended meaning of the words, “present at,” in Article XII of TUMC’s 1978 Articles is to require the physical presence of a member at any duly-announced member meeting in order to vote. FWCT’s mail-in ballot member meeting did not comply with this meaning of Article XII of TUMC’s 1978 Articles. Accordingly, the mail-in

ballot was void.

FWCT Did Not Comply With the Amendment Process
Under The Applicable *Discipline*

TUMC's 1978 Articles state that the internal affairs of the corporation shall be managed and controlled so as to "remain in accord with these Articles of Incorporation and with the Discipline of the United Methodist Church as the same may be amended from time to time." See 1978 Arts. Art. V, RMC 02-0003, Exhibit 7. All corporate property is "subject to the laws, usages, and ministerial appointments of the United Methodist Church". *Id.*, Art. IV(c), RMC 02-0002. TUMC board members are to be "elected and organized as prescribed in the Discipline". *Id.*, Art. VII, RMC 02-0003 – 0004. The primary purpose for which the church was incorporated was "to conduct and operate a United Methodist Church and congregation according to the Discipline." *Id.*, Art. III, RMC 02-0001. An incorporated United Methodist local church can only amend its articles of incorporation by going through the charge or church conference process. See Vose Aff. ¶14, RMC 14-0005, Exhibit 1.

Utah's Non-profit Corporation Act authorizes articles that limit the rights and powers of members under the Act by reference to other documents of similar import to the articles. Utah Code Ann. §§ 16-6a-102(3) and 202(2)(b)(ii)(C) The Act also provides that articles may lawfully require the written approval of amendments by third persons. Utah Code Ann. § 16-6a-1013. TUMC's 1978 articles do both.

The *Discipline* is a document of similar import and TUMC's charter amendments required the written consent of the Conference district superintendent. TUMC's 1978 articles repeatedly condition the exercise of powers and rights of its members and board on compliance with the *Discipline*. The applicable *Discipline* in November-December 2012 was the 2008

Discipline. Under the 2008 *Discipline*, TUMC's articles could only be amended by members present and voting at a duly-called and duly-convened charge or church conference presided over by a Conference representative, typically the district superintendent. See Vose Aff., ¶¶11, 14, RMC 14-0004, 14-0005, Exhibit 1.

The FWCT faction did not comply with the member meeting process set forth in the 2008 *Discipline*. The faction therefore lacked the authority and the power to amend the articles and, as such, the acts taken by the faction were invalid and a nullity. *Peters Creek United Presb. Ch. v. Washington Presbytery of Pa.*, 90 A.3d 95, 118 (Pa.Comm.2011) (bylaw amendments invalid where inconsistent with Presbyterian Book of Order); *New v. Kroeger*, 167 Cal.App.4th 800, 824 (2008) (purported amendments by dissidents to local church articles held a nullity where denominational law not followed.)

CONSTITUTIONAL ARGUMENT – DENOMINATIONAL TRUST

Regardless of who owns the corporate charter, TUMC continues to own and hold its property in trust for the UMC. Denominational trusts are constitutionally protected from attempts by breakaway factions or dissatisfied individuals to defeat the trust through the use or manipulation of state nonprofit corporate law.

UMC Is Hierarchical Religious Organization

The UMC is a hierarchical or connectional religious denomination organized in a network of conferences, starting with the local church and charge conference and extending through district, annual, jurisdictional and general conferences. See *St. Paul Church, Inc. v. Board of Trustees of the Alaska Missionary Conference of the United Methodist Church, Inc.*, 145 P.3d 541, 544 (AL 2006) (factual findings regarding UMC structure).

This hierarchical structure is distinguished from congregational or independent church organizations where local churches are largely self-governing and own their property free of a denominational trust interest. *See* Vose Aff., ¶8, RMC 14-0003, Exhibit 1; *see also* *Watson v. Jones*, 80 U.S. 679, 722-23, 729 (1872) (Methodist Episcopal Church cited as example of hierarchical religious organization).

The U.S. Supreme Court defined a “hierarchical church” in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church North America*, 344 U.S. 94, 110 (1952): “hierarchical churches may be defined as those organized as a body with other churches having similar faith and doctrine with a common ruling convention or ecclesiastical head.” TUMC is a local church within the hierarchical structure of the United Methodist denomination.

U.S. Supreme Court Precedent

The U.S. Supreme Court has recognized two constitutionally-permissible approaches to resolving property disputes following a local church schism: the compulsory deference approach and the neutral principles approach. The history of U.S. Supreme Court jurisprudence in this area is set forth in a relatively recent case involving a United Methodist local church in *St. Paul Church, Inc. v. Board of Trustees of the Alaska Missionary Conference of the United Methodist Church*, 145 P.3d 541, 550-553 (Alaska 2006).

As discussed in *St. Paul*, the deferential approach was first recognized in 1871 in the U.S. Supreme Court case of *Watson v. Jones*, 80 U.S.(13 Wall.) 679, 20 L.Ed. 666 (1871). The Supreme Court began its analysis by drawing a distinction between churches organized on a congregational or independent basis, governed solely within themselves, and churches organized within a hierarchical model where a local congregation is part of a larger, structured

denomination. For governance or property disputes within hierarchical churches, the Court adopted an approach deferential to the hierarchy within the denomination.

“Whenever 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.” (727)

The Court’s rationale was further explained by the law of voluntary associations:

“All who unite themselves to such a [hierarchical religious] body do so with an implied consent to this government, and are bound to submit to it . . . Each of these large and influential bodies (to mention no others, let reference be had to . . . the Methodist Episcopal . . . church), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs . . .”

The nature of a “judicatory” as intended by the *Watson* Court, includes any level of the UMC governance structure by and through an “ascending series of ‘judicatories’ known as” charge conferences, annual conferences, jurisdictional conferences and the General Conference. *See Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 110-111 (1952) (referencing similar judicatories within the Presbyterian church.)

Following *Watson*, the U.S. Supreme Court applied the compulsory deference rule (*see Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 334 U.S. 92 (1952) (decision by central hierarchical authority in Soviet Union given deference over New York legislative act)) and recognized exceptions to the rule (*see Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929) (“narrow exception” in cases involving fraud, collusion and arbitrariness.))

The *Watson* approach was not substantially modified until 1969 in the case of

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S.Ct. 601 (1969). The case involved a dispute between two factions of a local church within a hierarchical denomination. Before the dispute could be resolved by a denominational judicatory, one of the factions sued. The Georgia Supreme Court decided the case based on which faction stayed true to, or departed from denominational doctrine. The U.S. Supreme Court rejected this approach:

“The departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.” (450)

The Court suggested an alternative approach that came to be known as the “neutral principles” approach:

“Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without “establishing” churches to which property is awarded.” (449)

In 1979 in the case of *Jones v. Wolf*, 443 U.S. 595, the Court expressly recognized the neutral principles approach as a constitutionally permissible way for civil courts to resolve property disputes between factions of a local church in a hierarchical denomination.

“The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.” (603)

The Court further explained its rationale:

“Under the neutral-principles approach, 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. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.” (605)

Other State Court Precedent

Since *Jones*, state courts have been permitted to adopt either the compulsory deference approach or the neutral principles approach. Most state courts where the issue has arisen since *Jones* have adopted the neutral principles approach. Compare, *Western Pennsylvania Annual Conference of United Methodist Church v. Everson Evangelical*, 312 A.2d 35, 38 (Pa.1973) (compulsory deference given to UMC Discipline); with *St. Paul Church, Inc. v. Board of Trustees*, 145 P.3d at 553 (adopting neutral principles approach concerning UMC). (See also, discussion *infra*.)

Religiously-Neutral Evidence

State courts have elaborated on the sources of neutral evidence properly used by civil courts in resolving property disputes following a local church schism. These sources generally include (a) deeds and title documents; (b) articles of incorporation and local church bylaws; (c) denominational church constitutions, disciplines and rules of order; and (d) relevant state statutes on property and trust law. See, e.g., *St. Paul Church*, *supra* 145 P.3d 541, 553; *Bishop v. Mote*, 716 P.2d 85, 99 (Colo.1986); *East Lake Methodist Episcopal Church v. Trustees of Peninsula-Delaware Annual Conf. of the United Methodist Church*, 731 A.2d 798, 809 (Dela.1999); *Hope*

Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.), 291 P.3d 711, 684-85 (Or.2012); *In re Church of St. James The Less*, 888 A.2d 795, 805-806 (Pa.2005); and, *Convention of the Protestant Episcopal Church in the Diocese of Tennessee v. Rector, Wardens, and Vestrymen of St. Andrew's Parish*, M2010-01474-COA-R3-CV, p.14 (Tenn.App.2012).

Utah Case Law Precedent

There is no reported Utah case dealing directly with ownership of church property following a schism in a local church. There is Utah case law precedent setting the constitutional parameters for how Utah courts should approach property disputes involving religious organizations.

In *Jeff v. Stubbs*, 970 P.2d 1234 (Utah 1998), the Utah Supreme Court discussed the constitutional limitations on the role civil courts may play in resolving church property disputes.

“Courts must treat property disputes between religious factions ‘in the same manner they treat disputes among other voluntary associations.’ [internal quotation omitted] (1251) . . . we find nothing that would suggest that courts are not competent to hear cases involving religious entities” (1243)

The Court cited U.S. Supreme Court precedent that recognized the neutral principles approach:

“The UEP has cited no Arizona or Utah law suggesting that a court should limit the application of the doctrine of unjust enrichment solely because of the religious nature of the relationship and motivation of the UEP and claimants. And federal constitutional law imposes no such limitation. In *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601 (1969), the Court stated:

‘Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by

the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. But ... the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.” (1243)

In *Jeffs*, the Utah Supreme Court clearly recognized its jurisdiction to decide cases between

religious factions:

“We therefore conclude that in Arizona and Utah nothing prevents a civil court from hearing an ordinary equity case between religious entities or factions, or between a religious entity and a private litigant.” (1244)

The *Jeffs* case does not resolve the question of whether Utah courts prefer the compulsory deference approach or the neutral principles approach.

In *Gulbraa v. Corp. of President of The Church Of Jesus Christ Of Latter-Day Saints*, 159 P.3d 392, 2007 UT App 126 (Utah App. 2007), the Appellate Court sustained dismissal of claims against a church leader that required inquiry into religious doctrine and practices of a religious organization.

“[T]he central inquiry involved is whether the causes of action alleged expressly implicate religious teachings, doctrines, and practices. For, as both the Utah Supreme Court and the United States Supreme Court have noted, “churches must have ‘power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” (395, ¶16)

In *Fundamentalist Church of Jesus Christ Of Latter-Day Saints v. Lindberg*, 238 P.3d 1054, 2010 UT 51 (2010), the Utah Supreme Court recognized the neutral principles approach without adopting the approach as a preferred approach:

“[T]he third of the district court’s principles mandated that the court reform the Trust using “neutral principles.” The court

understood this to mean that it could not resolve property disputes on the basis of religious doctrine. The district court's memorandum decision states,

“[C]ourts are prohibited by the First Amendment from resolving rights to the use and control of church property on the basis of a judicial determination that one group of claimants has adhered faithfully to the fundamental faiths, doctrines and practices of the church ... while the other group of claimants has departed substantially therefrom.[*quotations omitted*] *In short, courts must separate that which is primarily ecclesiastical from that which is primarily secular, and must defer to ecclesiastical authority for ecclesiastical determinations.*” (1059, ¶13) (*emphasis in original*)

In *Snow, Christensen & Martineau v. Lindberg*, 299 P.3d 1058 (Utah 2013), the Utah Supreme Court again recognized without discussion the neutral principles approach to resolving disputes involving religious organizations:

“Additionally, the Reformed Trust is administered” based on neutral principles of law," independent of priesthood input. This is in stark contrast to the administration of the UEP Trust in which priesthood input was critical.” (1069)

With its language regarding voluntary associations, the Utah Supreme Court in *Jeffs* recognized the essence of the compulsory deference approach as a method for resolving property disputes between religious factions. However, the Utah Supreme and Appellate Courts have also recognized the neutral principles approach as a method for resolving disputes concerning religious organizations, including but not limited to property disputes. *Fundamentalist Church v. Lindberg, supra*.

In this case, the United Methodist Parties prevail regardless of which approach is adopted.

Application of Compulsory Deference Approach

To Property Ownership

The starting point for application of the compulsory deference approach is the *Discipline* of the UMC. As set forth in the statement of undisputed facts, the *Discipline* is the book of law of the UMC. Its terms and provisions are established by the highest judicatory within the United Methodist denomination – to wit, the General Conference of The United Methodist Church. *See* SOF ¶3. The *Discipline* is the embodiment of the rules by which a local UM church agrees to conduct its affairs and order its property holdings.

The express trust provisions of the *Discipline*, coupled with Utah law on voluntary associations, dictate that all property remains under the ownership of TUMC in trust for the UMC. *Jeffs v. Stubbs*, 970 P.2d at 1251. *See* SOF ¶5 for express trust provision. From its origins in 1978 TUMC has been bound by the *Discipline*, and in particular the trust provisions in the *Discipline*.

As stated in *Western Pennsylvania Conference of the United Methodist Church v. Everson Evangelical Church of N. Amer.*, 312 A.2d 35, 38 (Pa.1973):

“The Book of Discipline of The United Methodist Church is a contractual agreement between the parent denomination and its members. Enforcing this agreement, as we do in this case, does not require interpretation of doctrinal or theological matters.”

See also, St. Paul, supra; Shirley v. Christian Episcopal Methodist Church, 748 So.2d 672, 678 (Miss.1999); *East Lake Methodist E.C. v. Trustees, supra*, 731 A.2d at 809.

As stated in *Watson v. Jones, supra* at 729:

“All who unite themselves to such a [hierarchical religious] body do so with an implied consent to this government, and are bound to submit to it.”

See also, Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Georgia, Inc., 718 S.E. 2d 237, 243 (Ga. 2011) (voluntary submission to “mode of church government or rules of discipline”); *Baldwin v. Mills*, 362 So.2d 2 (Fla.1978) (structure and government of hierarchical church determines who represents local church). As stated in *Baldwin v. Mills*, *supra* at 6-7:

“When the church is representative, republican or episcopal in government, the authorities uniformly hold that the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or a minority faction, the church property remains with the mother church.”

The critical fact for application of the compulsory deference approach is the TUMC Charge Conference held in January 2013, following the purported amendment to the corporate charter and the commencement of this action. This Charge Conference was called and convened by the area District Superintendent of the Conference. The District Superintendent presided over the meeting. Among other items of business, the Charge Conference approved the removal from membership of those persons who affiliated with FWCT. *See* SOF ¶¶ 24 and 34.

This Charge Conference shows without contradiction that the Conference continues to regard TUMC as a viable UMC congregation or local church, entirely capable of holding its property and governing its operations. If all or substantially all TUMC members had defected to FWCT, such that there was no critical mass left with which to continue as a local UM church, the Conference might have been faced with deciding whether TUMC should be discontinued as a local UMC church. This is what happened in Alaska in the *St. Paul Church* case. *See St. Paul*

Church, supra 145 P.3d 541.

Instead, there was a critical membership mass of loyal TUMC members who wanted to continue on as a local UMC church. The Charge Conference in itself is a decision by the highest judicatory necessary under the *Discipline* to recognize TUMC as the lawful *religious* organization representing the UMC. As such, the compulsory deference approach dictates that this Court must defer to this decision, including the necessary implication under the *Discipline* that all TUMC property remains with TUMC. *See Watson, supra* 80 U.S. (13 Wall.) at 727; *Kedroff, supra* 344 U.S. at 110-11.

Under the compulsory deference approach, ownership of the corporate charter is irrelevant to whether TUMC exists as a viable UMC congregation or local church. FWCT cannot challenge, nor has it challenged, the Charge Conference proceedings.

TUMC remains in ownership of all property titled in its name, notwithstanding the amendment to the corporate charter and the name change effected with the Utah Division of Corporations.

**Application of Compulsory Deference Approach
To Process for Charter Amendment Under *Discipline***

The *Discipline* is the expression of the UMC's highest judicatory; viz., the General Conference of the UMC. One such expression deals with how a local church can incorporate and amend its articles of incorporation. As outlined in the Statement of Facts, local church articles of incorporation can only be amended by a duly-convened charge conference. *See Vose Aff.* ¶14, RMC 14-0005, Exhibit 1.

This charge conference process is protected by the Free Exercise clause of the First Amendment. *Watson, supra*. *See also, Serbian Eastern Orthodox Diocese v. Milivojevich*, 426

U.S. 696, 724 (1976) (internal church decisions at core of religious freedom.)

In *New v. Kroeger*, 167 Cal.App.4th 800 (2008), a separatist group within a local Episcopal church attempted to amend the church's articles of incorporation and bylaws without following the process for amendment of local church articles under Episcopal Church canon law. Like here, the Episcopal Church recognized the loyal members and convened a new vestry comprised of these loyal members. The Court concluded that the separatists lacked the power and authority to amend the articles or bylaws. The amendments to the corporate documents were held null and void. The Court deferred to the Episcopal Church's recognition of its own vestry: "as a matter of canon law, the [new] vestry became the board of the parish corporation." *Id.* at 823-24.

Similarly, in *Peters Creek United Presbyt. Church v. Washington Presbytery of Pennsylvania*, 90 A.3d 95, 121-22 (Pa.Commwlth.2014), a majority of local church members disaffiliated and purported to change the bylaws of the church. The Court invalidated the bylaw changes, stating that such changes could only be made at a meeting called in accordance with the Presbyterian Church Book of Order.

Here, FWCT made no attempt to comply with the charge conference process under the *Discipline*. The Conference Bishop even warned FWCT of the need for a charge conference before FWCT completed its mail-in ballot. *Cf., Peters Creek, supra* 90 A.3d at 121 (local church warned "not to conduct the vote"). FWCT ignored the warning and proceeded to consummate an unauthorized and flawed mail-in ballot. This Court should give deference to the *Discipline* and void the purported amendments to TUMC's 1978 articles.

Application of Neutral Principles Approach to Property Ownership

General Church Can Impress Denominational Trust

For hierarchical churches, some courts using the neutral principles approach start and end the inquiry with an examination of the general church constitution, book of order or similar governing document. If the general church documents clearly state express denominational trust language, and did so prior to the onset of the case under consideration, these courts go no further than to find that an express denominational trust exists because the general church documents say such a trust exists. *See, Episcopal Church in the Diocese of Connecticut v. Gauss*, 28 A.3d 302, 319-320 (Conn. 2011) (national church can impress trust; subjective intent of donors irrelevant); *Episcopal Diocese of Rochester v. Harnish*, 870 N.Y.S.2d 814, 11 N.Y.S.3d 340, 351 (NYCtApp 2008) (“Dennis Canons clearly establish an express trust in favor of [denomination]”); *Episcopal Church Cases*, 45 Cal.4th 467, 492, (Cal.2009) (“in a hierarchically organized church, the ‘general church’ *can* impress a trust on a local religious corporation of which the local corporation is a ‘member’ *if* the governing instruments of that superior religious body so provide”); *Baldwin v. Mills*, *supra* 362 So.2d 2 (general church constitution controls).

Here, the UMC has had an express trust provision in its *Discipline* for over two centuries. *See* SOF ¶5. Every local UM church formed since 1797 has entered the denomination subject to the express denominational trust set forth in the *Discipline*. Applying neutral principles, this Court could easily find a denominational trust in favor of the United Methodist Church using only the *Discipline*.

Local Church Consent to Denominational Trust

Numerous courts using the neutral principles approach also look for some indicia of local

church consent to express trust language set forth in general church documents. *See*, Alaska: *St. Paul Church*, *supra* 145 P.3d 541, 553 (“view the relationship . . . as a whole in order to discern intent”); Oregon: *Hope Presbyterian Church v. Presbyterian Church (U.S.A.)*, *supra* 291 P.3d 711, 724 (intent of local church to create trust shown by written or spoken words, or conduct, before and after conveyances); Pennsylvania: *In re Church of St. James The Less*, *supra* 888 A.2d 795, 808-09 (church’s articles of incorporation showed clear intent to hold property in trust), and *Conference of African Union 1st Colored Methodist Protestant Church v. Shell*, 659 A.2d 77, 80 (Pa.Commonwlth.1995) (local church affiliated with Methodist Protestant Church from its inception, cannot sever relationship without forfeiting property to parent denomination); Colorado: *Bishop v. Mote*, *supra*, 716 P.2d 85, 104 (intent to dedicate property to trust shown “unambiguously” by articles of incorporation, canons of general church and conduct of parties over time);, long-standing and formal affiliation); North Carolina: *Daniel v. Wray*, 580 S.E.2d 711, 718 (N.C.App.2003) (local church adhered to general church canons, impliedly assented to governance, including trust provisions); Tennessee: *Convention of Protestant Episcopal Church in Diocese of Tennessee v. Rector, Wardens and Vestrymen of St. Andrew’s Parish*, *supra* @ 16 (local church governing documents “clearly create trust in favor of central church”). All of these cases used the local church articles of incorporation or equivalent to find a local church intent to be bound by the denominational trust in question. *See also*, *Church of God of Christ, Inc. v. Board of Trustees*, 280 P.3d 795, 804 (Kan.App.2012) (act of incorporating did not affect denominational trust in local church property).

Here, TUMC’s 1978 Articles of Incorporation repeatedly acknowledge the primacy of the *Discipline* in all matters concerning TUMC’s property, governance and operations. The articles

expressly state that “*all of [TUMC’s] property, both real and personal, shall be subject to the laws, usages, and ministerial appointments of the United Methodist Church as are now or shall be from time to time established, made and declared by the lawful authority of said church*”. See SOF ¶21 (b) (emphasis added). This is language of dedication. By this language, TUMC expressly consented to the application of UMC church law regarding local church property as set forth in the *Discipline*. TUMC’s articles clearly constitute a “legally cognizable form” of local church consent as required by *Jones v. Wolf, supra* at 605.

Additionally, TUMC has operated for 35 years as a UMC local church. It has held annual charge conferences; conducted Sunday worship with UMC worship materials; used UMC Sunday School tracts; attended annual conferences; participated in Pacific Islander United Methodist conferences; borrowed and repaid connectional loans; and so forth.

After TUMC’s original church burned down in 2000, the congregation used insurance proceeds from the Conference-wide mandatory insurance plan to build a new church on new property. The congregation accepted donations for the new church from area UMC churches. TUMC accepted the benefits of the UMC connection. By its every act since 1978, TUMC has been the embodiment of a UMC local church.

Evidence of Founder Intent by Holding Itself Out As United Methodist Church

The *Discipline* provides that the intention of the founders of a UMC local church to be bound by the denominational trust can be established by showing one or more of the following three actions: first, accepting United Methodist pastors; second, holding real property using the name, “United Methodist”; and, third, using the polity, customs and name of the United Methodist Church in such a way that the local church is known to the community as a United Methodist

Church. *See* SOF ¶8.

These “holding out” provisions of the *Discipline* have been held binding on local UMC congregations for purposes of enforcing the denominational trust. *See St. Paul Church, supra* 145 P.3d at 554-55 (“intent of founders . . . shown through the use of the name, customs and polity of [UMC]”); *Board of Trustees of Louisiana Annual Conference of the United Methodist Church v. Revelation Knowledge Outreach Ministry LLC*, 142 So.3d 353, 361 (La.App.2014) (“Conference proved all three of the provisions in paragraph 2503(6)”). These “holding out” provisions have been part of the *Discipline* since at least 1976. *See Carnes v. Smith*, 222 S.E.2d 322, 328 (Ga.1976) (“all three of these indications are present in this case.”)

Here, TUMC acquired all of its real property in the name of “Tongan United Methodist Church.” *See* SOF ¶25. It has accepted United Methodist pastors since 1978 and continues today with a United Methodist pastor in the pulpit. And it has consistently used the polity, name and customs of the United Methodist Church in its dealings with the wider community. This is further uncontradicted evidence of the intent of TUMC’s founders’ to hold all TUMC property in trust for the UMC denomination.

Intent of Prior Generations

Some courts recognize the donative intent of bygone generations to find in favor of a denominational trust. Each time a members put money in the offering plate, they did so with the intent to benefit the United Methodist connection. *East Lake Methodist Protestant Church v. Peninsula-Delaware Annual Conference*, 731 A.2d 798, 810 (Dela.1999) (“not free to nullify the affiliation accomplished by previous generations.”) Here, original intent is evidenced by the 1978 Articles. This intent has been acted upon year after year since 2012, and continues today.

Countless hundreds of TUMC members faithfully donated money, time and service to the UMC denomination through their TUMC.

CONCLUSION

Based on the forgoing, the United Methodist Parties respectfully request that the Court grant their motion for partial summary judgment, holding that the charter amendments are void or voidable and that TUMC owns church property because it remains an affiliated congregation of, and because it holds its property in trust for, the UMC. Accordingly, the United Methodist Parties request the Court enter an order (1) declaring that all real, personal, tangible and intangible property acquired or held by TUMC prior to December 6, 2012, is owned by TUMC and its constituent members in trust for the benefit of the UMC and any of its members; and (2) awarding possession of such property to TUMC.

DATED this 13th day of August, 2015.

RICHARDS BRANDT MILLER NELSON

And

PIPIS MARSH LAW LLP

/s/ Richard A. Marsh

Richard A. Marsh

Attorneys for Consolidated Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2015, a true and correct copy of the foregoing **Memorandum in Support of Motion for Partial Summary Judgment Based on the Free Exercise Clause of the First Amendment** was served on the following as indicated below:

<p>Craig Carlile Emily S. Loeffler RAY QUINNEY & NEBEKER, PC 36 South State Street, Suite 1400 Salt Lake City, UT 84111 Email: ccarlile@rqn.com eloeffler@rqn.com <i>Attorneys for Plaintiff</i></p>	<p><input type="checkbox"/> U.S. Mail – Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Filing <input type="checkbox"/> Email</p>
<p>Hutch U. Fale Isaac C. Byrd AVERY BURDSAL & FALE, PC 1422 East 820 North Orem, UT 84097 Email: huf@abflegal.com isaac@pac-legal.com <i>Attorneys for Plaintiff</i></p>	<p><input type="checkbox"/> U.S. Mail – Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Filing <input type="checkbox"/> Email</p>

/s/ Susan McGuire