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1 I. INTRODUCTION.

2 In the Debtor's Cross Motion for Partial Summary Judgment (the "Cross Motion"), the Debtor asks  
3 the Court to grant partial summary judgment on seven issues. The Tort Claimants Committee's (the "TCC")  
4 response speaks volumes by its silence. The TCC never attempts to rebut the Debtor's first two issues in  
5 its cross motion for partial summary judgment—(1) that the Debtor is a corporation sole which is the legal  
6 recognition of the office of the Archbishop of the Archdiocese of Portland and (2) that a Catholic bishop,  
7 when ordained, vows to conduct his entire ministry and administration as bishop according to Canon Law  
8 and Catholic doctrine. Accordingly, the Court should grant summary judgment for the Debtor on these two  
9 issues.

10 The TCC also refuses to engage much of Debtor's argument regarding its remaining requests in  
11 the Cross Motion.<sup>1</sup> The TCC did not offer a competing canon law expert to controvert any aspect of  
12 Nicholas Cafardi's testimony on Canon Law, including that an archdiocese and parishes are each separate  
13 juridic persons and that only parishes are capable of owning parish property. The TCC does not offer  
14 competing evidence to show that the Declaration of Archbishop Vlazny (the "Vlazny Declaration") is wrong.  
15 The TCC dismisses both the Declaration of Nicholas Cafardi (the "Cafardi Declaration") and Vlazny  
16 Declaration in contending that Canon Law is irrelevant even though Debtor's articles and Oregon  
17 corporation law each specifically mention it, and *Jones v. Wolf*, 443 U.S. 595 (1979) requires the Court to  
18 consider it.

19 II. THE DECISION IN RE CATHOLIC BISHOP OF SPOKANE IS NEITHER CONTROLLING NOR  
20 HELPFUL IN DECIDING THE ISSUES BEFORE THIS COURT

21 The TCC relies heavily on the decision in *In re Catholic Bishop of Spokane*, 329 B.R. 304 (Bankr.  
22 E.D. Wash. 2005), (the "Spokane Decision") in support of some of its arguments. However, the Spokane

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23 <sup>1</sup>The five other issues the Debtor requested the Court grant partial summary judgment are: (3) Oregon law permits the Debtor to  
24 function and govern its affairs according to Canon Law, (4) the Debtor's articles of incorporation require the Debtor to function  
25 and govern its affairs according to Canon Law, (5) the First Amendment guarantees that religious institutions have the power to  
26 decide for themselves, free from state interference, matters of church government—including the definition and creation of  
ecclesial entities like parishes which own and administer their own property, (6) the Court must consider Canon Law in assessing  
whether the Parishes are separate from the Debtor, and (7) the Parishes and the Debtor are separate entities. See Cross  
Motion at 2-3.

1 Decision is distinguishable from the issues before this Court because the Spokane Court assumed without  
2 deciding that the parishes were separate entities from the Diocese. Furthermore, the facts before that  
3 Court and the underlying state law it considered are significantly different from those before this Court.

4 Among other things:

- 5 1. Oregon law relating to the governance of religious corporations is more accommodating  
6 than Washington law;
- 7 2. The Debtor's Articles of Incorporation (and its supplements) specifically reference Canon  
8 Law seven times;
- 9 3. The Debtor's Articles of Incorporation (and its supplements) reference the Roman Catholic  
10 Church, (not the debtor diocese, as found by the Spokane Court), as the beneficiary of  
11 property it holds in trust;
- 12 4. The record in this case includes the Vlazny Declaration explaining why his vows upon his  
13 ordination as a bishop require him to follow Canon Law in the administration of his  
14 diocese; and
- 15 5. The Debtor and the Class Defendants have submitted volumes of evidence of claims to an  
16 interest in parish assets, including evidence of a charitable trust, whereas the Spokane  
17 Decision did not even address charitable trust law.

18 In addition, other facts and law requiring a different result are before this Court that were not  
19 addressed by the Spokane Court and that require a different result here. The Debtor has addressed in  
20 Debtor's Brief in Response to Tort Claimant Committee's Restated Second Motion for Partial Summary  
21 Judgment and Supporting Debtor's Cross Motion for Partial Summary Judgment (the "Debtor's Response"),  
22 in the remainder of this brief, and in the briefs and supporting evidence filed by the defendants in  
23 connection with the Second Restated Motion for Partial Summary Judgment ("Second Restated Motion")  
24 and the Third Motion for Partial Summary Judgment ("Third Motion").

25 **III. CANON LAW IS NOT THE LAW OF OREGON, BUT THE LAW OF OREGON PERMITS  
26 CHURCH CORPORATIONS TO ORGANIZE AND GOVERN THEMSELVES ACCORDING TO  
THE LAW OF THE CHURCH.**

A. **Introduction.** The TCC states that "Canon Law is not the law of Oregon." TCC Reply at  
18. The Debtor never said that it was. The Oregon legislature has recognized the need for and the right of  
churches to form civil law corporations to hold property and conduct their secular affairs while at the same  
time not violating the churches' own laws and regulations.

1           **B. Oregon’s Religious Incorporation Statutes Authorize Religious Corporations to**  
2 **Operate In Accordance With Religious Law.** Oregon law long ago recognized this basic principle. This is  
3 evident in the wording of the law under which the Debtor was incorporated, Or. Gen’l Laws at 126 § 9  
4 (Stilley Decl. Ex. 3) in Or. Gen’l Laws at 135-37 (*see* Stilley Decl. at Ex. 4), and under Oregon’s modern  
5 religious corporation law, O.R.S. 65.067. Each provides that the bishop or other religious leader, “may, in  
6 conformity with the constitution, canons, rules, regulations, and discipline[s] of [any or such] church or  
7 denomination” form a corporation sole.

8           The only reasonable conclusion to draw from O.R.S. 65.067 is that, when a corporation sole is  
9 *formed* “in conformity with the constitution, canons, rules, regulations, and disciplines of any church or  
10 religious denomination,” it is permitted to *operate* in accordance with those same doctrines. To conclude  
11 otherwise, would be to render O.R.S. 67.067 meaningless, especially in light of O.R.S. 65.042,  
12 O.R.S. 65.357(2)(d), and O.R.S. 65.377(2)(c) discussed below. Oregon courts have been “unwilling to  
13 deem a legislative act meaningless unless no other reasonable conclusion is available.” *1000 Friends of*  
14 *Oregon v. Wasco County Circuit Court*, 299 Or 344, 358 (1985).

15           **C. O.R.S. 65.067 Must Be Interpreted Together with Other Oregon Statutes.** At least two  
16 Oregon statutes (O.R.S. 65.357 (2)(d) and O.R.S. 65.377(2)(c)), authorize directors and officers of religious  
17 corporations to consult religious authorities in the operation of the corporation and (O.R.S. 128.620(2))  
18 requires a religious corporation to protect property it holds in trust.

19           **1. Oregon Law Expressly Recognizes that a Director of a Religious Corporation**  
20 **Can Rely on Religious Authorities to Discharge His or Her Fiduciary Duties.** O.R.S. 65.357 states in  
21 relevant part:

22                           (2) In discharging the duties of a director, a director is entitled to rely on  
23 information, opinions, reports or statements, including financial statements and other  
24 financial data, if prepared or presented by:                           \*\*\*

25                           (d) In the case of religious corporations, religious authorities and  
26 ministers, priests, rabbis or other persons whose position or duties in the religious  
organization the director believes justify reliance and confidence and whom the director  
believes to be reliable and competent in the matters presented. (emphasis added)

1           If an Archbishop, as the director of a religious corporation, is authorized by statute to rely on a  
2 priest for advice in discharging his fiduciary duties as sole director, it follows that he is authorized by the  
3 same statute to rely on Canon Law. The uncontroverted declarations of Dean Cafardi (Cafardi Decl. ¶¶ 9-  
4 12, 24,25,30-32, and 35) and Archbishop Vlazny (Vlazny Decl. ¶ 9-10) make clear that the Archbishop  
5 must comply with Canon Law.

6           O.R.S. 65.357 is not just an exculpatory statute as the TCC asserts. Rather, it is an express  
7 statutory authorization for the sole director—here the Archbishop—to rely on reliable and competent  
8 religious authorities in discharging his duties, in operating the religious corporation..

9           This is entirely consistent with the concept that a corporation sole is the incorporation of the office  
10 of the bishop or other religious leader. A Catholic bishop, upon the incorporation of his office as a  
11 corporation sole, cannot divorce himself, or his incorporated office, from his vows to conduct the operation  
12 of his diocese (including the corporation sole) in accordance with Canon Law and Catholic doctrine and  
13 practice. Debtor’s Response at 9-10.

14           The duties of a director of a religious corporation are broadly outlined in O.R.S. 65.301. As the sole  
15 director of a corporation sole, the Archbishop can exercise those powers granted to the corporation sole in  
16 its articles and as authorized by law. Those powers include the right to “take by gift, devise or  
17 bequest...and...hold, improve, use and otherwise deal with, real or personal property...” (O.R.S.  
18 65.077(4)), and “[d]o any other act, not inconsistent with law, that furthers the activities and affairs of the  
19 corporation” (O.R.S. 65.077(17)). The net result is the Archbishop can operate the corporation sole while  
20 relying on religious law (Canon Law), and “hold” or “deal with” real and personal property for others  
21 consistent with its Articles and Canon Law.

22           **2. Corporations Sole are Required by Oregon Statutes to Hold in Trust**  
23 **Property Given for a Particular Charitable Purpose.** Oregon’s Charitable Trust and Corporation Act,  
24 O.R.S. 128.620(2), states that charitable trustees include:

- 25           1. [a]ny...corporation...holding property in trust pursuant to a charitable trust; [and]  
26           2. [a]ny corporation which has accepted property to be used for a particular charitable  
            purpose as distinguished from the general purposes of the corporation ... .

1 Those specifically include a corporation sole. O.R.S. 128.620(1) and O.R.S. 128.640(2)(a). The Attorney  
2 General and “any court” have the authority to enforce compliance with O.R.S. 128.620(2). See O.R.S.  
3 128.710(1) and O.R.S. 128.710(2). The Debtor and the Archbishop are each obligated to comply with their  
4 respective fiduciary duties. That is all civil law.

5 **3. Oregon Law Recognizes Religious Practice and Doctrine in the Operation of**  
6 **Religious Corporations.** O.R.S. 65.042 clearly requires that religious doctrine or practice be followed in  
7 the operation of religious corporations if following state law would violate constitutionally protected church  
8 doctrine or practice. This is entirely consistent with the concepts expressed in *Jones v. Wolf, supra*.  
9 Religious doctrine or practice will, in many instances, be consistent with Oregon law; however, at times it  
10 may not be an exact fit (Cafardi Decl. ¶¶ 41-42).

11 The TCC asserts that the Debtor has not identified any requirements of the Oregon Nonprofit  
12 Corporation Act that violate the First Amendment or the Oregon state constitution. That is not the issue. It  
13 is the TCC's attempt to have this Court apply the Act in a way that ignores Canon Law in contravention of  
14 *Jones v. Wolf, supra*, that creates the problem.

15 For instance, the TCC has argued that the Debtor has the unfettered right to sell property. TCC  
16 Reply at 21. The Debtor does not assert that it has no power to sell property held in its name. Rather, that  
17 in doing so, the Debtor must follow Canon Law, e.g. obtaining the necessary consent of the pastor to sell  
18 parish property. Cafardi Decl ¶¶ 29, 35. The Debtor cannot sell property in violation of the rights of third  
19 parties or in contravention of common law of trusts or Oregon's Charitable Trust and Corporation Act.  
20 Likewise, it cannot sell property or otherwise act in violation of Canon Law to which the Archbishop is  
21 religiously bound to follow, which Oregon law acknowledges, and to which conflicting aspects or less  
22 specific provisions of Oregon law must yield.

23 **4. The TCC Wants to Rewrite Oregon Law to Limit the Rights of Religious**  
24 **Corporations.** The TCC would like to write out of the Oregon nonprofit corporation statutes all references  
25 to a church's constitution, canons, rules, regulations, doctrine, and practices, but it cannot do so. As the  
26 TCC argues, statutory construction requires a duty “not to insert what has been omitted, or to omit what has

1 been inserted.” TCC Reply at 18. Furthermore, the Court must attempt to discern the intent of the  
2 legislature by examining both the text and context of the statute. *Id.* Here, the Oregon legislature felt it  
3 important enough to specifically reference basic religious governance—constitutions and canons. It  
4 intended to provide a corporate structure that would permit churches and other religious organizations to  
5 conduct their secular affairs in accordance with their own rules and regulations. This statutory framework  
6 provides flexibility under Oregon corporate law for religious corporations to function with due regard to their  
7 doctrines.

8 Finally, the TCC asserts that if the Court were to recognize the Debtor’s right to govern its affairs in  
9 accordance with Canon Law, this will lead to the absurd result that Canon Law governs title to property.  
10 This logical leap is unfounded. Although the Court is prohibited from altering the polity or organizational  
11 structure of the church (which it would be doing if it were to find that the parishes have no separate  
12 identity), it can still determine property rights based on neutral principles of law.

13 The Debtor may hold legal title to property, but it does not follow that the Debtor also holds the  
14 equitable or beneficial interest in the property. Such property may be held subject to restrictions or in either  
15 a charitable or resulting trust, with the parishes being potential beneficiaries of such trusts. See Debtor’s  
16 Response at 20-23; Debtor’s and other Defendants’ Responses to the Third Motion. The Debtor’s holding  
17 of property for others is not inconsistent with Oregon law.

18 Even if the Court were to rule that the parishes have no separate legal existence, that does not  
19 foreclose the Debtor’s holding such property in charitable trust.<sup>2</sup> It is the parishioners, and their parents

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20 <sup>2</sup> The TCC seems to belittle the idea of Canon Law being used at all, continually saying Canon law is not relevant to this case.  
21 Debtor has shown in this and other briefs that that statement is just dead wrong.

22 However, the Debtor makes one more point. A charitable trust can be established by just an oral solicitation over the  
23 radio, or by door to door solicitations, to save the whales (see, e.g., Oregon’s Charitable Solicitations Act at O.R.S. 128.801-  
128.898) Those are sufficient facts and circumstances to create an enforceable charitable trust. That also is undoubtedly true  
24 for inter vivos and testamentary charitable trusts typed in lawyers’ offices, even though private and secret from all but a few and  
not publicly proclaimed or circulated until they become effective.

25 Why should Canon Law not be given at least equal respect? Canon Law is publicly proclaimed, published worldwide,  
and binding on Roman Catholic organizations everywhere. (Cafardi Decl. ¶¶ 9, 10, and 17) Canon Law is entitled to at least as  
26 much respect as evidence of a charitable trust as any other evidence, whether it be a national campaign by the American Red  
Cross for the Liberty Fund for victims of the 9-11 disaster, trusts established in private lawyers’ offices on typed sheets, or oral  
charitable solicitations by phone or door to door.

The record before this Court shows that faithful people have given money and property to buy land and build parish  
churches and high schools. Canon Law says those assets belong to the parishes and high schools. Canon Law is part of the

1 and ancestors, who unselfishly gave money and property to their local parish church to be used at the  
2 parish level for erecting church and school buildings, and for acquiring other property to be used for  
3 religious worship, education, and works of charity. (See Declarations in Support of Response to Third  
4 Motion for Partial Summary Judgment (Committee of Parishioners and Defendant Class) and legal  
5 arguments related thereto.

6 The property given to a parish for these purposes must be used for such purposes and no other. It  
7 cannot be taken and used for some other purpose such as paying tort claims against the Debtor who  
8 happens to hold title to the property as the trustee of a trust. It would be a violation of Oregon charitable  
9 trust law and unfair to those donors to use the property in such a manner. Only the Debtor's non-trust  
10 property is available to pay claims against it.

11 **5. Oregon's Accommodation of Religion in Its Corporation Law Violates**  
12 **Neither the Establishment Clause Nor the Equal Protection Clause.** Despite the TCC's protestations,  
13 the U.S. Supreme Court has consistently held that a legislative accommodation or exemption of religion  
14 does not constitute an establishment of religion. *Cutter v. Wilkinson*, \_\_\_ U.S. \_\_\_, 125 S.Ct. 2113 (2005);  
15 *Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987). See Debtor's Response at 43-  
16 45.

17 The TCC's Equal Protection argument is so broad that any statutory accommodation of religion  
18 would become unconstitutional. Given the absence of on point precedents, it cites *Church of Lukumi*  
19 *Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), a Free Exercise case, for the proposition that, under  
20 Equal Protection analysis, "classifications according to religious belief receive strict scrutiny as well." TCC  
21 Brief at 24. *Lukum/s* actual holding is that a legislative classification burdening a particular religion violates  
22 the Free Exercise Clause.

23 Finally, the Court should note that the accommodation provided by the Oregon legislature is  
24 precisely the liberty of religious organizations to determine their own polity required by the First Amendment  
25

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26 facts and circumstances under which money and property have been raised and which a court needs to consider in determining whether a charitable trust has been established.

1 Doctrine of Church Autonomy.

2 **IV. PARISHES DO NOT NEED TO HAVE A CIVIL STATUS TO BE BENEFICIARIES OF A TRUST.**  
3 **EVEN SO, CIVIL STATUS IS AVAILABLE SHOULD THE COURT REQUIRE IT.**

4 The Debtor's articles of incorporation identify its purpose as "acquiring, holding and disposing of  
5 church property **for the benefit of** the Roman Catholic Church". Stilley Decl. at Ex. 1, p. 4. **This is the**  
6 **language of trust.** Restatement (Second) of Trusts § 349(a) and 351 cmt. b (1959). The Debtor is not the  
7 beneficiary of the Trust; the language of the Debtor's articles is in stark contrast to that of Spokane's.

8 In the Spokane Decision, the Court held:

9 The Articles could not express more clearly the intent to create a trust and, clearly, the  
10 current Bishop, in his official capacity, holds title to the trust res. The named beneficiary of  
11 the trust is not, however, any of the defendant members of the diocesan family. The  
12 named beneficiary is the Diocese itself. The Bishop, in his official capacity, holds the  
13 property in trust for the debtor Diocese. The words mean what they say, the beneficiary is  
14 "The Roman Catholic Church of the Diocese of Spokane." They do not mean what they  
15 don't say, that each individual parish or all parishes or any member of the diocesan family  
16 is the beneficiary. (emphasis added)

17 329 B.R. at 328

18 The TCC argues that the Parishes cannot be beneficiaries of a trust unless they are civil legal  
19 entities. It makes this argument by ignoring all contrary law previously cited by the Debtor; the law that  
20 establishes that no civil status is required to be the beneficiary of a charitable trust. See Debtor's  
21 Response at 20-22 ; O.R.S. 128.620(2)(b); Restatement (Second) of Trusts § 348 cmt. f (1959); *In re*  
22 *Parkview Hospital*, 211 B.R. 619 (Bankr., N.D. Ohio 1997); *Municipality of Ponce v. Roman Catholic*  
23 *Apostolic Church in Porto Rico*, 210 U.S. 296, 313 (1908).

24 Even if the Court required a civil legal entity for parishes to be beneficiaries of a trust, the Debtor  
25 previously explained an alternative form of trust beneficiary-the "religious organization"<sup>3</sup>. If a "religious  
26 organization" can be a trustee (O.R.S. 128.640(2)(a)) it can certainly be a beneficiary of a trust.

27 The TCC also argues the parishes have no separate status because they cannot sue or be sued.  
28 Even though many tort claimants have sued parishes,<sup>4</sup> the TCC contends parishes lack standing to be

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29 <sup>3</sup> Under O.R.S. 128.629(4) that a "religious organization means any organized church or group organized for the  
30 purpose of divine worship, religious teaching, or other directly ancillary purposes". (See also Debtor's Response p. 21-22).

31 <sup>4</sup>The TCC contends that the tort claimants' practice of suing parishes is of recent origin. This not only begs the

1 sued. This argument is not only incorrect, *see* Debtor's Response at 20, it also never shows any  
2 relationship between capacity to be a trust beneficiary and capacity to be sued.

3 **V. THE DEBTOR'S ARTICLES OF INCORPORATION IMPORT CANON LAW INTO THE**  
4 **DEBTOR'S GOVERNANCE.**

5 The Court should note that *Spokane's* analysis turned largely on the language of the Diocese of  
6 Spokane's articles of incorporation. *Id.* at 327-28. The Archdiocese of Portland's articles (and  
7 supplements) **seven times** incorporate Canon Law into the Debtor's governance. Debtor's Response at  
8 13-14. Those references to Canon Law are not limited to the formation of the corporation. They also  
9 define the corporation's purposes as acting "according to the doctrine, rules, and usages of the Roman  
10 Catholic Church." They "empower" the Archbishop who is the corporation sole "according to the canons . .  
11 . of the Church," and they require him and his successors to "hold [their] office or position, in said Diocese,  
12 under the canons, rules, and usages of the Roman Catholic Church." *Id.* at 13.

13 The TCC ignores the language in the Debtor's articles which state that one of the objects of the  
14 corporation sole is the "holding" of property. The concept of "holding" property is also part of  
15 O.R.S. 65.077(4) which gives the nonprofit corporation the power to "hold, . . . and otherwise deal with, real  
16 or personal property or any interest in property". This same concept is part of one definition of a charitable  
17 trustee in the Oregon Charitable Trust and Corporation Act §128.620(2)(a). (a "legal entity holding property  
18 in trust pursuant to any charitable trust"). The concept of "holding" property in trust is fundamental to and  
19 repeated throughout the Act.<sup>5</sup> The concept of "holding property" referenced in the Debtor's articles, under  
20 the Oregon Nonprofit Corporation Act, and in Oregon's Charitable Trust and Corporation Act necessarily  
21 includes holding property in trust and is more expansive than the Debtor owning property just for itself.

22 Rather than answering the Debtor's argument regarding its articles of incorporation, the TCC  
23 instead tries to frighten the Court from applying Oregon religious corporation law permitting churches to  
24 define their own governance. The TCC identifies several seemingly sham corporations sole in Oregon—  
25 The Meatus Beo, A.H.O.Y., and the Convergence Ministries—to suggest that permitting a Catholic

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26 question, it is also incorrect. *See, e.g. Sec. Hoffman Dec.*, and all of its Exhibits.  
<sup>5</sup> O.R.S. §§128.630(1); 128.640(2)(a) and (c); 128.650; 128.670(1) and (2)

1 Archdiocese with a 162 year history in Oregon to determine its own polity means that these other groups  
2 will "be a law unto themselves." TCC Reply at 27. (The Debtor has filed a Motion to Strike with respect to  
3 two of these three entities as being noncompliant with O.R.S. 65.067(2)).

4 The TCC could similarly argue against application of the First Amendment Doctrine of Church  
5 Autonomy because bogus religious groups might attempt to exploit the protections of that law. The United  
6 States Supreme Court long ago resolved this problem by holding that the Church Autonomy Doctrine does  
7 not extend to circumstances in which an ersatz religious group commits a fraud upon the government  
8 regarding its "religious" character. *Jones v. Wolf, supra* at 609 n.8; *Serbian E. Orthodox Diocese v.*  
9 *Milivojevich*, 426 U.S. 696, 713 (1976); *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929).<sup>6</sup>  
10 The TCC's reliance on exceptions to legitimate religious entities should not swallow the rule for those, such  
11 as the Archdiocese of Portland, that are unquestionably legitimate.

12 VI. THE FIRST AMENDMENT GUARANTEES THAT A CHURCH HAS THE POWER TO DECIDE  
13 ITS OWN DOCTRINE, POLITY, AND GOVERNANCE.

14 A.. The TCC Never Disputes the Substantive Doctrine of the First Amendment Church  
15 Autonomy Principle. In its opening brief in support of its Restated Second Motion for Partial Summary  
16 Judgment, the TCC cites and quotes *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) for the  
17 proposition that the First Amendment Doctrine of Church Autonomy cases "uphold the basic First  
18 Amendment principle that religious institutions must have 'power to decide for themselves, free from state  
19 interference, matters of church government as well as those of faith and doctrine.'" (emphasis added).  
20 TCC Second Summary Judgment Brief at 4. The TCC's original proposition is, almost word for word, one  
21 of the propositions for which the Debtor has requested the Court grant summary judgment in its favor. See  
22 Debtor's Cross Motion at 3, ¶ 5.

23 The TCC nowhere contests the substantive First Amendment Church Autonomy Doctrine set out in  
24 Section VIII of the Debtor's Response (pages 23 through 30). Accordingly, it is not in disputed that, if the

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25 <sup>6</sup>Congress and the IRS similarly test the bona fides of those religious organizations claiming  
26 IRC § 501(c)(3) status by requiring that they be "organized exclusively" for religious or charitable purposes." See *Church of*  
*Scientology v. Commissioner*, 823 F.2d 1310, 1315 (9th Cir. 1987), cert denied 486 U.S.1015 (1988). This case identifies several  
factors that determine whether a religious organization qualifies for a tax exemption.

1 First Amendment Doctrine of Church Autonomy applies here, it ensures that:

- 2 • The governance and polity of a church includes the church's authority to determine the  
3 administration, use, and ownership of church property by ecclesial entities, Debtor's Response at  
4 24;
- 5 • The rights conferred by Canon Law upon ecclesiastical officials and entities are "strictly a matter of  
6 ecclesiastical government," *id.*;
- 7 • The First Amendment Doctrine of Church Autonomy, as pronounced *Watson v. Jones*, 80 U.S. (13  
8 Wall.) 679 (1871) and its progeny, structurally restrains civil courts from adjudicating disputes  
9 involving ecclesiastical subject matters, including: "questions of discipline, or of faith, or  
10 ecclesiastical rule, custom or law," "matters of church government," "church polity," "control of  
11 church property, and "structure and administration of a church," *id.* at 25, Debtor's Brief in  
12 Response to TCC's Third Motion for Partial Summary Judgment at 17;
- 13 • The *Watson* rule requires deference to church authorities when such ecclesiastical subject matters  
14 are involved and the religious organization is hierarchically organized, Debtor's Response at 25;
- 15 • *Jones v. Wolf*, 443 U.S. 595 (1979) identifies limited circumstances in which a "neutral principles"  
16 methodology is a permissible alternative approach, to the *Watson* deference approach, for  
17 resolving a dispute involving ecclesiastical subject matters like those just described, *id.* at 27;
- 18 • The neutral principles methodology requires a court to look at the relevant state law, corporate  
19 charters and articles of incorporation, and also the relevant church or canon law, *id.* at 28; and
- 20 • Notwithstanding its endorsement of the neutral principles methodology, *Jones v. Wolf* holds that,  
21 when state religious corporation law provides for church law to control certain issues, "then the  
22 First Amendment requires that the [civil] courts give deference to" the church hierarchy, *id.* at 30.

23 The TCC has not disputed any of these legal propositions.

24 The TCC also has failed to address three of the four most significant First Amendment precedents  
25 before the Court: *Mannix v. Purcell*, 19 N.E. 572, 582 (Ohio 1888), *Carnes v. Smith*, 222 S.E.2d 322 (Ga.  
26 1976), *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929), and *Order of St. Benedict v.*  
*Steinhauser*, 234 U.S. 640 (1914).

27 *Mannix* is a particularly important case. It is the only published opinion before 2005 addressing the  
28 issue of whether the creditors of an archbishop might reach parish property when legal title to the parish  
29 property is in the name of archbishop personally. The facts in *Mannix* were more favorable for the creditors  
30 than the facts here. Archbishop Purcell of Cincinnati held title to the property of the parishes within the  
31 Archdiocese, not in a statutory corporation sole or even in the classic formula for the common law  
32 corporation sole ("the Archbishop and his successors") but in his own name. The parish property had been

1 "conveyed to 'John B. Purcell, his heirs and assigns, forever.'" *Mannix*, 19 N.E. at 582. The parishes  
2 "were not incorporated nor organized under any law of the state, nor were they incorporated associations . .  
3 . ." *Id.*

4 Archbishop Purcell made an assignment for the benefit of creditors. The assignment stated that it  
5 was "in trust for the payment of his debts, of all his property which could, at law or in equity, be subjected to  
6 such payment . . . ." *Id.* at 582. The deed effecting the assignment did not describe specific property  
7 because such a deed, by force of law, automatically transferred the assignor's properties to the assignee.  
8 *Id.* The assignee sued the archbishop seeking declaratory relief "that the archbishop was so far the  
9 absolute owner of the [parishes'] property--such was his dominion over it--that it is subject to the payment  
10 of even his general indebtedness, and passed by deed of assignment to the assignee." *Id.* at 583.

11 The Ohio Supreme Court recognized, first, that "[n]o higher or better right or title to any of this  
12 property passed to the assignees than the assignor held" and that the debtor's "creditors acquired no new  
13 rights or remedies in or against it by force of the assignment." *Id.* at 584. It then considered evidence of  
14 "15 centuries into the laws and canons of the church" and found "proof . . . overwhelming that [the bishop]  
15 was not invested with an absolute title to it as his own," *id.*, and it held that "[t]he legal title to all this  
16 property is in the bishop, while the equitable or beneficial interest is in the several congregations . . . ." *Id.*  
17 at 590. The assignee thus lost, as should the TCC here.

18 *Carnes v. Smith, supra* a case cited favorably by *Jones v. Wolf*, held that church property titled  
19 exclusively in a local church corporation and without any reference to any trust or reverter interest,  
20 nevertheless became property of the Methodist denomination because the local church was within the  
21 denomination whose canon law made it "clear that church property is held by local trustees for the benefit  
22 of the general Church." *Id.* at 324-25. This is a First Amendment case, approved by the U.S. Supreme  
23 Court, in which church law controlled a property ownership question regardless of the language in the  
24 deed.

25 *Order of St. Benedict v. Steinhauser, supra* reached a similar result when copyrights titled in a  
26 Benedictine priest went not to his estate, but to his religious order, by force of canon law and the Rule of St.

1 Benedict.

2 Finally, in *Gonzalez, supra*, the Supreme Court applied Catholic Church Canon Law in rejecting a  
3 creditor's claim to be the beneficiary of an endowed chaplaincy.

4 Application of *Mannix, Carnes, Steinhauser, and Gonzalez* and their respective principles is  
5 determinative of the outcome in this adversary proceeding. The TCC provides no answer to the first three  
6 of these cases because it has none. As regards *Gonzalez*, the TCC argues that the creditor's claims were  
7 not rejected because of Canon Law but because he was not qualified to be a chaplain. The TCC omits that  
8 *Gonzalez* held that the creditor was not qualified to be chaplain because of Canon Law. *Gonzalez*, 280  
9 U.S. 1.

10 **B. There Is No Third Party Exception to the Church Autonomy Doctrine.** There is no  
11 "third party" exception to the Church Autonomy Doctrine because the institutional autonomy guaranteed  
12 religious institutions by the First Amendment does not depend upon who initiates a lawsuit against a  
13 church. *See* Debtor's Response at 30-36. The implications of the TCC's "third party exception" argument  
14 are that (a) when a stranger to the church (denominated by the TCC as a "third party") brings a claim,  
15 Canon Law is suspended, parish ecclesial entities are ignored, and the stranger may reach the parish  
16 assets; but if (b) the claimant is a member of the church, Canon Law applies, parish ecclesial entities  
17 survive, and the claimant can only reach Archdiocesan assets.

18 The fallacy of this argument is made evident by the First Amendment disposition of clergy  
19 malpractice "third party" claims and the government initiated claims against churches. These clergy  
20 malpractice claims primarily involve past and present female members of a church suing the church for  
21 inappropriate sexual conduct by a priest or minister. While most of these claims involve adult victims, and  
22 are, therefore arguably less harmful and morally less offensive, the relationship between the clergy  
23 malpractice claimants and the church is similar to the tort claimants and the church defendant here. *See*  
24 Second Hoffman Declaration. The First Amendment functions as a limitation on judicial power regardless  
25 whether the government, a church member, or a stranger to a church initiates the suit. The issue is  
26 whether the dispute involves an ecclesiastical subject matter, not the relationship of the claimant to the

1 church.

2 The off limits subject matter in clergy malpractice<sup>7</sup> cases is the judicial definition of a reasonable  
3 standard of care for the clergyperson. The off limits subject matter is the judicial override of a church's right  
4 to define its own polity and governance in accordance with its own beliefs.

5 Certain legal claims initiated by the government provide another example of situations in which the  
6 First Amendment precludes adjudication of cases, initiated by strangers to the church or "third parties."  
7 Regardless of the fact of the government's "third party" relationship with the church, such cases are barred  
8 when they touch upon ecclesiastical subject matters. *See United States v. Ballard*, 322 U.S. 78 (1944) and  
9 Debtor's Response at 33 and 34.

10 **C. Even If There Were a Third Party Exception, the Tort Claimants Are Not Third**  
11 **Parties.** The TCC has never established that the tort claimants here are third parties or strangers to the  
12 Church. Indeed, the evidence is the opposite. After reviewing complaints by 206 sexual misconduct  
13 claimants, Margaret Hoffman testifies that "[i]n every single one of these Complaints, the claimants assert  
14 that, at the time of their alleged sexual misconduct, they were members of or associated with the Roman  
15 Catholic Church, primarily through attendance at a Catholic school and/or parish church within the  
16 Archdiocese." Sec. Hoffman Decl. at ¶ 2. This, too, constitutes evidence that was not before the Spokane  
17 Court when it articulated a "third party" exception to the Church Autonomy Doctrine that the tort claimants  
18 had never impliedly consented to Catholic Church Doctrine or polity.

19 **D. *Smith* Did Not Diminish Church Autonomy Law.** The TCC continues to suggest that  
20 there is no religious defense to neutral, generally applicable laws." TCC Brief at 27-28. If this were the  
21 rule, there would be no more Church Autonomy Doctrine, and the Jehovah's Witnesses in *Cantwell v.*  
22 *Connecticut*, 310 U.S. 296 (1940) would have gone to prison. The Debtor has previously explained how  
23 this contention mixes First Amendment paradigms; omits that the TCC's primary precedent, *Employment*

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24 <sup>7</sup>Rather than dealing with the uniform body of law in which courts, on First Amendment grounds, consistently dismiss clergy  
25 malpractice claims, the TCC invokes selected fiduciary cases. Even though many courts recognize that fiduciary duty claims are  
26 barred for the same reasons that clergy malpractice cases are barred, *see, e.g., Schmidt v. Bishop*, 779 F. Supp. 321, 325-26  
(S.D.N.Y. 1991), those that find no First Amendment bar do so on the pretext that such claims do not require expert testimony  
regarding and judicial definition of standards of care for clergypersons. The TCC's fiduciary duty cases do not depend upon  
plaintiff "third party" status.

1 *Div. V. Smith*, 494 U.S. 872 (1990) affirms the Church Autonomy case law; and ignores that every court to  
2 have considered whether *Smith* diminished Church Autonomy law found otherwise. See Debtor's  
3 Response at 39-40.

4 VII. THE UNDISPUTED EVIDENCE OF CANON LAW ESTABLISHES THAT PARISHES ARE  
5 DISTINCT ECCLESIAL ENTITIES WITH THEIR OWN PROPERTY AND THAT PARISH  
6 PROPERTY CANNOT BE PART OF THE DEBTOR'S ESTATE.

6 The TCC offers no evidence to dispute the canonical analysis provided by Dean Cafardi and  
7 Archbishop Vlazny. As summarized on pages 16 and 17 of Debtor's Response, this analysis establishes  
8 that Canon Law is founded upon Catholic doctrine; that it recognizes distinct ecclesial entities called public  
9 juridic persons, which include parishes and dioceses; and that these entities each own their own property  
10 and cannot own the property of another juridic person. Cafardi Decl. at ¶¶ 14, 24-26, 29-31, 33, 35;  
11 Vlazny Decl. at ¶ 9. Given the absence of controverting evidence, the Court should conclude that Canon  
12 Law is as set forth in the numbered paragraphs in the Debtor's Response at 16-17.

13 In the final paragraph of the Third Cafardi Declaration, he stated that the Archbishop functions as  
14 the "canonical steward" of the Archdiocese. When the Archbishop serves as canonical steward or  
15 "*paterfamilias*" of the Archdiocese, the Archbishop "exercise[s] vigilance so that abuses do not creep into . .  
16 . the administration of goods." Third Cafardi Decl. at ¶ 16, CIC, c. 392, § 2. Dean Cafardi explains,

17 [S]tewardship connotes the idea of property and goods being held by one person for the  
18 benefit of others. Property held by the steward is not the steward's own. It belongs to  
19 others, but the steward is to manage it, conserve it, and make the best of it, so that the  
20 true owners, both present and future, might benefit from the blessings of the property.

19 Third Cafardi Declaration at ¶ 17. As "canonical steward," the Archbishop is, for future generations,  
20 ensuring that canonical norms are observed. This is why the Archbishop has certain oversight functions  
21 and reserved powers regarding parishes. See Cafardi Decl. at ¶ 37, CIC., 392, § 1. The TCC's  
22 suggestion, therefore, that the Archbishop's canonical stewardship role within his Archdiocese usurps the  
23 distinctiveness of parishes is like arguing that a trustee's role in preserving trust property destroys the legal  
24 distinctiveness of trust beneficiaries.

25 In addition, the TCC distorts much evidence regarding the parish-archdiocesan relationship. It, for  
26 example, notes that that the Archdiocese has signatory authority on parish bank accounts while omitting

1 that such authority is for "emergency purposes only [as when a] parish is without a pastor." Vuylsteke Decl.  
2 at ¶ 11; Conway Decl. at Ex. 4, p. 15. It states that parishes are "required" to participate in the  
3 Archdiocesan Loan and Investment Program ("ALIP") while omitting that parishes participate in the ALIP, in  
4 part, to comply with the Scriptural mandate (citing II Corinthians 8:14) for the faithful to help one another,  
5 Fletcher Decl. at Ex. 14, p. 15.

6 The TCC's arguments are also inconsistent with the notion that, while the Archbishop may expect  
7 Parishes to participate in the ALIP, he is "unable to force a pastor's compliance because of the authority of  
8 a pastor . . . under Canon Law." Second Vlazny Decl. at ¶ 4. The TCC notes that parishes are subject to  
9 Archdiocesan assessments—ignoring, first, that such assessments are a tax on parish income and not on  
10 parish property, and second, that an Archdiocesan assessment would not be required if the Parishes had  
11 no separate existence from the Archdiocese and the Archdiocese already owned the Parishes' property.

12 **VIII. THE RELIGIOUS FREEDOM RESTORATION ACT IS NOT AT ISSUE IN THE DEBTOR'S**  
13 **CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT.**

14 The Debtor expressly stated that its Cross Motion for Partial Summary Judgment was not based  
15 upon RFRA. Debtor's Response at 23-24, n.15. The TCC's arguments against RFRA in response to the  
16 Cross Motion, therefore, are surplusage and warrant no response.

17 **IX. THE ARCHDIOCESE IS NOT JUDICIALLY ESTOPPED.**

18 **A. Even if Without Constitutional Constraints, Judicial Estoppel Is Not Available Here.**

19 As a threshold matter, it should be noted that none of the cases cited by the TCC in its response have  
20 anything to do with parishes or parish property. *Thorne*, *Mattson* and *Central Catholic* focus on issues  
21 involving Catholic Schools only.<sup>8</sup> Thus, the TCC's attempt to expand its judicial estoppel argument to  
22 include the status of schools and parishes is overreaching. A party cannot invoke judicial estoppel for  
23 issues not raised in prior proceedings.

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26 

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<sup>8</sup>The TCC does not address the Debtor's arguments concerning *Baker, Mt. Angel* and *Washington County* in its response brief. Therefore, the Debtor assumes the TCC is no longer relying on those cases to support its judicial estoppel argument. To the extent those cases are still relevant, the Debtor will rely on its original arguments. See Debtor's Response at 52.

1 Besides ignoring the scope of prior cases, the TCC also incorrectly states that the court may rely  
2 on “any one or more” of the factors set forth in Debtor’s motion to find judicial estoppel. See Plaintiffs’  
3 Reply at 14. Contrary to the TCC’s position, there are three inflexible requirements for judicial estoppel to  
4 apply. The first two require that the party’s previous position must be clearly inconsistent with the position it  
5 is currently taking and that previous position must have been accepted by an earlier tribunal. See *Hamilton*  
6 *v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782-83 (9<sup>th</sup> Cir. 2001) (stating that judicial estoppel precludes  
7 a party from taking a “clearly inconsistent position” and is restricted to cases where the court “relied on, or  
8 ‘accepted,’ the party’s previous inconsistent position”); in accord is even the *Spokane Decision at*, 319  
9 (stating that “an inference or implication is not sufficient for application of the doctrine of judicial estoppel. It  
10 must be clear that the party made inconsistent representations of fact or law”)(emphasis added).

11 The third requirement, as the Ninth Circuit and other courts have consistently stated, is that judicial  
12 estoppel will only apply if the party’s change in position is “tantamount to a knowing misrepresentation or  
13 even fraud on the court.” *Johnson v. State of Oregon*, 141 F.3d 1361, 1370 (9<sup>th</sup> Cir. 1998). If there is no  
14 fraudulent intent, the seemingly inconsistent statements are simply additional evidence to be considered by  
15 the trier of fact:

16 Although we acknowledged that estoppel might be appropriate when the inconsistency of  
17 statements and positions was so blatant as to “demonstrate that a claimant is playing fast  
18 and loose with the courts,” our clear preference was that inconsistent statements simply be  
considered along with other evidence to see whether they were so damaging that no  
rational trier of fact could rule in the plaintiff’s favor.

19 *Fredenburg v. Contra Costa County Dept. of Health Servs*, 172 F.3d 1176, 1179 (9<sup>th</sup> Cir. 1999); see also  
20 *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. GMC*, 337 F.3d 314, 319 (3<sup>d</sup> Cir. 2003)(stating that judicial  
21 estoppel requires a showing of bad faith and “should only be applied to avoid a miscarriage of justice”).  
22 Here, the TCC has not alleged, much less proven, the Debtor acted with fraudulent intent.

23 As the Debtor explained in its Response, none of the cases cited by the TCC meet the  
24 fundamental requirements for judicial estoppel. See Debtor’s Response at 51-54. The TCC ignores  
25 Debtor’s arguments and simply points again to scattered statements from *Thorne*, *Mattson* and *Central*  
26

1 Catholic to support its claim of judicial estoppel.<sup>9</sup> However, in assessing a claim of judicial estoppel, the  
2 court is concerned with inconsistent “positions,” not simply allegedly inconsistent statements.

3 If removed from context, many statements can seem inconsistent. Therefore, the proponent of  
4 estoppel must demonstrate that a party’s statements *in the context they were made* amount to the adoption  
5 of a position that is clearly incompatible with the position asserted in the present case. *See Johnson*, 141  
6 F3d at 1370-71 (examining the context of a statement to determine whether it gives rise to judicial  
7 estoppel). Otherwise, judicial estoppel becomes a glorified game of “gotcha.”

8 *Thorne, Mattson* and *Central Catholic* all involve the relationship between the Debtor and teachers  
9 in Catholic Schools in western Oregon. In each case, the state was attempting to regulate that relationship,  
10 and the Debtor argued that the relationship is uniquely religious.<sup>10</sup> As Dean Cafardi explains:

11 Bishops have a special role as “pastors in the Church” in their capacity as “teachers of  
12 doctrine, priests of sacred worship, and ministers of governance.” In his role as “teacher of  
13 doctrine,” a bishop “frequently preaching in person, is bound to propose and explain to the  
14 faithful the truths of the faith which are to be believed and applied to morals.” As  
15 “moderator of the entire ministry of the word,” a diocesan bishop is the principal teacher of  
16 Catholic doctrine in the diocese. As moderator of the word, “a diocesan bishop is to  
17 oversee the “ministry of the word,” in the diocese, which includes both preaching and  
18 catechetical instruction throughout the diocese. As “moderator of the entire ministry of the  
19 word,” the diocesan bishop is to exercise care that Catholic schools and universities  
20 faithfully observe the principles of Catholic doctrine.

21 Third Cafardi Declaration at ¶13 (citations to Canon Law omitted).

22 When considered in the proper light, it is clear that these cases concern the Debtor’s doctrinal  
23 control of Catholic education and faculty, not secular control of the schools themselves. In each case, the  
24 Debtor’s arguments would have been the same if the schools were separate corporations run by other,  
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21 <sup>9</sup> Although not addressed in the TCC’s judicial estoppel section, the TCC also cites the Debtor’s Answers in two recent cases as examples of  
22 allegedly inconsistent statements: *D.J. et al. v. The Archdiocese of Portland et al.*, Mult. Co. Case No. 0008-07885 (2001) and *Phalen v.*  
23 *Roman Catholic Archbishop of Portland in Oregon*, Josephine Co. Case No. 02 CV 0191 (2002). To the extent the TCC is relying on those  
24 cases to support its judicial estoppel argument, they are not applicable. Both cases were settled prior to trial. For a settlement to satisfy the  
25 “adoption” requirement of judicial estoppel, it must be favorable to the party against whom estoppel is sought and it must have undergone some  
26 type of judicial approval. *See Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 604-5 (9<sup>th</sup> Cir. 1996); *see also Kale v. Obuchowski*,  
985 F.2d 360, 362 (7<sup>th</sup> Cir. 1993)(stating that a judicially approved property settlement in a divorce case is considered a “win” for judicial  
estoppel purposes when a party used its prior position to “induce their opponents to surrender”)(cited with approval by the *Rissetto* court).  
There was no judicial approval of the settlements in *DJ* or *Phalen*, and whatever position the Debtor took regarding Catholic schools or  
parishes in those cases was irrelevant to their eventual settlement.

<sup>10</sup> The TCC claims that it is irrelevant that the Debtor lost at every level in *Mattson*. The TCC ignores the fact that the Ninth Circuit requires that  
a tribunal actually adopt a party’s position before judicial estoppel will apply. *See Interstate Fire & Cas. Co. v. Underwriters at Lloyd’s, London*,  
139 F.3d 1234, 1239 (9<sup>th</sup> Cir. 1998). Contrary to the TCC’s argument, the Debtor did not argue in *Mattson* that Catholic Schools and the  
debtor are one in the same. However, if it had, the fact that the Debtor lost before every tribunal in *Mattson* indicates that its position was not  
adopted in that case.

1 separate Catholic organizations. See *id* at ¶14. The priority of the Archbishop in Catholic educational  
2 matters arises from the fundamental religious nature and purpose of Catholic education, and it does not  
3 affect the status of the schools as separate entities. See *id* at ¶15.

4 Thus, the temporal status of Catholic Schools was completely irrelevant in *Thorne, Mattson* and  
5 *Central Catholic*. The position taken in those cases – *i.e.*, that Catholic Schools in western Oregon are  
6 under the complete theological control of the Archbishop and therefore beyond state control – is not “clearly  
7 inconsistent” with the position that the Debtor and Catholic Schools are separate entities. Once those  
8 cases are viewed in the right context, it is clear that they do not estop the Debtor’s current position, which is  
9 based on a good faith interpretation of civil and Canon Law and supported by exhaustive legal research  
10 and Canon Law authority.

11 **B. *F.E.L. Publications* and *St. Francis Xavier* Are Inapposite.** The TCC places significant  
12 reliance on two federal cases to support its argument that the Debtor and its parishes and schools are the  
13 same entity. As explained in the Debtor’s Response (at page 19), those cases do not control here because  
14 the corporations sole involved were governed by different statutes than the Debtor and, more importantly,  
15 because the Canonical Law issues raised in this case were not considered by those respective courts.

16 Moreover, in *F.E.L. Publications, Ltd. v. Catholic Bishop of Chicago*, 754 F.2d 216, 221 (7th Cir.  
17 1985) the court relied on *Galich v. Catholic Bishop of Chicago*, 394 N.E. 2d 572 (Ill. App. 1979), as support  
18 for the contention that parishes are “subsumed under the Catholic Bishop.” However, *Galich* did not hold  
19 that parishes and the Diocese are one in the same. Rather, the court simply held that, absent evidence of  
20 a trust or covenant, it would not get involved in decisions regarding the use of church property. *Galich*, 394  
21 N.E. 2d at 578-79. Decisions regarding church property, including whether to close a church, are  
22 ecclesiastical decisions governed by church law, and third-parties cannot use the secular courts to force a  
23 particular outcome. *Id.* at 579. Thus, the underpinnings of *F.E.L. Publishing* are in accordance with the  
24 Debtor’s position in this case.<sup>11</sup>

25 \_\_\_\_\_  
26 <sup>11</sup> It should also be noted that the plaintiff in *F.E.L. Publications*, took contrary positions at trial, at one point arguing that the parishes and Diocese are the same and then arguing that they were different. *F.E.L. Publications*, 754 F.2d at 221. The court recognized that those positions could not be reconciled, and concluded that the jury erred in choosing one over the other. *Id.*

1           The TCC's reliance on *EEOC v. St. Frances Xavier*, 77 F. Supp. 2d 71 (D. D.C. 1999), is similarly  
2 misplaced. In that case, the court granted summary judgment based almost entirely on the statements of a  
3 single priest regarding his understanding of the organization of the Archdiocese of Washington D.C. and its  
4 relationship with its parishes. *EEOC*, 77 F. Supp. at 74-75. Whether those statements are correct with  
5 regard to the Archdiocese of Washington D.C., they have nothing to do with the Archdiocese of Portland.  
6 The Debtor has marshaled extensive legal and factual arguments to support its position in this case, and  
7 those arguments deserve to be considered on their merits. They should not be trumped by the statements  
8 of a single priest in a case involving a different Archdiocese on the other side of the country.

9 **X. THE AVAILABILITY OF OTHER CHOICES OF CIVIL ENTITIES FOR THE DEBTOR OR A**  
10 **PARISH DOES NOT MEAN THAT CHOOSING AN ARCHDIOCESAN CORPORATION SOLE**  
11 **ABOLISHES A PARISH'S SEPARATE IDENTITY**

12           The Archdiocese chose to form an Archdiocesan corporation sole under a state corporation law  
13 which expressly permitted the importation of Canon Law.<sup>12</sup> The TCC notes that the Diocese of Baker in  
14 Oregon made a different choice. It recently separately incorporated the parishes within its territories. TCC  
15 Reply at 4. The TCC also notes that the Diocese of Pittsburgh is a charitable trust. *Id.* It then faults the  
16 Archdiocese for its choice and suggests that the Archdiocese has thereby given up parish distinctiveness  
17 and governance in accordance with Canon Law. *Id.* at 36.

18           In the Cafardi Declaration (at ¶ 41), Dean Cafardi explained that "[t]here is seldom a perfect fit  
19 between the ecclesiastical entities known as public juridic persons and the civil entities by which they  
20 sometimes conduct their temporal affairs" and that the choice made by the Archdiocese of Portland is  
21 "[o]ne acceptable choice" because it accommodates the bishop's role as canonical steward while honoring  
22 the canonical rights of parishes. *Id.* at ¶ 42. In his Third Declaration, Dean Cafardi explains the historical  
23 reasons why many dioceses have structured their temporal affairs just as the Archdiocese of Portland. He  
24 states, "the choice made by the Archdiocese of Portland follows a pattern adopted by many American  
25 dioceses in the wake of a hundred year long controversy known as trusteeism or the trusteeship

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26 <sup>12</sup>Dean Cafardi identifies some of the canonical difficulties of separately incorporating parishes in the manner chosen by the  
Diocese of Baker in his Third Declaration at ¶ 7.

1 controversy." Third Cafardi Decl. at ¶ 9. He notes that, during a period "[f]rom the 1780s and continuing  
2 beyond the Civil War, the Catholic Church in the United States was driven by a controversy called  
3 trusteeism [which was] a form of insubordination in which lay parishioners, particularly lay parish trustees,  
4 on the basis of civil law claimed excessive parochial administrative powers, and even the right to choose  
5 and dismiss pastors." *Id.* After decades of controversy including lawsuits between bishops and lay boards  
6 of parish trustees, the American bishops convened a series of Councils in Baltimore which addressed the  
7 problem, *inter alia*, by requiring bishops to hold the deed to parish property. *Id.* at 10. The Debtor's choice  
8 fits the pattern required by the Baltimore Councils and is an acceptable one within canonical norms.

9 **XI. THE PARISHES ARE NOT OPERATING DIVISIONS OF THE ARCHDIOCESAN**  
10 **CORPORATION.**

11 The TCC continues to contend that the Court should treat the Parishes like operating divisions of  
12 the Archdiocesan corporation in order to have the Court rearrange Catholic Church polity and consolidate  
13 the Parishes and their property into the Archdiocese.

14 The TCC relies on a quote from an 1956 article from The Harvard Business Review which, states  
15 that a division "acts in all respects like a subsidiary whose stock is held by the parent . . . , differing primarily  
16 that it has no legal existence apart from the parent . . . ." The 1956 Harvard *Business Review* is hardly a  
17 legal authority requiring judicial respect. Even if it were, parishes do not act like they are "owned" by the  
18 Archdiocese. *See generally* First Cafardi Declaration. Finally, the TCC invokes *In re Convertible Rowing*  
19 *Exerciser Patent Litigation*, 817 F.Supp. 434 (D. Del. 1993). *Convertible Rowing* is inapposite. It says  
20 nothing about parishes or dioceses, and even its holding was not, as the TCC states, that Columbia, the  
21 subsidiary/division, was not a separate legal entity but that service of process upon Columbia did not  
22 constitute service upon its parent.

23 **XII. CONCLUSION.**

24 The issues on Summary Judgment now before the court are complex and factually intense. The  
25 Court has before it, nearly 100 declarations and affidavits, and thousands of pages of other evidence filed  
26 by the Debtor and other defendants.

The TCC has asked the Court to rule that the parishes are not separate from the Debtor and that

1 under Fed R Civ P 17(b) they cannot sue or be sued. The TCC relies principally on *EEOC v. St Frances*  
2 *Xavier, supra* and *F.E.L. Publications Ltd. v. Catholic Bishop of Chicago, supra*, and principles of judicial  
3 estoppel. It then denigrates Canon Law and relegates it to the level of the doctrines of the *Metus Beo*, and  
4 disregards its significance in the Debtor's articles of incorporation, Oregon law, and under established First  
5 Amendment precedent. It also gives short shrift to the Debtor's charitable trust arguments, ignoring the  
6 statutory relationship between religious corporations and charitable trusts (compare O.R.S. 65 to O.R.S.  
7 128). From all of this, it attempts to extrapolate that parishes cannot have any interest in property and that  
8 parish property is the Debtor's property. This leap is factually unsupported, and legal unsound.

9 The TCC never meaningfully distinguishes the Debtor's First Amendment arguments. Instead, it  
10 overreaches and mischaracterizes Debtor's arguments by making overly broad with statements such as  
11 "[c]ontrary to Debtor's assertion that its beliefs determine the contours of legal property ownership, this  
12 case actually has nothing to do with religious doctrine" (TCC Reply p. 1, lines. 9-10) and "[d]ebtor claims  
13 this Court must defer to the internal regulations of the Roman Catholic Church in deciding this adversary  
14 proceeding" TCC Reply p. 8, lines 2-3. These types of overstatements extend into areas other than the  
15 First Amendment when the TCC states that "[t]he Debtor ignores the undisputed fact that parishes are not  
16 independent of the Debtor." (emphasis added) TCC Reply p. 11, lines 22-23.

17 In contrast, the Debtor's cross motion for summary judgment is not directly controverted, although  
18 it is attacked, largely on the grounds of relevancy. The TCC has not offered any evidence contradicting the  
19 Vlazny Declaration and the Cafardi Declaration. Under Fed R Civ P 56(e), the TCC cannot rest on the mere  
20 allegations of its pleadings; it must "set forth specific facts showing that there is a genuine issue [of fact] for  
21 trial. The TCC failed to do so.

22 The TCC wants to pretend this debtor is the Harvard Business School model of a multidivisional,  
23 secular, for-profit conglomerate, with a board of directors and officers accountable to shareholders, whose  
24 existence never intersects with religion and the First Amendment, except perhaps to the extent it is closed  
25 on Christmas Day. The Debtor is the antithesis of that model. It is a nonprofit religious corporation formed  
26 under Oregon Law in accordance with its articles, both of which permit it to be governed by Canon Law.

1           It is that latter entity the TCC wishes to ignore. It is the law governing this entity the TCC wishes to  
2 disregard. It is the Canon Law and the Debtor's First Amendment rights the TCC hopes the Court will  
3 snub. It is the law of property and the law of trusts the TCC wants to discount. These are the fundamental  
4 principles, together with the evidence the Debtor and other defendants presented in connection with these  
5 motions, that justify granting the Debtor's cross motion and denying the TCC's motions for partial summary  
6 judgment.

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1 CERTIFICATE OF SERVICE

2 I certify that on November 7, 2005, I served **by first class mail**, a full and correct  
3 copy of the foregoing **DEBTOR'S REPLY BRIEF IN SUPPORT OF ITS CROSS**  
4 **MOTION FOR PARTIAL SUMMARY JUDGMENT** to the interested parties of record,  
5 addressed as follows:

6 **PLEASE SEE ATTACHED LIST OF INTERESTED PARTIES**  
7

8 Dated: November 7, 2005  
9

10 */s/ Thomas W. Stilley*

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