

UTAH SUPREME COURT
JUL 20 2009

Kenneth A. Okazaki (USB #3844)
Stephen C. Clark (USB #4551)
JONES, WALDO, HOLBROOK &
McDONOUGH
170 South Main St., Ste. 1500
Salt Lake City, UT 84101
Telephone: (801) 521-3200
Facsimile: (801) 328-0537

Rodney R. Parker (USB #4110)
Richard A. Van Wagoner (USB #4690)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

James C. Bradshaw (#3768)
BROWN, BRADSHAW & MOFFAT, L.L.P.
10 West Broadway, Suite 210
Salt Lake City, Utah 84101
Telephone: (801) 532-5297
Facsimile: (801) 532-5298

IN THE UTAH SUPREME COURT

THE FUNDAMENTALIST CHURCH
OF JESUS CHRIST OF LATTER-DAY
SAINTS, an association of individuals,

v.

JUDGE DENISE P. LINDBERG, Third
District Court Judge,

Respondent.

**AFFIDAVIT OF WILLIE JESSOP IN
SUPPORT OF PETITION FOR
EXTRAORDINARY WRIT**

Supreme Court No. _____

Trial Court No. 053900848

Subject to Assignment to
the Utah Court of Appeals

**Petitioner Requests that the Utah
Supreme Court Retain Jurisdiction**

STATE OF _____)
)ss.
COUNTY OF _____)

I, Willie Jessop, being duly sworn, hereby depose and state as follows:

1. I am a member and duly authorized representative of the Petitioner Association, which comprises an informal association of members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (the "FLDS Church" or the "Church"). I am also a member in good standing of the FLDS Church, and a beneficiary of the United Effort Plan Trust, which is the subject of this action.

2. I am over 18 years of age and am otherwise competent to testify to the facts set forth herein.

3. I have personal knowledge of the matters set forth herein unless otherwise stated, and as to other matters I attest thereto to the best of my knowledge, information and/or belief, including my sincere religious belief.

4. Petitioner Association members are a voluntary group of persons, without a formal charter, formed by mutual consent for the purpose of promoting our common objective of securing our constitutional rights against state action that has prevented us from exercising core tenets of our religion and that is tearing at the spiritual and economic heart of our community.

5. The FLDS Church is based on the "fundamental" teachings of our Savior as recorded in ancient scripture and revealed through modern-day Prophets. We believe that we have been sent to the earth to learn who God is and how to become like Him. We claim the privilege of worshiping God as guaranteed by the Constitution; we believe this same privilege belongs to all as a matter of law and divine right.

6. In the 1930's, a small group of FLDS Church faithful began to settle on a piece of land straddling the borders of Utah and Arizona. This area became known as Short Creek.

7. I have lived in the Short Creek area all my life, and I have seen the communities there grow and thrive as a result of the hard work and the faithfulness of the people.

8. We worked hard to turn the desert landscape into fertile fields and productive farms and ranches. We worked hard to create small businesses. We worked hard to build communities on principles of self-reliance, charity and brotherhood.

9. As I explain below, in the last few years our communities and our faith have come under sustained and systematic attack by the State of Utah. The principal means by which that attack has been carried out is the State's takeover of a sacred Trust and appointment of a self-proclaimed "State-Ordained Bishop" to administer the Trust.

10. As a result of the State's actions, the farms, ranches, businesses and communities we worked so hard to create and consecrated and dedicated to the common good through the Trust, have been decimated. The people are destitute, without homes, without livelihoods, without property, without food, having their power cut off. Daily I hear the pleas of my brothers and sisters, because they've lost their homes and their jobs, and everything they know and hold dear and sacred is disappearing under constant attack.

11. Millions of dollars in property and assets have been confiscated or sold. To cite just one example, the Harker Farm was formerly one of the largest and most productive dairy farms in the State of Utah, with 700 head of dairy cows and state-of-the-

art facilities. The Farm, along with dozens of other properties and small businesses, has been ripped from the heart of the community and used, not for the common benefit of the people, but to pay the fees and costs of the "State-Ordained Bishop" and the large state bureaucracy he has used to supplant the Holy United Order we created. While millions of dollars have been sucked out of the Trust, not one penny has gone to provide food, clothing or shelter to the people who were supposed to share in and be sustained by the Trust.

12. As I explain below, the "State-Ordained Bishop" now plans to auction off land that has not only served as the breadbasket of our community, but also is the site of a prophetic vision to build a Holy Temple. We ask this Court to stop this sale and hear our claims.

13. As faithful members of the FLDS Church, I and other member of Petitioner Association believe its doctrines and tenets and have sought to put those doctrines and tenets into practice through consecrating our time, talents, materials and property to the Church, as discussed below.

14. The FLDS Church teaches as one of its fundamental tenets that there must be a literal gathering together of the faithful Church members on consecrated and sacred lands to establish the Kingdom of God on Earth under the guidance of divinely-inspired Church leadership.

15. This tenet, along with specific instruction on how it is to be implemented, is set forth in a book called the "Doctrine and Covenants," which we revere as Holy

Scripture, as well as in the Holy Bible, the Book of Mormon, the Pearl of Great Price and sermons of Church leaders.

16. This tenet gets further implementation in the day-to-day decisions of the Bishops ordained to ascertain and minister to the needs of their congregations with the guiding Light of divine inspiration.

17. As a matter of religious faith and devotion, we believe we have been commanded by God, through the Prophet God called to establish his Kingdom on Earth in these “latter days,” to consecrate our property, services, time and talents to the FLDS Church, for the purpose of building that Kingdom.

18. The principles and practices that underlie our consecrations to the FLDS Church are referred to as the Holy United Order. The scriptural foundation of the Holy United Order is found in Doctrine and Covenants 42:30-39.

19. In order to facilitate our efforts toward the Holy United Order, an “Amended and Restated Declaration of Trust of the United Effort Plan” was executed on November 3, 1998 (the “Trust”).

20. As FLDS Church members, in accordance with our internal church practices, we were given the opportunity to sustain, and we unanimously voted to sustain, the Trust.

21. We did so with the express understanding and belief, based on the terms of the Trust itself and as a matter of religious faith and devotion, that the Priesthood leaders of the Church act with the authority and under the divine inspiration of Jesus Christ in carrying out the Church’s religious mission and purpose, including the administration of

the Trust and determining the just wants and needs of Church members, and thereby are engaged in establishing the Kingdom of God on earth.

22. It is because we maintain this belief that we are willing to consecrate our real property as well as our time, talents, money and materials to the Trust and to authorize the Board of Trustees in their sole discretion to provide for us according to their wants and needs, insofar as our wants are just. This belief is set forth in Doctrine and Covenants 82: 17-21.

23. The scriptures and tenets of our faith make it clear that any determination of our “just wants and needs” is fundamentally a religious determination.

24. Our understanding and intent in voting to sustain and consecrate to the Trust was that by doing so, we were not creating an ordinary charitable trust that would exist independent of any religious belief or practice, but engaging in a form of religious expression that would enable us to put into action one of our basic religious beliefs – commonality of ownership and action in an effort toward the Holy United Order under the leadership of the FLDS Church.

25. Our understanding in voting to sustain and consecrate to the Trust was that, following principles of internal Church governance, if it were to be determined that the Board of Trustees was in breach of the Trust, they would have to be removed and replaced through Priesthood authority or, if the breaches were such as to render the Trust incapable of pursuing its religious mission, the Trust would have to be terminated.

26. In 2005, we became aware that the Third District Court had determined that the Board of Trustees was in breach of the Trust and had removed the Board and appointed a Special Fiduciary to administer the Trust.

27. Shortly after he was appointed, I met the Special Fiduciary, Bruce Wisan. Mr. Wisan came down to Short Creek and asked to meet with some of us. Among the first things he said to me was that, based on the ruling of the Third District Court, he was now the "State-Ordained Bishop" or "SOB." He said this with a humorous expression, as if he found it clever and amusing, but it was a clear mockery of our faith and institutions.

28. As "State-Ordained Bishop," the Special Fiduciary has proceeded to create his own secular hierarchy and to staff it with functionaries who are unmistakably identified with those who are opposed to the FLDS Church and its historic role in the spiritual and economic life of our communities.

29. All of the members of the Advisory Board of the Reformed Trust are avowed enemies of the FLDS Church.

30. Whereas before the members took their requests to the ordained Bishop, who administered the Trust lands and the Bishop's storehouse under his Holy calling and divine inspiration, members now are supposed to go through the Special Fiduciary and have their requests considered by allegedly "neutral principles" by people who are anything but "neutral" in their views of the FLDS Church.

31. The Special Fiduciary has stated to me personally, and admitted in open court, that one of the driving factors in his decision as to how to manage and dispose of Trust properties is whether he has reason to believe a particular Trust participant will

continue to practice the Holy United Order and consecrate the property to the Church in the future.

32. This effectively requires me and my fellow Association members to forswear any intention ever to consecrate the property to the FLDS Church in fulfillment of what we believe to be a commandment of God.

33. I have read and am familiar with court pleadings filed in the Third District Court action where the Special Fiduciary discusses what he calls a “strategic plan to subdivide Trust property so that it can be conveyed to members of the beneficiary class in a religiously neutral manner in furtherance of the Reformed Trust’s purpose to serve the ‘just wants and needs’ (primarily housing) of all persons who consecrated to the Trust.”

34. The Special Fiduciary’s court filings refer to the determination of FLDS members’ “just wants and needs” in accordance with Holy Scripture and divine revelation as “the whim of leadership”; to the FLDS Church’s religious beliefs and practices in making such determinations as “discriminat[ing] on the basis of religion” and operating “in a religiously discriminatory manner”; and to me and my fellow Association members as “saboteurs.”

35. The Special Fiduciary’s characterizations of the Trust’s administration before the State takeover speak volumes about how the state views the manner in which the Trust was previously administered in accordance with its fundamental, inherent nature as a religious institution. Of course the Trust was operated under religious principles, and of course the Trust “discriminated” on the basis of determinations made in accordance with Holy Scripture and divine revelation. Although it appears the Special Fiduciary believes

churches can be required not to follow their own doctrines but only “neutral principles” dictated by the state, that is contrary to our beliefs, including our belief that all people may worship as they choose and make their own determinations as to matters of church doctrine like “just wants and needs.”

36. In other court filings, the Special Fiduciary has revealed his intention to pursue the sale of Trust properties that hold special economic, social, historical and spiritual significance for the FLDS community, including the Harker Farm, the Berry Knoll Farm and the FLDS Temple in Eldorado, Texas.

37. The Special Fiduciary says he needs to sell this property not to meet the needs of the people for food, clothing and shelter – which needs are dire – but to “resolve the current cash crunch problem” – a multi-million-dollar debt incurred by the Special Fiduciary’s for legal, accounting and other fees, including payment of fees incurred in the defense of the Special Fiduciary and his functionaries charged (one convicted) with illegal and unconstitutional actions in the course of their duties.

38. The Third District Court scheduled a hearing on the Special Fiduciary’s proposed sale of the Berry Knoll Farm for November 14, 2008, in St. George, Utah. Thousands of Petitioner Association members turned out for that hearing in an unprecedented display. We wanted the Third District Court, which had consistently said it wanted to hear from us, to hear from us, even though we had been denied any formal standing in the court.

39. Berry Knoll Farm has long been of central economic, social and historical value to the FLDS Church as a part of the prophetic vision and divine command that the

Short Creek area will “become a garden spot of the west” and sustain the faithful members of the community through consecration of its bounty to the Bishop’s Storehouse.

40. Berry Knoll Farm also has deep religious and historical significance for me and my fellow Association members. We believe that the location of a temple site is divinely revealed to Church leaders, and that as a result of a specific prophecy Berry Knoll is a sacred site upon which a temple will be constructed, even if the Church leadership is “scattered,” so long as they remain faithful. *See* documents attached hereto as Exhibit A.

41. The Special Fiduciary apparently disagrees with our faith, telling the Third District Court he has unspecified but allegedly “credible information” that the “temple site prophecy was rejected by later FLDS leadership, who stated that the FLDS church would not build a temple on Berry Knoll.” He challenges our claims as to the sacred nature of Berry Knoll as based on “a few old documents” rather than “evidence from any authorized current leader of the FLDS Church indicating that the Berry Knoll site is considered ‘sacred ground.’” Without pointing to any source document or witness, but insisting he has been “advised” of the truth in this matter of competing claims, the Special Fiduciary thus places himself in the middle of an ecclesiastical dispute.

42. In fact, the Special Fiduciary appears poised to come down on one side of that dispute, since he was forced to admit in papers filed in Third District Court that he intended to sell the property to an entity controlled by one Kenneth C. Knudson of Centennial Park, Arizona.

43. Kenneth Knudson is a member of another religious sect with a competing claim to Berry Knoll. His brother Joseph Knudson owns and conducts the day-to-day operations of an entity listed as one of the “vested Managers” of the entity that plans to buy Berry Knoll.

44. On behalf of Petitioner Association members, and to represent their interests in the distribution of UEP Trust assets, I actively participated as a representative of the FLDS Church in the recent settlement negotiations and at the Third District Court’s July 29, 2009 “public hearing.” Besides us few FLDS Church representatives allowed to participate, there were no other participants, and there are none that I am aware of in the litigation, that specifically represent the interests of the faithful FLDS Church members or in the Church generally in the areas where Trust lands are located. Once again, however, thousands of Petitioner Association members from the United States and Canada came to Salt Lake for that hearing, even though we have consistently been denied formal party status in that and all other proceedings before Judge Lindberg.

45. As a result of being taken over by the State and its religious mission, purpose and guiding tenets wholly secularized, the Reformed Trust operates with the clear purpose and effect of substituting what is fundamentally a religious institution guided by divine inspiration with a wholly secular mirror image, thus fundamentally suppressing the FLDS Church’s longstanding and historical role as the communitarian and spiritual center of life in the communities of Hildale, Utah and Colorado City, Arizona where Plaintiff association members reside.

46. More importantly, the State of Utah's sustained and systemic attack on the Holy United Order amounts to punishment for following our beliefs by consecrating our property to the good of the whole.

47. In addition, the State is making us pay those engaged in the attack – people who are opposed to the Church's religious mission and purposes, which the Trust was intended to advance – but has denied us any standing to object or require accountability.

48. The extent of the devastation, spiritual and economic, that the State of Utah's actions in this matter have visited and are continuing to visit upon our community of faith cannot be overstated. Thousands of us are literally fighting for our survival. We ask this Court for nothing more than to apply the United States Constitution to the actions of the Third District Court in this case.

THIS IS THE END OF MY AFFIDAVIT.

DATED this ___ day of October, 2009.

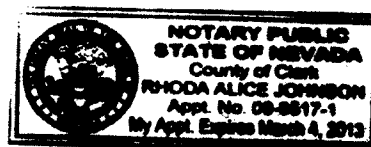
Willie Jessop
WILLIE JESSOP

SUBSCRIBED AND SWORN to before me this 16 day of October, 2009.

Rhoda Alice Johnson
Notary Public
Residing in: Clark County

My Commission Expires:

March 4, 2013



CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF WILLIE JESSOP IN SUPPORT OF PETITION FOR EXTRAORDINARY WRIT** to be served upon the following in the following described manner:

VIA U.S. MAIL, POSTAGE PREPAID and EMAIL TRANSMISSION:

Timothy Bodily, Esq.
Assistant Attorneys General
Office of the Utah Attorney General
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, UT 84114-0874
EMAIL: tbodily@utah.gov

VIA U.S. MAIL, POSTAGE PREPAID and EMAIL TRANSMISSION:

Mark L. Callister
Jeffrey L. Shields
Zachary Shields
Callister Nebeker & McCullough
10 E. South Temple, Suite 900
Salt Lake City, UT 84133
EMAIL: jlshields@cnmlaw.com

VIA U.S. MAIL, POSTAGE PREPAID AND EMAIL TRANSMISSION:

Roger H. Hoole
Gregory N. Hoole
4276 South Highland Drive
Salt Lake City, UT 84124
EMAIL: rh@hooleking.com

VIA U.S. MAIL, POSTAGE PREPAID AND EMAIL TRANSMISSION:

Mark L. Shurtleff
Utah Attorney General
160 East, 300 South, Fifth Floor
P.O. Box #142320
Salt Lake City, UT 84114
EMAIL: mshurtleff@utah.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

Peter Stirba
Stirba & Associates
215 South State Street, Suite 750
P.O. Box 810
Salt Lake City, UT 84110-0810
EMAIL: peter@stirba.com

VIA FACSIMILE TRANSMISSION and EMAIL TRANSMISSION:

William A. Richards
Arizona Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007-2997
Fax No.: (602) 364-2214
EMAIL: bill.richards@azag.gov

VIA U.S. MAIL POSTAGE PREPAID AND EMAIL TRANSMISSION:

Michael D. Zimmerman
Snell & Wilmer
15 W. South Temple, Suite 1200
Salt Lake City, UT 84101
EMAIL: mzimmerman@swlaw.com

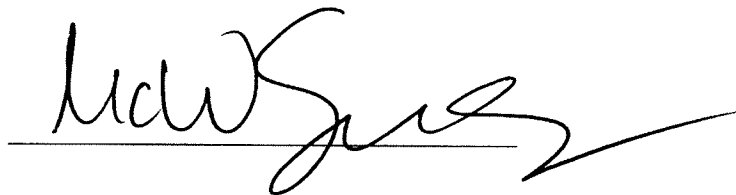
A handwritten signature in black ink, appearing to read "Michael D. Zimmerman", is written over a horizontal line. The signature is stylized and cursive.

Exhibit A

“Joseph Musser made prophecies of things that would come to pass. Among these prophecies were that a temple would be built on a small hill south of the community called Berry Knoll, ... He also prophesied that Short Creek would become a garden spot of the west, one acre of land producing more food stuff than 10 acres of the best farm land in Davis County, Utah.”

The Polygamists: A History of Colorado City, Arizona, Benjamin G. Bistline (2004), p. 27

Diary of Joseph Lyman Jessop
1952

Jun. 30. Attended Insurance agents' meeting from 9 to 11:30. Went with my son Karl to fair grounds where he finally obtained his driver's license. I bot tires for the car at Sears after trying to make a trade with Mr. W. Westonshow. A lot of monkey work or waiting to get going by nighttime. I called upon Bro. R. C. Allred at his home in evening.

Jul. 1. Wayne Handy spent the night at our house. Wayne and my daughters Eula and Shirley and I left home in our car about 3:20 a.m., and with Bro. Joseph W. Musser (whom we picked up at 4 a.m.), we drove via Hiway 91 to Hurricane,



Joseph W. Musser at Hurricane Hill

thence to Short Creek, Arizona. reaching there by 11:45 a.m. and found the people mostly well tho surprised to see us. This is Wayne's first visit there, so I introduced him wherever we went. Most of the people in Short Creek are my relatives. Joseph stopped with his wife (my very sweet sister Fawn, who is the scaled wife of Joseph Leslie Broadbent). My son Edson and family and my daughters Louise and Florence are OK. My dear father (Jos. S. Jessop) not so well but always helping all he can. My brother Fred, too, always sweet and helpful. They are moving into the new store building. Fawn is Post Mistress and store keeper, along with her son David Broadbent. We saw many of the people.

The purpose of this trip is to find out how the people feel toward Joseph (Musser) and the priesthood callings made thru him. (On last Sunday, June 30th, Joseph asked me to take him on this trip). Joseph conversed some with Carl Holm on the situation, and Carl seemed to feel like he would rather not have Joseph hold a meeting with the people. Joseph and I called upon my Brother Richard Jessop, and Richard expressed a firm belief and testimony that Bro. Joseph Musser is the head of the Priesthood and he (Richard) would gladly call the peo-

ple together in a meeting if Joseph desired it so—but Brother Roy Johnson was away and is expected back this evening, so Joseph decided to wait until Roy could be consulted. (Roy Johnson, Richard Jessop, and Carl Holm are the head men of the community.)

Joseph and I, also Eula and Shirley, ate supper with Fawn and David's family. Wayne and I visited with Edson and Alyne, also Margaret, Irene, and Leota and their children, and we slept there.

Jul. 2. By 7 a.m. Joseph had walked near 1/2 mile to find me at Margaret's place. After breakfast we drove to Berry Knoll (at Joseph's desire) about a mile south of the town. This is a spot designated for a temple sometime, so Joseph wanted to stand upon it. Leaving the car by the road side, Wayne and I helped Joseph to the top-most eminence of the hill, which climb was about 1/4 of a mile. It's a beautiful view in all directions and seems a delightful place for a Temple of God when the land is redeemed from its drought, and Joseph said as we stood in the view, "There will be plenty of water sometime."

While Wayne went back to the car for his camera, Joseph and I prayed together fervently to The Lord in behalf of the people, the saints, the Lamanites, for our own mission and callings. Wayne returned but could not get the car only a short way up because of the deep sand. We assisted Joseph to the car and we dug ourselves out of a stuck and returned to Short Creek.

We found Bro. Roy Johnson in his car near Richard's house (south side of town). We invited them into our car, and Roy, Richard, Carl Holm, Sr., and Carl Holm, Jr., came and sat in our car for more then an hour. Bro. Joseph asked Roy to state how he felt toward him (Joseph), so Roy said that he knows that Joseph holds the keys to Priesthood and he (Roy) will sustain him in that position in love and loyalty. Roy also stated in about these words, "I stood by Uncle John until the end. I was at his elbow, and I know you (Joseph) now hold the head place, and I will support you as I did him (John)." Joseph responded, "That is fine."

Bro. Carl Holm, Sr., asked Joseph if he could make a statement. Joseph said, "Yes, go ahead." Then Bro. Holm made a lengthy statement, telling of his conversion and conviction of points of doctrine, emphasizing the scripture as given by Paul, viz: "Tho we or an angel from heaven preach any other gospel than that we have preached, let him be accursed." Also, "Bro. Musser should be in harmony with the Council, else 'if you are not one, you are not mine,' sayeth The Lord." His statements seemed lengthy considering the time and place, tho he was given all the time he wanted to make his statements.

Joseph called upon me to speak my thots and I did so, saying that, "I consider the priesthood question a serious one. I agree with Bro. Holm in part, but as I see the picture and understand priesthood, he has stated the

Held meeting with the Priesthood (line gone) Sacrament was administered. Stressed need for unity, charity, a forgiving spirit, that when we forgive we forget and never judge each other without hearing both sides. Sustained the leadership of John and the move to Short Creek. Said temple would some time be built there; also spoke of judgments coming on this land. Said the Priesthood would be scattered, but enough would be here, if faithful, to protect the righteous with the power of their Priesthood. Those who did right would be protected.

Personal Journal of Joseph W. Musser, Entry from Saturday March 14, 1936

Arise, O Glorious Zion

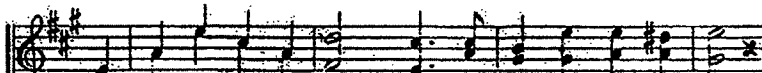
(Choir)

William G. Mills



George Careless

Brightly ♩=104

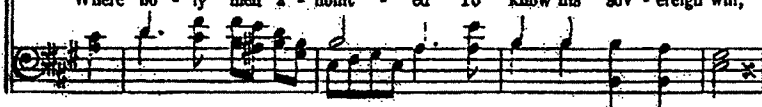


1. A - rise, O glo - rious Zi - on, Thou joy of lat - ter days.
 2. Let faith - ful Saints be roar - ing The cit - y of our Lord,
 3. ~~Let faith - ful Saints be roar - ing The cit - y of our Lord,~~
 4. What though the world in mal - ice De - spise these might - y things,

Whom count - less Saints re - ly on To gain a rest - ing place.
 On moun - tain tops ap - pear - ing, Ac - cord - ing to his word.
 By will - ing hearts s - rect - ed, Who love Je - ho - vah's will.
 We'll build the roy - al pal - ace, To serve the King of kings.

A - rise and shine in splen - dor A - mid the world's deep night,
 A sought - out hab - i - ta - tion By men of truth and faith,
 Let earth, her wealth be - stow - ing, A - dorn his ho - ly seat,
 Where ho - ly men a - noint - ed To know his sov - ereign will,

For God, thy sure de - fend - er, Is now thy life and light.
 A coy - ert of sal - va - tion From ig - no - rance and death.
 For na - tions great shall flow in To wor - ship at his feet.
 Each or - di - nance ap - point - ed To save us, will re - veal.

