

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP1800013

Protestant Episcopal Church In The Diocese Of South Carolina	Christ St. Paul's Episcopal Church	Episcopal Church	Protestant Epis.Ch. in the US of America
Church Of The Cross, Inc and Church Of The Cross Declaration	Church Of The Holy Comforter	Episcopal Church in South Carolina	
Church Of The Redeemer	Saint Luke's Church, Hilton Head		
St. John's Episcopal Church Of Florence, S. C.	St. Matthias Episcopal Church, Inc		
Church Of St. Luke and St. Paul, Radcliffeboro			
PLAINTIFF(S)		DEFENDANT(S)	

2015 FEB -3 PM 5
 CLERK OF COURT
 DORCHESTER CO

Submitted by: _____ Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

CPFORM4Cm
 SCCA SCRPC Form 4C (Revised 3/2013)

may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

2/3/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on 2/3/2015, and a copy mailed first class or placed in the appropriate attorney's box on 2/3/2015, to attorneys of record or to parties (when appearing pro se) as follows:

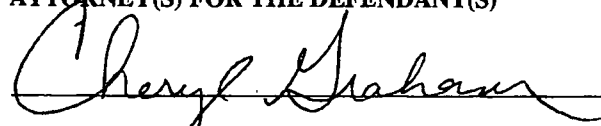
SEE ATTACHED

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Ruth Mott

Court Reporter



Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

The Protestant Episcopal Church In The)
Diocese Of South Carolina; The Trustees of)
The Protestant Episcopal Church in South)
Carolina, a South Carolina Corporate Body;)
All Saints Protestant Episcopal Church, Inc.;)
Christ St. Paul's Episcopal Church; Christ)
The King, Waccamaw; Church Of The)
Cross, Inc. and Church Of The Cross)
Declaration Of Trust; Church Of The)
Holy Comforter; Church of the Redeemer;)
Holy Trinity Episcopal Church; Saint)
Luke's Church, Hilton Head; Saint)
Matthews Church; St. Andrews Church-Mt.)
Pleasant and The St. Andrews Church-Mt.)
Pleasant Land Trust; St. Bartholomews)
Episcopal Church; St. Davids Church;)
St. James' Church, James Island, S.C.; St.)
John's Episcopal Church of Florence, S.C.;)
St. Mathias Episcopal Church,, Inc.; St.)
Paul's Episcopal Church of Bennettsville,)
Inc.; St. Paul's Episcopal Church of)
Conway; The Church Of St. Luke and St.)
Paul, Radcliffeboro; The Church Of Our)
Saviour Of The Diocese of South Carolina;)
The Church Of The Epiphany (Episcopal);)
The Church Of The Good Shepherd,)
Charleston, SC; The Church Of The Holy)
Cross; The Church Of The Resurrection,)
Surfside; The Protestant Episcopal Church,)
Of The Parish Of Saint Philip, In Charleston,)
In The State Of South Carolina; The)
Protestant Episcopal Church, The Parish Of)
Saint Michael, In Charleston, In The State)
Of South Carolina and St. Michael's Church)
Declaration Of Trust; The Vestry and)
Church Wardens Of St. Jude's Church Of)
Walterboro; The Vestry and Church)
Wardens Of The Episcopal Church Of The)
Parish Of Prince George Winyah; The)
Vestry And Church Wardens Of The)
Episcopal Church Of The Parish Of St.)
Helena and The Parish Church of St. Helena)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2015 FEB - 3 PM 5: 18
CLERK OF
DORCHESTER COUNTY

Case No. 2013-CP-18-00013

FINAL ORDER

Trust; The Vestry and Church Wardens Of)
 The Episcopal Church Of The Parish Of St.)
 Matthew; The Vestry and Wardens Of St.)
 Paul's Church, Summerville; Trinity Church)
 of Myrtle Beach; Trinity Episcopal Church;)
 Trinity Episcopal Church, Pinopolis; Vestry)
 and Church-Wardens Of The Episcopal)
 Church Of The Parish Of Christ Church;)
 Vestry and Church Wardens Of The)
 Episcopal Church Of The Parish Of St.)
 John's, Charleston County, The Vestries)
 And Churchwardens Of The Parish of St.)
 Andrew)

PLAINTIFFS,)

v.)

The Episcopal Church (a/k/a, The)
 Protestant Episcopal Church in the)
 United States of America); The Episcopal)
 Church in South Carolina)
 DEFENDANT.)

I. Introduction

This action is brought by thirty-eight South Carolina non-profit corporations, whose business is religious, against a New York unincorporated association, The Episcopal Church ("TEC") and a South Carolina unincorporated association, The Episcopal Church in South Carolina ("TECSC"). The Defendants' business is also religious.

Aligned in interest, the Plaintiffs seek resolution of their real and personal property rights (including intellectual) by invoking this Court's declaratory and injunctive powers arising out of three South Carolina statutes.¹ The Defendants, also aligned in interest, in addition to defenses

¹ S.C. Code Ann. §§ 15-53-10 et. seq. ("Uniform Declaratory Judgments Act"), §§ 39-15-1105 et. seq. ("Trademarks and Service Marks") and §§ 16-17-310 & 320 ("Improper Use of Names")

raised, seek the resolution of counterclaims which, in effect, seek to have the real and personal property rights placed at issue by the Plaintiffs, declared in their favor.

Many of the facts in this case derive from the early history of South Carolina and the United States. The Plaintiff parish churches have existed since as early as 1680. Their buildings, land, names and heritage are at the core of the history of lower South Carolina extending well before the creation of the United States. Likewise, the Diocese has been a part of the religious heritage of South Carolina for 229 years and TEC of the nation's, for 225 years.

II. Procedural History

On January 4, 2013, the Protestant Episcopal Church in the Diocese of South Carolina ("Diocese"), the Trustees of the Protestant Episcopal Church in South Carolina ("Trustees") and sixteen other South Carolina non-profit corporations filed this action against TEC for declaratory and injunctive relief. On January 22, 2013, Plaintiffs amended their complaint, adding 17 additional South Carolina non-profit corporations as Plaintiffs. That same day, the Diocese and the Trustees moved for a temporary restraining order which this Court granted on January 23, 2013 subject to the posting of a \$50,000 bond. Prior to the hearing set by the restraining order to consider the issuance of a preliminary injunction, TEC appeared through its counsel, Thomas S. Tisdale, Jr., and consented to the entry of a temporary injunction that incorporated the terms of the January 23, 2013 restraining order. The restraining order and the temporary injunction prohibited all except officers, directors, trustees and employees of the Diocese and Trustees from using the registered names and marks of the Diocese.

Thereafter, Plaintiffs amended their complaint pursuant to this Court's order of February 28, 2013, to add three additional South Carolina non-profit corporations as Plaintiffs and TECSC as a Defendant. The Defendants were served with the Second Amended Complaint on March 5,

2013. On that same day, Charles vonRosenberg, an agent of TECSC and a Bishop in TEC, filed a parallel action in federal court.

The Defendants then filed their respective answers and counterclaims on March 28, 2013 and April 3, 2013. On April 3, 2013, TECSC with TEC's consent removed this action to federal court. Plaintiffs moved to remand it to this Court on April 10, 2013. On June 10, 2013, the United States District Court (Houck, J.) remanded this action. The District Court also dismissed the parallel action brought by Bp. Charles vonRosenberg on August 23, 2013 under the abstention doctrine finding that the relief sought in federal court was "the same relief as TEC's counterclaims in the state action" and also was relief which "directly conflicts with a state court temporary injunction." Or. Granting Mot. to Dismiss, 2:13-cv-587-CWH (D.S.C. Aug. 23, 2013).

Between June 10, 2013 and July 8, 2014, there was extensive document production. However, with the exception of one deposition taken on September 10, 2013, discovery by deposition was only taken in the six weeks before trial. The Plaintiffs sought to take depositions beginning in December 2013. However between January 13, 2014 and May 13, 2014, the Defendants refused to engage in discovery contending that discovery was stayed because of TECSC's appeal of a discovery order.

TECSC appealed that discovery order on January 13, 2014. Plaintiffs moved to dismiss the appeal on January 15, 2014 and also moved the South Carolina Supreme Court to certify the appeal from the Court of Appeals on February 6, 2014. On March 28, 2014, the Court of Appeals granted Plaintiffs motion to dismiss TECSC's appeal. TECSC then filed a petition for a rehearing that was certified by the State Supreme Court on April 4, 2014. The Supreme Court denied TECSC's petition for a rehearing on May 7, 2014.

On June 23, 2014, TECSC again filed an interlocutory appeal of an order denying its motion to join additional parties. It also sought a supersedeas on July 3, 2014, the Friday before the scheduled Monday start of the trial. The appeal was denied and the supersedeas petition was dismissed that same day.

The case was tried to the court without a jury in St. George, South Carolina. Commencing on July 8, 2014 and concluding on July 25, 2014, the 2,523 page official transcript of record² created during this fourteen day trial records the testimony of 59 witnesses and the admission into evidence of over 1,200 exhibits.

The Court has carefully considered the evidence and, pursuant to Rule 52, SCRPC, makes the following findings of fact and conclusions of law.

III. Findings of Fact

A. Plaintiff Diocese

1. The Diocese was formed on May 12, 1785 as an unincorporated association by former Anglican churches. Since then it has met in convention, annually more or less, for 229 years.

2. When the Diocese was formed, it was named the "Protestant Episcopal Church in the State of South Carolina." Since its formation, it has used the following names at various times in its history: "The Protestant Episcopal Church in South Carolina," "The Protestant Episcopal Church in the Diocese of South Carolina," "The Protestant Episcopal Diocese of South Carolina," "The Diocese of South Carolina," and "The Episcopal Diocese of South Carolina."

² The official transcript was completed on September 25, 2014.

3. The first constitution of the Diocese was adopted at its 4th convention on May 31, 1786. The following Plaintiff churches were signatories: St. Philip's, St. Michael's, St. Andrew's (Old St. Andrew's), St. Helena's, Trinity Edisto Island, St. John's (Charleston County) and Prince George.

4. Articles 1, 2 and 6 of that Constitution provide:

Art. 1. That the Protestant Episcopal Church in these states is, and ought to be, independent of any foreign authority, Ecclesiastical or Civil.

Art. 2. That it hath, and ought to have, in common with all other religious societies, full and exclusive powers to regulate the concerns of its own communion.

Art. 6. That no power be delegated to a General ecclesiastical Government except such, as cannot be exercised by the clergy and vestries, in their respective congregations.

5. When executed in 1786, Article 4 of the Diocese's Constitution provided that it would not have a Bishop. This provision was deleted in 1795 when the Diocese elected its first Bishop. TEC's Constitution does not require that member dioceses have a bishop.

6. Initially, the Diocese was governed by delegates meeting in convention and then, starting in 1790, by its Standing Committee between conventions.

7. Between May 1785 and October 1789, the Diocese held seven conventions.

8. At its 19th Convention in 1806, the Diocese adopted "Rules and Regulations for the Government of the Protestant Episcopal Church in the State of South Carolina." Rule 14 provided that:

No Article, canon, rule or other regulation of any general in State Convention, shall be obligatory on any Episcopal Church within this state, where the same shall be found to infringe on its chartered rights.

9. In 1841, the Diocese meeting in convention added the following sentence to its Constitution:

“The Protestant Episcopal Church in South Carolina accedes to, recognizes and adopts the general Constitution and Canons of the Protestant Episcopal Church in the United States of America, and acknowledges their authority accordingly.”

10. The term “accede” means: To consent or agree. Black's Law Dictionary (9th ed. 2009).

11. Between 1861 and 1866, the Diocese withdrew its association with TEC, immediately declaring “null and void” any of its constitutional or canonical provisions inconsistent with that disassociation. Then, together with other dioceses who were formerly associated with TEC, formed and voluntarily joined an unincorporated association called “The Protestant Episcopal Church in The Confederate States of America.” Finally, the Diocese withdrew its association with The Protestant Episcopal Church in The Confederate States of America and voluntarily re-associated with TEC immediately declaring any inconsistent provisions of its Constitutions and Canons “to be henceforth of no force” and “be changed” immediately “to conform to the legislation adopted at this Council.”

12. The Diocese has operated for most of its existence using two principal governing documents, a “Constitution” and “Canons”. Both of these documents can be, and repeatedly have been, amended by the Diocese meeting in convention without any approval by TEC. After the Diocese was incorporated in 1973, the Constitution and Canons operated as its bylaws. Supplemental bylaws were adopted in October 2010.

13. When the Diocese meets in convention, it exercises corporate authority, among other things, by approving budgets, electing bishops, electing other persons to fill

positions in Diocesan governing bodies, including the Standing Committee and voting on resolutions. The Diocese's Bishop serves as President of the convention, or if absent or there is no Bishop, then the President of the Standing Committee serves as President.

14. Between 2009 and 2012, when the Diocese has met in convention, there have been approximately 200 laity and 100 clergy in attendance. During this period, there has always been a quorum. Each clergy has seat, voice and one vote. Each parish through its lay delegates has seat, voice and one vote. Each mission through its lay delegates has seat, voice and one-half vote. The most common form of voting is a voice vote where a majority prevails. If requested, a vote by orders will be taken. Such a vote is also required for some decisions such as the amendment of a Canon. On vote by orders, the clergy vote separately from the parish and missions. A roll call records the vote of all clergy, parish and missions and the required vote is determined within each order, clergy and lay (parish/missions). After each convention, a journal of the proceedings is published.

15. Between its conventions, the Bishop, the Standing Committee and the Diocesan Council carry out the business of the Diocese.

16. Mark Lawrence is the Chief Operating or Chief Executive Officer of the Diocese and is also its Ecclesiastical Authority. The Diocesan Convention, according to provisions in its Canons, elected him and the Diocese employed him. In order for him to become a member of TEC, TEC's other members, the Bishops and the Dioceses (by their Standing Committees), had to consent to his ordination.

17. The Standing Committee is vested with overall management of the affairs of the Diocese. It is the only governing body, other than the convention itself, provided for in the Diocese's Constitution. It is the only Diocesan body that can make decisions for the whole

Diocese. It typically meets monthly. In civil matters it acts as the Board of Directors. The Bishop is an *ex officio* member with seat and voice but with no vote. Between conventions of the Diocese, the Standing Committee replaces officers who can no longer serve, which is a function typically exercised by a Board of Directors. It employs counsel, and it is the signatory on the Bishop's employment contract. It is the body responsible for approving and executing sales of Diocesan titled real property.

18. The Diocesan Council oversees the budgeted finances of the Diocese.

19. On October 27, 1973 the Diocese, meeting in convention, passed a resolution authorizing and directing that certain named agents make application to the South Carolina Secretary of State for its incorporation.

20. On November 14, 1973 the Diocese through those authorized agents filed a Declaration and Petition with the South Carolina Secretary of State asking that the Diocese be incorporated with its purpose stated to be "to continue the operation of an Episcopal Diocese under the Constitution and Canons of The Protestant Episcopal Church in the United States of America." The Declaration and Petition contained a list of "all the Managers, Trustees, Directors and other officers" which were stated to be by name and title "The Rt. Rev. Gray Temple, Bishop", " Rt. Rev. Canon George I. Chassey, Jr., Secretary", "Thomas E. Myers, Treasurer" and "18 members elected by Convention, Members of Bishop and Council."

21. On November 14, 1973, the South Carolina Secretary of State issued a Certificate of Incorporation incorporating the Diocese.

22. On February 19, 1987, the Diocese filed a notice in the Charleston News & Courier of its intent to amend its articles of incorporation to change its name by a resolution of

the Diocese meeting in convention. The Right Reverend C. F. Allison, the Bishop at that time, signed the notice as its "President".

23. On February 20, 1987, the Diocese meeting in convention passed a resolution authorizing and directing that its authorized agents file an application with the South Carolina Secretary of State to amend its articles of incorporation to change its name from "The Protestant Episcopal Diocese of South Carolina" to "The Protestant Episcopal Church in the Diocese of South Carolina." On March 13, 1987, the South Carolina Secretary of State issued articles of amendment changing the name of the Diocese.

24. From 1987 to October 2010, the Diocese had the following paragraph, frequently referred to as the "Dennis Canon," in its Canons:

All real and personal property held by or for the benefit of any Parish, Mission, or Congregation is held in trust for the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina. The existence of this trust, however, shall in no way limit the power and Authority of the Parish, Mission, or Congregation existing over such property so long as the particular Parish, Mission, or Congregation remains part of, and subject to, the Episcopal Church and the Protestant Episcopal Church in the Diocese of South Carolina.

25. Between 2009 and 2011, during the time the Diocese was still associated with TEC, the Diocese meeting in convention, passed a number of resolutions dealing with its relationship with TEC. These included resolutions rejecting TEC's Presiding Bishop's efforts to hire counsel in South Carolina on behalf of the Diocese, passing a Canon making the Diocese's Ecclesiastical Authority (Mark Lawrence or the Standing Committee) the final authority in any dispute over the Diocese's Constitution and Canons; amending the Diocese's Constitution removing any accession to the Canons of TEC but retaining accession to its Constitution;³

³ The Diocese stated the removal of its accession to TEC's 2009 Canons was the result of TEC's General Convention vote to replace the Title IV Disciplinary Canon found in the 2006 Constitution and Canons with a new

making amendments to its Canons consistent with that constitutional amendment; making the Diocese's Constitution and Canons the prevailing authority for any inconsistent constitutional provisions of the General Convention; removing the canon relating to trust in property; and amending the Articles of Incorporation changing its purposes clause.

26. Prior to October 15, 2010, the Diocese's Standing Committee sitting as its Board of Directors unanimously voted to amend its Articles of Incorporation to restate its corporate purpose to "continue operations under the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina."

27. On October 15, 2010, the Diocese meeting in convention passed resolutions as follows:

- amending its Constitution to remove accession to the Canons of the TEC and to add the following provision: "In the event that any provision of the Constitution of the General Convention of the Protestant Episcopal Church in the United States of America is inconsistent with, or contradictory to, the Constitution and Canons of the Protestant Episcopal Diocese of South Carolina, the Constitution and Canons of this Diocese shall prevail." The resolution passed by a majority vote.

- amending its canons to conform to the amendment to its constitution. The resolution passed on a vote by orders with 90% of the clergy and 86% of the parishes and missions voting in favor.

- amending its canons to remove the so-called "Dennis Canon" on a vote by orders with 94% of the clergy and 91% of the parishes and missions voting in favor.

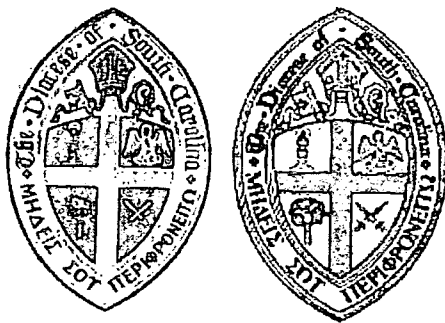
version. The Diocese contended that this new version was unconstitutional because the provisions in these new Canons conflicted with TEC's own Constitution.

amending its corporate purpose to “continue operations under the Constitution and Canons of the Protestant Episcopal Church in the Diocese of South Carolina.” The resolution passed by a majority vote.

28. On October 21, 2010, the Standing Committee, sitting as the Diocese’s Board of Directors, created bylaws naming the Right Reverend Mark J. Lawrence President of the Diocese. On October 22, 2010, the Diocese filed Non Profit Corporation Articles of Amendment with the South Carolina Secretary of State containing the restated corporate purpose. The amendment was signed by “+ Mark J. Lawrence, President.”

29. In late October 2010, the Diocese through its registered agent and Canon to the Ordinary⁴, James B. Lewis, applied to the South Carolina Secretary of State for the registration of five service marks under the provisions of S.C. Code §§39-15-1105, *et. seq.*

30. In November 2010, the South Carolina Secretary of State registered the following service marks to the Diocese as owner: “The Diocese of South Carolina;” “The Episcopal Diocese of South Carolina;” “The Protestant Episcopal Church in the Diocese of South Carolina” and the Diocese seal in color and black and white:



⁴ A canon to the ordinary is one whose assigned role is to work for the bishop.

31. In February 2011, the Diocese meeting in convention, on second reading, passed the constitutional changes of October 2010, by two-thirds of the votes by orders: 84% of the clergy and 80% of the parishes and missions.

32. Between late 2009 and November 2011, the Diocese issued and delivered quit claim deeds to every parish then in union with it including those now in union with TECSC. Most were recorded and none were sent back to the Diocese.

33. On November 1, 2011, the Standing Committee, also sitting as the Diocese's Board of Directors, unanimously passed a resolution that automatically called a convention of the Diocese to occur within 30 days after any attempted action being taken by TEC against Mark J. Lawrence.

34. On October 2, 2012, the Standing Committee, also sitting as the Board of Directors of the Diocese, unanimously passed the following resolution:

"The Protestant Episcopal Church in the Diocese of South Carolina, through its Board of Directors and its Standing Committee, hereby withdraws its accession to the Constitution of the Episcopal Church and disaffiliates with the Episcopal Church by withdrawing its membership from the Episcopal Church. This decision shall be effective immediately upon the taking of any action of any kind by any representative of the Episcopal Church against The Bishop, the Standing Committee or any of its members or the Convention of this Diocese or any of its members including purporting to discipline, impair, restrict, direct, place on administrative leave, charge, derecognize or any other action asserting or claiming any supervisory, disciplinary or other alleged hierarchical authority over this Diocese, its leaders or members."

35. In 2011, claims were made to the Disciplinary Board for Bishops (DBB) that Mark Lawrence had abandoned TEC. The DBB refused to certify a charge of abandonment. Mark Lawrence was aware that the claims had been made and that the DBB had refused to

certify them. In September 2012, the DBB again considered allegations that Lawrence had abandoned TEC. Included in these were the allegations made in 2011, which the DBB had found insufficient to justify a charge. This time, the DBB certified the charge of abandonment allowing it to go forward. A certification is a charge not a conviction. This time Lawrence was unaware that claims had been made, that they were being considered by the DBB and of the DBB's action. The action of the DBB was not disclosed to Lawrence until October 15, 2012. Lawrence was not served with the certification. Had he been, he would have had 60 days to respond.

36. The Diocese withdrew its association from TEC in October 2012.

37. On November 17, 2012, at a Special Convention of the Diocese called 30 days before November 17, the delegates overwhelmingly affirmed the Diocese's disaffiliation from TEC and made conforming changes to its Constitution and Canons. The vote on the removal of accession to TEC's constitution and removal of all references to TEC passed by a majority vote on the first reading of the constitutional change and on a vote of orders of 96% of the clergy and 89% of the parishes and missions in favor as to the canonical changes.

38. In March 2013, a vote on the second reading of the November 2012 changes of the Diocese's Constitution passed unanimously on a vote by orders.

39. Mark Lawrence was not elected Bishop of the Diocese with the intent on either his part or on that of the Diocese to lead the Diocese out of TEC. From 2009 until October 2012, his intent was to remain "intact and in TEC."

40. Between his election as Bishop and until after the Diocese disassociated from TEC, Mark Lawrence was in good standing with TEC. He did those things that Bishops

with jurisdiction do and had seat, voice and vote at TEC conventions and in meetings of the House of Bishops.

41. From November 2012 until the fall of 2013, the Defendants used, without the Diocese's permission, and with knowledge of that use, the names, marks and emblems of the Diocese.

42. These uses included the sending of email communications to the clergy of the Diocese purporting to be from the "Episcopal Diocese of South Carolina" and using the Diocese's seal on those emails; holding a clergy meeting in the name of the Diocese; creating and using a website with a registered name of the Diocese; using the Diocese's seal description on the created website identical to the description found on the Diocese's website; creating a domain name using a registered name of the Diocese; calling a convention, and creating and using registration forms for that convention, using a registered name of the Diocese; using the names of the Plaintiff parishes on TECSC's website for a number of months without their permission; causing a search using a web search engine for a registered name of the Diocese to redirect the result to TECSC's website; and using a registered name of the Diocese on bank accounts used by TECSC.

43. The Defendants also took action as if TECSC was the Diocese at a convention on January 26, 2013 when votes were taken to reverse many of the changes the Diocese had made to its Constitution and Canons between 2010 and 2012.

44. As of July 8, 2014, the Diocese had approximately 25,000 parishioners worshipping in the 39 non-profit parish corporations and 12 missions, which are in union with the Diocese.

B. Plaintiff Trustees

45. In 1880, the South Carolina legislature chartered the "Bishop and members of the Standing Committee" as the "Trustees of the Protestant Episcopal Church in South Carolina" ("Trustees").

46. In 1902, the 1880 act was amended to relieve the Bishop and Standing Committee as Trustees and provide for a "Board of Trustees" incorporated with the same name consisting of from five to nine Trustees elected by the annual Diocesan Convention and governed by the Trustees' own governance (by-laws) as determined by the Trustees majority vote. The Legislative acts and the bylaws are the only governance documents of the Trustees.

47. The Trustee's corporate purpose is to hold in trust property, receive assets under wills or gifts given by individuals or other organizations. Some assets are held for uses of the Diocese.

48. TEC has no voice in the Trustees governance nor does it have any right of approval of the Trustees' governance.

49. The Trustees Corporation is not now, nor has it ever been, a member of either the Diocese or TEC.

50. Nothing in the Trustee's legislative charter references TEC; all references are to the Diocese.

51. The Trustees Corporation is not subject to the 1994 Non-Profit Act; it is given its power, by statute, to decide its own governance by a majority vote of its Board of Trustees.

52. In 1982, the Trustees Corporation's bylaws stated that its duties would be carried out under the authority of the "Constitution and Canons of The Episcopal Church and of

the Diocese of South Carolina.” On March 17, 2010, these bylaws were unanimously amended to remove the previous reference to the Constitution and Canons of The Episcopal Church.

C. Plaintiff Churches

53. None of the Plaintiff parish churches have ever been members of TEC or TECSC. None of the Plaintiff parish churches have ever participated in General Conventions of TEC and none have participated in Conventions of TECSC since TECSC was organized in January 2013.

54. The elected body of each parish church known as the “Vestry” sits as the parish church’s Board of Directors. It is responsible for governance of the parish churches civil affairs.

55. Neither TEC nor TECSC have any veto or oversight with respect to the election of vestry members of a parish.

56. After joining the Diocese, the Plaintiff parish churches have annually participated for the most part, in conventions of the Diocese by electing and sending delegates to those conventions who typically have seat, voice and one vote for their parish church.

57. The Constitution and Canons of the Diocese do not restrict the ability of a member parish church voluntarily to withdraw its membership.

58. None of the Plaintiff parish churches filed with the Secretary of State an irrevocable election to be governed by the South Carolina Non-Profit Act of 1994 (the “Act”).

59. The following legislatively chartered Plaintiff parishes are not subject to the Act: **The Church of The Holy Comforter**, (“Holy Comforter”), **St. James’ Church, James Island**, (“St. James”), **The Church of The Holy Cross-Stateburg**, (“Holy Cross”), **The Protestant Episcopal Church, of The Parish of Saint Philip, in Charleston, in the State of**

South Carolina, ("St. Philip's"), The Parish of St. Michael, in Charleston, in the State of South Carolina, and St. Michael's Church Declaration of Trust, ("St. Michael's"), The Vestry and Church Wardens of The Episcopal Church of The Parish of Prince George Winyah, ("Prince George"), The Vestry and Church Wardens of The Episcopal Church of The Parish of St. Helena and The Parish Church of St. Helena Trust, ("St. Helena"), The Vestry and Church Wardens of The Episcopal Church of The Parish of St. Matthew, ("St. Matthew's, Fort Motte"), Trinity Episcopal Church, Edisto Island, ("Trinity Edisto"), The Vestry and Church-Wardens of The Episcopal Church of The Parish of Christ Church, ("Christ Church"), The Vestry and Church-Wardens of The Episcopal Church of The Parish of St. John's, Charleston County, ("St. John's"), The Vestry and Churchwardens of the Parish of St. Andrew, ("Old St. Andrew's"), and The Vestry and Wardens of St. Paul's Church, Summerville, ("St. Paul's Summerville").

60. The following Plaintiff parishes are subject to the Act: **All Saint's Protestant Episcopal Church, Inc. ("All Saints"), Christ St. Paul's Episcopal Church, ("Christ St. Paul's"), Christ the King, Waccamaw, ("Christ the King"), Church of The Cross, Inc. and Church of The Cross Declaration of Trust, ("The Cross"), Church of the Redeemer, ("Redeemer"), Holy Trinity Episcopal Church, ("Holy Trinity"), Saint Luke's Church, Hilton Head, ("Saint Luke's"), St. Matthias Episcopal Church, Inc., ("St. Matthias"), St. Andrews Church – Mt. Pleasant and The St. Andrews Church Mt. Pleasant Land Trust, ("St. Andrews Church"), St. Bartholomews Episcopal Church, ("St. Bartholomew"), St. David's Church, ("St. David's"), St. John's Episcopal Church of Florence, S.C., ("St. John's Florence"), Saint Matthew's Church, ("St. Matthews"), St. Paul's Episcopal Church of Bennettsville, Inc., ("St. Paul's, Bennettsville"), St. Paul's Episcopal Church of Conway, ("St.**

Paul's, Conway"), **The Church of St. Luke and St. Paul, Radcliffeboro**, ("The Cathedral"), **The Church of Our Saviour of The Diocese of South Carolina**, ("Our Saviour"), **The Church of The Epiphany**, ("Epiphany"), **The Church of The Good Shepherd, Charleston, S.C.**, ("Good Shepherd"), **The Church of The Resurrection, Surfside**, ("Resurrection"), **The Vestry and Church Wardens of St. Jude's Church of Walterboro**, ("St. Jude's"), **Trinity Church of Myrtle Beach**, ("Trinity MB"), and **Trinity Episcopal Church, Pinopolis**, ("Trinity, Pinopolis").

61. The following Plaintiff parish churches pre-existed the formation of the Diocese, TEC, TECSC and the United States and they first operated as churches on or about the stated dates: St. Philip's – 1680; Old St. Andrew's – 1706; Christ Church – 1706; St. Helena's – 1712; Prince George – 1721; St. John's, Charleston County – 1734; St. Michael's – 1761; St. David's – 1768; St. Matthews, Fort Motte-1768; and Trinity Edisto Island- 1770.

62. The following Plaintiff parish churches were legislatively chartered after petitioning the legislature pursuant to the provisions of Article 38 of the 1778 South Carolina Constitution: St. Helena; Prince George; St. John's, Charleston County; St. Michaels; St. Philips; Christ Church; Holy Cross, Statesburg; Old St. Andrews.

63. The Plaintiff parish churches had some or all of the following corporate governance documents: legislative charters, articles of incorporation, constitutions and bylaws.

64. Where applicable, the Plaintiff parish churches amended their corporate governance documents to remove references to TEC; such amendments complied with the notice quorum and voting requirements of the Act and the requirements of their corporate governing documents.

65. In 2012 and 2013, the Plaintiff parish churches passed resolutions declaring that they had no relationship with TEC or TECSC but that they remained in union with the Diocese.

66. Title to all the real property of the Plaintiff parishes, Trustees and Diocese is held in the name of those entities. No properties are held in the name of TEC or TECSC.

D. Defendants TEC and TECSC

67. TEC is a New York unincorporated association.

68. In 1789, the Diocese, along with 6 other state associations of Protestant Episcopal Churches, formed the association comprising TEC and voluntarily joined it as a founding member after its delegates subscribed to its Constitution. The Diocesan Convention ratified its delegates' actions in 1790. None of the Plaintiff parishes has ever been a member of the association comprising TEC.

69. TEC's first constitution provided in Article 5 that: "A Protestant Episcopal Church in any of the United States, not now represented, may, at any time hereafter, be admitted, on acceding to this constitution." Pursuant to this article as subsequently amended, the members of this legal entity, the association comprising TEC, are dioceses.

70. Since 1979, TEC has had the following paragraph, known as the "Dennis Canon," in its Canons. It has no similar provision in its Constitution:

All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

71. TEC has no delegates at Diocesan Conventions and has no rights with respect to the conduct of business at a Diocesan Convention, nor has TEC ever had any right of approval over any amendments to the Articles of Incorporation, the Bylaws or to the Constitution and Canons of the Diocese.

72. The Constitution and Canons of TEC have no provisions which state that a member diocese cannot voluntarily withdraw its membership.

73. The Constitution and Canons of TEC do not provide for the discipline of member dioceses.

74. When TEC amends its Constitution, notice of the proposed amendment is sent to every Diocese in TEC followed by a vote on the amendment by diocese in which each diocese votes as a unit through its representatives at the next TEC convention. The amendment must receive affirmative votes from a majority of dioceses to pass.

75. TEC, through its Treasurer, has stated that TEC is composed of "autonomous" dioceses.

76. TEC does not have an ultimate judicatory.

77. TEC's provincial synod has no power to regulate or control the internal policy or affairs of any member diocese.

78. During the period when the Diocese was a member of TEC, funds were voluntarily sent to TEC from the Diocese and TEC, or entities with which it was associated, sent funds to the Diocese. Seventy percent of the funds TEC sent to the Diocese were for third party use; twenty-three percent went to Plaintiff parishes in the form of loans or grants and seven percent to the Diocese as a grant. The ratio of diocesan giving to TEC versus TEC gifts or grants to the Diocese was 117 to 1.

79. TEC is not organized in a fashion that its governance controls the Dioceses or the parish churches. Authority flows from the bottom, the parish churches, up. The "Ecclesiastical Authority" of a diocese is the diocesan bishop. There is no supremacy clause or other provision unambiguously giving any central body or officer of TEC governing authority superior to the diocesan bishop.

80. The Plaintiffs' names and marks were not derived from TEC. The word "episcopal" is used in many other churches unrelated to TEC. Before TEC was created, "Episcopal" and "Episcopal Church" were part of some of the Plaintiffs corporate names and some were called "denominations" by the South Carolina legislature. Before TEC was created, the words "Protestant Episcopal Church" were used to describe the Moravian Church by the English Parliament in 1749 and were part of the names of pre-existing state church organizations who later formed the association comprising TEC.

81. A treatise, "The Episcopal Church And Its Work," part of the Episcopal Church teaching series, was found to be reliable by Dr. Allen Guelzo, an undisputed expert in 18th and 19th American, church and civil war history and a priest in TEC. It makes the following assertions with which Dr. Guelzo agrees:

- The Presiding Bishop of TEC lacks "canonical duties historically associated with the office of Archbishop" and does not "possess visitorial or juridical powers within the independent Dioceses of The Episcopal Church."
- "The first Dioceses existed separately from each other" before TEC was created in 1789 and after that union "each diocese retained a large amount of autonomy." The need for these dioceses to be publicly perceived as separate and in fact separate was critical to the safety of its members. If individuals were perceived to be part of the

hierarchical Church of England during the American Revolution they were labeled "Tories." Tories had been tarred and feathered with some regularity during the Revolution and for the safety of its members autonomy was a paramount concern. Needless to say, the religious organizations which had earlier been part of or identified as associated with the Church of England were motivated to avoid any association whatsoever.

- "Diocesan participation in any national program...must be voluntarily given, it cannot be forced."

- The national church and general convention revenues are dependent on the "voluntary cooperation of Dioceses."

82. TECSC is a South Carolina unincorporated association. It was first organized on or about January 26, 2013.

83. TECSC's provisional bishop is Charles vonRosenberg who was elected to that position by TECSC delegates meeting in convention on January 26, 2013.

84. As of July 2014, TECSC had 10 parishes, 17 missions and 3 worshipping communities in union with it.

IV. Conclusions of Law

The Supreme Court of the United States has plainly stated that "civil courts [are] to decide church property disputes without resolving underlying controversies over religious doctrine." Therefore, "it follows that a state may adopt any one of various approaches to settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Maryland v. Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970); accord *Jones v. Wolf*, 443 U.S. 595, 602 (1979). As early as 45 years ago, two such approaches were identified.

Courts could: (1) enforce the property decisions of a congregational church made by a majority of its members or of those made by “the highest tribunal or judicatory that has ruled on the issue” in a hierarchical church, *Maryland Churches, supra* at 368-69; or (2) a court could use “neutral principles of law developed for use in all property disputes....” *Presbyterian Church v. Blue Hull*, 393 U.S. 440, 449 (1969). This latter approach has come to be known as “neutral principles of law;” the former approach, “deference.”

South Carolina has made its choice: “...When resolving church dispute cases, South Carolina courts are to apply the neutral principles of law approach....” *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 442, 685 S.E.2d 163, 171 (2009). When a church dispute can be completely resolved on neutral principles of law, it must be. *Id.* at 445, 685 S.E.2d at 172. Since *All Saints*, the courts of this state have used neutral principles of law when resolving church property disputes. *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 750 S.E.2d 605 (2013); *Glover v. Manning*, 2014 WL 2926501 (Ct. App. 2014); *Glover v. Stephenson*, 2014 WL 2926811 (Ct. App. 2014); *Haselden v. New Hope Church*, 2014 WL 2581531 (Ct. Ap. 2014); *Progressive Church of Our Lord Jesus Christ, Inc. v. Black*, 2012 WL 10841363 (Ct. App. 2012). Just as in *All Saints*, the two primary legal issues here are “church property and corporate control.” 385 S.C. at 434. These issues can be completely resolved using neutral principles of South Carolina law.

The plaintiffs’ evidence was primarily directed at establishing that they are the exclusive owners of their real, personal and intellectual property; that they took the necessary action, pursuant to South Carolina law and their governance documents, properly to disassociate themselves from any relationship with the defendants; and that the defendants infringed on their marks. The defendants’ evidence was primarily directed at establishing that the plaintiffs lacked

the authority to disassociate whether or not they complied with the procedural requirements of the Act or their governance documents. Alternatively, even if they successfully disassociated, the defendants contend that the plaintiffs' property is subject to an express or constructive trust in the defendants' favor.

A. Corporate Control and Rightful Leadership

Corporate control is decided, just as in *All Saints*, by the determination of whether each Plaintiff followed its appropriate civil governance and lawfully adopted changes to those documents "which effectively severed the Corporation's legal ties" to TEC. 385 S.C. at 449; 685 S.E.2d at 174.⁵ Since all the parties are either South Carolina entities (non-profit corporations or unincorporated associations) or do business in South Carolina, neutral principles of South Carolina law govern what was required to accomplish those changes. While many of the plaintiffs are subject to the South Carolina Non-Profit Act of 1994 (the "Act"), some were legislatively chartered before the first non-profit act. The Act does not apply to legislatively chartered corporations that have not elected to be subject to the Act. Fourteen of the thirty-eight plaintiffs are not subject to the Act since they were legislatively created before 1900 and did not file an irrevocable election to be bound by the Act.⁶ Twenty-four of the plaintiffs were incorporated after 1900 and are subject to the Act.

I. Diocese

Initially, while TEC and TECSC assert that they have rights with respect to Diocese property, they do not derive from the so-called "Dennis Canon" because on its face this Canon

⁵ The issue of who are the corporation's rightful leaders is determined based on where corporate control rests. *Id.* at 451, 685 S.E.2d at 175.

⁶ "[R]eligious corporations validly created by legislative authority before 1900..." have their original powers and those of the Act if they choose to file "with the Secretary of State an irrevocable election to be governed by the provisions of this chapter." S.C. Code § 33-31-1701. Filing such an election "would constitute, in effect, the surrender of the [corporation's] legislative charter powers." *Id.* (S.C. RepTr. Transc. Comments). "However, nothing in this Act requires these entities to do this." S.C. Code § 33-31-305 (S.C. RepTr. Transc. Comments).

does not apply to the property of a Diocese. *Diocese of Quincy v. Episcopal Church*, 388 Ill. Dec. at 647, 14 N.E.3d at 1258. Whatever rights the defendants might possess derive from their claim that corporate control is vested in TECSC not the Diocese. Therefore, the sole issue with respect to the Diocese is corporate control. If the Diocese legally withdrew from TEC, then those currently in union with it and its leadership control it.

For over 200 years, the Diocese has governed itself through votes of its parish churches and clergy meeting in convention. Between meetings of its convention, it operated first through its Standing Committee starting in 1790 and then after 1795, its Bishop and Standing Committee, and then later in its history, it's Bishop, Standing Committee and its Diocesan Council. Its governance is found in its Constitutions and Canons which have existed and, from time to time, been amended for over 200 years. After its 1973 incorporation, its governance is also found in its Articles of Incorporation and Bylaws. The Diocese's usages and practices have been essentially unchanged since its creation.

In 2010, meeting in Convention, the Diocese began making a series of amendments to its Constitution and Canons that had a bearing on its association with TEC. It is uncontested that these were all passed with the necessary quorum and votes and that the voting procedures in its Constitution and Canons were followed. One of these changes was the amendment of the "purposes" clause in its corporate charter. This amendment was unanimously passed by its Standing Committee sitting as its Board of Directors. It was then passed at the October 15, 2010 Convention by a majority vote.⁷ The Diocese filed Articles of Amendment containing changes in its corporate purpose with the Secretary of State.

⁷ "Majority rule is generally employed in the governance of religious societies." *Jones v. Wolf*, 493 U.S. at 607. (citation omitted).

On October 2, 2012, the Standing Committee, also sitting as its Board of Directors, voted to disassociate from TEC if TEC took any action against the Diocese, Parishes or any of the Diocese or Parish leadership. Shortly thereafter, TEC announced it had charged Mark Lawrence with having abandoned The Episcopal Church. The Diocese disassociated through the prior vote of its Standing Committee sitting as its Board of Directors and the Diocese met in Convention thirty days later. There, its delegates voted overwhelmingly to affirm the Standing Committee's (Board of Director's) vote to disassociate from TEC. They also voted to remove all references to the Diocese's association with TEC from its Constitution and Canons. The defendants assert that these actions were beyond the power of the Diocese or *ultra vires*.⁸

There is no requirement that articles of incorporation include an express power of amendment. S.C. Code §§ 33-31-1001. The Diocese clearly had the authority to amend its articles of incorporation, so the act of amending is not outside its power. S.C. Code §§ 33-31-1001 and 302. The appropriate question is whether the Diocese followed the requirements of the Act in making that amendment.

The defendants called a legal expert witness, Martin C. McWilliams, Jr. on the subject of nonprofit corporate governance under the Act. Mr. McWilliams opined that the Diocese did not meet the requirements of the Act when the Diocese amended its corporate purpose. The Court admitted this testimony recognizing that the issues of whether the Diocese's actions were sufficient under the Act to amend its corporate charter and its withdrawal from TEC are legal issues solely within the province of this Court. *Dawkins v. Fields*, 354 S.C. 58, 66-67, 580 S.E. 2d 433, 437 (2003). Additionally, this court, as the "trier of fact determines [the] probative value," if any of Mr. McWilliams' testimony. *Small v. Pioneer Mach., Inc.* 329 S.C. 448, 470,

⁸ If third parties, the defendants may not bring a claim based on an *ultra vires* action. S.C. Code §33-31-304. If they claim membership, the claim must be brought derivatively and it was not. *Id.*; S.C. Code §33-31-630; see Ord. Den. Mot. to Join Additional Parties (May 20, 2014).

494 S.E. 2d 835, 846 (Ct. App. 1997); *Vortex v. Ware, et. al.*, 378 S.C. 197, 207, 662 S.E. 2d 444, 450 (Ct. App. 2008). As the trier of fact, while the Court acknowledges Mr. McWilliams expertise, in this instance his opinion regarding the ultimate issue of corporate control was not of assistance.

Mr. McWilliams is a long-standing member of an episcopal church still in union with TEC. He stated he was also a former legal advisor to the Upper Diocese of South Carolina, which is also in union with TEC. Mr. McWilliams testified essentially that the Bishop was made the Diocese's sole director upon its incorporation; that there were never additional directors; or if there were, their powers were delegated to the Bishop. He then opined that even this person could not amend the charter to change its purpose, and he concluded that whatever the Convention or the Standing Committee did in the instant case were of no legal effect. As discussed *infra*, the court finds this opinion incorrect.

Mr. McWilliams' opinions lack factual support. The 1994 Act required at least 3 directors yet no evidence was offered that there had been any delegation of authority from the other directors to Mark Lawrence, leaving him as the sole director. S.C. Code §33-31-803. Most importantly, there was no testimony save that of Mr. McWilliams that the Standing Committee was not the Board of Directors.⁹

When the Diocese was incorporated in 1973, the existing non-profit corporation legislation could be described as vague. The South Carolina Nonprofit Corporations Act of 1994 (1994 Act) reduced much of the uncertainty. One of the 1994 Act's hallmarks is a framework

⁹ Mr. McWilliams also opined that S.C. Code § 33-31-180 "converted" the provisions contained in TEC's Constitution and Canons into neutral principles of corporate law. Section 180 adds nothing new to issues involving religious non-profit corporations. The official comment recognizes this fact: "... Section 1.80 simply states the obvious...." The provisions of any act are subservient to the requirements of the Constitutions of the United States and South Carolina. ("...religious doctrine controls to the extent required by the Constitution of the United States or the Constitution of South Carolina, or both." S.C. Code §33-31-180). Those "requirements" have been considered in the Court's conclusions of law. See also *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 442, 685 S.E.2d 163, 171 (2009).

that provides for flexibility in the structure and operation of non-profit corporations. The 1994 Act elevates substance over form in determining a non-profit corporation's governance structure and operation. While a non-profit must have bylaws, the "bylaws" are the documents that regulate or manage the affairs of the non-profit corporation regardless of what they are named.¹⁰ S.C. Code §33-31-206, Off. Com. ("The term bylaws has a broad meaning.") Similarly, the Board of Directors is comprised of those persons with overall management of the non-profit corporation's affairs irrespective of their titles. S.C. Code §33-31-801. Corporate authority may rest with any persons who actually exercise that authority. S.C. Code §33-31-801.

The Act also recognizes that many organizations including churches, meet in convention through delegates "at which time major corporate and policy decisions are made." S.C. Code §33-31-140(8), Off. Com. 4. However, because of the 1994 Act's provisions concerning delegates, they are not "members" of a non-profit corporation, by virtue of their position as a delegate. S.C. Code §33-31-140(23)(b)(A). Nonetheless, a non-profit corporation's governance may provide delegates with "some or all of the authority of members." S.C. Code §33-31-640. Delegates may therefore elect directors, S.C. Code §33-31-726 (directors elected by "members or delegates"), and delegates' approval may be necessary to amend articles or bylaws. S.C. Code §33-31-1030, Off. Com. Delegates may even have corporate authority either in lieu of or in addition to, directors and members. S.C. Code §33-31-640. The Act leaves the authority of delegates to that set forth in the articles or bylaws. *Id.*, Off. Com.

The Diocese has operated virtually since its existence with a Constitution and Canons. These governing documents provide that delegates meeting in convention make major corporate decisions concerning the amendment of these documents. Both the Diocese's incorporation and

¹⁰ Roberts Rules of Order notes that it was "formerly common practice to divide the basic rules of an organization into two documents in order that one of them – the Constitution– might be made more difficult to amend than the other, to which the name bylaws was applied." RONR (10th ed., p. 13, l. 17-21.)

the amendment of its Articles in 1987 were done through the authority of its delegates in convention. When the Diocese incorporated in 1973 and certainly by 1994, the Court specifically determines that the Constitution and Canons were the bylaws. In 2010, additional bylaws were adopted that were supplementary to the Constitution and Canons.

Since at least 2010, the entity that engaged in overall management of the corporation has been the Standing Committee. Under the 1994 Act, that is the function of the Board of Directors. The Diocese's bylaws (Constitution and Canons) provide that delegates elect the Standing Committee. The 1994 Act allows a corporation to "provide in its articles or bylaws for delegates having some or all of the authority of members." S.C. Code §33-31-640. Therefore, Delegates may be vested with the power to elect the Board of Directors of a Nonprofit Corporation.

In 2010, the Standing Committee, as the Board of Directors, unanimously voted to amend the Diocese's corporate purpose in its Articles to remove references to TEC's Constitution and Canons. The Diocese meeting in convention voted to amend them as well. These amended articles were then signed by "+Mark Lawrence, President," and filed with the Secretary of State. Mark Lawrence was acting at that time both as Bishop of the Diocese and as President of its convention. This signature was the same as that used by his predecessor Bishop when providing the notice which antedated the amendment of the Diocese's articles in 1987.

The Defendants offered evidence that the Diocese, during its association with TEC, followed certain rules or requirements associated with its membership in TEC as support for its contention that TEC's control over the Diocese and that control was such that the Diocese could not withdraw its association without TEC's consent.

It is plain that persons or entities organize themselves for common purposes under a variety of rules which govern their relationship. These organizational rules often contain both

mandatory (“shall” “must”) and permissive (“may” “should”) provisions. Typically, adherence to these rules is maintained either by some form of sanction for noncompliance or by expulsion. In all of TEC’s governing documents, no rule exists prohibiting the withdrawal of one of its member dioceses.¹¹ No such rule could be constitutionally inferred.

Both TEC and TECSC are unincorporated associations. In South Carolina, in the absence of statutory changes, the common law governs issues involving unincorporated associations. *Graham v. Lloyd’s of London*, 296 S.C. 249, 371 S.E.2d 801 (1988). Under the common law, a member of an unincorporated association may unilaterally withdraw from the association at any time. *Finch v. Oak* [1897] 1 Ch 409 (CA); Stewart, Nicholas, *The Law of Unincorporated Associations* p. 77 (Oxford University Press, 2011) (“The right is not dependent on acceptance by the association, even if the rules contain no provision for resignation”).¹² Similarly, membership in a South Carolina non-profit corporation is voluntary, S.C. Code § 33-31-603 (1976) (“No person may be admitted as a member without his consent.”) and “a member may resign at any time.” *Id.*; S.C. Code § 33-31-620. More fundamentally, as noted in the commentary in Section 20 of the Revised Uniform Unincorporated Non-Profit Associations Act,

¹¹ Although there was much evidence about the absence of an agreement not to leave, the most telling was the following exchange between plaintiffs’ counsel and Bishop Daniel, a witness for Defendants. After handing the witness the TEC Constitution and Canons (2006 & 2009), he was asked:

Q: Would you please turn to the page in those two where it says the diocese cannot withdraw from the Episcopal Church and read it to us?

A: You’re asking me to find the page, you’re going to have to wait a little while.

Q: I am.

A: What is your question?

Q: My question is, is there a page or a phrase or sentence in either of those two that says, quote, a diocese may not leave the Episcopal Church without the consent of the general convention?

A: I don’t believe so.

Mr. Runyan: Thank you, sir.

The Witness: But I may be wrong.

Mr. Runyan: I’m sure it will be pointed out if you are. Thank you, Bishop.

¹² “This association is a voluntary one.” *Finch v. Oak* [1896] 1 Ch. 416. “The other members have no power to say that he shall not retire, and there is no law that a resignation which cannot be refused must be accepted before it can take effect. If therefore, a member of this association chooses, even from mere caprice, to retire from it, he can do so at any time without the consent of the other members...” *Id.* at 415.

“preventing a member from voluntarily withdrawing from an [association] would be unconstitutional and void on public policy grounds.”

Freedom of association is a fundamental constitutional right: “it is beyond debate that freedom to engage in associations for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment....” *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). “[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, any state action which may have the affect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.* Freedom of association is a constitutional right of both incorporated and unincorporated associations. *Id.*

With the freedom to associate goes its corollary, the freedom to disassociate. *Robert v. United States Jaycees*, 468 U.S. 609, 623 (1984) (“Freedom of association ... plainly presupposes a freedom not to associate.”); *Disabato v. South Carolina Association of School Administrators*, 404 S.C. 433, 445, 746 S.E.2d 329, 335 (2013) (“Among the protections afforded by the freedom of association are the rights to not associate....”); accord *Harris v. Quinn*, 134 S. Ct. 2618, 2629 (2014) (citations omitted) (A law is not justified “that forces men into ideological and political associations which violate their right to freedom of conscience, freedom of association, and freedom of thought” or that “forces a person to “conform to [an entity’s] ideology.”

There is no basis to claim that the Diocese did not validly exercise its legal and constitutionally-protected right to disassociate from TEC in October 2012.

2. Trustees

The Trustees, an independent legislatively chartered corporation, are not now, nor have they ever been, members of TEC. The legislative charter does not reference TEC.¹³ The Trustees relationship has always been with the Diocese. They are given the power by statute to decide their own governance by a vote of their majority. In 1982, their by-laws stated that their duties would be carried out under the authority of the "Constitution and Canons of The Episcopal Church and of the Diocese of South Carolina." On March 17, 2010, these by-laws were amended to remove the previous reference to the Constitution and Canons of TEC. As noted above, the "Dennis Canon," on its face, does not apply to property of a Diocese much less to that of the Trustees. *All Saints Parish Waccamaw v. The Protestant Episcopal Church in the Diocese of South Carolina*, 385 S.C. 428, 442, 685 S.E.2d 163, 171 (2009). There is no legal basis for TEC or TECSC to have any claim of control over the Trustees or its assets.

3. Parish Churches

Parishes are not members of TEC. Any associational relationship they may have with TEC is solely through their association with the Diocese. The Defendants neither contested, nor offered contrary evidence to the proof that the parish churches, where necessary, met the procedures required by the 1994 Act, their governance documents or both to sever any relationship they might have with the Defendants. Instead, they assert that these Plaintiffs lacked the authority "to remove their allegiance to The Episcopal Church" because they agreed to be bound by TEC governance either in their governing documents or by their conduct. If a parish

¹³ The Defendants contend that two entities are referred to in this legislation, the Diocese and TEC. It is clear that the legislative intent when reading the Act as a whole is to one entity and that entity is the Diocese.

The "Protestant Episcopal Church for the Diocese of South Carolina" is the Diocese. The language of the Act makes clear that this is a singular entity. This language is also used in the Diocese's Canons to mean the Diocese alone. E.g., D383B. While the 1880 Act refers to "said Church in said Diocese," the obsolescent legal drafting term "said" means the "aforesaid" or "above mentioned," and refers both, "church" and "diocese," to the previously mentioned name. *Black's Law Dictionary (9th Ed.) at 1453*. Additionally, the operative Act of 1902, makes clear that the "Diocese" is the proper name as church is stated as "church." Finally, the last section specifically recognizes that annual reporting is to the Diocese by name not to any other entity.

could properly sever its relationship with the Diocese, as in *All Saints supra.*, it certainly could do so with an entity with which it had no corporate or associational relationship. The Plaintiff parishes are not under the authority or control of TEC or TECSC.

B. Real and Personal Property Rights

It is uncontested that all the real and personal property of the Plaintiffs is titled and held in their names. It is equally undisputed that there is nothing in the deeds of their real property referencing any trust in favor of TEC. However, the Defendants assert that TEC nevertheless is the beneficiary of express and constructive trusts.¹⁴ The claims of an express trust arises out of the same provision that was at issue in *All Saints*. 385 S.C. at 437, 449, 685 S.E. 2d at 168, 174. The “Dennis Canon” is found both in the TEC canons and was also in the Diocese canons before its removal in 2010. The Defendants assert that any parish churches governing documents, which voluntarily agreed to TEC’s constitution and canons would constitute an express trust under South Carolina law. Failing the existence of an express trust, they contend that the plaintiff churches relationships with TEC gave rise to constructive trusts in TEC’s favor.

1. Express and Constructive Trusts

The United States Supreme Court noted the “peculiar genius” of a “neutral principles analysis” in that it orders “private rights and obligations to reflect the intentions of the parties.” *Jones v. Wolf*, 443 U.S. at 603. The parties, before the dispute arises, can structure their relationships so that any dispute over church property ownership will be resolved based on their intent as expressed in “legally cognizable” agreements. *Id.*¹⁵ As between an express and a

¹⁴ The Defendants conceded at trial that the only trust available other than an express trust was a constructive trust since there are no implied trusts in South Carolina except resulting and constructive trusts and a resulting trust is not present here.

¹⁵ TEC added the Dennis Canon to its canons in 1979 presumably because of a suggestion in *Jones v. Wolf* that neutral principles could allow parties to control the outcome of a dispute through pre-dispute agreements.

constructive trust, the “legally cognizable” **consensual** agreement in South Carolina is an express trust.

In order to create an express trust in South Carolina, whether by transfer or declaration, there must be a writing “signed by the owner of the property that the owner holds identifiable property as a trustee” for another. S.C. Code § 62-7-401(a)(2)(2013). Obviously, this creates two hurdles: (1) the owner of the property must create the trust for the benefit of another (the beneficiary cannot create it for himself); and (2) it must be in writing and signed by the owner of the property. *All Saints* never reached the second issue with regard to TEC’s asserted trust interest via its “Dennis Canon” because it held that “it is an axiomatic principle of law that a person or entity must hold title to property in order to declare that it is held in trust for the benefit of another....” 385 S.C. at 449. The Dennis Canon created no express trust of which TEC was the beneficiary.

First, TEC chose not to place its Dennis Canon in its Constitution. To do so would require that the proposed amendment be sent to all the Dioceses first to get their conventions to vote on the proposed amendment. If approved by enough Dioceses, the Constitution could have then been amended. Rather, TEC chose to pass it as a canon, which required a single vote at one Convention. Second, as to the Diocese and the Trustees, the Dennis Canon does not apply on its face to them. As to the parish churches, there was nothing consensual between TEC and the parish churches in the process used to adopt it, much less that it was subsequently “embodied in some legally cognizable form.” A legally cognizable form in South Carolina would have

“At any time before the dispute erupts...they can modify the deeds or the corporate charter to include a rights of revision or trust in favor of the general church. Alternatively, the **constitution** of the general church can be made to recite an express trust in favor of the denominational church. ... and the civil courts will be bound to give effect to the result indicated by the parties, **provided it is embodied in some legally cognizable form.**”

Jones v. Wolf, 443 U.S. at 606. (emphasis added). This concept was explicitly recognized in *All Saints*. (“We find that the Diocese and ECUSA organized their affairs with *All Saints Parish* in a manner.... 385 S.C. at 445).

required a writing signed by each parish church as the owner of the property making a declaration of trust in TEC's favor.¹⁶

Neither is there a constructive trust in TEC's favor. A constructive trust is not a true trust at all as it lacks the fiduciary relationship present with a trust. Restatement of the Law of Trusts §2. It is a "remedial device imposed by law." S.C. Code §67-1-102 Off. Com. (2005); *accord* Karesh, Coleman. Trusts 1 at 66 (1977). It is not the product of an agreement. Its legal basis is the titleholder's equitable duty to convey property to another to prevent unjust enrichment if the titleholder retained it. Restatement of Restitution §160. The South Carolina Supreme Court has expressed these concepts as follows:

A constructive trust arises entirely by operation of law without reference to any actual or supposed intention of creating a trust and is resorted to by equity to vindicate right and justice, or to frustrate fraud.

Scott v. Scott, 216 S.C. 280, 288, 57 S.E. 2d 470,474. (1950); *accord Carolina Park Associates, LLC v. Marino*, 400 S.C. 1, 732 S.E. 2d 876 (2012). The evidence of its existence must be "clear, definite, and unequivocal." *Id.* at 6, 732 S.E. 2d at 879.

¹⁶ Eight parish churches were incorporated by the legislature as a result of the 1778 Constitution. Finding 63. Article 38 of the 1778 Constitution of South Carolina in effect substituted the Protestant religion for that of the Church of England as the established church in South Carolina. This constitution also vested in those former Church of England parishes then in existence the property which they possessed, stating "the churches, chapels, parsonages, glebes, and all other property now belonging to any societies of the Church of England, ... shall remain and be secured to them forever." Although Article 38 was effectively replaced in the Constitution of 1790 by Article 8 to remove the Protestant religion as the established church, this provision was added: "The rights, privileges, immunities and estates of both civil and religious societies, and of corporate bodies, shall remain as if the constitution of this state had not been altered or amended." This provision was carried through every constitution until that of 1868.

It is a well-known principle that neither legislative acts nor constitutional amendments can operate retroactively to "divest vested rights." *Vartelas v. Holder*, 132 S. Ct. 1479 (2012); *Faulkenberry v. Norfolk Southern Ry. Co.*, 349 S.C. 318, 323, 563 S.E.2d 644, 646 (2002); *Robinson v. Askew*, 129 S.C. 188, 123 S.E.2d 822, 823 (1924). While this principle relates to governmental action and a parish church with vested property rights could divest itself of those rights, given their vested nature such disinvestment would have to be done with the owner's complete consent and the owner's unmistakable intent to accomplish that result.

The undisputed evidence is that all the real and personal property at issue was purchased, constructed, maintained and possessed exclusively by the Plaintiffs.

There is no “clear, definite and unequivocal” evidence of the existence of a constructive trust in TEC or TECSC’s favor. The circumstances in the instant case are most akin to those in *All Saints, Supra*.

C. Marks

Plaintiffs’ action also seeks declaratory and injunctive relief with respect to their names, service marks, styles, seals and emblems under two statutes: S.C. Code §§ 39-15-1105 *et. seq.*, (Service Mark Infringement) and S.C. Code §§ 16-17-310 & 320 (Improper Use of Names, Styles and Emblems).¹⁷ The service mark infringement statutes, S.C. Code §§ 39-15-1105 *et. seq.*, create a statutory framework for the protection of registered marks in South Carolina. The issuance of a certificate of registration by the Secretary of State is “competent and sufficient proof” of the mark’s registration and of “compliance by the applicant with the requirements of the [Act].” S.C. Code § 39-15-1125 (1994). Once a mark is registered, a person¹⁸ is liable to the registrant for its use or reproduction without consent of the registrant either in connection with merchandising activities¹⁹ or when using it is “likely to cause confusion or mistake or to deceive as to the source of origin...” S.C. Code § 39-15-1160. If the mark is “famous,” the registrant is entitled to injunctive relief and if willful intent is proven, to other remedies set forth in the Act.

¹⁷ These names, marks and their usage are the subject of three prior orders of this Court. One temporarily restrained their use to the Diocese and its officers, directors and employees. It was entered on January 23, 2013. The second continued that relief in the form of a temporary injunction consented to by TEC until a final ruling by this court. *Temp. Inj. (Consent), January 31, 2013*. The third denied, *inter alia*, TECSC’s Motion to Vacate or Modify the January 31, 2013 injunction. *Or. Den. Mtn. to Vacate/Modify Temp. Inj. and Den. TECSC Mtn. for Temp. Inj., January 14, 2014*.

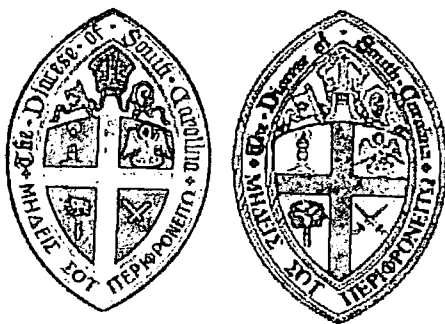
¹⁸ A person “includes a juristic person, as well as a natural person. The term “juristic person” includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.” S.C. Code Ann. § 39-15-1105(4).

¹⁹ Such activities are the “sale, distribution, offering for sale, or advertising of goods and services.” § 39-15-1160 (1994).

S.C. Code § 39-15-1165. When the infringement is done with knowledge or in bad faith, the Court may award reasonable attorneys' fees to the prevailing party. S.C. Code § 39-15-1170.

Sections 16-17-310 and 320 provide for injunctive relief as well. However, these sections are not based on registration of a mark. They secure the "names, styles and emblems" to the *incorporated* charitable entity that was first organized and used the names.²⁰ Since neither TEC nor TECSC are incorporated and all the plaintiffs are incorporated, the only issue is whether TEC and TECSC have used or threatened to use the names and emblems of the plaintiffs. There is no requirement that people be "deceived or misled" by the misuse to secure injunctive relief. S.C. Code § 16-17-320.

The Diocese marks are: "The Diocese of South Carolina," "The Episcopal Diocese of South Carolina," "The Protestant Episcopal Church in the Diocese of South Carolina" and the Diocese seal, in color and black and white:



²⁰ S.C. Code Section 16-17-310 provides:

No person, society or organization shall assume, use, adopt, become incorporated under or continue to use the name and style or emblems of any incorporated benevolent, fraternal, social, humane or charitable organization previously existing in this State or a name and style or emblem so nearly resembling the name and style of such incorporated organization as to be a colorable imitation thereof. When two or more of such societies, associations or corporations claim the right to the same name or to a name substantially similar as above provided, the organization which was first organized and used the name and first became incorporated under the laws of the United States or of any state of the Union, whether incorporated in this State or not, shall be entitled in this State to the prior and exclusive use of such name, and the rights of such societies, associations or corporations and of their individual members shall be fixed and determined accordingly.

These marks were registered with the South Carolina Secretary of State on November 15, 2010. Several of the Plaintiff parishes, in addition to the injunctive relief they seek with the other plaintiffs under sections 16-17-310 and 320, also seek declaratory and injunctive relief with respect to their registered marks.²¹ The facts surrounding the use of the plaintiffs' marks are not disputed.

The Defendants admit that the Diocese is the owner and registrant of its marks and TEC also admits that these marks are "famous" within the meaning of Section 39-15-1165. *Answer and Counterclaim of The Episcopal Church to Second Amended Complaint for Declaratory and Injunctive Relief*, ¶ 341; *The Episcopal Church in South Carolina's Response to Request for Admissions by Certain Parishes, October 3, 2013, No. 13*. There is no dispute that the Diocese has used the marks at various times throughout its history.

The dispute surrounding the use of the Diocese marks began after the Diocese withdrew from TEC in October 2012. At least from November 2012 until the fall of 2013, the Defendants intentionally used, without permission, and with knowledge of that use, the names, marks and emblems of the Plaintiffs. Bishop vonRosenberg testified that both he and the Steering Committee regularly used the name and seal of the Diocese in the fall of 2012 and that their use was intentional. He also testified that TECSC used the names of the Plaintiff parishes on its website after TECSC was organized in January 2013.

The Diocese presented extensive testimony on the unauthorized use of the Diocese's marks, which was not contradicted by any witness for the defendants. James B. Lewis testified as follows:

²¹ **St. Michaels**: "The Protestant Episcopal Church, The Parish of St. Michael, In Charleston, in the State of South Carolina," "St. Michael's Episcopal Church," "St. Michael's Church," and its Seal all registered on October 14, 2011; **St. Philips**: "St. Philip's Church" registered on November 27, 2011; and **The Parish Church of St. Helena**: "The Parish Church of St. Helena," "The Parish Church of St. Helena (Episcopal)," "St. Helena's Episcopal Church," "St. Helena's Church" and its Seal all registered on July 22, 2011.

- On November 7, 2012 he received emails sent to all clergy of the Diocese purportedly from the “Episcopal Diocese of South Carolina” which had not come from the Diocese. These emails attached an invitation to a November 15, 2012 Clergy Day supposedly on behalf of the Diocese and used the Diocese’s seal with the TEC shield on the invitation. The Diocese immediately issued a press release and emailed it to all clergy stating that the use of the name and seal of the Diocese was without authority. Nevertheless, another email was again sent from TECSC using the Diocese name and seal.
- He attended a November 15 clergy meeting called without authority in the name of the Diocese. Tom Tisdale, Jr. (counsel for TEC and the future TECSC) spoke most of the time and appeared to be in charge. Bishop vonRosenberg was also present. Mr. Tisdale stated “explicitly that he was functioning as legal counsel for the Presiding Bishop” and that “he had been contacted by the presiding bishop several months...prior and asked to begin organizing for the possible need of replacing the Diocese.” He stated their intent to use the names and seal of the Diocese.
- TECSC created and used a website using a registered name of the Diocese. Mr. Lewis checked the website domain registration and found the name “episcopaldioceseofsc.com.” He checked the origin of the email address with “episcopaldioceseofsc.com” as the sender and found it registered to “Domain Discreet Privacy Service.”
- In December 2012, he received a registration form using a registered name of the Diocese for a special convention to be held on January 26, 2013. The presiding bishop of TEC had called the special convention. The form also used the Diocese seal together with the TEC shield. It further stated that registration checks should be made payable to the “Diocese of South Carolina.”
- After TECSC launched a website in a registered name of the Diocese, Mr. Lewis visited

the site where he observed use of the Diocese seal and it's registered name. He also found a page on that website where there was a description of the Diocese seal. It was identical to the written description of the Diocese seal which he had prepared and which was on the Diocese website. "It had been lifted in whole from our Diocesan website."

- Mr. Lewis attended the January 26, 2013 convention of TECSC. "My impression upon attendance is that the intention was to be a convention of the Diocese of South Carolina." However, had the convention been of the Diocese of South Carolina, it would have lacked the necessary quorum.
- Among other things at this convention, Mr. Lewis observed Mr. Tisdale's appointment as the Chancellor of TECSC, passage of resolutions intended to alter existing provisions of the Constitution and Canons of the Diocese and which used a registered name of the Diocese.
- Mr. Lewis made a comparison between the Diocese of South Carolina's Constitution and Canons and those, which were part of the resolutions and found "it was clear that the changes that were being proposed were in direct correspondence with what were our governing documents as the Diocese of South Carolina."
- He discovered after the January convention of TECSC, that when searching for a registered name of the Diocese of South Carolina by using a web search engine, the search would be redirected to TECSC's website.
- In addition to Mr. Lewis' testimony, TECSC admitted that at its two conventions in 2013, it attempted to revise the Constitution and Canons of the Diocese; used a website known as "www.episcopalchurchofsc.org" until the summer of 2013, redirected web visitors seeking the Diocese of South Carolina's website to TECSC's website, used the names of the Plaintiff parishes on TECSC's website for a number of months without their permission and operated a

bank account in the registered name of the Diocese.

Finally, there was testimony from witnesses on both sides that the use of the names and the marks of the Plaintiffs not only was likely to cause confusion and to deceive persons as to their source or origin but that there was confusion and deception about their source or origin. The Defendants do not dispute that they used the marks after the Diocese's withdrawal from TEC. They, however, assert as a defense that the marks were derived from the marks of TEC. The record does not support this defense.²²

Plaintiffs' names and marks were claimed to be derived from these marks of TEC: "The Episcopal Church" and "The Protestant Episcopal Church in the United States of America." To be derived from these names, the Plaintiffs' marks of necessity must have been later in time and so uniquely similar to TEC's marks, in the way used by Plaintiffs, else the object of their derivation, if any, may have been another source. Neither is the case here.

The word "episcopal" refers to an organization with bishops or overseers. Not only does the use of this word predate TEC, but it also is used today in many other church organizations unrelated to any party in this lawsuit. "Episcopal" and "Episcopal Church" were also part of the corporate names of some of the Plaintiffs before TEC was created. "Episcopal Church" also was in use before TEC's existence.²³ Some of these "Episcopal" churches were also called "denominations" by the legislature before TEC existed as well. Equally, the words "Protestant Episcopal Church" are not unique to, nor were they first used by, TEC.

²² TECSC's "FOURTEENTH DEFENSE (Invalidity)" asserts that the Plaintiffs' names and marks "were derived wholly from and through Defendants and the rights and interests...are invalid and do not constitute a basis for the relief sought." *Answer, Affirmative Defenses and Counterclaims of The Episcopal Church in South Carolina to Second Amended Complaint for Declaratory Injunctive Relief*, ¶ 518.

²³ A portion of the Parish Church of St. Helena vestry minutes from July 7, 1784, requests a clergyman from the "Episcopal Church for the Town of Beaufort, South Carolina on the following terms. An Annual Salary of One Hundred Fifty Pounds Sterling."

As early as 1749, the English Parliament referred to the Moravian Church as an "ancient Protestant Episcopal Church." In the United States, prior to the formation of TEC, these words were part of the names of independent church organizations in Maryland, South Carolina, and Pennsylvania and in other states. If anything, the record supports the conclusion that TEC derived its name from those of the preexisting "Protestant Episcopal Churches" which formed it including that of the Diocese and its preexisting "Protestant Episcopal" parishes.

This Court finds, there is no adequate legal remedy for the protection of the Plaintiffs' names and marks making permanent injunctive relief necessary if the facts justify relief.

It is clear from the record that the Plaintiffs are the owners of their names and marks and that they are incorporated charitable organizations while the Defendants are not. It is also clear that in the absence of the January 2013 restraining order and temporary injunction there would have been a continuance of the intentional infringement of these marks that occurred prior to their entry. Under both statutes, the Plaintiffs have established their entitlement to permanent injunctive relief. There has been the "actual or threatened violation" of Plaintiffs' rights to the "exclusive" use of their "names, styles and emblems," S.C. Code §§ 16-17-310 & 320 (1976), and there has been use that is both likely to cause confusion and deceive as to source or origin and has done so. Additionally, the Diocese's marks are "famous" as defined by S.C. Code § 39-15-1165.

It is also clear, as to the Diocese, that the Defendants "willfully intended to trade on the registrant's reputation" and that they chose, intentionally, to use the names and seal of the Diocese as strategic support for TECSC's purposes. This strategy was not simply one of TECSC's but was one that TEC benefited from and promoted. "Legal counsel for the presiding bishop" announced it. TEC allowed the TEC shield to be used jointly with the Diocese's seal and

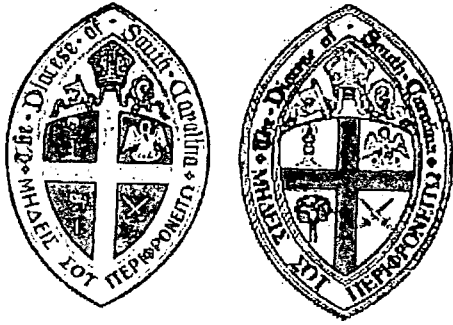
TEC's presiding bishop called a special convention using both the name and the seal of the Diocese. Even after the entry of the January 2013 orders, TECSC continued to use the name of the Diocese on its checking account, acted to make modifications to the Diocese's Constitution and Canons also using the Diocese's name, and forwarded web searches for the Diocese to TECSC's website.

IT IS THEREFORE ORDERED,

1. The Plaintiffs are the owners of their real, personal and intellectual property.
2. The Defendants have no legal, beneficial or equitable interest in the Plaintiffs' real, personal and intellectual property.
3. The Defendant TEC, also known as The Protestant Episcopal Church in the United States of America and Defendant The Episcopal Church in South Carolina and their officers, agents, servants, employees, members, attorneys and any person in concert with or under their direction or control are permanently enjoined from using, assuming, or adopting in any way, directly or indirectly the names, styles, emblems or marks of the Plaintiffs as hereinafter set out, or any names, styles, emblems or marks that may be reasonably perceived to be those names, styles emblems or marks:

Diocese:

- "The Protestant Episcopal Church in the Diocese of South Carolina"
- "The Episcopal Diocese of South Carolina"
- "The Diocese of South Carolina"
- The seals of the Diocese:



St. Michael's Church:

- “The Protestant Episcopal Church, The Parish of St. Michael, In Charleston, In the State of South Carolina”
- “St. Michael's Episcopal Church”
- “St. Michael's Church”

St. Philip's Church:

- “St. Philip's Church”

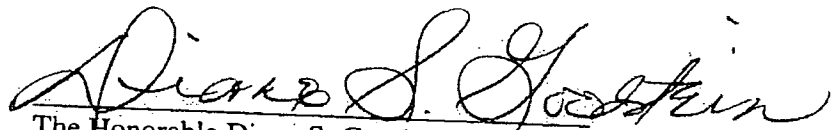
The Parish Church of St. Helena:

- “The Parish Church of St. Helena”
- “The Parish Church of St. Helena (Episcopal)”
- “St. Helena's Episcopal Church”
- “St. Helena's Church”
- The Seal of St. Helena's as depicted on page 4 of exhibit PCSH-23 and registered with the South Carolina Secretary of State on July 22, 2011. The Seal is described as follows: “The seal is composed of shield, crest, collar, divided in 4 segments. “Parish Church of St. Helena: over the top 2 segments, “1772 Beaufort South Carolina” under the bottom segments. First quarter is a pelican on a red field, second quarter depicts azure field with the steeple of St. Helena's Episcopal

Church; third quarter shows an azure field, a palmetto tree and crescent (South Carolina); fourth quarter depicts blood red gules with a portcullis, gate of a castle, taken from crest of the Duke of Beaufort.”

4. The Dorchester County Clerk is directed, upon the filing of this order, to refund the sum of \$50,000.00 to the Protestant Episcopal Church in the Diocese of South Carolina.
5. The Defendants counterclaims are dismissed with prejudice.

IT IS SO ORDERED!



The Honorable Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit
State of South Carolina

February 3, 2015
Orangeburg, South Carolina