

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. Supreme Court

Diane S. Goodstein, Circuit Court Judge

Case No. 2013-CP-18-00013

The Protestant Episcopal Church
in the Diocese of South Carolina et. al. Respondents,

v.

The Episcopal Church (a/k/a The Protestant
Episcopal Church in the United States of
America) and The Episcopal Church in South Carolina. Appellants.

RECORD ON APPEAL - Volume 2

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1 THE COURT: Next witness, please.

2 (Plaintiff's Exhibits SJF-1 through SJF-22 premarked for
3 identification.)

4 ALLIE PATTERSON WALKER,
5 being first duly sworn, testified as follows:

6 MR. ORR: Judge, I have an additional set of the
7 exhibits if you'd like those just to refer to.

8 THE COURT: I would. That would be great.

9 MR. ORR: Can I hand them up?

10 THE COURT: Thank you kindly, yes, sir. Thank you so
11 much.

12 Have you consulted with counsel?

13 MR. ORR: They have no objection.

14 THE COURT: They have no objection. And do you know
15 what the exhibit numbers are?

16 MR. TISDALE: Your Honor, there might be one caveat on
17 that. We've just got one that we can't read, so we'd like to
18 ask Mr. Orr to provide us with a copy of that as we did on
19 the one yesterday.

20 THE COURT: I understand. And can you direct him to the
21 one?

22 MR. TISDALE: If you'll allow us, we'll just tell him
23 which one it is.

24 THE COURT: Sure that's fine. Very well. So Exhibits
25 SJF-1 through 22 would be in evidence conditionally with that

1 one exception.

2 MR. TISDALE: And provided to us and to the Court.

3 THE COURT: Indeed. Very well.

4 (Plaintiff's Exhibits SJF-1 through SJF-22 admitted into
5 evidence.)

6 THE COURT: Mr. Orr.

7 MR. ORR: Your Honor, I'm Lawrence Orr here for
8 St. John's, Florence.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION BY MR. ORR:

11 Q. Would you state your name, please, ma'am.

12 A. Allie Patterson Walker.

13 Q. Where do you live, Ms. Walker?

14 A. In Florence, South Carolina.

15 Q. Okay. How long have you lived there?

16 A. All of my life except for about two years.

17 Q. Are you married?

18 A. I am.

19 Q. Have children?

20 A. I do have three.

21 Q. Where are you a member of a church?

22 A. I am a member of St. John's Church in Florence.

23 Q. How long have you been a member there?

24 A. I've been a member for 23 years.

25 Q. Have you been a member of any other church in Florence?

- 1 A. I have.
- 2 Q. What?
- 3 A. All Saints Church in Florence.
- 4 Q. I believe there was testimony yesterday from Ms. Hodge
- 5 from All Saints that that was a seed church started by
- 6 St. John's?
- 7 A. That's correct.
- 8 Q. Was your family involved in that?
- 9 A. Yes, my parents.
- 10 Q. Okay. Your parents were members of All Saints and went
- 11 to St. John's when it started?
- 12 A. They were members of St. John's, and then when they
- 13 seeded the church at All Saints, they left to start that
- 14 congregation.
- 15 Q. Okay. At some point you left All Saints and went to
- 16 St. John's?
- 17 A. That's correct.
- 18 Q. Okay. Where's St. John's located?
- 19 A. 252 South Dargan Street in Florence.
- 20 Q. Dargan Street runs generally north/south?
- 21 A. That's correct.
- 22 Q. Okay. And so St. John's is on the east side of -- a
- 23 challenge for you.
- 24 A. Yes.
- 25 Q. Okay. The campus of St. John's runs from Dargan Street

1 back to Railroad Avenue?

2 A. Yes, it does.

3 Q. Okay. And then on the south side towards Palmetto
4 Street is what used to be the 301 Drive-In and a couple
5 things there?

6 A. Yes.

7 Q. And then your campus also runs to the north to some
8 property owned, I guess, by McLeod?

9 A. That is correct.

10 Q. Do you know how long St. John's has been located on that
11 property?

12 A. We have a cornerstone that's marked 1866.

13 Q. Okay. How many members do you currently have?

14 A. We would have probably about 500 baptized members;
15 probably about 250 communicants, adults.

16 Q. About how many attend services on Sunday?

17 A. We have -- during the winter we have three services,
18 during the summer we have two. And we will average anywhere
19 between 180 to 200 with all three services.

20 Q. What is your -- do you have a position in the church?

21 A. Yes, I am currently the senior warden.

22 Q. Okay. Have you held that position for how many years?

23 A. This will be my second year.

24 Q. Okay. Have you had that position before --

25 A. No.

1 Q. -- in the past?

2 Have you served on the vestry before?

3 A. Yes, I have.

4 Q. How many times or how many years, roughly?

5 A. I served a time before for three years. This is my
6 seventh consecutive year. I was three years on the vestry,
7 two years as a junior warden, and now two years as a senior
8 warden.

9 Q. Is your husband also a member of the church?

10 A. Yes, he is.

11 Q. Has he served on the vestry and as warden?

12 A. Yes, he has.

13 Q. Okay. What about either of your parents?

14 A. My father has served on the vestry and has been senior
15 warden.

16 Q. Is St. John's a corporation?

17 A. Yes, it is.

18 Q. Nonprofit corporation?

19 A. Yes.

20 Q. Exhibit No. 1, if you would, is that the articles of
21 incorporation issued by the Clerk of Court for Darlington
22 County? I believe the second page indicates the office.

23 And, again, I think this is one of the documents Mr. Tisdale
24 had some question about. That's the cleanest copy we have,
25 but I'll try to get another copy.

1 MR. TISDALE: That is correct.

2 Q. But if you look down at the bottom, does that say Clerk
3 of Court, Clerk, Darlington County?

4 A. Court, Darlington, yes, in December.

5 Q. December 5 in the 100th year of the United States, that
6 was in December of 1875?

7 A. Yes.

8 Q. At that time Florence County was not in existence, was
9 it?

10 A. That's correct.

11 Q. When did Florence County get formed?

12 A. I believe it was 1980 -- was it --

13 Q. 1888?

14 A. -- 1888.

15 Q. From parts of Darlington, parts of Marion?

16 A. That's correct.

17 Q. Was another certificate of incorporation issued?

18 A. Yes, in Florence County.

19 Q. Okay. And that is Exhibit No. 2?

20 A. Yes.

21 Q. And that was issued by the South Carolina Secretary of
22 State?

23 A. That is correct.

24 Q. And the official name of the church?

25 A. St. John's Episcopal Church, Florence, South Carolina.

1 Q. And that was dated November the 26th, 19 --

2 A. 15.

3 Q. 1915. And the stated purpose in the fourth paragraph of
4 that is to establish and maintain an Episcopal Church or
5 churches in Florence County, South Carolina; is that correct?

6 A. Yes.

7 Q. Since 1915 to today have there been any amendments or
8 changes to that certificate of incorporation?

9 A. Not to the certificate of incorporation.

10 Q. So the name of the corporation of St. John's is still
11 the St. John's Episcopal Church of Florence, SC?

12 A. Yes.

13 Q. Church has bylaws?

14 A. Yes, we do.

15 Q. The first bylaws were enacted in 1919?

16 A. 19.

17 Q. Okay. Have those bylaws been amended?

18 A. Yes, they have.

19 Q. And when were they amended?

20 A. Well, it was -- in 2011 there was a first reading, and
21 then in 2012 they were passed.

22 Q. Okay. Do you know why there was an amendment to the
23 bylaws?

24 A. I do.

25 Q. How about tell us about it, please.

1 A. We did not have -- we had language in our bylaws that
2 did not allow women to be on the vestry or to be wardens, so
3 we removed it since we had already had women on the vestry
4 and as wardens.

5 Q. If you look at Exhibits 18 and 20, are those the minutes
6 of the annual meeting of the congregation at which those
7 amendments to the bylaws were first proposed and voted on and
8 then the second year adopted or ratified?

9 A. Yes.

10 Q. And there was also passed a resolution ratifying all the
11 acts of the vestry and the wardens while women were serving
12 on them before?

13 A. That is correct.

14 Q. Now, at any time -- Exhibit No. 19 is a copy of the
15 amended bylaws?

16 A. Yes, it is.

17 Q. Is there anything in those amended bylaws that makes
18 reference to the national church?

19 A. No, there is not.

20 Q. Was there anything in the 1919 bylaws that made
21 reference to the national church?

22 A. Not that I'm aware of.

23 Q. Okay. There have been no amendments to the bylaws since
24 the 2011-2012?

25 A. That is correct.

1 Q. Now, you briefly described the property that you have.

2 That wasn't acquired in one fell swoop, was it?

3 A. No, over many years and many deeds.

4 Q. Okay. Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
5 and 15, are those all deeds for property that is now owned by
6 St. John's?

7 A. Yes.

8 Q. All of them speak for themselves. I don't think I need
9 to go through each one of them, but gradually you were
10 acquiring property to make up the rectangular part that you
11 have now?

12 A. That is correct.

13 Q. Okay. I do want to ask you about three of those.
14 Exhibit No. 3 is a deed dated October 23, 1884, by the Ladies
15 Aid Society of St. John's to the vestry --

16 A. Yes.

17 Q. -- of lot --

18 A. 238.

19 Q. -- 238?

20 A. Yes.

21 Q. Okay. And then Exhibit No. 4 is a deed dated November
22 16, 1889, by the vestry -- a deed of that same lot, by the
23 vestry to St. John's?

24 A. That is correct.

25 Q. Okay. Now, Exhibit No. 22 -- which is almost totally

1 illegible but it's the best copy I was able to get with an
2 iPhone because it was in a book we couldn't take apart to
3 copy -- is a deed from St. John's of that Lot 238 to the
4 trustees of the Diocese of South Carolina?

5 A. That is correct.

6 Q. Are you aware of that?

7 A. Yes.

8 Q. How did you become aware of that?

9 A. I was told by my attorneys and the historians of the
10 church.

11 Q. Haigh Porter is a member of your church?

12 A. Yes, he is.

13 Q. And he has served as chancellor of St. John's over the
14 past?

15 A. Chancellor, senior warden.

16 Q. Okay. When he was senior warden -- he also does a lot
17 of real estate work as an attorney?

18 A. That is correct.

19 Q. He attempted to compile all the deeds and records so
20 there would be a continuous record available --

21 A. Correct.

22 Q. -- for the property of the corporate status. And in
23 that process he found that this property had been deeded to
24 the trustees but no deed had ever been received back?

25 A. That is correct.

1 Q. Okay. As a result of that what happened?

2 A. He contacted the diocese and they had no record. They
3 could not find the deed. Mr. Porter requested a quitclaim
4 deed for that property.

5 Q. Okay. Exhibit No. 16, please, ma'am. That is a
6 quitclaim deed by the trustees of the Protestant Episcopal
7 Church in South Carolina of whatever interest the trustee
8 corporation may have in Lot No. 238?

9 A. Yes.

10 Q. Okay. And that was dated November the 11th, 2010 --

11 A. Yes.

12 Q. -- and recorded?

13 All right. And that is a deed that was requested by
14 St. John's?

15 A. Yes, it was.

16 Q. Exhibit No. 17 is a quitclaim deed from the diocese?

17 A. Yes.

18 Q. Did St. John's request that?

19 A. No.

20 Q. Do you know anything about why it was received?

21 A. It was just received.

22 Q. The deed is actually dated October the 21st of 2010.

23 And this is the diocese corporation as opposed to the trustee
24 corporation. And this quitclaim deed is renouncing any
25 interest in any of the various parcels listed here, correct?

1 A. That is correct.

2 Q. It was dated October 21st of 2010. Do you know when
3 St. John's actually received it?

4 A. It was received in 2010, I believe.

5 Q. Okay. It was not recorded until November the 16th of
6 2011?

7 A. That's correct.

8 Q. Do you know why?

9 A. They asked us not to.

10 Q. Do you know why?

11 A. Have no idea.

12 Q. Okay. These deeds, is that all the property that
13 St. John's owns?

14 A. All the deeds that you did, yes.

15 Q. Yes, ma'am, okay.

16 Now, let's talk for a minute about the resolution. The
17 governing body of the church is the vestry?

18 A. That is correct.

19 Q. Did the vestry take any action with respect to its
20 affiliation with the Diocese of South Carolina? Just tell me
21 about that.

22 A. When we had received information that the national
23 church had taken action against our Bishop Lawrence, the
24 standing committee had already in place if that happened that
25 they would start and they would no longer be part of the

1 national church. There was a specially held convention, and
2 at that time the delegates decided to stay with the -- ratify
3 the standing committee's decision to pull away from the
4 national church, then we came back and as a vestry we came up
5 with our resolution that we wanted to remain with Bishop
6 Lawrence and the Diocese of South Carolina. We asked the
7 congregation in a nonbinding vote for them to give us, you
8 know, their reaction and what they wanted, and we asked the
9 question, would you -- do you want to remain in the Diocese
10 of South Carolina with Bishop Lawrence, and the congregation
11 voted to remain with the diocese.

12 Q. Do you know by what percentage they voted?

13 A. It was 88 percent.

14 Q. And then as a result -- or after that congregational
15 meeting when that vote was taken, what did the vestry do?

16 A. The vestry signed the resolution.

17 Q. Exhibit No. 21, are those the minutes of the vestry
18 meeting at which that resolution was passed?

19 A. Yes, they are.

20 Q. You have listed the vestry members who were present?

21 A. Yes.

22 Q. And of those, looks like you had at least five lawyers?

23 A. Yes, we do.

24 Q. How did y'all get anything done?

25 A. It took a while.

1 THE COURT: Why?

2 THE WITNESS: I can't imagine, after being here today.

3 Q. The third page of that exhibit, is that the resolution
4 that was agreed upon?

5 A. Yes, the last page.

6 Q. And it was -- was it unanimously adopted by those
7 present?

8 A. It was.

9 Q. And you had a quorum at that vestry meeting?

10 A. Yes, we did.

11 Q. Does that resolution set forth the feelings and thoughts
12 of the vestry as to why they were taking the action and the
13 action that they were taking?

14 A. Yes, it does.

15 Q. In the resolution you're going -- remaining with the
16 Diocese of South Carolina and you're, in effect, saying, this
17 is -- we're confirming that we have no affiliation with the
18 Protestant (sic) church of the U.S., the national church,
19 correct?

20 A. That is correct.

21 Q. But the name of the church -- the name of the
22 corporation is still St. John's Episcopal Church of Florence,
23 SC, why was that not changed?

24 A. Well, you could imagine with five or six lawyers on the
25 vestry it was the consensus that we are an Episcopal Church.

1 We no longer belong to the national Episcopal Church, but we
2 are an Episcopal Church.

3 Q. Okay. At the current time does St. John's have any
4 relationship with the national church?

5 A. No, we do not.

6 Q. Do you have any relationship with the unincorporated
7 diocese?

8 A. No.

9 Q. Have you ever had any relationship with the
10 unincorporated diocese?

11 A. No.

12 Q. Has St. John's sent delegates to the annual convention
13 or any special conventions of the corporate diocese, the
14 Diocese of South Carolina?

15 A. Of South Carolina, yes, we have.

16 Q. And you've done that historically?

17 A. Yes.

18 Q. And you continue to do that now?

19 A. Yes.

20 Q. Have you ever served as a delegate?

21 A. Yes, I have.

22 Q. Many times?

23 A. I think four.

24 Q. Okay. Enough?

25 A. Enough.

1 Q. Okay. Has St. John's ever sent any delegates to any
2 meetings of the unincorporated diocese?

3 A. No, we have not.

4 Q. Do you know whether some members of St. John's attended
5 any conventions of the unincorporated diocese?

6 A. I believe there have been.

7 Q. But they did not go as official delegates from
8 St. John's?

9 A. No.

10 Q. St. John's has renovated its parish, the sanctuary?

11 A. Yes.

12 Q. That was a rather extensive renovation and termites were
13 found and all sorts of work had to be done?

14 A. Yes.

15 Q. And you have built a parish hall, wonderful parish hall,
16 in the back?

17 A. That is correct.

18 Q. Okay. Were any moneys received from the national church
19 for any of those projects?

20 A. No.

21 Q. Was any money received from the diocese for any of those
22 projects?

23 A. No.

24 Q. Do you know of any moneys that St. John's has received
25 from the national church or any of its affiliated entities?

1 THE COURT: Plaintiffs ready to proceed?

2 MR. RUNYAN: Plaintiffs are ready, Your Honor.

3 THE COURT: Great. And are defendants ready to proceed?

4 MR. BEERS: Yes, ma'am.

5 THE COURT: Very well. All right. Call your next
6 witness. Who's next?

7 (Plaintiff's Exhibits TP-1 through TP-14 premarked for
8 identification.)

9 LAVERNE HAROLD FENTERS, JR.,
10 being first duly sworn, testified as follows:

11 THE COURT: All right, sir, would you state your full
12 name for the record again for us.

13 THE WITNESS: LaVerne Harold Fenters, F-E-N-T-E-R-S, Jr.

14 THE COURT: Thank you very much.

15 Your witness.

16 MR. WILLIAMS: Thank you, Your Honor.

17 THE COURT: Yes.

18 DIRECT EXAMINATION BY MR. WILLIAMS:

19 Q. Reverend Fenters, tell us a little bit about yourself.

20 Are you married?

21 A. Yes, I am. Been married for 32 years. We have two
22 children, two grandchildren.

23 Q. Okay, sir. And what is your present job? What do you
24 do?

25 A. I'm the rector of Trinity Episcopal Church in Pinopolis,

1 South Carolina.

2 Q. And how long have you been the rector there?

3 A. Ten years this past July 4th.

4 Q. Okay, sir. Little bit about your education, please,
5 sir.

6 A. I received a Bachelor of Science in business
7 administration from the Citadel in 1973 and a master's of
8 divinity from the School of Theology, University of the South
9 known as Sewanee, in 1999.

10 Q. Okay, sir. You are ordained, is that correct?

11 A. That's correct.

12 Q. Could you tell us when and by whom?

13 A. I was ordained as a deacon in All Saints Church in
14 Florence by Bishop Edward Salmon in 1999 and then in that
15 same year ordained a priest by Bishop Salmon again at Old St.
16 Andrew's Parish in Charleston.

17 Q. Now, you've testified that you've been at Trinity for
18 ten years?

19 A. Yes, sir.

20 Q. Tell us a little bit about the history of the church,
21 please.

22 A. Trinity has a long history, but the specifics of Trinity
23 Episcopal Church in Pinopolis date back to 1846 when the
24 church was founded as a chapel of ease for what was then
25 known as Trinity Church, Black Oak. When Trinity Church,

1 Black Oak, became what is part of now Lake Moultrie; in other
2 words, the church grounds were flooded, the primary place of
3 worship became Trinity Church in Pinopolis.

4 The church in Black Oak, the church that was razed, to
5 be razed so that the lake could be built, parts of that
6 church were used to construct what we call Black Oak Hall at
7 Trinity now, which was our first parish hall. Materials from
8 that church were used. Also, bricks from that church were
9 moved to a new cemetery. That cemetery is called St. John's
10 Cemetery and it's over in Bonneau, South Carolina.

11 MR. WILLIAMS: Your Honor, for the record, we have a
12 list of 14 exhibits, TP-1 through 14, that we will move to
13 admit without objection, Your Honor.

14 THE COURT: And is that correct?

15 MR. TISDALE: No objection.

16 MR. BEERS: That's correct, Your Honor.

17 THE COURT: Very well, thank you.

18 (Plaintiff's Exhibits TP-1 through TP-14 admitted into
19 evidence.)

20 Q. Reverend Fenters, you have a copy of those exhibits, is
21 that correct?

22 A. I do.

23 Q. Will you look at Exhibit No. 1, please, and tell me what
24 that is.

25 A. Exhibit 1 are the articles of incorporation that were

1 issued to Trinity Episcopal Church Pinopolis in February of
2 1971.

3 Q. To your knowledge, have they ever been amended?

4 A. No.

5 Q. So those are the present bylaws -- I mean present
6 articles of incorporation?

7 A. They are.

8 Q. I want you to look at Exhibit No. -- I'm going to skip
9 over for right now to Exhibit No. 14. And tell me, please,
10 is that a map of the Trinity property as it presently exists?

11 A. Yes.

12 Q. And getting back to Exhibits TP-2, TP-3 -- and I'm going
13 through just a group of them right now -- TP-4 and TP-5 and
14 TP-6, what do those deeds represent?

15 A. These represent deeds issued to Trinity which are
16 represented by the plat that we looked at a minute ago.

17 Q. So those deeds then constitute the property presently
18 owned by Trinity Church?

19 A. Yes.

20 Q. Okay. Sir, I'm going to ask you to look at Exhibit
21 TP-7, please, sir. And if you'll tell me what that is?

22 A. This is a quitclaim deed issued to Trinity Episcopal
23 Church. The date on it is the 9th of October, 2011.

24 Q. Okay, sir. Some questions have been asked before. Did
25 the church ask for that deed?

1 A. No.

2 Q. Was it expecting the deed?

3 A. We had heard that we might be receiving it, yes.

4 Q. Has the deed been recorded?

5 A. Yes, it has.

6 Q. I want you to look at Exhibit TP-8, please, sir, and
7 tell us what that is.

8 A. This is a document -- we had property from those various
9 deeds that were issued to Trinity in a variety of names, and
10 they're listed here on this document, Trinity Episcopal
11 Church Pinopolis, Trinity Episcopal Church Pinopolis South
12 Carolina, the vestry and wardens and various names, and this
13 was an effort to consolidate all of the property that we
14 owned under one name, which would be Trinity Episcopal
15 Church.

16 Q. Pinopolis?

17 A. Yes, Trinity Episcopal Church Pinopolis, yes.

18 Q. Okay, sir. Thank you, sir.

19 Reverend Fenters, in the ten years that you have been at
20 Trinity, to the best of your knowledge, has Trinity Church
21 ever received any support from what I'll call the national
22 church?

23 A. Not to my knowledge.

24 Q. Okay, sir.

25 And from the Diocese of South Carolina?

1 A. Not to my knowledge.

2 Q. Okay, sir. Has Trinity Church to your knowledge ever
3 donated to either one of those?

4 A. We pledge money yearly to the Diocese of South Carolina.

5 Q. Yes, sir.

6 A. As to the national church, we make no direct
7 contributions. I know that in the past in my tenure there
8 have been -- on occasions of natural disaster we've been
9 invited, our congregation, to make donations to the -- I
10 think it's called Episcopal relief and development as well as
11 other institutions like the Red Cross. I don't know -- I
12 have no knowledge of how much money was collected, if any,
13 for that organization.

14 Q. Okay, sir. The makeup of Trinity Church's governing
15 body, what is that? Would you explain that, please?

16 A. We would refer to it as a vestry board of directors
17 which consists of senior warden, junior warden, treasurer,
18 secretary, a nine-member vestry, and the rector.

19 Q. Okay, sir. Now, the Exhibit TP-13 -- which are the
20 bylaws of Trinity Church?

21 A. Yes.

22 Q. -- (continuing) have those bylaws to your knowledge been
23 amended?

24 A. Yes, they have.

25 Q. Tell me what you know about it.

1 A. I know prior to my coming to Trinity, which would have
2 been before 2005, the amendments were -- the bylaws were
3 amended as to the selection of the senior warden. Previously
4 the senior warden had been elected by the vestry. With that
5 amendment the senior warden was selected by the rector and
6 approved by the vestry.

7 Another amendment during my time at Trinity was to -- we
8 had two annual meetings. We had an amendment to go from two
9 annual meetings to one, and we also had a 12-member vestry.
10 We made an amendment to go from 12 members to nine.

11 The most recent amendment, which was in 2013, was to
12 amend our -- any references to the Protestant Episcopal
13 Church in the United States of America from our bylaws.
14 There was one reference to a canon, which had to do, I
15 believe, with the qualifications for vestry and wardens.

16 Q. Okay, sir.

17 Reverend Fenters, did the vestry review or act on that
18 proposed bylaw changes? The resolution I'm specifically
19 talking about.

20 A. I'm not sure I understand the question.

21 Q. Okay. I'm sorry. Was there a meeting of the vestry
22 held to authorize the church to stay with the Diocese of
23 South Carolina, a vestry meeting?

24 A. There was a meeting of the vestry to make a resolution
25 to affirm the action in support of the Diocese.

1 Q. Okay, sir. And the bylaws require a notice to the
2 parish members; is that correct?

3 A. That's correct.

4 Q. But it doesn't specify that it has to be in writing?

5 A. It does not.

6 Q. And were the meetings, the proper meetings of the
7 congregation, held in order to consider and pass the
8 resolution?

9 A. Yes. There was a meeting to read and debate the bylaws
10 and then a second meeting, which is required by our bylaws,
11 to vote on the proposed changes.

12 Q. So if you will look, TP-11 is the minutes of the parish
13 meeting dated January 27, 2013?

14 A. That's correct.

15 Q. And that's where the resolution was presented and
16 discussed?

17 A. Yes.

18 Q. And then the next week on February 3, 2013, what
19 happened on that one?

20 A. At that meeting the changes to the bylaws were --
21 proposed changes to the bylaws were voted on, and this is a
22 reflection, a recording, of that action.

23 Q. And were the proposed changes to the bylaws approved?

24 A. They were.

25 Q. Reverend Fenters, to the best of your knowledge, all

1 notice, proper notices, were given to notice the
2 congregational meetings?

3 A. To the best of my knowledge they were, yes.

4 Q. Okay, sir. About how many -- what is the average
5 attendance at Trinity Church?

6 A. Every Sunday attendance is around 100 souls.

7 Q. Okay, sir. And so, Reverend Fenters, Trinity Church
8 then is, if I can phrase this correctly, a member of the
9 Diocese of South Carolina; is that correct?

10 A. That's correct.

11 Q. And has no affiliation with the national church?

12 A. That's correct.

13 MR. WILLIAMS: Okay, sir. Thank you, sir. If anybody
14 else has any questions, please answer.

15 THE COURT: Any by the plaintiffs? All right. Mr.
16 Beers, Mr. Tisdale?

17 MR. BEERS: No, Your Honor.

18 MR. TISDALE: I have a few, Your Honor.

19 THE COURT: All right.

20 CROSS-EXAMINATION BY MR. TISDALE:

21 Q. Good morning, Father Fenters.

22 A. Good morning.

23 Q. You said that the parish received a quitclaim deed,
24 which is one of the exhibits?

25 A. Yes, sir.

1 Q. And you said, I believe, that you had heard that you
2 might be receiving one?

3 A. Yes.

4 Q. What did you understand was the purpose of the quitclaim
5 deed?

6 A. The purpose of the quitclaim deed was that the Diocese
7 of South Carolina had no interest in our property.

8 Q. Did you know of any interest that it did have?

9 A. No.

10 Q. And who signed the deed? What organization and by whom?

11 A. This deed was signed by the Right Reverend Mark J.
12 Lawrence, bishop of the Episcopal Diocese of South Carolina,
13 and was signed also by Paul C. Fuener, authorized committee
14 member of the standing committee of the Diocese of South
15 Carolina, and also signed by Paul C. Fuener again as its
16 president and by several witnesses.

17 Q. That's fine. Did the parish -- Trinity Pinopolis is a
18 parish, is it not?

19 A. It is.

20 Q. And did the parish receive anything it didn't already
21 have when that deed arrived?

22 A. Not to my knowledge.

23 Q. Have you, since you've been in the Diocese as a priest,
24 attended annual conventions and special conventions of the
25 Diocese?

- 1 A. Yes.
- 2 Q. And has Trinity Pinopolis during the time you've been
- 3 there sent delegates to the diocesan convention?
- 4 A. Yes, we have.
- 5 Q. As far as you know, has the parish always participated
- 6 in the diocesan convention?
- 7 A. As far as I know we always have.
- 8 Q. And at least up until 2012 certainly, the parish has
- 9 been in union with the convention, has it not?
- 10 A. The convention, yes, it has.
- 11 Q. It has. When did Trinity cease being an Episcopal
- 12 church?
- 13 A. I would say that would be when the Diocese disassociated
- 14 from the national church.
- 15 Q. Would that have been in the fall of 2012?
- 16 A. That's correct.
- 17 Q. And is it no longer an Episcopal church?
- 18 A. It is. We call ourselves Trinity Episcopal Church, but
- 19 we are not affiliated with the national church.
- 20 Q. You still call yourselves Trinity Episcopal Church?
- 21 A. Yes, we do.
- 22 Q. Do the signs on the church indicate that?
- 23 A. They do.
- 24 Q. What signs do you have that say that you are an
- 25 Episcopal church?

1 A. We have one on our street and we also have one that's on
2 the -- on the office side of our parish hall.

3 Q. What do those signs say, Father?

4 A. The one on the street says "Trinity Episcopal Church,"
5 date of our establishment, lists some information about our
6 Sunday morning services. It also has a place below that to
7 insert removable letters. The one on the parish hall says
8 "Trinity Episcopal Church Office."

9 Q. And you say that you're an Episcopal Church, but you
10 acknowledge, I gather, that you have no association in any
11 way with the Episcopal Church?

12 A. That's correct.

13 Q. Is it your understanding that when a parish makes annual
14 contribution to the diocese, whatever diocese it's in in the
15 Episcopal Church, that usually part of the money from the
16 diocese that you give goes to the Episcopal Church, the
17 national church?

18 A. I know that has been common practice in the past.

19 Q. And do you know of any reason it doesn't still go on
20 today?

21 A. I don't know. I don't know.

22 Q. Don't know today. Did it? Was that the practice before
23 you all departed from the Episcopal Church?

24 A. As far as I know -- I don't know the answer to that.

25 Q. Has Trinity Church Pinopolis ever informed the Diocese

1 of South Carolina not to send any money to the national
2 church?

3 A. I believe we have. I can't cite dates on that, but I
4 believe we have done that, yes, sir.

5 Q. Do you know when or what years?

6 A. I know that was done in some of the early years of my
7 tenure at Trinity. I don't recall us doing that recently.

8 Q. Have you studied the history of Trinity Church
9 Pinopolis?

10 A. Have I studied?

11 Q. Yes.

12 A. As much history as available, yes, sir.

13 Q. And based upon that study of the history of the parish,
14 are you able to say whether or not the Episcopal Church or
15 any part of it has made grants, loans, or any other financial
16 contributions to the parish?

17 A. To the best of my knowledge, no.

18 Q. Okay. Why did Trinity Pinopolis decide to depart from
19 unity with the Episcopal Church?

20 A. Our decision was -- we didn't make that decision
21 unilaterally. Our decision was because we were part of
22 the -- we supported the decision made by the Diocese.

23 Q. Did you have any independent reason yourself for wanting
24 to depart?

25 A. Independent reason?

1 Q. From the Diocese. You said you wanted to stay with the
2 local Diocese, right?

3 A. Yes, sir.

4 Q. My question is whether or not the parish itself had any
5 reasons that caused it to depart from its connection with the
6 Episcopal Church?

7 A. I wouldn't be able to speak for the parish as to exact
8 reasons for that.

9 Q. Were there reasons?

10 A. I don't know.

11 Q. Don't know?

12 A. I don't know.

13 Q. Does the parish continue to use the Book of Common
14 Prayer --

15 A. Yes, we do.

16 Q. -- for whatever it offers?

17 A. Yes, we do.

18 Q. And you have them in your pews?

19 A. We do.

20 Q. That's the Book of Common Prayer of the national church?

21 A. It's the Book of Common Prayer 1979, yes.

22 Q. Of the Episcopal Church? It says on the title page,
23 doesn't it, "Book of Common Prayer of the Episcopal Church"?

24 A. I don't remember exactly what the title page says, but
25 if that's what it says, that's what it is.

- 1 Q. Does Trinity Pinopolis have any loans, debts, mortgages
2 on its property?
- 3 A. No.
- 4 Q. Does Trinity Church possess any trusts that lend to
5 support that have been contributed by people in the past?
- 6 A. We have a small trust of \$7500 that was contributed, I
7 believe, back in the 1920s, if I'm getting my dates right.
- 8 Q. What?
- 9 A. I said if I'm getting my dates right, it was in the
10 1920s.
- 11 Q. What's the name of that trust, if it has one?
- 12 A. The Roosevelt Fund I believe is what it's called.
- 13 Q. And you say it has a corpus or body or value now of
14 about \$7500?
- 15 A. Yes, sir.
- 16 Q. And who manages that money?
- 17 A. The vestry.
- 18 Q. And does the vestry also possess a copy of the trust
19 instrument?
- 20 A. I don't know if we do or not. I would think we do, but
21 I can't say for 100 percent certainty that we do.
- 22 Q. And if we want to see a copy of it, would we get in
23 touch with the vestry about that?
- 24 A. Yes, sir.
- 25 Q. Or Mr. Williams?

1 A. Yes.

2 Q. Do you know, based upon your review of the information
3 you've testified about here today, when and under what
4 circumstances Trinity acquired its present property upon
5 which the church rests?

6 A. It was received over a number of years through a variety
7 of gifts or through the exchange of money for the property,
8 the exchange of money I think every time, in small amounts,
9 nominal amounts, for most of the deeds. The one that has --
10 was the -- had the most money involved was I think \$55,000
11 for one piece of property.

12 Q. For one of the pieces of property?

13 A. One of the pieces of property that composed the land we
14 rest on, yes, sir.

15 Q. Well, now, how large is the tract of land that the
16 church is on right now?

17 A. I don't know the acreage. It's not a big piece of land.

18 Q. Do you know where it came from?

19 A. It's listed in the deeds I believe, but it came from
20 Fishburn's family and also from the Morgan family, John
21 Morgan.

22 Q. Okay. And was there a time that the parish was in
23 another building, another church building?

24 A. A building had to be torn down and a new building built,
25 not in another location, no.

- 1 Q. It was the same location?
- 2 A. Yes.
- 3 Q. And it was at a smaller white wooden building?
- 4 A. Yes, it was.
- 5 Q. Do you presently draw any pension from the Episcopal
- 6 Church?
- 7 A. Yes, I do.
- 8 Q. And tell us, sir, since when did you become eligible to
- 9 begin drawing that pension?
- 10 A. When we were no longer associated with the Episcopal
- 11 Church.
- 12 Q. And is that pension one that is sponsored by the
- 13 national church?
- 14 A. It is the church pension fund.
- 15 Q. Church pension fund?
- 16 A. Yes, sir.
- 17 Q. And that is a division of the Episcopal Church United
- 18 States of America, isn't it?
- 19 A. I don't know the exact connection between the two, but I
- 20 know there is one. I don't know exactly what it is.
- 21 Q. There is one. You agree that there is one?
- 22 A. I don't know if there is or not.
- 23 Q. All right. And are you an Episcopal priest now?
- 24 A. No.
- 25 Q. All right. When did you cease? You were an Episcopal

1 priest, weren't you?

2 A. I was, yes.

3 Q. And when did you become not an Episcopal priest?

4 A. When we disassociated from the -- when the diocese
5 disassociated from the national church.

6 Q. Would that be in early 2013?

7 A. I'm sorry, sir?

8 Q. Would that be in early 2013, late 2012?

9 A. Well, that would have been in late 2012.

10 Q. Father, have you been relieved of any duties or
11 responsibilities that you owe to the Episcopal Church, the
12 national church?

13 A. Yes, I have.

14 MR. TISDALE: Thank you.

15 Thank you, Your Honor.

16 THE WITNESS: Thank you.

17 THE COURT: All right. Redirect?

18 REDIRECT EXAMINATION BY MR. WILLIAMS:

19 Q. Just one question, Reverend Fenters. Your pension from
20 the national church is something that you earned during your
21 tenure as a priest; is that correct?

22 A. Yes, that's correct.

23 Q. Okay, sir. Fine. And at this present time you no
24 longer contribute to that fund?

25 A. That's correct.

- 1 Q. Thank you, sir.
- 2 A. Yes.
- 3 THE COURT: Mr. Beers, yes.
- 4 RECROSS-EXAMINATION BY MR. BEERS:
- 5 Q. Father, my name is David Beers.
- 6 A. Good morning.
- 7 Q. You didn't contribute to the pension fund yourself, did
- 8 you?
- 9 A. No. Contributions were made on my behalf by Trinity,
- 10 Trinity Episcopal Church, yes.
- 11 Q. And other churches before you went to Trinity?
- 12 A. Yes. There would have been old St. Andrew's Parish
- 13 Church in Charleston.
- 14 Q. So ever since you were ordained in the Episcopal Church,
- 15 some Episcopal Church contributed moneys on your behalf for
- 16 your pension?
- 17 A. That's correct.
- 18 Q. And do you recall what they contributed was about 18
- 19 percent of whatever you were paid?
- 20 A. I think that's a fair number.
- 21 Q. It's a generous pension fund, isn't it?
- 22 A. It is.
- 23 Q. And you're now receiving those benefits?
- 24 A. Yes.
- 25 Q. Thank you.

1 A. Thank you.

2 MR. BEERS: Nothing further, Your Honor.

3 THE COURT: All right. Mr. Tisdale?

4 MR. TISDALE: Nothing further, Your Honor.

5 THE COURT: Anything from anyone else? Thank you, sir.

6 You may come down.

7 Call your next witness, please.

8 (Plaintiff's Exhibits SD-1 through SD-17 premarked for
9 identification.)

10 RICHARD LANE BROWN, III,
11 being first duly sworn, testified as follows:

12 THE COURT: If you'd state your full name for the
13 record, please, and spell your last name.

14 THE WITNESS: Richard Lane Brown, III, B-R-O-W-N.

15 THE COURT: All right. Your witness, sir.

16 MR. EASTERLING: May it please the Court, thank you,
17 Your Honor. My name is Harry Easterling, Jr. I represent
18 the plaintiff, St. David's Church. We're from Cheraw.

19 THE COURT: All right.

20 DIRECT EXAMINATION BY MR. EASTERLING:

21 Q. Mr. Brown, what town do you live in?

22 A. Cheraw, South Carolina.

23 Q. And what church do you attend there?

24 A. St. David's Church.

25 Q. How many members do you have, roughly?

- 1 A. We have approximately 115.
- 2 Q. Okay. Are you a member?
- 3 A. Yes, I am.
- 4 Q. When did you start attending the church?
- 5 A. I started attending the church in early or mid-2008 and
- 6 was received, I believe, at the end of that year.
- 7 Q. And after you were received, did you hold any leadership
- 8 roles in the church?
- 9 A. Yes, I did.
- 10 Q. What leadership positions have you held?
- 11 A. I was elected to the vestry and served as a member of
- 12 the vestry in the calendar years 2009 and 2010 and '11, and
- 13 then I was elected as senior warden and served as senior
- 14 warden in the years 2012 and '13.
- 15 Q. Do you currently hold any other positions in the church?
- 16 A. No, I do not.
- 17 Q. Have you had a chance to learn a little bit about the
- 18 history of St. David's, like, for instance, when was the name
- 19 St. David's Parish -- where did that originate from?
- 20 A. St. David's Church traces its early history to an act of
- 21 the colonial assembly in 1768. The original church was
- 22 completed in approximately 1773. Thereafter the church
- 23 endured or went through two conflicts, served as a military
- 24 hospital for Cornwallis' soldiers during part of the
- 25 Revolutionary War, and thereafter served as Union Federal

1 Hospital No. 1 for Sherman's soldiers during its march
2 through the South in March of 1865. The church recovered
3 following the Civil War, began to grow. A decision was made
4 to relocate on West Market Street. The cornerstone of the
5 present church was laid just before the First World War in
6 1914, construction completed in 1919, and the parish has
7 occupied that sanctuary continuously since its completion.

8 MR. EASTERLING: Your Honor, please. I understand that
9 all of our trial exhibits have been --

10 THE COURT: Consented to.

11 MR. EASTERLING: -- consented to.

12 THE COURT: All right. And what are the numbers?

13 MR. EASTERLING: The numbers are 1 through 17 inclusive.

14 THE COURT: Very well. Is that correct?

15 MR. TISDALE: With one just minor thing we've had
16 before. We find Exhibits 2 and 11 we can't read, and if
17 he'll let us agree to correct that, after his testimony we'll
18 have no objection except for that.

19 THE COURT: Is that acceptable?

20 MR. EASTERLING: Your Honor, please, these are both very
21 old documents. That's the best copy. One is actually
22 something that we took off the wall and xeroxed a copy of.
23 The other is a copy of a deed that is handwritten and came
24 out of the Courthouse. It is what it is, Judge. I mean I
25 don't have the original deed.

1 THE COURT: Let me see them and see if they're --
2 because, obviously, I can't admit documents if they're not
3 legible. That doesn't help anybody. So let me see.

4 MR. EASTERLING: Your Honor, I do believe that they can
5 be read.

6 THE COURT: I'll let you know in a minute.

7 MR. TISDALE: He may be able to somehow get better
8 copies, Your Honor, blow them up or something.

9 MR. EASTERLING: Well, I have no objection to taking the
10 copies that I have and blowing them up on 11 x 17 paper, if
11 that would be acceptable. Is that acceptable?

12 MR. TISDALE: To try to get a better copy?

13 MR. EASTERLING: Yes, sir.

14 MR. TISDALE: We would agree that they're admissible if
15 you can give us better copies. If you can't, we would have
16 to object to them. As the Judge said, no point having
17 something in the record nobody can read.

18 MR. EASTERLING: Your Honor, I don't have a problem
19 trying to blow up these documents.

20 THE COURT: Let me say this about Exhibit No. SD-2: I
21 would appreciate that you blow it up and do the best that you
22 can, but I'm not going to not admit it. I think -- and you
23 do that as a courtesy, but the language that is important to
24 this document is legible. I can read it. I can discern it.
25 What is difficult to read are the names of the incorporators.

1 I don't care who the incorporators are. It's clear that
2 there are names here, and this document is sufficiently old
3 that these people aren't going to be around anyway. So I'm
4 not concerned about it. You do that as a courtesy.

5 MR. EASTERLING: Yes, ma'am.

6 THE COURT: But I will not not admit it for that reason.

7 Now, what was the other one?

8 MR. TISDALE: 11, Your Honor.

9 THE COURT: Let me look at 11.

10 Let me tell you about 11.

11 MR. EASTERLING: Yes, ma'am.

12 THE COURT: 11 is obviously titled "Real Estate." St.
13 David's Church can be discerned. This document I think can
14 be improved, and the blowing up and darkening it may be
15 sufficient.

16 MR. EASTERLING: Yes, ma'am.

17 THE COURT: This one I'm more concerned about it. I can
18 tell its title, but I can't read a description, and that
19 concerns me, but I'm confident if you work on this that it
20 can be improved.

21 MR. EASTERLING: Your Honor, would the defendants --

22 THE COURT: I'm going to conditionally admit it. If
23 after you've done that there's a concern, I expect you to
24 bring that to my attention.

25 MR. EASTERLING: What if I transcribe it, have it typed?

1 THE COURT: Well, that's fine, but they're still
2 entitled to be able to make the determination whether or not
3 what you have transcribed is appropriate.

4 Now, if you have a court reporter that attests to it,
5 that might be something else, and you may simply -- I share
6 this with you for what it's worth. I saw a document from
7 1785 that the way that it was duplicated -- and I don't know
8 -- I don't know which of these three folks -- I am suspicious
9 it might have been Mr. Platte, but I'm not positive about
10 that, only because if I happened to be either Mr. Runyan or
11 Ms. Golding, I'd have made him do it, but however they
12 reproduced that document, they took a document that I
13 couldn't read very well and somehow turned it into a document
14 that was very easy to read.

15 I'm not sure what they did. I'm confident, though, that
16 Mr. Platte didn't sit down there and go over the -- take this
17 ancient document and write over it, but you might want to
18 just check with them because I don't know what they did to
19 it, but it was remarkable, and maybe it's just Xerox does
20 something special.

21 That would be my concern about No. 11. I'm going to
22 conditionally admit it. I expect to hear from you all if
23 it's illegible. It's obviously titled "Real Estate," and
24 certainly this is the best evidence, but if somebody was able
25 to read it and can testify, I'm going to hear that too.

1 MR. EASTERLING: Thank you, Your Honor. I understand.

2 THE COURT: Everything else is in without a conditional
3 admission. Thank you.

4 MR. EASTERLING: Thank you, Your Honor.

5 THE COURT: All right.

6 (Plaintiff's Exhibits SD-1 through SD-17 admitted into
7 evidence.)

8 Q. Mr. Brown, is St. David's, Incorporated?

9 A. Yes, it is, and it was incorporated by the State of
10 South Carolina as of October 1st, 1915.

11 Q. Has it been in continuing operation since that date?

12 A. Yes, it has.

13 Q. Does it have written bylaws?

14 A. Yes, it does.

15 Q. Do these bylaws describe a board of directors?

16 A. Describes them in the sense that the board of directors
17 is the vestry of the parish.

18 Q. And officers?

19 A. Yes. The bylaws provide for officers including the
20 rector, the senior warden, the junior warden, secretary and
21 treasurer of the parish.

22 Q. What exactly are the governing documents of this
23 particular incorporation?

24 A. There are actually three documents. First would be the
25 certificate of incorporation from 1915 and any amendments,

1 then the constitution of the parish followed by the bylaws of
2 the parish.

3 Q. Does St. David's own any real estate?

4 A. Yes, it does.

5 Q. Are the deeds that are held by the parish found in
6 Exhibits 4, 5, 6, 7, 8, 9, 10 and 11?

7 A. Collectively those exhibits, or deeds, represent the
8 real property owned by the parish.

9 Q. Okay. Generally describe what kind of property this is.

10 A. Well, of course we have the sanctuary and the church
11 offices, there is an education wing to the sanctuary as well
12 as a parish hall and then attendant grounds for the property,
13 plus a rather large vacant lot that adjoins the sanctuary.

14 Q. The cemetery, is this the cemetery in Cheraw, or is this
15 the cemetery in Chesterfield?

16 A. It's actually an old cemetery located between
17 Chesterfield and Cheraw that was originally, I think,
18 acquired in two parcels of land, and we probably have a net
19 of about two acres now in the cemetery proper.

20 Q. Did St. David's receive a quitclaim deed from the
21 Diocese?

22 A. Yes, it did.

23 Q. Did it record it?

24 A. It received the deed in November of 2011, but the deed
25 was not recorded until late February of 2012.

1 Q. Okay. Is that deed Exhibit 3, for the Court?

2 A. That is Exhibit 3, the so-called quitclaim deed.

3 Q. All right. Let's move on to Exhibit 12. Mr. Brown,
4 what is that?

5 A. Those are the minutes of a regular meeting of the vestry
6 held on December 13th, 2012.

7 Q. Was a quorum present?

8 A. Yes, it was.

9 Q. What action did the vestry take at that meeting?

10 A. The vestry adopted a resolution that contained a group
11 of three amendments. That resolution with amendments would
12 be submitted to a called meeting of the parish members after
13 giving notice, and the resolution would permit the members of
14 the parish to have a straight up or down vote on whether they
15 wanted to remain in alignment with the Diocese and Bishop
16 Lawrence or whether the parish wanted to be affiliated with
17 the national church.

18 Q. Was a parish meeting scheduled?

19 A. A parish meeting was scheduled and noticed for January
20 13, 2013. Prior to that parish meeting there were a series
21 of communications and other meetings with members of the
22 parish in order that there might be an informed discussion of
23 the issues relating to the contemplated vote.

24 Q. Let's skip over Exhibit 13 for a minute and turn to
25 Exhibit 14.

1 A. Yes.

2 Q. What are these documents, Mr. Brown?

3 A. These were the proposed amendments to the constitution
4 of the parish, to the bylaws of the parish, and a necessary
5 amendment to the corporate charter of the parish.

6 Q. And are there also notice provisions and rules in 14?

7 A. Yes. In Exhibit 14 we have the formal notice that was
8 given to the members of the parish together with the voting
9 rules and procedures that were prepared in a manner
10 consistent with the bylaws of the parish.

11 Q. All right, sir. Now let's turn back to Exhibit 13.

12 A. Yes, I have Exhibit 13.

13 Q. What are these?

14 A. Exhibit 13 is the minutes of the parish meeting held on
15 January 13, 2013, at which time a quorum of the parish
16 members voted on the issues of alignment and affiliation.

17 Q. Okay.

18 A. The document immediately behind the two-page minutes is
19 a copy of the ballot that was provided to the members of the
20 parish.

21 Q. All right, sir. And following that?

22 A. Following that we have a certificate of adoption of the
23 amendments, a quorum of 90 confirmed members having been
24 present and voting by a vote of 62 in favor and a vote of 22
25 against the parish, voting to approve the proposed amendments

1 which permitted the parish to align itself with and accede to
2 the Protestant Episcopal Diocese of South Carolina.

3 Q. All right, sir. And Exhibit 15, please explain to the
4 Court what that is.

5 A. Following the approval of the amendments at the January
6 13 meeting, it was necessary with respect to the articles of
7 incorporation to formally file that amendment with the South
8 Carolina Secretary of State, and that was done several weeks
9 after the called meeting of the members.

10 Q. And is that your signature on the document, sir?

11 A. That is my signature, that is correct.

12 Q. Did the vestry take any other action following the vote
13 and the filing of those amendments?

14 A. Yes. The vestry did take several actions at its regular
15 monthly meeting on January 17, 2013.

16 Q. Is that Exhibit SD-16?

17 A. That is Exhibit 16, that's correct.

18 Q. Did the vestry pass any resolutions during that meeting?

19 A. There were several actions taken. While the minutes
20 speak for themselves, the first two approving actions were
21 with respect to legal representation. The vestry also
22 adopted a resolution requesting that the new Episcopal Church
23 and its interim bishop cease and desist from using the name
24 St. David's Church in any of its website or other postings.

25 There was also action taken to approve the delegates

1 serving at the Charleston Convention scheduled for later in
2 January, and the final action taken was for the St. David's
3 Parish to join the present litigation which is the subject of
4 these proceedings today.

5 Q. If you know, how many churches in the Cheraw area use
6 the word "Episcopal" in their name?

7 A. Well, St. David's Church is the only parish of the
8 Diocese in Chesterfield County; however, in Chesterfield and
9 Marlborough Counties, to my knowledge there are approximately
10 ten churches that use the name "Episcopal" and, more
11 specifically, that is the AME Zion Church or the
12 African-American Episcopal Church, which was chartered, if I
13 remember, as early as 1795, and has been using the name
14 "Episcopal" in its title for its churches continuously.

15 Q. Has the use of that similar name posed a problem for St.
16 David's?

17 A. It has not posed a problem for us, nor for them, as I
18 would believe.

19 Q. Insofar as the incorporated name of the church, what is
20 that?

21 A. St. David's Church, Cheraw, South Carolina.

22 Q. Thank you. Exhibit 17?

23 A. I have it.

24 Q. Mr. Brown, what is that?

25 A. This is a letter notification from the Internal Revenue

1 Service to the parish dated May 1st, 2008.

2 Q. And does St. David's have a separate tax ID number?

3 A. St. David's made inquiry regarding its tax exempt
4 status, and for a number of years prior to 2008 it has had
5 its own stand-alone TIN or EIN.

6 Q. All right, sir. During your tenure with St. David's,
7 has it received any funds from the national church?

8 A. None to my knowledge.

9 Q. Or from the defendant Diocese?

10 A. None to my knowledge.

11 Q. Does St. David's have any continuing relationship with
12 the national church or the continuing Diocese?

13 A. None.

14 Q. Does St. David's pay on any loans or grants from either
15 organization?

16 A. No, we do not.

17 Q. All right, sir.

18 MR. EASTERLING: I ask the Court's indulgence.

19 THE COURT: All right.

20 MR. EASTERLING: Thank you, Your Honor.

21 One more question, please, Your Honor.

22 THE COURT: Certainly.

23 Q. Mr. Brown, looking at Exhibit 17 --

24 A. Yes.

25 Q. -- would you direct your attention to the second

1 paragraph which begins "Churches". Would you read those
2 first two sentences which end at the words "refer to."

3 A. Yes. "Churches, their integrated auxiliaries and
4 conventions or associations of churches that meet the
5 qualifications for exemption are automatically considered tax
6 exempt under Section 501(c)(3) of the Internal Revenue Code
7 without applying for formal recognition of such status. No
8 determination letters are issued to these organizations."

9 MR. EASTERLING: Thank you, Mr. Brown. Please answer
10 any questions that Mr. Beers or Mr. Tisdale may have.

11 THE COURT: All right. Nobody else from plaintiff side?
12 All right. Very well. Mr. Beers?

13 CROSS-EXAMINATION BY MR. BEERS:

14 Q. Let's start with that last question. When you said that
15 the parish has its own EIN, do you know what those letters
16 stand for?

17 A. Employer identification number or used synonymously with
18 tax identification number. TIN, EIN are used
19 interchangeably.

20 Q. That has nothing to do with whether your entity is
21 exempt from federal income tax?

22 A. We are automatically exempt by virtue of being a church
23 under the regulations under Section 501(c)(3).

24 Q. Right, but the fact that you had an EIN has nothing to
25 do with your tax exemption?

1 Suzanne Schwank.

2 (Plaintiff's Exhibits PCSH-1 through PCSH-33 premarked
3 for identification.)

4 SUZANNE WARREN SCHWANK,
5 being first duly sworn, testified as follows:

6 THE COURT: I'm going to ask you to state your full name
7 again and spell your last name.

8 THE WITNESS: My name is Suzanne Warren Schwank,
9 S-C-H-W-A-N-K.

10 DIRECT EXAMINATION BY MR. RUNYAN:

11 Q. Ms. Schwank, where do you live?

12 A. I live in Beaufort, South Carolina.

13 Q. How long have you lived there?

14 A. 26 years.

15 Q. Are you a member of a church?

16 A. I am.

17 Q. What's the name of that church?

18 A. I'm a member of the Parish Church of St. Helena.

19 Q. Is that church a plaintiff in this lawsuit?

20 A. Yes, it is.

21 Q. How many members does Parish Church of St. Helena have?

22 A. We have approximately 1900.

23 Q. Have you held any leadership positions in the parish?

24 A. Yes, I have.

25 Q. Could you briefly explain those for us?

1 A. I've been a member of the vestry. I've been junior
2 warden, senior warden. I have served as diocesan delegate,
3 and I currently have a position. The title is adviser for
4 vestry affairs.

5 Q. Could you explain what that is?

6 A. It's an advisory role. I meet with the wardens and the
7 rector monthly for a discussion of issues, vestry issues,
8 issues related to the parish. I attend all vestry meetings
9 and advise vestry if issues come up of procedure or process.

10 Q. How long have you had that position?

11 A. Nine years.

12 Q. First picture, please. Could you tell us what this is a
13 picture of?

14 A. Yes. That is the front of the parish church of St.
15 Helena. That picture is taken from Church Street.

16 Q. Are you generally familiar with the history of this
17 parish?

18 A. Yes, I am.

19 Q. How old is St. Helena?

20 A. St. Helena was created in 1712.

21 Q. And within that location does it occupy a city block?

22 A. Yes, it does.

23 Q. Map, please. Have you seen this document before?

24 A. Yes, I have.

25 Q. A little bit fine print. I'm going to ask if you would

1 please zoom in on that place I asked you to.

2 Could you just read this, tell us what this is?

3 A. That is identified on this map as Church Square. It
4 indicates four parcels, all four together identified as the
5 Church Square.

6 Q. Is that the location of where the parish church and
7 surrounding churchyard is?

8 A. Yes, it is.

9 Q. Do you know the approximate age of this map?

10 A. This map was created in 1717.

11 Q. Next picture, please.

12 Do you recognize this photograph?

13 A. Yes, I do.

14 Q. What is that a picture of?

15 A. This is a marker on the enclosure to the graveyard of
16 Colonel John Barnwell, also known as Tuscarora Jack.

17 Q. Do you know the date of his death?

18 A. 1724 I believe.

19 Q. Do you know the date when the church was completed?

20 A. Church was completed in the year 1724.

21 Q. Next picture, please.

22 Is this another photograph of the burial site?

23 A. Yes. The actual site, that's correct.

24 Q. Next picture, please.

25 Are there other individuals buried there that have been

1 buried there for quite a long time?

2 A. Yes. This is a picture of the grave marker for
3 Tuscarora Jack, one of his descendants, John Barnwell, who
4 died in the year 1800.

5 Q. Next picture. What is that a picture of?

6 A. That's a picture of the interior of the Parish Church of
7 St. Helena looking toward the altar.

8 Q. Next picture, please.

9 Do you recall that event?

10 A. Yes. That is the diocesan convention of 2012 which took
11 place in the Parish Church of St. Helena.

12 Q. Next picture, please.

13 What is that a picture of?

14 A. That is a picture of Old Sheldon Ruins, which is a
15 property owned by the Parish Church of St. Helena.

16 Q. That's a little odd. Could you tell us what that is?

17 A. That is the town crier, who at the moment, I believe, is
18 saying here ye, here ye. This was the opening ceremony of
19 our beginning of our tricentennial celebration which began in
20 January 2012, and what he was preparing to do was to read
21 letters of congratulations from various dignitaries, and that
22 included the governor of South Carolina, the mayor of
23 Beaufort, and Queen Elizabeth II.

24 Q. Next picture. Is that part of that opening ceremony?

25 A. Yes, it is. They're processing up the brick walkway

1 inside the historic churchyard to the front door of the
2 church.

3 Q. Next picture. Could you zoom in on the second
4 paragraph, please, sir.

5 Would you just read that for us, Ms. Schwank?

6 A. "Her majesty was interested to learn that the bishop of
7 London will be attending the ceremony and that the Parish
8 Church of St. Helena was founded in 1712 as a colonial parish
9 of the Church of England during the reign of Queen Ann."

10 Q. And at the top of that letter could you tell us on what
11 institution's stationery that is?

12 A. Buckingham Palace.

13 THE COURT: They didn't put their address.

14 MR. RUNYAN: Your Honor, I don't believe it's needed.

15 Q. Ms. Schwank, could you briefly describe the historical
16 development of the parish between its foundation in 1712 and
17 when it was incorporated?

18 A. Yes. It was created in 1712 by act of the South
19 Carolina Commons House of Assembly, and that was pursuant to
20 the Church Act of 1706. Five years later, 1717, the
21 commissioners of the Church Act granted a 50-acre glebe to
22 the Parish Church of St. Helena. In 1722 the church building
23 was begun and completed in 1724, and that was up until the
24 beginning of the Revolutionary War the church operated
25 continuously as a parish of the Church of England under the

1 Lord Bishop of London.

2 Q. You mentioned the word "glebe." Can you say what that
3 is?

4 A. A glebe -- my understanding of that word is that is both
5 a property and ecclesiastical phrase that describes land
6 grants to churches or parishes.

7 Q. Tell the Court, if you would, during that same period of
8 time, 1712-1786, who the leadership of the Parish Church of
9 St. Helena was?

10 A. The leadership would have been the vestry and church
11 wardens.

12 Q. And what sorts of powers did they have?

13 A. During the period of time leading up to the
14 incorporation?

15 Q. Yes.

16 A. The Church Act gave them full powers, all authority.
17 They acted not only as the governing authority for the parish
18 church during the colonial era in South Carolina. They also
19 acted as the local governmental political entity. So they
20 had both those powers as well as the ecclesiastical powers.

21 Q. Ms. Schwank, have you brought with you or had brought
22 with you today several older items?

23 A. Yes, we have several older items.

24 Q. I'm going to hand you the first of these, if I could.

25 And, first of all, I just ask you to please tell the Court

1 what that is.

2 A. This is a 1728 prayer book that is the property of the
3 Parish Church of St. Helena. It's referred to as the King
4 George, the Second Prayer Book. It was in continuous use in
5 our parish until the year 1790.

6 Q. Has it been modified in any way?

7 A. Yes, it has.

8 Q. How has it been modified?

9 A. There are two cards that are marking places. In one
10 particular place handwritten is a list of the royal
11 succession, names of the royal successors to King George II,
12 and, more interesting, in a second place there is a
13 handwritten very large X crossing out the portions of the
14 prayer book that are prayers for the royal family and the
15 king.

16 Q. Can you tell the Court what institution published this
17 book?

18 A. Yes. It was published by the Royal Bindery as a
19 commemorative, commemoration of the reign of King George II.

20 Q. Your Honor, these are available if the Court would like
21 to look at them. I do have a pair of gloves. I'm not
22 suggesting you do. I just want to make it available.

23 THE COURT: I would love to do that, but I'll wait and
24 do that at lunch. Oh, my gosh. What a treasure.

25 Q. I'm going to hand you one more and ask you if you can

1 tell the Court what this is.

2 A. This is the parish register for the Parish Church of St.
3 Helena. The earliest entry dates to 1706. The parish
4 register would be the record of all major life events of all
5 inhabitants in the parish, not simply members of St. Helena
6 but any Christians who were residents in the parish
7 geographic area. So it records all births, deaths,
8 marriages, confirmations, baptisms.

9 Q. Has this also been in the possession of St. Helena since
10 its creation?

11 A. With the exception of disappearing briefly during the
12 Civil War and then being returned to our parish.

13 Q. One final book.

14 A. This book is the vestry minutes of the Parish Church of
15 St. Helena. The earliest entry is 1724. That was the year
16 the building was completed. Likewise, it is not simply a
17 record of vestry minutes continuous up until -- the last
18 entry I believe is in 1812. It also records financial
19 matters of the government entity that was the Parish of St.
20 Helena.

21 Q. Ms. Schwank, at some time in the last -- in the recent
22 times has the parish adopted its original name?

23 A. Yes.

24 Q. What is that name?

25 A. The Parish Church of St. Helena.

1 Q. I want you to turn, if you would, in one of those pages
2 -- I think it's the first page -- and locate an entry where
3 that name appears, please. And if you would put that on the
4 screen, please, would you just read and give us the date of
5 that entry?

6 A. I don't believe what I'm looking at is the same as
7 what's on my screen.

8 Q. Then read what's on the screen.

9 A. What is on my screen is at a vestry held at the Parish
10 Church of St. Helena December 4th -- I'm sorry -- December
11 the 28th, 1726.

12 Q. And is that the name but for an E instead of the I that
13 the Parish Church of St. Helena has adopted as the name it is
14 doing business under?

15 A. Yes, it is.

16 Q. When was that done?

17 A. I'm sorry. This document that I'm reading?

18 Q. No, no, no, no. When did the parish church adopt that
19 name?

20 A. The first recorded use of that name was 1712.

21 Q. Okay. I'd ask you to turn over to another page that I
22 hope I have right that has a piece of paper between it.
23 Would you tell the Court if the word "Episcopalian" appears
24 on that sheet of paper?

25 A. Appears twice on this page.

1 Q. Could you tell us the date?

2 A. The date is the 7th of July, 1784.

3 Q. Would you just please read, if you're able to, the
4 paragraph that those two references are in?

5 A. There appears to be a heading of the paragraph wrote to
6 Mr. John King requesting him to procure a clergyman of the
7 Episcopalian Church, Beaufort, July 1794, and then you are
8 hereby requested and empowered to procure a clergyman of the
9 Episcopalian Church for the Town of Beaufort, South Carolina,
10 on the following terms.

11 Q. Thank you.

12 THE COURT: Wait a minute. Hold on. I want to see what
13 he was getting paid.

14 Q. What does it say?

15 A. 150 pounds sterling.

16 Q. The book that you just read from, could you tell us what
17 that is?

18 A. Yes. That is the vestry minute book.

19 Q. Vestry of what?

20 A. The Parish Church of St. Helena.

21 Q. Has that book been published?

22 A. Has that book been published in its entirety?

23 Q. Yes, if you know.

24 A. I'm sorry. I don't know.

25 Q. Is the Parish Church of St. Helena incorporated?

1 A. Yes, it is.

2 Q. How did it become incorporated?

3 A. We were legislatively incorporated in the year 1786.

4 Q. Did the members of the parish have to do something in
5 order for that to happen?

6 A. The first South Carolina constitution in 1778 after the
7 start of the Revolutionary War established -- disestablished
8 the Church of England as the state church, established the
9 Protestant religion as the state religion, and empowered
10 parishes then existing to petition the assembly for
11 incorporation.

12 MR. RUNYAN: Your Honor, at this time I'd move in
13 evidence Exhibit 1 through 33. I understand there are
14 legibility issues with Exhibits 4, 10 and 11, which I have
15 indicated that I will do my best to solve.

16 MR. BEERS: We have no objection.

17 MR. TISDALE: Except for the legibility issues on those
18 that he mentioned, we have no objection.

19 THE COURT: All right. Very well. Then let me say
20 this: They will be conditionally admitted. I just want to
21 be sure that if I don't hear further from you at the
22 conclusion of the taking of testimony, then they will be
23 admitted because I know you all are dealing with so much
24 paper and I know if there's an issue, I am confident that you
25 all will bring that to my attention. If there are issues of

1 the legibility, I'll look at it to make the final
2 determination, but I'm going to leave it with you all to work
3 it out.

4 MR. TISDALE: He said he'll give them to us later.
5 That's fine.

6 THE COURT: And you've been able to get them.

7 MR. TISDALE: Yes ma'am.

8 THE COURT: I'm really not concerned about it. Yes.

9 (Plaintiff's Exhibits PCSH-1 through PCSH-33 admitted
10 into evidence.)

11 Q. Ms. Schwank, did the parishioners of Parish Church St.
12 Helena make a petition to the legislature in 1786?

13 A. It would not have been the parishioners. It would have
14 been the vestry and church wardens.

15 Q. And did they do that?

16 A. Yes, they did.

17 Q. As a result of that petition, what happened?

18 A. The assembly legislatively passed an act establishing
19 the church as a corporation along with, I believe, several
20 other parishes simultaneously, and they incorporated our
21 parish with the corporate name of the vestry and church
22 wardens of the Episcopal Church of the Parish of St. Helena.

23 Q. Would you put Exhibit 5 on the screen, please.

24 And, Ms. Schwank, if you would turn to that, please.

25 Second page, please. And if you would zoom in on the first

1 Roman numeral paragraph where that name appears.

2 A. It's roughly one-third of the way down after semicolon,
3 The Vestry and Church Wardens of St. Helena's Parish by the
4 name of "The Vestry and Church Wardens of the Episcopal
5 Church of the Parish of St. Helena".

6 Q. Did the statute give the vestry and church wardens
7 certain powers?

8 A. The statute gave the vestry and church wardens sole and
9 complete powers and authorities over the corporation.

10 Q. Was the parish also established as a denomination?

11 A. Well, apparently it was.

12 Q. Would you locate that spot at the top of that page and
13 read it to us, please?

14 A. It's a little below one half of the way through that
15 first paragraph, and it states, "And whereas sundry members
16 of the Episcopal Church of St. Helena's parish have by their
17 petition to the general assembly humbly prayed to be
18 incorporated under the denomination of the, quote, Episcopal
19 Church in St. Helena's Parish, end quote, and to be vested
20 with all the privileges and immunities which any of their
21 sister churches enjoy."

22 Q. Has the Parish Church of St. Helena continuously carried
23 out its religious purposes since 1712 in Beaufort?

24 A. Yes.

25 Q. Has the Parish Church of St. Helena ever been a member

1 of an unincorporated association known as the Protestant
2 Episcopal Church in the United States of America?

3 A. No.

4 Q. Did the Parish Church of St. Helena play a role in the
5 formation of another unincorporated association known at that
6 time as the Protestant Episcopal Church in the State of South
7 Carolina?

8 A. Yes, it did.

9 Q. Did the Parish Church of St. Helena sign a constitution?

10 A. Yes.

11 Q. Was that the first constitution of the Diocese?

12 A. Yes, it was.

13 Q. Who is the present leadership of the parish?

14 A. Their names or their positions?

15 Q. Their positions.

16 A. The vestry and church wardens.

17 Q. And do they sit also in a civil capacity?

18 A. Yes. They are the board of directors.

19 Q. How are they elected or appointed?

20 A. The rector is a member of the vestry. He is a member of
21 the vestry by virtue of being the rector. The other members
22 of the vestry are laypersons. They are elected by the
23 congregation at the annual meeting.

24 Q. How long do they serve?

25 A. They serve a three-year term.

1 Q. Does this corporation have officers?

2 A. Yes, it does.

3 Q. Who are they by title?

4 A. The rector is the presiding officer; the wardens in our
5 case, because of our specification in our bylaws, a senior
6 warden and a junior warden; a treasurer; and a clerk of
7 vestry, who is also the secretary of the corporation.

8 Q. There are a series of deeds that have been admitted in
9 evidence as Exhibit 6 through 22. Could you give the Court a
10 general description of that property?

11 A. Those properties include the historic church square,
12 which contains the historic church building and graveyard,
13 includes a parcel on which currently the parish hall and
14 education building complex is located. It includes a
15 historic rectory. It includes four different parking lot
16 parcels, and that comprises what I would call the downtown
17 campus of the Parish Church of St. Helena.

18 Q. Is there any other property owned in Beaufort?

19 A. Yes, we do have other property. We own an additional
20 residence that we refer to as the vicarage for the associate
21 rector. We own the Old Sheldon Ruin historic property, which
22 was one of the photographs. We own another historic property
23 called the Chapel of Ease, which is on St. Helena Island. We
24 were gifted with a subdivision lot called the Deerfield
25 subdivision, and we own that property.

1 Q. Who is the present owner of the real property that at
2 one time was owned by the 1786 Corporation?

3 A. The present owner is the Parish Church of St. Helena
4 Trust, Declaration of Trust.

5 Q. And when was that property transferred to the trust?

6 A. The transfer took place in January of 2010.

7 Q. Has the parish church at St. Helena registered any marks
8 with the Secretary of State?

9 A. Yes.

10 Q. If you would turn to Exhibit 33, please, I'd ask if
11 you'd put up a mark, please. What is the first mark in your
12 Exhibit 23?

13 A. This is a copy of the service mark registration for the
14 Parish Church of St. Helena.

15 Q. Does it indicate a date of first use?

16 A. First used in 1712.

17 Q. Okay. What's the second mark?

18 A. The second mark is St. Helena's Church.

19 Q. Does that indicate a date of first use?

20 A. July 1st, 1842.

21 Q. What's the third mark?

22 A. St. Helena's Episcopal Church.

23 Q. And does that indicate a date of use?

24 A. July 1st, 1946.

25 Q. All right. Next?

1 A. The Parish Church of St. Helena (Episcopal).

2 Q. And what does that -- what is that date of first use?

3 A. July 1st, 2005.

4 Q. And the last mark?

5 A. The last mark is for our parish seal.

6 Q. When were these marks obtained?

7 A. They were first used -- I'm sorry. They were obtained
8 in July of 2011.

9 Q. Ms. Schwank, does the corporation have bylaws?

10 A. Yes, it does.

11 Q. Have they been amended since 2011?

12 A. Yes, they have.

13 Q. On how many occasions?

14 A. Since 2011 they have been amended twice.

15 Q. Can you broadly describe the nature of those amendments?

16 A. In February of 2012 there were a number of amendments.
17 The first was to change the paragraph, opening paragraph,
18 which was titled "The Mission." There was the addition of a
19 preamble, which described the history of the Parish Church of
20 St. Helena. There was an amendment to Article 8, which was
21 our amendments article of our bylaws, and the change at that
22 point was to delete Paragraph 1, which stated that if there
23 were any changes to the canons of the Diocese that they would
24 automatically prevail over our bylaws. That paragraph was
25 deleted in its entirety, and Paragraph 2 stated that if there

1 was such a difference between the bylaws and the canons, that
2 the vestry had the authority to automatically amend the
3 bylaws, and that was deleted in its entirety.

4 Q. Were there any amendments in 2011?

5 A. In 2011, yes, there were. There were two in 2011.

6 Q. What were they?

7 A. In January of 2011 we made nine miscellaneous amendments
8 to our bylaws.

9 Q. You don't have to go into those. How about in March?

10 A. On March 27, 2011 we amended again Article 8, the
11 amendments section, and we deleted the word "national canons"
12 from those canons, which would automatically prevail if there
13 was a discrepancy between those and our bylaws.

14 Q. Tell the Court how amendments to the Parish Church of
15 St. Helena's bylaws are accomplished?

16 A. The vestry deliberates and is the author of amendment
17 language, and those go as a motion from the vestry to the
18 annual meeting of the congregation, and the congregation
19 votes, and it requires a majority vote of the members present
20 at an annual meeting or a special meeting to amend the
21 constitution -- I'm sorry -- to amend the bylaws.

22 Q. What's a quorum of the annual meeting?

23 A. 50 members.

24 Q. And were these amendments voted on at annual meetings?

25 A. Yes, they were, with the exception of March 27th. That

1 was a special meeting.

2 Q. And at all of those meetings was there a quorum?

3 A. Yes.

4 Q. And did these amendments pass at all of those meetings?

5 A. They passed unanimously.

6 Q. And have they previously been considered and passed by
7 the vestry sitting as a board of directors?

8 A. Yes, they had.

9 Q. And had they passed?

10 A. Yes, they had, unanimously.

11 Q. Did the vestry consider a resolution relating to its
12 relationship with the Diocese of South Carolina?

13 A. Yes.

14 Q. Would you turn to Exhibit 27, please? Is that that
15 resolution?

16 A. Yes, it is.

17 Q. Would you tell the Court what the gist of that
18 resolution was and if it was passed?

19 A. The gist of this resolution is to essentially lay out
20 the context in which the resolution was brought about, the
21 resolves that we are no longer in any relationship with the
22 Episcopal Church nor in union with it, but that we remain
23 affiliated with the Protestant Episcopal Church in the
24 Diocese of South Carolina as well as our lawfully elected
25 bishop, Reverend Mark Lawrence.

1 Q. Was that resolution passed by the vestry sitting as a
2 board of directors?

3 A. Yes. It was passed unanimously.

4 Q. Was it considered by the congregation?

5 A. No, it was not.

6 Q. And why not?

7 A. Our 1786 charter vests full authority for corporate
8 decisions in the vestry and church wardens.

9 Q. Ms. Schwank, have you ever been to a website operated by
10 the Episcopal Church in South Carolina?

11 A. Yes, I have.

12 Q. Have you ever seen the name of the Parish Church of St.
13 Helena on that website?

14 A. Yes, I have.

15 Q. Did the Episcopal Church in South Carolina have
16 permission to put that name there?

17 A. No, it did not.

18 Q. Did you see that on their site after these names had
19 been registered?

20 A. Yes, I did.

21 Q. Would you take a look at Exhibit 32, please?

22 What is Exhibit 32?

23 A. It is a resolution of the board of directors of the
24 Parish Church of St. Helena.

25 Q. And what is the purpose of that resolution?

1 A. That resolution is to stipulate that the Parish Church
2 of St. Helena, by and through its board of directors, does
3 not recognize a convention that was being called by that
4 group. The Episcopal Church, as they are now known, the
5 Episcopal Church in South Carolina, were calling a convention
6 that is not a convention of our Diocese, nor does the Parish
7 Church of St. Helena -- have they elected delegates nor do
8 they authorize anyone to appear at that convention
9 representing themselves to be delegates from the Parish
10 Church of St. Helena.

11 Q. What's the date of this resolution?

12 A. This resolution is dated 15th day of January, 2013.

13 Q. Did it pass?

14 A. Yes, it did.

15 Q. Would you look at Exhibit 33? What is Exhibit 33?

16 A. With the exception of citing the convention date being
17 called by that group, it is an identical resolution to the
18 prior one.

19 Q. What is the date of that resolution?

20 A. This is the 7th day of March, 2013.

21 Q. Did it pass the vestry?

22 A. Yes, it did, unanimously.

23 Q. Why were these resolutions passed?

24 A. In this period of time, early 2013, the group that calls
25 itself the Episcopal Church in South Carolina was

1 communicating -- issuing communications to newspapers and the
2 general public with -- we believe with the intent of
3 confusing, and in fact the result was it did confuse, the
4 clergy, laity and the general community about the identity of
5 the Protestant Episcopal Church in the Diocese of South
6 Carolina.

7 MR. RUNYAN: Just a moment.

8 Thank you, Ms. Schwank.

9 THE COURT: All right. Any other questions on behalf of
10 any of the plaintiffs? All right.

11 Who will go first on behalf of the defendants, Mr. Beers
12 or Mr. Tisdale?

13 MR. BEERS: The church has no questions.

14 THE COURT: Very well, Mr. Beers.

15 Mr. Tisdale, do you have any questions?

16 MR. BEERS: Excuse me, Your Honor. I made a mistake. I
17 do have a question.

18 THE COURT: All right. Very well.

19 CROSS-EXAMINATION BY MR. BEERS:

20 Q. I have exactly one. Does your review of the history of
21 your parish educate you as to whether the parish ever
22 received in the form of loans or grants financial help from
23 the national church?

24 A. I'm aware that in the mid-1950s a loan was applied for
25 from the Episcopal Foundation.

1 Q. And not from the National Council of the Episcopal
2 Church?

3 A. My recollection is from vestry minutes it was the
4 Episcopal Foundation, although our parish records indicate
5 that that loan was fully repaid and that all payments were
6 made to the order of the Diocese of South Carolina.

7 Q. And do you remember how much the loan was?

8 A. I do not.

9 MR. BEERS: Thank you, Your Honor.

10 MR. TISDALE: Your Honor, I have no questions.

11 THE COURT: All right. Very well.

12 MR. RUNYAN: No redirect.

13 THE COURT: Thank you very much. You may come down.

14 All right. Call your next witness, please.

15 MR. CAMPBELL: Pierce Campbell, again, just for the
16 record, on behalf of St. Bartholomew's Episcopal Church in
17 Hartsville, calls Mr. Rumpf to the stand.

18 (Plaintiff's Exhibits SB-1 through SB-16 premarked for
19 identification.)

20 STEVEN JOSEPH RUMPF,

21 being first duly sworn, testified as follows:

22 THE COURT: If you would state your name again -- this
23 is a sound check -- and spell your last name for us, please.

24 THE WITNESS: Steven Joseph Rumpf, R-U-M-P-F.

25 THE COURT: Your witness, Mr. Campbell.

1 MR. CAMPBELL: Thank you, Your Honor. If I may have a
2 moment, I had asked them if they were going to agree to admit
3 the documents into evidence.

4 THE COURT: Okay.

5 MR. TISDALE: We probably will, Your Honor, but we need
6 to look at them quickly. This is not in the order we were
7 given, so we need to look at them real quick.

8 THE COURT: Not a problem.

9 MR. CAMPBELL: We provided them last night, just for the
10 record, Your Honor, as requested by this Court.

11 THE COURT: Yes, they're indicating that you did. They
12 just need a moment to take a look.

13 MR. BEERS: I've reviewed them, counsel, and I do not
14 have any objection.

15 THE COURT: Thank you.

16 MR. TISDALE: Your Honor, to save time, we don't believe
17 we'll have any objections. If something comes up that's
18 unexpected, we'd like to raise it at that time, but I doubt
19 that it will.

20 THE COURT: Very well. You may proceed.

21 MR. CAMPBELL: Just for record purposes, Your Honor, I
22 don't want to have us fall into a problem later on, I would
23 move to admit 1 through 16, marked SB 1 through 16 inclusive,
24 into evidence.

25 THE COURT: And they are admitted conditionally. If I

1 hear anything from Mr. Tisdale that something is of a
2 concern, I will address it; otherwise, the condition will be
3 automatically removed.

4 MR. TISDALE: That's agreeable, Your Honor.

5 (Plaintiff's Exhibits SB-1 through SB-16 admitted into
6 evidence.)

7 MR. CAMPBELL: Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Tisdale.

9 DIRECT EXAMINATION BY MR. CAMPBELL:

10 Q. Could you state your name again? I'm sorry for all the
11 distractions.

12 A. Yes. Steven Joseph Rumpf.

13 Q. Where do you live?

14 A. Hartsville, South Carolina.

15 Q. And how long have you lived there?

16 A. 35 years.

17 Q. And do you attend a church there?

18 A. Yes, I do.

19 Q. What church is that?

20 A. St. Bartholomew's Episcopal Church.

21 Q. And how long have you been a member of that church?

22 A. Since 1979.

23 Q. And during those years have you held any positions of
24 leadership or authority in the parish?

25 A. Yes.

- 1 Q. What positions?
- 2 A. Vestry member and senior warden.
- 3 Q. What does the vestry do at St. Bartholomew's?
- 4 A. The vestry is responsible for the temporal actions of
- 5 the church, and they are the governing board, board of
- 6 directors.
- 7 Q. Okay. And how about the senior warden?
- 8 A. The senior warden acts as the president of that body.
- 9 Q. Are there any other officers?
- 10 A. Yes. We have the junior warden, treasurer and
- 11 secretary.
- 12 Q. And, Mr. Rumpf, in your roles on the vestry and as a
- 13 senior warden, have you come to learn about the history of
- 14 St. Bartholomew's?
- 15 A. Yes. By no means a historian, but I'm familiar with the
- 16 overall history.
- 17 Q. When was the church first organized?
- 18 A. Church was organized in 1902 when Reverend Thomas began
- 19 services in Hartsville, and he was from Darlington.
- 20 Q. And was it subsequently incorporated?
- 21 A. It was in 1922.
- 22 Q. I'd like to have you look at a document that's been
- 23 marked as SB-1.
- 24 A. Certificate of incorporation from the Secretary of
- 25 State.

- 1 Q. Is that the incorporation from 1922?
- 2 A. That is correct.
- 3 Q. What name was given to the corporation?
- 4 A. St. Bartholomew's Episcopal Church.
- 5 Q. And did the articles of -- the certificate of
- 6 incorporation, rather, give a purpose for that corporation?
- 7 A. It did.
- 8 Q. What was that purpose?
- 9 A. Religious.
- 10 Q. Just religious?
- 11 A. Just religious.
- 12 Q. Okay.
- 13 A. And in perpetuity.
- 14 Q. Since 1922 has St. Bartholomew's been in existence?
- 15 A. Yes.
- 16 Q. And has it been carrying out that religious purpose?
- 17 A. It has.
- 18 Q. Has it been at the same site?
- 19 A. Yes.
- 20 Q. And generally where is that church located?
- 21 A. Church is located physically at 103 Campus Drive in
- 22 downtown Hartsville, and it's surrounded on three sides by
- 23 Coker College.
- 24 Q. Right there at the campus of the college?
- 25 A. That's correct.

- 1 Q. Could I get the first picture, please.
- 2 Have you always been at that location?
- 3 A. That is correct.
- 4 Q. Can you identify that picture?
- 5 A. Yes. That's our church in Hartsville.
- 6 Q. Okay. Second picture. How about that?
- 7 A. Yes. That's the inside of our sanctuary.
- 8 Q. Mr. Rumpf, I'm not an architect, but that does not look
- 9 to be a 1902 church building. Is there a reason for that?
- 10 A. It is not. We had a fire in February of 1987, and the
- 11 church and the parish hall were lost to a fire which was
- 12 started as a diversion during a robbery.
- 13 Q. And was this church built on the same site?
- 14 A. Yes, it was.
- 15 Q. Was the original church completely destroyed?
- 16 A. It was.
- 17 Q. Approximately how many members do you all have at the
- 18 parish?
- 19 A. Approximately 110.
- 20 Q. A number of documents have been admitted into evidence
- 21 as Exhibits 2, 3, 4 and 5. Are you familiar generally with
- 22 what those documents show?
- 23 A. Yes, I am.
- 24 Q. What are those?
- 25 A. They are copies of warranty deeds showing the church's

1 property ownership for the campus at that location.

2 Q. And do those deeds encompass the entire campus property?

3 A. They do.

4 Q. Does the church own any other property?

5 A. Yes, it does. We have a rectory, which sales on that
6 were to conclude yesterday, but most likely will continue
7 until next week.

8 Q. There was an issue with the closing?

9 A. Just an issue of closing, yes, sir.

10 Q. And will the church expect to receive any funds from
11 that closing?

12 A. We do.

13 Q. And what will the parish use those funds for?

14 A. Those funds will be held in a restricted fund for
15 housing allowance for our rector, and right now we have an
16 interim rector, so we made the decision to upgrade the
17 property, upgrade housing possibilities.

18 Q. Those funds would be used for the same purpose they're
19 currently being used for?

20 A. That's correct.

21 Q. Mr. Rumpf, do you see a document before you marked as
22 Exhibit 6, St. Bartholomew's 6?

23 A. I do.

24 Q. Do you know what that document is?

25 A. Yes. That is a quitclaim deed.

- 1 Q. And who did the parish receive that from?
- 2 A. The Right Reverend Mark J. Lawrence and the Episcopal
- 3 Diocese of South Carolina, standing committee, etc.
- 4 Q. And did the parish request that deed?
- 5 A. It did not.
- 6 Q. What happened when the parish received the deed?
- 7 A. We took the deed and recorded it in Darlington County.
- 8 Q. In the fall of 2012 did the parish learn that the
- 9 Diocese of South Carolina had disassociated from the national
- 10 church?
- 11 A. We did.
- 12 Q. And did the vestry take any action at that time?
- 13 A. It did. On January 12th of 2013 we had a vestry meeting
- 14 and we passed a continuance resolution to stay with the
- 15 Diocese.
- 16 Q. Is that the document that's been admitted as Exhibit 7?
- 17 A. That is correct.
- 18 Q. I'm sorry. Could you look at No. 7 there and tell me
- 19 exactly what that is?
- 20 A. Number 7 is the St. Bartholomew Episcopal Church vestry
- 21 minutes dated January 12, 2013 with the commitment to
- 22 continue diocesan relationship attached.
- 23 Q. It's on the second page?
- 24 A. The second page, yes.
- 25 Q. And was it passed at that vestry meeting?

1 A. Unanimously.

2 Q. Was there a reason why the vestry reconsidered that
3 resolution a week or two later?

4 A. Yes. In January on the third Sunday we hold our annual
5 parish meeting, and via our bylaws we elect three vestry
6 members for terms that rotate every three years, and we had
7 three new members coming on at that time and one additional
8 member from an unfulfilled position -- I'm sorry. Not
9 unfulfilled, but from a vacant position on the vestry, and to
10 reaffirm that everyone was on board we voted on that again.
11 It passed, the resolution.

12 Q. How did it pass?

13 A. I beg your pardon?

14 Q. What was the vote on that second time?

15 A. It was unanimous.

16 Q. Did you have to pass it a second time?

17 A. We didn't. It had been completed, but we just wanted to
18 make sure that our vestry members were all on the same page,
19 so to speak.

20 Q. Did any vestry member, current or past, ever raise any
21 objection?

22 A. Did not.

23 Q. Did the congregation take any further action regarding
24 this issue?

25 A. At our annual parish meeting we changed our bylaws, and

1 that was the first reading on January the 20th, and,
2 according to our bylaws, notices for change of bylaws
3 procedures were followed. On January the 13th the rector
4 announced during announcement session in the service that
5 there would be a first and second reading of bylaws for the
6 change purpose.

7 Q. And were you present at the announcement of that annual
8 meeting?

9 A. Yes, I was.

10 Q. And you heard the rector's announcement?

11 A. Yes.

12 Q. Were announcements of the meeting made in other written
13 forms?

14 A. Yes. We have church bulletins showing announcement for
15 the change of bylaws and the annual parish meeting. We also
16 used email, which was sent out to parish members stating that
17 these meetings were to occur and there would be changes.

18 Q. Mr. Rumpf, do exhibits marked and admitted into evidence
19 as Exhibits 9, 10, 12, 13 and 14 represent those written
20 notices?

21 A. Yes, they do.

22 Q. And did the first reading of the bylaws occur on January
23 20th?

24 A. That is correct; during the annual parish meeting.

25 Q. And you were present at that meeting?

1 A. I was.

2 Q. And how was the vote on the changes?

3 A. It was unanimous.

4 Q. Were there any objections made at the meeting?

5 A. There were not.

6 Q. And I believe you said there was a second meeting on
7 January 27th; is that correct?

8 A. That is correct.

9 Q. And were you present?

10 MR. BEERS: Excuse me. Tell me what year you're talking
11 about.

12 MR. CAMPBELL: 2013.

13 MR. BEERS: Thank you.

14 Q. Were you present at the second meeting on January 27th,
15 2013?

16 A. Yes, I was.

17 Q. And had that meeting also been noticed?

18 A. Yes, it had.

19 Q. And were you present when the rector made notice of that
20 meeting?

21 A. Yes, I was.

22 Q. And where did he make the notice?

23 A. He made the notice at the annual parish meeting that on
24 the 27th there would be the second reading of the change to
25 the bylaws.

- 1 Q. Did he ever announce it during any Sunday services?
- 2 A. He did.
- 3 Q. When?
- 4 A. That would have been on the service prior to the annual
5 parish meeting on that same date.
- 6 Q. Okay. And what was the substance of the bylaw change
7 that took place at those meetings?
- 8 A. Substance of the bylaw change, remove the authority of
9 Article 1 from our bylaws, and that was removed from our
10 bylaws.
- 11 Q. In summary, what was the outcome of the change in
12 bylaws? What were you trying to do?
- 13 A. Outcome was we had no reference to either the Episcopal
14 Church or the Diocese of South Carolina's constitution or
15 canons in our bylaws.
- 16 Q. Do you see a document in front of you marked as Exhibit
17 15?
- 18 A. Exhibit 16?
- 19 Q. 15.
- 20 A. 15, yes.
- 21 Q. What is that document?
- 22 A. Document is vestry minutes dated January 27th.
- 23 Q. Of what year?
- 24 A. 2013.
- 25 Q. Is that the same day of the second reading of the bylaws

1 at a congregational meeting?

2 A. Yes.

3 Q. Were there any separate minutes of the parish meeting on
4 that date?

5 A. There were not. The vestry meeting occurred after the
6 parish meeting and action taken under parish meeting was
7 proposed change in bylaws were approved by majority voice
8 vote, second reading and meeting of the church. That was the
9 record of that meeting stated in the vestry minutes.

10 Q. Do you know why the secretary didn't keep separate
11 minutes of the parish meeting?

12 A. We went straight into session after the parish meeting,
13 and we're a small church, and maybe it's a clerical error,
14 but she did state it in that document.

15 Q. And are those the corporate records regarding that
16 meeting of the parish?

17 A. Yes.

18 Q. Are there any other corporate records referencing that
19 meeting of the parish?

20 A. No.

21 Q. And it says there it was approved by majority voice
22 vote. Were you present at that meeting?

23 A. I was, and I questioned that recently, and I spoke with
24 the -- Ms. Holcombe and the treasurer and the head of the
25 Altar Guild, who were in the room at the time, and they

1 agreed with me that it was by acclamation, but the minutes do
2 say by majority.

3 Q. Do you believe it was just a simple majority?

4 A. No. I was there and, excuse me, it was unanimous.

5 Q. Thank you.

6 And the document marked as Exhibit 16, is that the
7 bylaws as amended at those two meetings?

8 A. Yes.

9 Q. Does St. Bartholomew's have any current relationship
10 with the Episcopal Church?

11 A. It does not.

12 Q. Are you familiar -- and that's the national church?

13 A. Yes.

14 Q. Are you familiar with an organization known as the
15 Episcopal Church in South Carolina?

16 A. I am.

17 Q. Does St. Bartholomew's have any relationship with that
18 organization?

19 A. No.

20 Q. Has it ever had a relationship with that organization?

21 A. No.

22 Q. Has St. Bartholomew's ever been a parish of the
23 Episcopal Church in South Carolina?

24 A. No.

25 Q. Has St. Bartholomew's ever participated in any meetings

1 or conventions of the Episcopal Church in South Carolina?

2 A. No.

3 Q. Has St. Bartholomew's ever sent delegates to any
4 conventions of the Episcopal Church in South Carolina?

5 A. No.

6 Q. If people appeared at a convention of the Episcopal
7 Church in South Carolina purportedly on behalf of St.
8 Bartholomew's, would their appearance have been authorized?

9 A. Our parish authorized no action of that nature.

10 Q. Did your parish actually take contrary action?

11 A. We did. We had a document stating that there was no
12 affiliation of our members to that delegate or delegates to
13 that diocesan. I'm sorry. Not diocesan, but to that
14 meeting.

15 Q. A meeting of the Episcopal Church in South Carolina?

16 A. In South Carolina, yes, sir.

17 Q. And did St. Bartholomew's ever give the Episcopal Church
18 in South Carolina permission to list its name and contact
19 information on their website?

20 A. It has not.

21 MR. CAMPBELL: I don't have any other questions. If
22 you'd answer any other questions counsel may have for you.

23 THE COURT: All right. Anyone on behalf of the
24 plaintiffs?

25 All right. Yes, sir, Mr. Beers.

1 the Anglican prayer book too.

2 Q. And would you have assumed that that parish, that
3 church, was a -- had an Episcopal priest?

4 A. I could not make that assumption.

5 Q. Why not?

6 A. Every time I assume I get in trouble.

7 Q. I'm tempted to ask for a recess after that, but I'll
8 continue for a few more minutes.

9 Why don't you personally want to have your parish
10 associated with the Episcopal Church?

11 MR. RUNYAN: Your Honor, that's irrelevant.

12 THE COURT: Sustained. It's irrelevant.

13 Q. When did your parish first -- when did the leadership of
14 your parish first express an interest or desire in severing
15 any relationship with the Episcopal Church?

16 A. Our church never severed relationship with the Episcopal
17 Church, since it was never a member.

18 Q. Well, when did the leadership of your parish first
19 develop or first consider a change in the bylaws that would
20 remove any mention of the Episcopal Church?

21 A. That would be when we passed our resolution for
22 continuance with the Diocese of South Carolina based upon the
23 actions the national church had taken against our bishop, and
24 we repudiated that in the resolution. We also affirmed that
25 we were no longer in any relationship whatsoever, nor had we

1 (Lunch recess held.)

2 THE COURT: All right. Very well. Call your next
3 witness, please.

4 MS. MACDONALD: Thank you, Your Honor. We call Dr.
5 Frank Sloan.

6 MR. TISDALE: What parish is this?

7 MS. MACDONALD: Trinity Myrtle Beach.

8 (Plaintiff's Exhibits TMB-1 through TMB-26 premarked for
9 identification.)

10 FRANK KEENAN SLOAN, JR.,
11 being first duly sworn, testified as follows:

12 MS. MACDONALD: For the record, I'm Susan MacDonald. I
13 represent Trinity Church of Myrtle Beach, plaintiff in this
14 action.

15 DIRECT EXAMINATION BY MS. MACDONALD:

16 Q. Could you state your name for the record, please?

17 A. Dr. Frank Sloan.

18 Q. And where do you live?

19 A. Myrtle Beach, South Carolina.

20 Q. What do you do for a living?

21 A. I'm an eye surgeon.

22 Q. And are you a member of any church in Myrtle Beach?

23 A. Trinity Myrtle Beach.

24 Q. And how long have you been a member?

25 A. Since 1987.

1 Q. Okay. And have you held any positions in Trinity
2 Church?

3 A. I've served on vestry twice and I'm current senior
4 warden.

5 Q. In that leadership position as senior warden and on the
6 vestry, have you come to learn information about the
7 corporate status of Trinity Church?

8 A. I have.

9 Q. Okay. And do you know some of the history of Trinity
10 Church?

11 A. Well, the church was founded -- initially was
12 incorporated in 1939 under the name of trustees of the church
13 of the Messiah Myrtle Beach, Horry County, South Carolina.
14 That was June 21st, 1939, but that was at the time a mission
15 church of the Diocese of South Carolina.

16 Q. Okay. Your Honor, I think Jason may still be looking.
17 We've looked at these earlier.

18 MR. TISDALE: We're okay.

19 MS. MACDONALD: You're okay with them? Okay.

20 Your Honor, at this point I would move to put into
21 evidence -- and they are denoted TMB Exhibits 1 through 26.
22 I've already given the court reporter her copy.

23 MR. TISDALE: No objection, Your Honor.

24 THE COURT: Thank you so much. On behalf of the
25 national church, Mr. Beers?

1 MR. BEERS: I thought I had informed counsel that we
2 were fine.

3 THE COURT: Thank you so kindly. I need to have
4 confirmation on the record. It's insufficient to have it
5 from one side. I need to have it from counsel. Thank you.

6 1 through 26 then are in evidence without objection.

7 (Plaintiff's Exhibits TMB-1 through TMB-26 admitted into
8 evidence.)

9 MS. MACDONALD: Thank you, Your Honor.

10 Q. If you would look at -- we were talking about the
11 history. Look at Exhibit 1. Is that a copy of the original
12 incorporation of the church?

13 A. It is to my understanding.

14 Q. And is that originally, as you said, trustees of the
15 church of the Messiah of Myrtle Beach, Horry County, South
16 Carolina, a corporation?

17 A. Correct.

18 Q. Okay. How about look at Exhibit No. 2? And do you
19 recognize this exhibit?

20 A. Yes. In 1949 the church ceased to become a mission and
21 became a full parish, and they apparently at the time
22 re-issued or re-applied for articles of incorporation but
23 under the same name, trustee to the Church of the Messiah,
24 but now as a parish.

25 Q. And then if you would look at Exhibit No. 3, do you

- 1 recognize this document?
- 2 A. I do.
- 3 Q. And what is this document?
- 4 A. It was decided, and it's lost to history as to what the
5 thinking was at the time, but it was decided to change the
6 name from Church of the Messiah, which I guess is kind of a
7 mouthful, to Trinity Episcopal Church of Myrtle Beach.
- 8 Q. That was done in what year?
- 9 A. 1949.
- 10 Q. If you look at the bottom at the notary.
- 11 A. Oh, I'm sorry, 1951.
- 12 Q. Okay. So by 1951 it was Trinity Church, Trinity
13 Episcopal Church Myrtle Beach?
- 14 A. Correct.
- 15 Q. Did you subsequently change the name again?
- 16 A. We did.
- 17 Q. Okay. If you'll look at Exhibit 4, is that the filing
18 of the name change and purpose change in 2009 with the
19 Secretary of State?
- 20 A. That's correct.
- 21 Q. And what's the new name?
- 22 A. The name is Trinity Church Myrtle Beach.
- 23 Q. Does Trinity Church of Myrtle Beach own any real estate?
- 24 A. It does. It owns the current church property where the
25 sanctuary and other associated buildings are located. It

1 also owns eight acres of undeveloped land in an area known as
2 Carolina Forest, and we also own a rectory for the use of the
3 rector.

4 Q. And if you would look at TMB Exhibits No. 5, 6, 7, 8, 9,
5 10, 11, 12, 13, do those deeds represent the current property
6 owned by Trinity Church of Myrtle Beach?

7 A. They do.

8 Q. Does anybody else, any other entity, own any interest in
9 this property according to the title records in Horry County?

10 A. They do not.

11 Q. Okay. Thank you. Now I'm going to ask you to look at
12 the back, because I know there were -- if you would look at
13 the very last exhibit, Exhibit 26.

14 A. Okay.

15 Q. Do you recognize what that exhibit is?

16 A. I do. Apparently it was customary for mission churches
17 to grant deed or control of their property.

18 Q. I'm looking at 26, not 24. I'm sorry.

19 A. Correct. This is -- to my understanding this is the --
20 oh, I'm sorry. This is the initial granting of the property
21 from Myrtle Beach Farms?

22 Q. Yes.

23 A. To the church for purposes of having a church on the
24 property.

25 Q. And in looking at the document, sort of the middle where

1 it starts "The trustees of the Protestant Episcopal Church in
2 South Carolina"?

3 A. Correct.

4 Q. That in the second -- does it indicate the reason why
5 Myrtle Beach Farms gave another quitclaim deed?

6 A. Well, because I think it was because the articles of
7 incorporation had been issued twice, in '39 and again in '49.
8 When we became a parish, there appeared to be there was some
9 confusion as to whether there were actually two corporations.
10 So in order to clear up any confusion over whether this
11 property was for the purpose of the church Myrtle Beach Farms
12 issued a quitclaim deed to clear up any possible confusion
13 there.

14 Q. And this is the original property that the church was
15 built on at first?

16 A. Exactly.

17 Q. Now, if you would turn back to Exhibit 24 -- and this
18 one's a little harder to read. It may be easier if you look
19 on the screen in front of you, I don't know, but in the very
20 top section can you tell what this is? He's going to blow it
21 up for you on your screen, if that helps.

22 A. Okay. I believe -- again, it's a little challenging
23 here, but I believe this is where the -- once the parish --
24 once the mission had become a parish, that the parish
25 requested that the trustees of the Diocese return control of

1 the property to the parish.

2 Q. At some point originally did the church of -- the
3 trustees of the Church of the Messiah own the property at
4 first?

5 A. Well, I'm not sure of the exact timing of it. It was
6 granted by Myrtle Beach Farms, but I know that subsequently
7 it was granted to the trustees of the diocese, which I think
8 was typical for mission churches. So that was nothing
9 unusual in that.

10 Q. Then at some point did the mission church -- did the
11 trustees deed back the property to Trinity?

12 A. Correct.

13 Q. Or to the Church of the Messiah?

14 A. Church of the Messiah, correct. In '49, once they had
15 become a full-fledged parish, they requested that the
16 trustees return control of the property to the parish, and
17 that was done.

18 Q. Do you know if Trinity owns any other real property
19 other than what we've discussed in these deeds?

20 A. None that I'm aware of.

21 Q. Okay. Now, if you would look at Exhibits 22 and 23, did
22 there come a point in which the Diocese of South Carolina and
23 the bishop and the standing committee provided quitclaim
24 deeds to Trinity Church?

25 A. There was.

1 Q. If you would look at Exhibits 22 and 23, do these
2 reflect the quitclaim deeds? Are these the quitclaim deeds?

3 A. They are.

4 Q. All right. Now we're going to kind of move to the
5 corporate actions of Trinity Parish. Does Trinity Church
6 have bylaws?

7 A. They do.

8 Q. Was there ever a substantial amendment to those bylaws
9 since you've been at the church?

10 A. There was.

11 Q. When did that happen?

12 A. That happened in November of 2009.

13 Q. Okay. And what was the background for these amendments?

14 A. Well, as the church had been incorporated since 1949,
15 there really had not been a comprehensive review of bylaws;
16 some amendments apparently over the years, but many, many
17 years had passed, and it was time for a comprehensive review
18 and cleaning up of the bylaws which was instituted in the
19 summer of 2009. Actually a committee was formed with the
20 chancellor just to review the bylaws, and laws changed and
21 times changed and those things just needed to be
22 re-addressed. So we were in the process of doing that.

23 Q. While you were in the process of reviewing and looking
24 at amending these bylaws, did you make changes to the reviews
25 you were looking -- or to the changes you were going to make?

1 Q. What action did the vestry take as a result of the All
2 Saints case?

3 A. We further amended the bylaws in ways that the vestry
4 believed would help us further protect our property.

5 Q. Okay. And I think you said earlier, was that part of
6 the November 2009 amendment?

7 A. It was.

8 Q. If you would look at Exhibit 18, can you identify what
9 that document is?

10 A. These were the amendments to the bylaws.

11 Q. And if you'll look at the very top, adopted as of what
12 date?

13 A. 22nd day of November, 2009.

14 Q. And in what form were these -- was this amended bylaws
15 done?

16 A. The bylaws stated how they should be done, that there
17 should be sufficient notice given to the entire parish, that
18 there should be, particularly stipulated, two readings, two
19 announcements from the pulpit, which was done, and then two
20 actual meetings for reading and voting on the amendments, all
21 of which was followed.

22 Q. And so these amendments -- or the bylaws were amended
23 pursuant to notice required?

24 A. Correct.

25 Q. And was a quorum present when it was done?

- 1 A. It was.
- 2 Q. And did the amendments pass at both of those two
3 meetings?
- 4 A. They did.
- 5 Q. Okay. If you would look at Exhibit 14, and at the very
6 top, can you identify this document?
- 7 A. Again, these are the minutes of the initial voting
8 meeting.
- 9 Q. And then if you would look at Exhibit 17, can you
10 identify this document?
- 11 A. These are the minutes of the second meeting.
- 12 Q. And I think you said notice was given pursuant to what
13 was required, but was additional notice given for these
14 meetings to amend the bylaws?
- 15 A. I actually can't say. I know that we went through
16 considerable effort to make sure that there was plenty of
17 notice given to everyone via electronic and mail, both. So I
18 know we went to considerable lengths to be sure, but as far
19 as if there were additional communications, I couldn't say.
- 20 Q. Look at Exhibit 15. And there are several pages
21 contained in that, and particularly down in the bottom corner
22 on the first page it's denoted TMB-3131159 and talks about
23 annual parish meeting?
- 24 A. Correct.
- 25 Q. It also notes that there would be two meetings, correct?

1 A. Correct.

2 Q. Then it's on the calendar on the next page listed, which
3 is 1165?

4 A. Correct.

5 Q. Then can you identify 1167, the next page?

6 A. Correct, yes, it's another notice that was posted.

7 Q. And that was posted?

8 A. In the church.

9 Q. Then I want you to look at the next page, which is
10 denoted on the bottom 1156.

11 A. Okay.

12 Q. And what is this document?

13 A. This is a letter from our rector at the time, who was
14 explaining in his words the reason for our meeting and the
15 rationale for changes we were making.

16 Q. What was the main impetus for the changes you were
17 making?

18 A. The main impetus for the changes was simply to protect
19 our property.

20 Q. Let's look at Paragraph 4 of this letter. Do you recall
21 this letter going out to the parish?

22 A. I do.

23 Q. Okay. And were you a member of the vestry who discussed
24 why these changes were necessary?

25 A. I was.

1 Q. And I would like for you to publish for the Court by
2 reading that paragraph, and read it slowly so the court
3 reporter can take it down.

4 A. "On September 22nd, 2009, the South Carolina Supreme
5 Court ruled that a national organization could not impose a
6 trust on a local congregation without the explicit consent of
7 that local congregation. The South Carolina Supreme Court
8 judged that the local congregations in many cases had never
9 given their consent to be incorporated into a national trust.
10 The Court ruled that the Dennis canon was null and void in
11 the State of South Carolina. What this means for us at
12 Trinity is that Trinity and its congregation are the owners
13 of all nonconsecrated property, land, offices, foundations,
14 etc. The vestry and clergy have unanimously asked the
15 congregation to consider amending the charter and bylaws to
16 better reflect the current understanding of church property
17 ownership in the State of South Carolina. Be sure to note
18 that this in no way changes our denominational affiliation.
19 If the amendments are passed, Trinity will continue to be an
20 Episcopal church. The amendments do not in any way address
21 our denominational affiliation."

22 Q. So at the time that these changes were made, it was for
23 a real property issue, correct?

24 A. Exactly.

25 Q. And it had nothing to do with what was going on with the

1 national church in any other way?

2 A. Correct.

3 Q. Now, in addition to amending the bylaws, did you also --
4 is that at the point where you amended the articles of
5 incorporation to change the name?

6 A. Yes.

7 Q. Did you have a parliamentarian at these meetings?

8 A. We did.

9 Q. And that parliamentarian was there to make sure that --

10 A. Proper order was followed.

11 Q. Okay. So at the time this was changed, or the
12 amendments were done in 2009, there had been notice as
13 required?

14 A. Correct.

15 Q. There was a quorum?

16 A. Correct.

17 Q. It was passed by the proper amount of vote?

18 A. Correct.

19 Q. Is Exhibit 14, which is the minutes, an accurate
20 representation about what occurred at that meeting?

21 A. They are.

22 Q. Does anyone outside of the membership of Trinity Church
23 have any veto power over the corporate entity of Trinity
24 Church and its governing documents?

25 A. Not that I'm aware of, no.

1 Q. Now I want to kind of go to 2012. If you'll look at --
2 let's go ahead and look at Exhibit 19.

3 Now, in 2009 there was an understanding that despite the
4 fact that you took the name Episcopal out of your name, you
5 were still an Episcopal church, correct?

6 A. Correct.

7 Q. Did that change?

8 A. No, it did not.

9 Q. Okay. So when you indicate that you're part of the
10 Episcopal Church, do you mean the Diocese of South Carolina?

11 A. Correct.

12 Q. And has Trinity always been affiliated with the Diocese
13 of South Carolina?

14 A. Yes.

15 Q. In 2012 did something significant happen within the
16 parish?

17 A. Something very significant happened, and I think, as we
18 all know, the national church moved to impair our duly
19 elected bishop, Mark Lawrence, and that triggered the
20 disassociation of the Diocese from the national church.

21 Q. And what was Trinity's position on that?

22 A. Our position was that we wished to remain in the diocese
23 under leadership of Mark Lawrence.

24 Q. I'll ask you to identify Exhibit 19.

25 A. Okay. It was the annual parish meeting.

1 Q. Okay. And if you'll look at the second page of that,
2 top, was there a vote at this meeting by the parish?

3 A. There was.

4 Q. Can you tell me what that vote was?

5 A. The result of the votes were 119 to affirm Trinity's
6 membership in the Diocese of South Carolina, 31 votes to
7 re-affiliate with the denomination of the Episcopal Church,
8 and 4 to abstain.

9 Q. Okay. Was there any vestry action that was necessary
10 after this?

11 A. Yes. The vestry -- this was really a sense of the
12 parish. The vestry was subsequently taking that sense of the
13 parish and resolved to remain with the Diocese of South
14 Carolina and Bishop Lawrence.

15 Q. And if you would look at Exhibit No. 21, can you
16 identify what this is?

17 A. Yes. This is minutes of the vestry, September 10, 2012.

18 Q. And did the vestry take action at this vestry meeting?

19 A. We did.

20 Q. Tell me what the vestry did.

21 A. The vestry resolved to remain in relationship with the
22 Diocese of South Carolina and Bishop Lawrence, and that was
23 passed unanimously by the vestry.

24 Q. And was this vestry meeting noticed as required with the
25 bylaws?

- 1 A. It was.
- 2 Q. Okay. Was there a quorum?
- 3 A. There was.
- 4 Q. Okay. And I note there was only one person absent?
- 5 A. Correct.
- 6 Q. Do these minutes accurately reflect what happened at
- 7 that meeting?
- 8 A. They do.
- 9 Q. Going back to the minutes where the mind of the parish
- 10 -- was that meeting properly noticed?
- 11 A. It was.
- 12 Q. Was there a quorum?
- 13 A. There was.
- 14 Q. And was there a parliamentarian there to conduct it?
- 15 A. There was.
- 16 Q. Do the minutes as reflected in that exhibit accurately
- 17 reflect what happened?
- 18 A. They do.
- 19 Q. Okay. We've had a lot of testimony about signage, so
- 20 let's get that out of the way.
- 21 In fact, if you could pull up the pictures, am I messing
- 22 you up if I tell you to do that now out of order?
- 23 Can you tell me what this is, what this picture is?
- 24 A. Well, this would be a picture of Palm Sunday. I see
- 25 some palm fronds in people's hands, and we do a little

1 the methodologies that were used, when was the incorporation,
2 what were the bylaws, and there's been probably more time
3 spent with the justification and the dispute over the
4 justification for these folks to have taken the actions that
5 they have taken.

6 All Saints speaks for itself, and at the end of the day
7 All Saints stands for the proposition that we are a state,
8 not one of hierarchical enforcement by the Court, but one
9 involving neutrality, which really sends me back to the
10 issues which are much more corporately driven.

11 So aside from the fact that it's not fair to ask a
12 physician about the dictates of All Saints any more than it
13 would be fair to ask me about how you do eye surgery, the
14 justification in and of itself is interesting, but not what I
15 believe to be the focus of the Court. So with that in mind,
16 you may proceed, Mr. Beers.

17 MR. BEERS: I'd just like to make one comment in
18 correction, Your Honor. I would not even suggest that the
19 witness try to interpret what All Saints said. That was not
20 the point of my question at all, but I will move on to a
21 similar subject which won't be appreciated much better than
22 that one.

23 Q. You said that in 2013 the parish voted to align itself
24 with the Diocese headed by Bishop Lawrence?

25 A. Right, 2012, correct.

1 Q. And you said that what triggered that was a belief or an
2 understanding that the Episcopal Church, the national church,
3 had done something to impair Bishop Lawrence's ministry; is
4 that correct?

5 A. That was my understanding.

6 Q. Do you know anything about the disciplinary system or
7 process of the national church?

8 A. Very little.

9 Q. Do you know anything about whether or not and to what
10 extent the national church can discipline bishops of the
11 church?

12 A. No, no, sir, I'm not familiar with that process.

13 Q. Do you know anything about the circumstances
14 surrounding -- do you know what -- excuse me. Let me start
15 again.

16 Do you know what action, if any, the presiding bishop
17 made with regard to Bishop Lawrence?

18 A. It was our understanding that she had moved to impair
19 the bishop, which could have led to him being replaced.

20 Q. And do you know what her grounds were?

21 A. Again, you may be asking me some legal questions I'm not
22 prepared to answer, but my understanding is that it did
23 involve these quitclaim deeds.

24 Q. But you haven't read any official documents that
25 explain --

1 A. You know, I'm not exactly certain what location they're
2 in. The last I heard there's some classrooms of a Methodist
3 church a couple of miles from where we were. That was the
4 last I heard, but I can't say factually where they're
5 worshipping.

6 Q. But a group of people who did not wish to disaffiliate
7 from the Episcopal Church when you all decided to do that are
8 worshipping in some other place?

9 A. Correct.

10 MR. TISDALE: Nothing further from me, Your Honor.

11 THE COURT: All right. Redirect?

12 MS. MACDONALD: No, Your Honor.

13 THE COURT: Very well. You may come down. All right.
14 Next witness? Call your next witness, please.

15 (Plaintiff's Exhibits SM-1 through SM-14 premarked for
16 identification.)

17 WILLIAM COWAN ERVIN, JR.,
18 being first duly sworn, testified as follows:

19 THE COURT: All right, sir, if you'd state your full
20 name again, please, and spell your last name.

21 THE WITNESS: William Cowan, C-O-W-A-N, Ervin,
22 E-R-V-I-N, Jr.

23 THE COURT: All right. Your witness, sir.

24 MR. MACK: Judge, would you like a copy of our exhibits?

25 THE COURT: Sure. Thank you kindly. This appears to be

1 SM-1 through 14. Any problems with the exhibits on behalf of
2 the defendants?

3 MR. TISDALE: No objection, Your Honor.

4 MR. BEERS: No objection.

5 THE COURT: Very well. They're in. SM-1 through 14 are
6 in evidence without objection.

7 (Plaintiff's Exhibits SM-1 through SM-14 admitted into
8 evidence.)

9 THE COURT: You may proceed.

10 MR. MACK: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION BY MR. MACK:

13 Q. Would you state your name again for the record, please,
14 sir.

15 A. William Cowan Ervin, Jr.

16 Q. Mr. Ervin, where do you live?

17 A. Darlington, South Carolina.

18 Q. How long have you lived there?

19 A. Almost all my life with the exception of six months.

20 Q. Okay. Are you married?

21 A. I am.

22 Q. Have any children?

23 A. I have two children, boy and a girl.

24 Q. Are you employed?

25 A. I am. I'm a civil engineer with Ervin Engineering

1 Company in Florence.

2 Q. Are there other Ervins who work at Ervin Engineering?

3 A. There are a lot of other Ervins that work there.

4 Q. Your father is Willy Ervin?

5 A. And my brother is Joe Ervin, and there are a lot of
6 other ones.

7 Q. Those are your immediate family?

8 A. That's my immediate family.

9 Q. Are you a member of any church?

10 A. I'm a member of St. Matthew's church in Darlington.

11 Q. How long have you been a member of that church?

12 A. Since I came to Darlington in 1959.

13 Q. That's at birth?

14 A. Well, six months old.

15 Q. Okay. What about your parents; are they members there?

16 A. They're members of the church as well. They were
17 married in the church, in St. Matthews.

18 Q. Okay. Your brother Jim?

19 A. He's a member of the church.

20 Q. How big is St. Matthew's?

21 A. We've probably got about 150 to 175 communicants and an
22 average Sunday attendance would be around 80, 80 or 90.

23 Q. Of those 80 or 90 who attend, are those generally
24 communicants or members of the family or members of the
25 church?

- 1 A. Yes.
- 2 Q. Do you have many visitors from outside?
- 3 A. Not casual visitors. Invited visitors, yes, but people
4 don't usually find their way to Darlington.
- 5 Q. Except during race weekend?
- 6 A. They don't find their way to church.
- 7 Q. What positions have you held at St. Matthews?
- 8 A. I believe on the vestry, junior warden, senior warden
9 and a deputy to the Diocesan convention.
- 10 Q. Over the time that you have been there as an adult, have
11 you served on the vestry or as a warden more years than you
12 have not been on the vestry?
- 13 A. Yes, I have.
- 14 Q. Is the same true for your brother and father?
- 15 A. Yes, it is.
- 16 Q. Does your father hold an office?
- 17 A. He's the treasurer of the church.
- 18 Q. For how long has he been treasurer?
- 19 A. Right now I don't know. I mean off and on for a long
20 time but, you know, probably for the last 15 or 20 years
21 without a break.
- 22 Q. When did St. Matthews get started?
- 23 A. A group of people got together to begin forming the
24 church in the late 1800s, and then they -- the church was --
25 construction of the church itself was begun in 1905. I think

1 before that they worshiped in the Methodist church, I think.

2 Q. St. Matthews is incorporated?

3 A. Yes, it is.

4 Q. Exhibit No. 1, is that the certificate of incorporation
5 issued by the Secretary of State for the State of South
6 Carolina?

7 A. It is.

8 Q. And it's dated April the 26th, 1905?

9 A. 1905.

10 Q. And the name of the corporation?

11 A. Is St. Matthew's Church.

12 Q. Okay. No. 4, Paragraph No. 4 states, "The purpose of
13 the corporation is," and I don't know who it was in the
14 Secretary of State's office that wrote this, but it's
15 difficult to read, but as I read it, it says religious, the
16 purpose is religious, and to enable it as a corporation with
17 all the usual privileges attached to the church -- to a
18 church corporation under the law, to carry on its business,
19 and further the religious and charitable ends for which it is
20 organized?

21 A. I agree with that.

22 Q. Has this certificate of incorporation ever been amended
23 or changed in any way?

24 A. No, sir.

25 Q. Does St. Matthew's have articles of incorporation -- I'm

- 1 sorry -- bylaws? I don't need to go over that again.
- 2 A. We do.
- 3 Q. Have those bylaws been amended over the years?
- 4 A. They have.
- 5 Q. As part of this litigation, has there been an effort to
- 6 go back and locate copies of past bylaws and any changes to
- 7 the bylaws? Was there an effort to locate any records in St.
- 8 Matthews pertaining to the bylaws and amendments to the
- 9 bylaws?
- 10 A. Yes, there was.
- 11 Q. And if we go to Exhibit SM-8, which is the
- 12 congregational -- the minutes of the congregational meeting
- 13 of January 13, 1975, those indicate that there were some
- 14 proposed amendments considered at that time?
- 15 A. Yes, sir.
- 16 Q. Were you able to find any bylaws before that?
- 17 A. No, sir. I didn't do that search, but the people doing
- 18 the search didn't.
- 19 Q. Who did the search?
- 20 A. Search was done by the rector, my brother Joe Ervin, my
- 21 father, and my wife, Julie Ervin.
- 22 Q. Exhibit No. 9, are those the bylaws as amended through
- 23 January 13th, 1975?
- 24 A. Yes, they are.
- 25 Q. Do you know what the purpose of the amendments was at

1 that time?

2 A. The primary purpose of 1975 was to make it possible for
3 women to serve on the vestry and also to be elected to the
4 office of warden.

5 Q. Okay. I believe that the minutes of the annual meeting
6 that we have produced in the discovery indicated that in 1989
7 and 1990 there were some additional amendments to the bylaws,
8 but we were unable to find those to produce them. Have you
9 been able to find any?

10 A. No, sir.

11 Q. Do you know what those amendments related to other than
12 what was contained in those minutes --

13 A. No.

14 Q. -- of the meeting?

15 Okay. Then Exhibit No. 10 is the annual parish report
16 for the congregational meeting of 1994, and on the first page
17 of that there's some summaries of proposed amendments to the
18 bylaws at that time?

19 A. Yes, sir.

20 Q. On the second page.

21 Do you know of any other amendments that have been made
22 to the bylaws of St. Matthews?

23 A. I'm not aware of any others.

24 Q. Have the bylaws ever had any reference to the Episcopal
25 Church of the US, the national church?

- 1 A. No, sir.
- 2 Q. Or acceding to any constitution or bylaws?
- 3 A. No, sir.
- 4 Q. Okay. Now, does St. Matthew's own any property?
- 5 A. We do.
- 6 Q. Okay. Where is the church located?
- 7 A. The church is located on the South Main Street in
- 8 Darlington.
- 9 Q. Main Street runs north/south?
- 10 A. Main Street runs north/south.
- 11 Q. St. Matthew's is located on the west side?
- 12 A. There you go again, yes, west side.
- 13 Q. And it's right next door to the First Baptist Church?
- 14 A. That's right.
- 15 Q. What property does St. Matthews own related to its
- 16 church?
- 17 A. We own the property that the church is on, which is
- 18 probably about six-tenths of an acre or something that the
- 19 church -- and we've got a Sunday school building and a parish
- 20 hall, and all of that is on one piece of property, and then
- 21 adjacent to that we own what is now a vacant lot that we
- 22 bought. It had a house on it. There was an old lady living
- 23 in it, and she sold it to us for a life interest so she could
- 24 live in the house, and after her death we tore the house
- 25 down, and we just have a vacant lot there.

1 Q. Use that for parking?

2 A. Well, we hope one day to use it for parking, but right
3 now we use it for weeds.

4 Q. Exhibits 2, 3, 4 and 5, are those all deeds for those
5 two pieces of property?

6 A. Yes, sir.

7 Q. Originally the property was deeded by Mr. J.M. Magruder
8 to the Protestant Episcopal Church in the Diocese of South
9 Carolina, and this was June 2nd of 1897?

10 A. That's right.

11 Q. That was before St. Matthew's was incorporated, correct?

12 A. That's correct.

13 Q. And the second deed was in 1904 by apparently some heirs
14 of Mr. Magruder of their reversionary interests?

15 A. That's correct.

16 Q. Then after the church was incorporated, the trustees of
17 the Protestant Episcopal Church in Exhibit No. 4 deeded the
18 property to the corporate St. Matthew's church?

19 A. That's correct.

20 Q. Now, Exhibit No. 6 is a quitclaim deed?

21 A. Yes, sir.

22 Q. What do you know about that?

23 A. I know that this was sent to us by the Diocese and we
24 recorded it.

25 Q. Did you ask for it?

- 1 A. No, sir.
- 2 Q. Were you glad to get it?
- 3 A. Honestly I didn't think about it one way or the other.
- 4 I was senior warden I think at the time that it came and I
- 5 knew that it was coming either from the rector or maybe
- 6 directly from the diocesan office and it came in and then we
- 7 gave it to a lawyer in the parish to record.
- 8 Q. Do you know anything more about it than that?
- 9 A. That's it.
- 10 Q. Now, there's one other deed that you have, Exhibit No.
- 11 7. Can you tell me about that, please, sir?
- 12 A. This is a deed to a building and probably about a tenth
- 13 of an acre across the street from the vacant lot on West
- 14 Hampton Street that we bought and are in the process of
- 15 converting that into a youth building for both teenagers and
- 16 young adults.
- 17 Q. Okay.
- 18 A. And we bought that in 1983 -- I mean 2013 I guess.
- 19 Q. So that was a recent acquisition?
- 20 A. Yes, we just bought it.
- 21 Q. And that was purchased after this lawsuit was
- 22 instigated?
- 23 A. Yes, sir.
- 24 Q. Does St. Matthew's have an active youth program?
- 25 A. We do.

- 1 Q. Who's in charge of that?
- 2 A. I am along with my brother.
- 3 Q. For how long?
- 4 A. For around 30 years the two of us and before that my
- 5 father for about 28 years.
- 6 Q. Okay.
- 7 A. And before that I don't know.
- 8 Q. For the church property that St. Matthews has, who paid
- 9 for the property as far as you know?
- 10 A. Well, the church paid for it.
- 11 Q. Who pays for the upkeep and maintenance?
- 12 A. We do.
- 13 Q. Do you know if the church has ever received any loans or
- 14 financial assistance from the national church?
- 15 A. Not that I'm aware of.
- 16 Q. Would you be glad to receive it if it was available,
- 17 particularly at below market rates?
- 18 A. Below market rates we'd consider it, although it would
- 19 have to be cheap to be below market rates right now.
- 20 Q. Let's talk about January of 2013.
- 21 A. All right.
- 22 Q. You were on the vestry at the time?
- 23 A. I was the senior warden at the time.
- 24 Q. Tell me about what happened with respect to a
- 25 congregational meeting and vestry meeting in January.

1 A. In January of 2013 in response to what had taken place
2 with the restriction of Bishop Lawrence and the subsequent
3 move by the standing committee to disaffiliate with the
4 national church, the vestry met and -- well, first, the
5 vestry decided to have the congregation meet, which happened
6 in -- on maybe January the 6th, I'm looking to see, and we
7 put it to the congregation in a nonbinding referendum to say
8 do you want to remain in affiliation with the Diocese of
9 South Carolina and Bishop Lawrence or not, I mean, because we
10 felt that we were at a place where we had to respond with
11 what was going on with the Diocese. The congregation voted
12 at that meeting about 90 percent in favor of remaining with
13 the Diocese of South Carolina and Bishop Lawrence and at a
14 vestry meeting following that we, the vestry, passed a
15 resolution saying that we were -- the title of the resolution
16 is commitment to continue diocesan relationship, stating that
17 we resolved to remain in relationship with the Diocese of
18 South Carolina and Bishop Lawrence.

19 Q. Okay. Exhibit No. 13 are the minutes of that January
20 14th vestry meeting?

21 A. Yes.

22 Q. Exhibit No. 14 has several resolutions. Is the first
23 one the one concerning the continuing affiliation with the
24 Diocese?

25 A. That's correct.

1 Q. And was that passed unanimously by the vestry?

2 A. That resolution was passed unanimously, but there was
3 one abstention. One of the vestry men chose not to vote.

4 Q. The second page of that exhibit is another resolution
5 also dated January the 14th of 2013. What was that?

6 A. This was a resolution that we passed stating that we
7 understood that the diocese that was formed as the
8 unincorporated diocese -- I can't remember what we're calling
9 it here -- was going to have a convention and we wanted to
10 pass a resolution saying that we had not elected any
11 delegates to go to that convention.

12 Q. Now, after January 14th did the vestry do anything else?

13 A. Yes. After January 14th we met with -- with you, and
14 after discussing with you at a vestry meeting on the 15th, we
15 decided that we wanted to enter into the litigation with the
16 Diocese on looking for a declaratory judgment, and we did
17 that primarily because we thought there were issues with
18 property that were going to need to be clarified and so we
19 chose to do that.

20 Q. Had anybody threatened to take your property?

21 A. Oh, no, sir.

22 Q. You just wanted to find out whether, in fact, you owned
23 the property?

24 A. Right. We thought we owned it, but we wanted
25 clarification.

- 1 A. We did.
- 2 Q. For a number of years?
- 3 A. For as long as I can remember.
- 4 Q. Did you change insurance after January of 2013?
- 5 A. We did after January of 2013.
- 6 Q. And did you participate in the national church Pension
- 7 Fund on behalf of your rectors?
- 8 A. We did.
- 9 Q. Do you do that now?
- 10 A. We participate in a different pension fund on behalf of
- 11 our rector.
- 12 Q. While you were with Church Insurance Company did you
- 13 have any claims?
- 14 A. We did. I can't remember the nature of all of them. We
- 15 had hail damage at one time, that kind of thing.
- 16 Q. And you paid your premiums?
- 17 A. Yes, we did.
- 18 Q. Do you know how many times you served as a delegate to
- 19 the annual convention?
- 20 A. No, sir, I don't, but a good number.
- 21 Q. Have you ever served as a delegate to the general
- 22 convention?
- 23 A. No.
- 24 Q. Okay.
- 25 A. No, sir.

1 MR. TISDALE: Just give us 30 seconds.

2 MR. BEERS: Not from the church, Your Honor.

3 MR. TISDALE: I don't think there are, but we're just
4 looking at them now.

5 THE COURT: All right.

6 MR. TISDALE: We don't have an objection.

7 (Plaintiff's Exhibits SJJI-1 through SJJI-12 admitted
8 into evidence.)

9 DIRECT EXAMINATION BY MR. EVANS:

10 Q. Please state your full name.

11 A. Arthur Mack Jenkins.

12 Q. And where do you live?

13 A. I live at 1476 Harborsun Drive, James Island, South
14 Carolina.

15 Q. And how long have you lived there?

16 A. 15 years.

17 Q. Do you have an association with St. James Church, James
18 Island, South Carolina?

19 A. I do.

20 Q. And how is that?

21 A. I'm the rector, senior pastor of St. James.

22 Q. And how long have you been in that position, Reverend
23 Jenkins?

24 A. 15 years.

25 Q. And, to your knowledge, when was St. James incorporated?

- 1 A. St. James was incorporated in 1832.
- 2 Q. Prior to that 1832 incorporation, were worship services
3 being conducted on James Island?
- 4 A. Yes, they were, since the early 1700s.
- 5 Q. After the 1832 incorporation did St. James later
6 incorporate again?
- 7 A. They did. In 1906 I believe it was.
- 8 Q. Is that reflected on St. James Exhibit 2?
- 9 A. Yes, it is.
- 10 Q. I believe the date says 1903.
- 11 A. 1903, I see that, yes.
- 12 Q. And I want to ask you if this is correct, Reverend
13 Jenkins. On the certificate of incorporation for St. James
14 from 1903 it says that the purpose of the corporation is for
15 the conduct of church services and worship according to the
16 rules of the Protestant Episcopal Church in the Diocese of
17 South Carolina?
- 18 A. That's correct.
- 19 Q. And today is St. James Church still in the Protestant
20 Episcopal Church of the Diocese of South Carolina?
- 21 A. It is.
- 22 Q. Where is the actual location of St. James Church?
- 23 A. The church campus is at 1872 Camp Road on James Island.
- 24 Q. Can you tell us generally what real property is owned by
25 St. James?

1 A. St. James owns the campus there, which is something like
2 17 or 18 acres, and then we have a church rectory, and then
3 there's a residential building lot, empty lot, in Belle Terre
4 residence, Belle Terre Subdivision. B-E-L-L-E-T-E-R-R-E, I
5 think, something like that.

6 Q. Are the deeds for the rectory and that vacant lot
7 Exhibits 3 and 4 of the St. James exhibits?

8 A. Yes, they are.

9 Q. And what buildings are actually located on the St. James
10 campus?

11 A. Well, there are three main buildings. One is the parish
12 house, then there is the federal church, the historic church,
13 and then there's a new ministry center that's been built in
14 the last ten years. Behind the parish house there is a day
15 care center, day care building.

16 Q. So is there a school located there at St. James?

17 A. St. James Christian Day School, which is for infants up
18 to three years old.

19 Q. Thank you. And Exhibit 1, is that a deed for the church
20 campus property that St. James originally acquired?

21 A. Yes. This is a quitclaim deed given by St. Andrew's on
22 Highway 61, St. Andrew's Parish for St. James. St. James
23 began as a chapel of ease from St. Andrew's Parish.

24 Q. And does that deed, Exhibit 1, reflect that St. Andrew's
25 originally deeded the church property to St. James in 1831?

- 1 A. 1886.
- 2 Q. Well, that's the quitclaim deed.
- 3 A. The quitclaim deed, that's right, yes. It does, in
- 4 1831, yes. I'm sorry.
- 5 Q. And does St. James today currently hold legal title to
- 6 the church campus property?
- 7 A. Yes, it does.
- 8 Q. What is Exhibit 12?
- 9 A. Exhibit 12 is a deed given to the St. James Land Trust,
- 10 which deeds all of the property to the St. James Land Trust
- 11 on behalf of the church.
- 12 Q. And in that deed did St. James Church, the corporation,
- 13 deed the campus property to the St. James Land Trust?
- 14 A. Yes, they did.
- 15 Q. And that's reflected on Exhibit 12?
- 16 A. Exhibit 12, yes.
- 17 Q. Now, what about this property across the street from the
- 18 church; did St. James used to own that property?
- 19 A. St. James did.
- 20 Q. What happened to that property?
- 21 A. In the early '80s St. James gave as a gift to Bishop
- 22 Gadsden Retirement Community the 50 acres located there that
- 23 were used to secure the bond, issue the loan and then
- 24 eventually to build the retirement community there.
- 25 Q. So are you saying that St. James originally owned 50

1 acres of land across the street from the current church and
2 in the early 1980s gave that land for the construction of the
3 Bishop Gadsden Retirement Community?

4 A. Yes, they did.

5 Q. Was anyone else's name on that deed where St. James gave
6 that 50 acres for Bishop Gadsden other than St. James?

7 A. No.

8 Q. Does a person have to be a member of any particular
9 faith to reside at the Bishop Gadsden Retirement Community?

10 A. No, they don't.

11 Q. At some point did St. James Church receive quitclaim
12 deeds to its church property from Bishop Lawrence and the
13 trustees of the Diocese?

14 A. Yes, we did.

15 Q. And are those quitclaim deeds reflected in St. James
16 Exhibits 10 and 11?

17 A. Yes, they are.

18 Q. Can you take a look, Reverend Jenkins, at Exhibit 7,
19 please?

20 A. Certainly. Okay.

21 Q. What is Exhibit 7?

22 A. Exhibit 7 are the bylaws of St. James Church as adopted
23 on January the 20th, 2013.

24 Q. Are those the current bylaws for St. James Church?

25 A. They are.

1 Q. And are they in any way relevant to this litigation that
2 we're here today about?

3 A. No, they're not. They're administrative for the vestry.

4 Q. Those are administrative provisions for the operation of
5 the vestry?

6 A. And the ministry, yes.

7 Q. Now, please take a look at Exhibit 8.

8 A. Mm-hmm.

9 Q. What is Exhibit 8?

10 A. Exhibit 8 is the constitution of the parish of St.
11 James, James Island, as it was amended at that same meeting
12 January the 20th, 2013.

13 Q. Is that the current constitution for St. James Church?

14 A. Yes, it is.

15 Q. Now, prior to these amendments of the constitution and
16 bylaws as shown on these exhibits dated January 20th, 2013,
17 did the vestry at St. James discuss proposed amendments to
18 these documents?

19 A. Yes, they did.

20 Q. Do you attend vestry meetings at St. James?

21 A. I certainly do.

22 Q. And do you recall what the vestry vote was on amending
23 the constitution and bylaws of St. James?

24 A. You mean was it -- as far as being unanimous, it was
25 unanimous votes twice, yes.

1 Q. And prior to that vestry meeting, had notice been given
2 to the vestry of that meeting?

3 A. They were regularly scheduled meetings, yes.

4 Q. And do the minutes of that vestry meeting on January
5 15th, 2013 reflect what occurred at that meeting?

6 A. Yes, they do.

7 Q. And are those minutes as set forth on St. James Exhibit
8 6?

9 A. They are.

10 Q. And as a result of this unanimous vote by the vestry to
11 amend its bylaws and constitution, were these matters made
12 part of the agenda for congregational meeting at St. James?

13 A. Yes, a regularly scheduled congregational meeting.

14 Q. And do you recall approximately when that congregational
15 meeting was?

16 A. It was held on January the 21st of 2013.

17 Q. And who actually conducted that January 2013
18 congregational meeting?

19 A. I did.

20 Q. And how were the congregants of St. James notified about
21 that congregational meeting?

22 A. Well, first it was a regularly scheduled meeting, but
23 then in December, after the vestry meeting of December the
24 5th or whenever that was, I announced it from the church,
25 from the pulpit, announced it at every service for the next

1 Sunday, and then it was also published in our monthly
2 newsletter beginning the 1st of January and then in other
3 means that we have, electronic means.

4 Q. What other electronic means does St. James utilize?

5 A. Well, we have a news -- an email blast I believe it's
6 called and Facebook.

7 Q. Looking at St. James Exhibit 5, what is that document?

8 A. That's the minutes of the December the 6th vestry
9 meeting.

10 Q. And what was discussed at that vestry meeting of St.
11 James on December 6, 2012?

12 A. There we unanimously passed two motions. One was to
13 join in with the diocese to ask for a declaratory judgment
14 about our ownership of our property and also to align ourself
15 with Bishop Lawrence and the Diocese of South Carolina in
16 that request for declaratory judgment.

17 Q. So St. James voted to be part of this declaratory
18 judgment action?

19 A. Yes, they did.

20 Q. And going back to the congregational meeting that next
21 month on January 20th, 2013 you said you actually conducted
22 the meeting?

23 A. Yes, I did.

24 Q. And in your opinion was there a full discussion of the
25 proposed constitutional amendments at that meeting?

1 A. Yes, there were, and there were copies presented and
2 available before the meeting and at the meeting.

3 Q. And are the minutes of that meeting as set forth on St.
4 James Exhibit 9?

5 A. Yes, they are.

6 Q. And what was the actual vote of the congregation at the
7 congregational meeting of St. James on January 20th, 2013?

8 A. It was unanimous.

9 Q. And how many votes were in favor of the amendments?

10 A. There were 100 plus people present at the meeting.

11 Q. So not a single vote opposed?

12 A. There was not.

13 Q. Now, do Exhibits 7 and 8 reflect the actual amendments
14 to the constitution and bylaws of St. James that were voted
15 on?

16 A. Yes, they do.

17 Q. By both the vestry and the congregation?

18 A. Yes, they do.

19 Q. And, finally, Reverend Jenkins, for what reason did St.
20 James Church James Island take these steps in amending their
21 corporate documents including the bylaws and constitution?

22 A. To protect and clarify the ownership of our property.

23 MR. EVANS: Thank you, Reverend Jenkins. Please answer
24 any questions that defendants have.

25 THE COURT: All right. Is there any question from

1 understand the concern and I think that clarification is
2 appropriate.

3 MR. TISDALE: Your Honor, we're not stipulating to the
4 truth or falsity of anything, but as Mr. Runyan I think said,
5 we are stipulating that if this person was on the witness
6 stand, this is what that witness would say that is contained
7 in this stipulation.

8 THE COURT: Absolutely got it. Absolutely.

9 MR. TISDALE: That is the core of what we agreed to.

10 THE COURT: Very well. Now, where are the stipulations?

11 MR. RUNYAN: Your Honor, we were going to offer them to
12 the extent there would be any testimony as we progress with
13 the remaining parishes.

14 THE COURT: Fantastic. That way I can stay organized.
15 Good. Now I'll hush and listen.

16 MR. CAMPBELL: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. CAMPBELL: For the record, Pierce Campbell for the
19 Church of the Holy Cross in Stateburg, South Carolina.

20 Call Mr. Lewis Jackson to the stand.

21 (Plaintiff's Exhibits HCS-1 through HCS-16 premarked for
22 identification.)

23 JOHN LEWIS JACKSON, JR.,
24 being first duly sworn, testified as follows:

25 THE COURT: All right. Your witness.

1 MR. CAMPBELL: Thank you, Your Honor. Just to clarify
2 on the record, I believe we are submitting without objection
3 Exhibits HCS 1 through 15, which were -- I provided to
4 opposing counsel last week and I don't believe they have any
5 objections to. And then I've also marked Holy Cross
6 Stateburg's stipulated facts with the supporting exhibits,
7 some of which are duplicative, but not all, as one document
8 HCS 16. So I would have 16 marked exhibits, including the
9 stipulated facts.

10 THE COURT: Very well.

11 Is that correct?

12 MR. BEERS: I don't know if it's correct or not, but we
13 have no objection.

14 MR. CAMPBELL: Makes me nervous being the first one
15 under this new system to say it's not correct.

16 THE COURT: You did really good. They have no objection
17 to what you have represented to the Court, they have no
18 objection to the admissibility of your exhibits --

19 MR. CAMPBELL: Thank you, Your Honor.

20 THE COURT: -- under the stipulation.

21 And it is HCS, really for my purposes as I review the
22 record, 1 through 15 are exhibits, 16 are the stipulated
23 facts.

24 MR. CAMPBELL: With supporting exhibits all clipped as
25 one document.

1 THE COURT: Thank you.

2 (Plaintiff's Exhibits HCS-1 through HCS-16 admitted into
3 evidence.)

4 MR. CAMPBELL: Thank you, Your Honor. May I proceed?

5 THE COURT: You may.

6 DIRECT EXAMINATION BY MR. CAMPBELL:

7 Q. Mr. Jackson, state your name again, please.

8 A. John Lewis Jackson, Jr.

9 Q. Where do you live?

10 A. I live in Stateburg community, Sumter County.

11 Q. How old are you, if you don't mind me asking?

12 A. I'm 63.

13 Q. And are you currently employed?

14 A. I am not.

15 Q. Are you retired or out of work?

16 A. I am retired.

17 Q. And what did you retire from?

18 A. From the United States Department of Agriculture.

19 Q. How long did you work for them?

20 A. Roughly 30 years.

21 Q. And are you a member of a parish church?

22 A. I am.

23 Q. What parish?

24 A. The Church of the Holy Cross.

25 Q. And how long have you been a member there?

1 A. Since about '98.

2 Q. And is that parish located in Stateburg?

3 A. Yes, it is.

4 Q. Where is Stateburg?

5 A. Stateburg is west of Shaw Air Force Base and just maybe
6 a mile north of the intersection of Highway 378 and 261.

7 Q. In Sumter County?

8 A. Correct.

9 Q. And while you've been a member at Holy Cross, have you
10 held any positions of authority?

11 A. I have.

12 Q. What positions?

13 A. I've been a vestry member, a junior warden, and senior
14 warden.

15 Q. And that parish, how many members does it have?

16 A. It's got about 98 to the best of my recollection.

17 Q. Thank you. And that parish is incorporated; right?

18 A. Yes, it is.

19 Q. And does the parish have a board of directors?

20 A. Yes, we do.

21 Q. Who is the board of directors?

22 A. The wardens and vestry.

23 Q. And does the parish have any officers?

24 A. Yes, we do.

25 Q. Who are the officers?

1 A. Senior warden, junior warden, secretary, and treasurer.

2 Q. In your position of leadership in that church have you
3 learned about the history and corporate structure of the
4 parish?

5 A. Yes, I have.

6 Q. Have you reviewed the document that's been marked as HCS
7 16, stipulated facts?

8 A. Yes, I have.

9 Q. And are you personally familiar with those statements?

10 A. Yes, I am.

11 Q. Do you have personal knowledge of everything stated in
12 those stipulated facts?

13 A. Yes, I do.

14 Q. And if asked to testify today, would you testify as to
15 all of the facts that are included in that document?

16 A. Yes, I would.

17 Q. When was your parish incorporated?

18 A. 1788.

19 Q. And was it chartered by the legislature?

20 A. It was.

21 Q. Since that original legislative charter, have any
22 changes to the corporate form occurred?

23 A. Yes. We've had one change.

24 Q. What was that?

25 A. We changed the name from the Episcopal Church of

1 Claremont to the Church of the Holy Cross.

2 Q. When did that change occur?

3 A. That change occurred officially in 1882, if I remember
4 correctly.

5 Q. Is it the same entity, though, since 1788?

6 A. Yes.

7 Q. The only change was the name?

8 A. That is correct.

9 Q. Since 1788 has Holy Cross existed as a corporation?

10 A. Yes, we have.

11 Q. And has it carried out its religious purposes since that
12 time?

13 A. Yes, we have.

14 Q. We've submitted into evidence and stipulated to numerous
15 deeds, but there's one particular deed I want to ask you
16 about. Are you familiar with the original piece of property
17 that the parish received?

18 A. Yes.

19 Q. And was there an issue or a problem with that property
20 at one time?

21 A. Yes, there was.

22 Q. Could you explain it, please?

23 A. Yes, sir. Approximately 1788, 1787 or 1788, Thomas
24 Sumter donated 2 acres, more or less, to the church, to the
25 wardens and vestry, to construct a church on the property

1 that he owned. And then several years later Mr. Sumter sold
2 to a Mr. Brooks 30-some-odd acres, if I remember the acreage
3 correct, that included the 2 acres that he had given to the
4 church, the Episcopal Church of Claremont.

5 Catching that error, Mr. Brooks apparently was an honest
6 man and brought it to Sumter's attention, which then Thomas
7 Sumter deeded the property to the church, the original same
8 property. And Mr. Brooks in the same document relinquished
9 all claims and rights that he had to that 2 acres.

10 Q. And is that the document that's been marked as HCS 4?

11 A. Yes, it is.

12 Q. Does Holy Cross, the Church of the Holy Cross, have any
13 relationship with the national church?

14 A. No, we do not.

15 Q. And does Holy Cross have any relationship with the
16 Episcopal Church in South Carolina led by Bishop von
17 Rosenberg?

18 A. No, we do not.

19 Q. Have you ever had any relationship with the Episcopal
20 Church in South Carolina?

21 A. No, we have not.

22 Q. Are you a parish of the Episcopal Church in South
23 Carolina?

24 A. No, we're not.

25 Q. Have you ever sent delegates to any meetings or

1 conventions of the Episcopal Church in South Carolina?

2 A. No, we have not.

3 Q. And have you ever authorized the Episcopal Church in
4 South Carolina to use your name, address, or other likeness
5 on their website or in any other materials?

6 A. No, we have not.

7 MR. CAMPBELL: I have no further questions, Your Honor.

8 If you would please answer any questions opposing
9 counsel may have.

10 THE COURT: Cross-examination.

11 MR. SMITH: Just trying to mix it up, Your Honor.

12 THE COURT: Great.

13 CROSS-EXAMINATION BY MR. SMITH:

14 Q. Mr. Jackson, thank you. How long have you been a member
15 of Holy Cross?

16 A. Since about 1998.

17 Q. Can you describe your role in the governance of the
18 church, if any? Have you had any role in the governance of
19 the church?

20 A. Yes. I've been junior warden and senior warden and
21 vestry member.

22 Q. Okay. Have you ever been a delegate at diocese
23 conventions?

24 A. Yes, I have.

25 Q. Have you ever been a delegate at a general convention of

1 Q. Okay. And when, Ms. Holmes, did the parish disassociate
2 from the Episcopal Church?

3 A. St. Jude's is not a member of the Episcopal Church so we
4 didn't disassociate.

5 Q. So you didn't do anything?

6 A. Right. We confirmed our commitment to the diocese.

7 Q. But not to the Episcopal Church?

8 A. Exactly.

9 MR. TISDALE: All right. Thank you.

10 Thank you, Your Honor.

11 THE COURT: Very well. Any redirect?

12 MR. PLATTE: No, Your Honor.

13 THE COURT: You may come down. Call your next witness,
14 please.

15 (Plaintiff's Exhibits GS-1 through GS-18 premarked for
16 identification.)

17 SAMUEL PORCHER GAILLARD, IV,
18 being first duly sworn, testified as follows:

19 THE COURT: State your full name for the record for us
20 again and spell your last name. It's a sound check.

21 THE WITNESS: Samuel Porcher Gaillard, IV,
22 G-A-I-L-L-A-R-D.

23 THE COURT: Thank you so much. Your witness.

24 MR. WALL: Judge, John Wall for the Church of the Good
25 Shepherd.

1 THE COURT: Thank you.

2 DIRECT EXAMINATION BY MR. WALL:

3 Q. Father Gaillard, where do you live?

4 A. Charleston, South Carolina.

5 Q. And what do you do for a living?

6 A. I'm the rector of the Church of the Good Shepherd.

7 Q. And how long have you been rector?

8 A. I've been rector for -- it will be eight years in
9 January.

10 Q. And what are your duties as the rector?

11 A. As the rector I'm the pastor and spiritual leader of the
12 church and I also act as a leader of the corporation in terms
13 of convening and running vestry and congregational meetings.

14 Q. And when you came to Good Shepherd, what year was that?

15 A. I came to Good Shepherd in August of 2006.

16 Q. And are part of your duties to maintain the records?

17 A. To make sure that they are maintained, yes.

18 Q. Are you familiar with the stipulations that I filed on
19 behalf of Good Shepherd in Exhibits 1 through 16?

20 A. I am.

21 Q. Do you agree with those?

22 A. I do.

23 Q. Stipulations and the documents.

24 A. I do.

25 MR. WALL: Your Honor, we would offer into the

1 stipulations by agreement in Exhibits 1 through 16 for the
2 Church of the Good Shepherd.

3 THE COURT: Any objection?

4 MR. TISDALE: None.

5 MS. KOSTEL: No objection.

6 THE COURT: Thank you. So Exhibits 1 through 16, I
7 think you said, are in evidence without objection --

8 MR. WALL: Yes, ma'am.

9 THE COURT: -- together with the stipulation.

10 (Plaintiff's Exhibits GS-1 through GS-16 admitted into
11 evidence.)

12 THE COURT: You may proceed.

13 MR. WALL: May I approach the bench and give you those
14 exhibits and stipulation?

15 THE COURT: That would be wonderful. Thank you very
16 much.

17 MR. WALL: Your Honor, I also have two more exhibits,
18 Exhibits 17 and 18, which were not with the stipulations that
19 have been produced in this litigation.

20 THE COURT: So we're now talking about Exhibits 17 and
21 18 or 16 and 17?

22 MR. WALL: Excuse me. 17 and 18.

23 THE COURT: Yes, 17 and 18. All right.

24 MR. WALL: And the witness has copies of those and they
25 also have copies at the end of the stipulation.

1 MS. ST. AMAND: That's correct.

2 THE COURT: And are you moving those into evidence?

3 MR. WALL: I'd like to introduce them first through the
4 witness.

5 THE COURT: All right. Very well. In other words,
6 they're not agreed to at this point.

7 MR. WALL: Unless they go ahead and agree to 17 and 18.

8 MR. TISDALE: We have no objection.

9 MS. KOSTEL: No objection.

10 THE COURT: Very well. All right. They're in evidence
11 without objection, 17 and 18.

12 MR. WALL: Thank you, Your Honor.

13 (Plaintiff's Exhibits GS-17 and GS-18 admitted into
14 evidence.)

15 Q. Father Gaillard, how many members do you have at Good
16 Shepherd?

17 A. About 350 members.

18 Q. And when was Good Shepherd originally incorporated?

19 A. It was founded in 1833 as St. Peter's Church on Logan
20 Street.

21 Q. Tell us a little bit about Good Shepherd and how many
22 churches it has been and merged with, if you would, please?

23 A. It's a long history of four different churches in three
24 different locations all ended up in -- on 1393 Miles Drive.

25 That building was built in 1972. 1985 St. Peter's by the Sea

1 closed and merged in. And in 2003 St. John's came over, it
2 closed and merged in. The church became the Episcopal Church
3 of St. Peter and St. John's, and then that name was changed
4 to be the Church of the Good Shepherd on January 1st or
5 became active on January 1st, 2007.

6 MR. WALL: Thank you.

7 Thank you, Your Honor. No further questions.

8 THE COURT: Very well. Cross-examination.

9 CROSS-EXAMINATION BY MR. TISDALE:

10 Q. Good morning.

11 A. Good morning.

12 Q. One of the deeds that we have -- and we're going to pull
13 something up to help us identify it in a minute -- from Good
14 Shepherd is located in Charlestowne Estates. Are you
15 familiar with that property?

16 A. Yes, sir.

17 Q. And what is that property used for?

18 A. It's used for the functions of the church.

19 Q. I mean, is that where the church is?

20 A. Yes, sir; 1393 Miles Drive.

21 Q. All right. And that's the church building --

22 A. Right.

23 Q. -- on this tract of land in Charlestowne Estates?

24 A. The church building and the surrounding property, yes.

25 Q. Right. That's what I mean.

1 I will see everyone at 2:00. Have a good lunch.

2 (Luncheon recess.)

3 THE COURT: All right. Mr. Runyan.

4 MR. RUNYAN: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MR. RUNYAN:

6 Q. Could you tell us one more time your name for the
7 record?

8 A. Ann Hester Willis.

9 Q. Where do you live?

10 A. In downtown Charleston.

11 Q. Do you have an occupation?

12 A. I do. My husband and I own a company that owns real
13 estate and we manage that real estate.

14 Q. Are you an attorney?

15 A. I am.

16 Q. Are you a member in good standing of the South Carolina
17 Bar?

18 A. I am.

19 Q. Are you active or inactive?

20 A. I'm an inactive member.

21 Q. Are you a member of a church in Charleston?

22 A. I am.

23 Q. Where are you a member?

24 A. The Protestant Episcopal Church.

25 Q. You can give us a shorthand version.

- 1 A. St. Michael's Church.
- 2 Q. How long have you been a member?
- 3 A. For 14 years.
- 4 Q. Approximately how many members does St. Michael's have?
- 5 A. We have about 1,460 active members. If you have total
- 6 active and inactive members, it's more like 1,850.
- 7 Q. Have you held any positions of leadership at St.
- 8 Michael's?
- 9 A. Yes, I have.
- 10 Q. Could you briefly tell us what those are?
- 11 A. I've been a member of the vestry, which is a three-year
- 12 term; I was junior warden, which is a two-year term; and I
- 13 was senior warden for two years.
- 14 Q. Ms. Willis, when was the first worship service in the
- 15 building that is now where it is located at the corner of
- 16 Meeting and Broad, I believe? When was the first worship
- 17 service?
- 18 A. The first worship service was held on February 1st,
- 19 1761.
- 20 Q. Is St. Michael's legislatively incorporated?
- 21 A. It is.
- 22 Q. In whom are the powers of the corporation legislatively
- 23 vested?
- 24 A. The vestry and church wardens.
- 25 Q. Do they sit in a civil capacity as well?

1 A. Yes, they do.

2 Q. What is that?

3 A. They are the board of directors. And the senior warden,
4 junior warden essentially act as chairman of the board and
5 vice chairman of the board.

6 Q. Has St. Michael's continuously carried out its religious
7 purposes since it was formed?

8 A. Yes, it has.

9 Q. Has St. Michael's ever been a member of the
10 unincorporated association known as the Protestant Episcopal
11 Church in the United States of America?

12 A. It has not.

13 Q. Did St. Michael's play any role in the formation of the
14 Diocese of South Carolina?

15 A. It did.

16 Q. Was it a signatory to the first constitution of the
17 diocese?

18 A. Yes, it was.

19 MR. RUNYAN: Would you put some pictures up, please?

20 Q. I've got a series of pictures I'm going to ask you
21 about. If we can go to the second picture. What is this a
22 picture of?

23 A. The front of St. Michael's Church.

24 Q. Next photograph. What is this?

25 A. That's the narthex of the St. Michael's Church, that's

1 Constitution?

2 A. He was a signer of the United States Constitution.

3 Q. And is this a picture of his grave on the grounds of St.
4 Michael's?

5 A. It is, in St. Michael's graveyard.

6 Q. Next picture. Who was Charles Cotesworth Pinckney?

7 A. He also was a signer of the US Constitution.

8 Q. Back up one, please. What is this a photograph of?

9 A. His gravestone, Charles Cotesworth Pinckney's
10 gravestone.

11 Q. Ms. Willis, in the exhibits that we'll mark in a moment
12 as Exhibit 17, with regard to that exhibit which contains
13 some service marks and applications, could you tell me who
14 signed the application for the St. Michael's service marks?

15 A. I did.

16 Q. In what capacity did you sign?

17 A. Senior warden.

18 Q. Have you ever been to the website of the defendant, the
19 Episcopal Church in South Carolina?

20 A. Yes, I have.

21 Q. When you went to that website, could you tell us if you
22 observed anything with respect to St. Michael's?

23 A. Yes, I did. I observed that St. Michael's Church was
24 listed on that website and represented as a member of the
25 Episcopal Church in South Carolina.

1 Q. Did the Episcopal Church in South Carolina have
2 permission to put that name on the website?

3 A. No, they did not.

4 Q. And did St. Michael's notify them to that effect?

5 A. Yes, they did.

6 Q. Is that document Exhibit 26 in the packet that you have?

7 A. It is.

8 MR. RUNYAN: Your Honor, at this time I'd move into
9 admission the documents that are subject to the stipulation
10 of counsel. It would be St. Michael's Exhibits SMI 1 through
11 SMI 26, and the stipulation itself would be SMI 27.

12 MR. TISDALE: No objection, Your Honor.

13 THE COURT: Very well.

14 MS. KOSTEL: No objection.

15 THE COURT: Very well.

16 (Plaintiff's Exhibits SMI-1 through SMI-27 admitted into
17 evidence.)

18 MR. RUNYAN: Thank you, Ms. Willis.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION BY MR. TISDALE:

21 Q. Ms. Willis, good afternoon.

22 A. Good afternoon.

23 Q. There are a number of, at least two, bishops of the
24 Episcopal Church who either have been rector of St. Michael's
25 or memorialized at St. Michael's, aren't there?

1 bylaws, were you?

2 A. I was not.

3 Q. So all you know is what you know today, what you believe
4 about the membership of the parish?

5 A. That's correct.

6 MS. KOSTEL: Thank you. Nothing further.

7 THE COURT: All right. Redirect?

8 MR. RUNYAN: No, Your Honor.

9 THE COURT: All right. You may come down.
10 Call your next witness, please.

11 MR. RUNYAN: I do have one request to admit to read at
12 this time, to publish.

13 THE COURT: All right.

14 MR. RUNYAN: This is a request for admissions from St.
15 Michael's and others to the Episcopal Church dated October 8,
16 2013. It's Request for Admissions No. 2: Parish churches
17 are not members of the Episcopal Church.

18 Answer: Admitted.

19 MR. MCKENZIE: Your Honor, Stephen McKenzie here for St.
20 Matthias Church, Summerton. We call David Thurlow to the
21 stand.

22 DAVID WILLIAM TACKABERRY THURLOW,
23 being first duly sworn, testified as follows:

24 THE COURT: All right. If you'd please state your name
25 again for our record and spell your last name.

1 Q. Tell us what your duties are at St. Matthias other than
2 the obvious.

3 A. Well, preaching and teaching and, as a small church,
4 photocopying 500 pages of exhibits for court cases. It's a
5 little bit of everything. If a light bulb goes out in the
6 church on a Sunday morning, I'll take care of that. And
7 really it's a small town, do what it takes to get the job
8 done.

9 Q. Are you familiar with other churches in the area?

10 A. Yes, sir, I am.

11 Q. Are you familiar with other churches in the area that
12 use the word "Episcopal" in their name?

13 A. There's approximately 50 in our county, in the area,
14 that use the word "Episcopal" in the name as well.

15 Q. And that would be churches that are not affiliated with
16 yourself?

17 A. That's correct, yes, sir.

18 Q. Are you familiar -- as you said, you copied most of
19 these exhibits. I think you copied all the exhibits; is that
20 correct?

21 A. Pretty much, yes, sir.

22 Q. And all the discovery, you did all that also?

23 A. Yes, sir. We have a part-time administrator who helped.

24 Q. So you're very familiar with the stipulation of facts
25 and the -- Exhibits 1 through 15 and stipulation of facts,

1 Q. So did you want to make clear that you had disassociated
2 from TEC? Is that why you changed the signs?

3 A. The consensus was to let the community know exactly
4 which side of the fence we were on so they knew which church
5 that would be more to their liking.

6 Q. Okay. Now, can you explain again on the name, what does
7 your current website -- does it use the word "Episcopal"?

8 A. The website does not, sir.

9 Q. It does not?

10 A. Does not.

11 Q. Was there a website -- is that a change, a recent
12 change, to remove Episcopal from your website?

13 A. I'm 60 years old, so to be honest with you, I don't surf
14 the web so I have no idea what it said before.

15 Q. I believe you testified that you joined the church in
16 2004; correct?

17 A. It was my mother's parish, she was unable to drive
18 herself, so I was a member of St. Thomas North Charleston and
19 on the vestry there and so I took a leave of absence from St.
20 Thomas and would drive my mother to church, hence attending
21 her church. And over a period of years I was assimilated,
22 you might say, into that church and eventually became a
23 member.

24 Q. Okay. Did you review some of the church's history in
25 anticipation of testifying in this case?

1 signs it puts out along the road and on the building, if any?

2 A. Either Old St. Andrew's, which is our colloquialism,
3 people know us as Old St. Andrew's, or St. Andrew's Parish
4 Church.

5 MR. TISDALE: I don't think I have any other questions.
6 Thank you very much.

7 THE WITNESS: Thank you.

8 THE COURT: All right.

9 Redirect?

10 MR. PLATTE: No, Your Honor..

11 THE COURT: Very well.

12 You may come down.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness, please.

15 (Plaintiff's Exhibits SPH-1 through SPH-43 premarked for
16 identification.)

17 MR. PHILLIPS: Your Honor, I'm Mark Phillips from Nelson
18 Mullins on behalf of St. Philip's Church, and the witness we
19 call is Mr. Myron Harrington.

20 MYRON CHARLES HARRINGTON, JR.,
21 being first duly sworn, testified as follows:

22 THE COURT: I'm going to ask you if you would please
23 just state your full name for the record and spell your last
24 name. We use this as a sound check.

25 THE WITNESS: Myron Charles Harrington, Jr. Harrington

1 is H-A-R-R-I-N-G-T-O-N.

2 THE COURT: Thank you so much.

3 Mr. Phillips, your witness.

4 DIRECT EXAMINATION BY MR. PHILLIPS:

5 Q. Mr. Harrington, you spoke beautifully just now. For the
6 sake of Ms. Mott and Judge Goodstein, please speak into the
7 microphone and a little deliberately. Okay?

8 A. Got it.

9 Q. We will shorten the examination. If you do that, we'll
10 do that, okay.

11 MR. PHILLIPS: Your Honor, housekeeping-wise --

12 THE COURT: Yes.

13 MR. PHILLIPS -- I would like to tender into evidence St.
14 Philip's as SPH Exhibits 1 through 42, which I understand
15 there are no objections to, and also Exhibit SPH 43, which is
16 a binder of stipulations that are tendered by St. Philip's
17 Church.

18 MR. TISDALE: We don't have any objection, except there
19 are two of them that are illegible, 11 and 40, if we can
20 address that in the best way.

21 MR. PHILLIPS: All right, sir.

22 Your Honor, if there are any copies available of 11 and
23 40 -- and the 11 I've got that you're going to have in about
24 a second looks legible to me.

25 MR. TISDALE: Well, in that case, I mean, we'll just

1 agree for whatever they're worth, and if you can get better
2 copies, fine; if you can't, we've just got what we've got.

3 MR. PHILLIPS: Your Honor, if you please, I'll bring you
4 a copy as well.

5 THE COURT: Very well. And for the national church?

6 MS. KOSTEL: Same position.

7 THE COURT: Thank you.

8 MR. TISDALE: We agree that it's worth what it's worth
9 and accept it on that basis.

10 THE COURT: Thank you, Mr. Tisdale.

11 MR. PHILLIPS: Your Honor, again I tender then into
12 evidence as discussed SPH Exhibits 1 through 42, which are in
13 a binder that you have, and SPH Exhibit 43, which is in a
14 separate binder which is the set of stipulations.

15 THE COURT: And they are admitted.

16 MR. PHILLIPS: Thank you.

17 THE COURT: Thank you.

18 (Plaintiff's Exhibits SPH-1 through SPH-43 admitted into
19 evidence.)

20 Q. Mr. Harrington, would you tell Judge Goodstein, please,
21 who you are, where you live, and how you were educated and
22 then we'll get into the rest of it.

23 A. Myron Harrington. I'm a resident of downtown Charleston
24 and I'm a graduate of The Citadel.

25 Q. What year did you finish The Citadel?

1 A. 1960.

2 Q. And do you have family?

3 A. I am married to Ann Hurst Harrington. I have two adult
4 children, Ann Hunley, who resides with us here in Charleston;
5 and our son Mike, who resides in Charlotte with his wife and
6 six grandchildren.

7 Q. Very good. And of the Harrington family that lives in
8 Charleston, where do you all go to church?

9 A. We are members of St. Philip's Church.

10 Q. And have you been going there for quite a while?

11 A. We've been going there for ten years.

12 Q. All right, sir. And tell us briefly, please, the Court,
13 about your two careers, where you've spent your working life.

14 A. I spent 30 years in the United States Marine Corps and
15 15 years as headmaster of a specialized school for children
16 who have learning disabilities, Trident Academy in Mount
17 Pleasant, South Carolina.

18 Q. And just for the Court's interest and for mine, in the
19 Marine Corps did you ever serve in combat?

20 A. I did.

21 Q. Where?

22 A. In Vietnam and Beirut.

23 Q. All right, sir. And did you receive any special
24 commendations from the United States Marine Corps for service
25 in Vietnam?

1 A. I was recognized for what my Marines did.

2 Q. What your Marines did, exactly. And what recognition
3 was that?

4 A. I'm a recipient of the Navy Cross and the Silver Star.

5 Q. All right, sir. Now, at St. Philip's Church are you
6 aware of what body forms that entity's board of directors?

7 A. Yes. It is the vestry.

8 Q. Have you ever served on the board of that entity?

9 A. I have been a member of the vestry.

10 Q. And have you held any vice chairmanship or chairmanship
11 positions on the vestry of St. Philip's Church?

12 A. Junior warden and senior warden.

13 Q. And have you gotten yourself familiar generally with the
14 history of St. Philip's Church?

15 A. Yes, I have.

16 Q. To the extent that you needed to for helping me in this
17 lawsuit?

18 A. Yes, I have.

19 Q. And specifically Exhibits SPH 1 through 42, through SPH
20 42, that are in a binder --

21 A. Yes, sir.

22 Q. -- and SPH 43, are you specifically familiar with those
23 exhibits and those tendered stipulations?

24 A. I am.

25 Q. Do you mind if we cut the exam a little short and not go

1 through every single one of those items?

2 A. I'd be delighted.

3 Q. Mr. Harrington, what I'd like to do is cover less than a
4 handful of dates from the 18th and 17th centuries and then
5 less than a handful of dates for the 21st century.

6 When was St. Philip's Church formed?

7 A. In 1680.

8 Q. And when was its first building for worship constructed?

9 A. 1681-82 timeframe.

10 Q. And when St. Philip's moved from its original location,
11 when was it that it built on its present location?

12 A. Well, in 1723 it moved over to the corner of Meeting
13 Street and Broad Street.

14 Q. Moved from the corner?

15 A. Moved from that corner, excuse me, moved from that
16 corner to its present location at 142 Church Street.

17 Q. All right. Do you know of any parish in the Diocese of
18 South Carolina's churches that are older than St. Philip's
19 which, as you said, was formed in 1680?

20 A. No, I don't.

21 Q. Okay. Has St. Philip's Church continually served the
22 spiritual and religious needs of its parishioners in the
23 Charleston community since that time of 1680?

24 A. It has.

25 Q. Is St. Philip's Church on which you served the board and

1 chaired the board incorporated?

2 A. Yes, it is.

3 Q. When was it incorporated?

4 A. 1785.

5 Q. All right. Who was it or what entity was it that
6 incorporated St. Philip's Church?

7 A. It was the General Assembly of the legislature.

8 Q. Are you familiar with this name, the Protestant
9 Episcopal Church of the Parish of St. Philip in Charleston in
10 the State of South Carolina?

11 A. Yes. That was the name that the General Assembly
12 provided us when we were incorporated.

13 Q. And that was 1785?

14 A. 1785.

15 Q. And normally you and I and our congregation refer to the
16 church how?

17 A. St. Philip's Church.

18 Q. All right. Was the corporation which I think
19 incorporated St. Philip's Church, what we know as St.
20 Philip's Church and St. Michael's Church, was there another
21 incorporation by the General Assembly?

22 A. In 1791 the vestries of St. Michael's and St. Philip's
23 petitioned the General Assembly to split the two parishes so
24 there would be a parish of St. Michael's and St. Philip's.

25 Q. So the incorporation was originally what year?

1 A. 1785.

2 Q. And then the separate corporations were formed --

3 A. 1791.

4 Q. All right. And was the original incorporation of St.
5 Philip's accomplished before what we today refer to as the
6 national church?

7 A. That is correct. St. Philip's predates, of course, the
8 Diocese of South Carolina as well as the national church and
9 had a part in the formulation of the Diocese as well as the
10 national church.

11 Q. Did St. Philip's name, which includes the word
12 "Episcopal," predate either the Diocese that we have talked
13 about today or the national church?

14 A. Yes, it did.

15 Q. And is the official state-recognized name of St.
16 Philip's Church still the longer name, the Protestant
17 Episcopal Church of the Parish of St. Philip in Charleston in
18 the State of South Carolina?

19 A. It is.

20 Q. All right, sir. Tell us how many members of the church
21 there generally are today.

22 A. We have approximately 2,500 members.

23 Q. And over roughly 300 years, I think you said before 1730
24 and through the 20th century, has St. Philip's Church, as
25 we've referred to it, accumulated real property?

1 A. We have accumulated what I would call a city -- square
2 city block in downtown historic Charleston.

3 Q. And specifically do you know about how many deeds the
4 church right now holds?

5 A. I believe we have 13 deeds. We've got the church, we
6 have a chapel, we have a tea garden --

7 Q. I'll tell you what, slow it down on this part just so
8 Judge Goodstein will understand what it is that the church
9 owns downtown. The church is the one with the big steeple
10 that's brown, not white?

11 A. We are the church with the big steeple. We have a
12 historic chapel.

13 Q. Our steeple's the brown one, St. Michael's has the white
14 one; is that right?

15 A. That is correct.

16 Q. What else has St. Philip's got downtown in roughly a
17 square block?

18 A. We have two cemeteries, an east side and a west side, we
19 have a parking lot, we have a parish hall and Sunday school
20 building.

21 Q. Are those separate buildings?

22 A. They are separate buildings.

23 Q. All right, sir. Keep going.

24 A. Then we have a ministries hall, which is also our
25 administrative building. Behind it is what is called the tea

1 garden, which is another building.

2 Q. What's the tea garden, real quickly?

3 A. It is a meeting place where folks have Bible study and
4 you could go there and have meditation if you so desired in
5 the little garden there.

6 Q. Is that an old building, by the way?

7 A. It is an old building as well.

8 Q. Now continue.

9 A. And we also have a property over on State Street that
10 was the old Charleston Day School building which we purchased
11 in 1996.

12 Q. Is there a preschool operated there now?

13 A. Not -- no, sir.

14 Q. All right. And is the Charleston Day School property
15 that belongs now to St. Philip's Church adjacent to its
16 campus?

17 A. It is.

18 Q. What other worship building exists on the campus within
19 that square block besides the big sanctuary?

20 A. I mentioned the chapel.

21 Q. Chapel?

22 A. Yes, sir.

23 Q. That's a separate smaller church; is that right?

24 A. Right.

25 Q. Does it have any townhouse or residential property?

1 A. We have a rectory down on Church Street, I believe it's
2 92 Church Street.

3 Q. And who does the rectory house?

4 A. The rector, Haden McCormick.

5 Q. So Haden McCormick lives at the rectory?

6 A. Correct.

7 Q. Just in anticipation of a question, do you know what, at
8 least for purposes of property and casualty insurance and a
9 conservative balance sheet, the rough value of the real
10 property and what other items exist at St. Philip's is?

11 A. I do not have any idea what the real value of the total
12 of our property is. I do know, however, that we have it
13 insured for \$23.5 million.

14 Q. All right, sir. Let's move to the modern era, if you
15 please. In the last -- in the 21st century has St. Philip's
16 passed legislation and committed acts that bear on this
17 lawsuit and specifically were intended to protect St.
18 Philip's?

19 A. We have.

20 Q. All right. And were all of these things done within the
21 rights of St. Philip's as you understand?

22 A. They were all done in accordance with our bylaws.

23 Q. All right, sir. Now, tell us, tell Judge Goodstein,
24 please, what it was the church did in May of 2011 and how it
25 was that that was accomplished. And I mean by notices, by

1 votes, let's just give her a little bit of an idea of what
2 St. Philip's did in May of 2011.

3 A. In May of 2011 we had two congregational meetings for
4 the reading of a new and revised bylaws. Our previous bylaws
5 had not been updated in a major way in a considerable period
6 of time, about 40 years, and they needed major revision. So
7 we made major revisions to our bylaws. We notified the
8 parish by mail, first-class mail, as well as through
9 electronic means through our Inspire, which is also mailed
10 out, and from the pulpit of the meeting. We had two readings
11 in accordance with the bylaws before they were approved by
12 the congregation unanimously.

13 Q. All right, sir. You and I know what the Inspire is, but
14 Judge Goodstein and the rest of these folks don't what the
15 Inspire is.

16 A. The Inspire is the weekly bulletin that is sent out, a
17 notice to all parishioners of activities that are going on at
18 the church.

19 Q. Who receives the Inspire?

20 A. All members that we have the address for on our records.

21 Q. So at least two sets of written notice besides pulpit
22 notice, announcement notice, electronic notice, and
23 first-class mail notice was sent?

24 A. That is correct.

25 Q. And that was to amend bylaws?

1 A. Yes, sir.

2 Q. Who was it that investigated the changes needed? Did
3 you say 40 or 50 years' worth of old bylaws?

4 A. Well, the vestry initiated the change when they realized
5 how outdated the bylaws were. A committee was formed that
6 consisted of vestry members, the parish administrator, and
7 our chancellor, who reviewed the bylaws, presented them to
8 the vestry for approval. The vestry then, of course,
9 approved them and sent them to the congregation for the two
10 readings prior to their approval.

11 Q. And the congregation approved and you got new bylaws;
12 correct?

13 A. That is correct.

14 Q. So they're modernized, as you said; is that right?

15 A. That is correct.

16 Q. What was the other effect of the new bylaws?

17 A. We removed all reference to the national Episcopal
18 Church.

19 Q. And this was all finalized in May of 2011; correct?

20 A. That is correct.

21 Q. Were there ever any documents, to your knowledge, where
22 St. Philip's Church specifically acceded to the constitution
23 and canons of the national church?

24 A. That was not in the previous bylaws. The only reference
25 to the national church in the previous bylaws were that we

1 would follow the rites and ceremonies of the Episcopal
2 Church.

3 Q. And rite meaning R-I-T-E?

4 A. Right, R-I-T-E.

5 Q. What does that mean?

6 A. That is the liturgy.

7 Q. The form of worship?

8 A. Right. And that was removed from the new bylaws.

9 Q. Now, the second thing that I want to discuss I believe
10 was initiated or formally initiated in October of 2012, about
11 a year and a half later. Do you know what event that was,
12 sir?

13 A. That was a restatement of our articles of incorporation
14 that went back to 1987.

15 Q. And then before that?

16 A. And then 1785 and '91.

17 Q. Excuse me. Let me interrupt you. 1785 and 1791?

18 A. '91.

19 Q. Got it.

20 A. Correct.

21 Q. So they were restated or clarified in what year?

22 A. 1987.

23 Q. And then?

24 A. And we did that to go on record with the Secretary of
25 State's office that we were in fact an incorporated body

1 because, of course, the Secretary of State's office did not
2 exist in 1785 and 1791.

3 Q. All right. And then what was accomplished in October of
4 2012?

5 A. The restatement removed all reference to the national
6 Episcopal Church.

7 Q. All right. Now, as to that act that was filed, and I
8 really would like to call quick attention to it, Exhibit 31,
9 Mr. Harrington, what was it that the church did to make the
10 congregation aware of this restatement and what was it that
11 the church did to get buy in of this restatement?

12 A. We again, as we did with the bylaws, submitted letters
13 to the parish explaining what we were doing. It was
14 announced from the pulpit and I believe it was also in the
15 Inspire as well, the weekly bulletin, to make sure that we
16 were fully transparent to the congregation of what we were
17 doing.

18 Q. Then did the congregation meet, get an explanation, and
19 give a vote after the --

20 A. That is correct. We had a congregational meeting and
21 our chancellor briefed the congregation fully and
22 comprehensively on the document. And the vote was something
23 like 238 for, two against, and four abstained.

24 Q. All right. Very good. By way of backup review, we were
25 talking about May 2011 and it was actually Exhibit SPH 25

1 that I meant to show you just briefly. And is this SPH 25,
2 which is on your screen, Mr. Harrington, the set of amended
3 bylaws that you referred to?

4 A. They are indeed.

5 Q. Okay. And the ritual is the section that specifically
6 refers to the types of worship for the church; is that right?

7 A. That is correct.

8 Q. One other item I think that we've alluded to occurred,
9 Mr. Harrington, in November of 2012; is that correct?

10 A. That is correct.

11 Q. All right. Tell us what the church did in November of
12 2012. And I'll call your attention to Exhibit SPH 28, which
13 is already in evidence.

14 A. At that time the vestry took action to create a
15 resolution regarding the diocesan relationship, which
16 basically declared that we're no longer in a relationship
17 with TEC, nor are we in union with TEC, but that St. Philip's
18 Church remains affiliated with the Protestant Episcopal
19 Church in the Diocese of South Carolina, her locally elected
20 standing committee, and her rightful bishop, the Right
21 Reverend Mark J. Lawrence. By stating this we declare that
22 we fully support the Diocese of South Carolina disaffiliation
23 from TEC and that as God has sent Bishop Lawrence to be our
24 Bishop, only he has the authority to declare otherwise.

25 Q. All right. This Exhibit SPH 28, this was memorialized

1 in an action taken by what entity?

2 A. This was approved in November by the vestry and was
3 taken to the congregation at a special congregational meeting
4 on January 13th, 2013.

5 Q. And is that the same congregational meeting where the
6 restated articles of incorporation were discussed?

7 A. That is correct.

8 Q. What notice was provided about this resolution that the
9 vestry had made before that meeting?

10 A. Again, we sent out first-class mail to the congregation,
11 it was announced from the pulpit, I believe the chancellor
12 was even called on one Sunday to give a brief explanation of
13 it, and, of course, it was in the Inspire, so the word was
14 out.

15 Q. It was in the newsletter as well?

16 A. Absolutely.

17 Q. And who was the chancellor who would have made some --
18 discussed all this with the --

19 A. Mr. Foster Gaillard.

20 Q. Who's here with us; right?

21 A. Yes.

22 Q. Finally, I'm going to show you the last page of what's
23 been marked as SPH Exhibit 36, Mr. Harrington, and ask you
24 whether this colloquial name that you and I have used, St.
25 Philip's Church, versus the longer name that was in existence

1 since 1785 as given by the General Assembly, has ever been
2 registered as a trademark by the church?

3 A. It has been registered and the date of the first use was
4 July 1st, 1680, as St. Philip's Church.

5 Q. And just to go all the way back to the first part of
6 your testimony, what happened on July 1st, 1680?

7 A. That's when we were founded.

8 Q. So what was it that was registered? What name was
9 registered?

10 A. St. Philip's Church.

11 Q. All right, sir. And we've had a lot of questions during
12 this trial about signage. As long as you've been a part of
13 St. Philip's Church and your family for ten years, what has
14 the signage been?

15 A. It has just been St. Philip's Church.

16 Q. Okay. Did we ever have an "Episcopal Church Welcomes
17 You" sign in downtown Charleston?

18 A. Not to my knowledge.

19 Q. All right. Now, besides these four events that St.
20 Philip's Church did on its own initiative from 2011 forward,
21 what else was done by the diocese for the benefit of St.
22 Philip's Church?

23 A. We received a quitclaim from the diocese. We received
24 two of them. I believe the first one was the bishop, signed
25 by the bishop, and the president of the standing committee,

1 Jeffrey Miller, which I would believe they were relinquishing
2 any right they had to the property. And then we got a second
3 quitclaim which was signed by Paul Fuener which recognized
4 the diocese had no claim to any of St. Philip's property.

5 Q. Was the title owner on these 13 deeds that comprised, as
6 you said, almost a square block plus some parking, plus a
7 residence, the same entity that --

8 A. The St. Philip's Church.

9 Q. -- was incorporated in 1785?

10 A. Yes, sir.

11 Q. All right. Since the Episcopal Church in South Carolina
12 or TECSC that's been referred to that's one of our adverse
13 parties in this case has come into existence in October or
14 November of 2012, has St. Philip's Church had any part of it
15 to your knowledge?

16 A. No.

17 Q. All right. And has it ever authorized itself, for
18 instance, to be listed as a parish member of the Episcopal
19 Church in South Carolina or TECSC?

20 A. No.

21 Q. And does St. Philip's Church maintain any relationship
22 and has it since November of 2012 with the national church?

23 A. No.

24 Q. All right, sir. I want to take, finally, a look at just
25 a few photographs just so we all get a little bit better feel

1 Exhibit 42. What is this?

2 A. This is the interior of our church.

3 Q. And, by the way, do you know about how many folks that
4 the church can hold on a packed-in service?

5 A. We could put in 1,200, but I think the safety level
6 would be about 850.

7 Q. All right, sir. And, if you please, the next photograph
8 in the series is SPH 42. I'm going to just call this
9 photograph by the 1974 date, if you would fill in the blanks
10 for us.

11 A. Well, this is by the Department of the Interior, which
12 has declared that St. Philip's Church has been designated a
13 national historic landmark because the site possesses
14 national significance in commemorating the history of the
15 United States of America.

16 Q. And back in 1974 what name was referred to by the United
17 States Department of Interior?

18 A. St. Philip's Church.

19 Q. All right. I'm going to ask for the next photo in SPH
20 Exhibit 42. Tell us what the Daughters of the Confederacy
21 declared by way of a nice-looking plaque I think in 1969.
22 And it might be the Daughters of the Revolution. I may have
23 misspoken. You'd better tell me.

24 A. No, I believe it is the Confederacy. No. I stand
25 corrected. It's the South Carolina Society Daughters of

1 American Colonists.

2 Q. What did the South Carolina Society of Daughters of
3 American Colonists recognize in a plaque?

4 A. They recognize two of our distinguished former past
5 members, Charles Pinckney, who was a signer of the United
6 States Constitution, and Edward Rutledge, who was a signer of
7 the Declaration of Independence.

8 Q. And to use the John Wayne pronunciation, where are those
9 two buried?

10 A. They're in St. Philip's cemetery.

11 Q. All right, sir. And what other distinguished person, if
12 any other person, that you're aware of that held national
13 significance?

14 A. John C. Calhoun, for example. And there are numerous
15 other citizens who have made great contributions to our
16 state, our nation, and certainly to our community that are
17 buried in St. Philip's.

18 Q. All right. And back in 1969 how was the church
19 addressed by name by this entity?

20 A. St. Philip's Church.

21 Q. All right. Next photograph on SPH 42. The first two
22 signs that we looked at, do those exist on the St. Philip's
23 Church campus?

24 A. They do, yes.

25 Q. All right. And how about this sign?

- 1 A. This is on the campus as well.
- 2 Q. Has this sign been there as long as you remember?
- 3 A. It's been there as long as I can remember.
- 4 Q. And just very quickly what entities are referred to and
- 5 what kind of worship is referred to?
- 6 A. St. Philip's Church, the Holy Communion, the Sunday
- 7 services, morning prayer using the 1928 prayer book, for
- 8 example, various other worship services.
- 9 Q. And, finally, let me see if we've got any photographs
- 10 left. We're about done.
- 11 This is another shot of the inside of the sanctuary?
- 12 A. Interior of the church.
- 13 Q. All right, sir. This view is from where?
- 14 A. This is looking north on Church Street at St. Philip's.
- 15 Q. And the building on the immediate right just before the
- 16 church?
- 17 A. Again, that is the ministries hall and the
- 18 administrative office building of the clergy and staff and
- 19 choir.
- 20 Q. And on the far side of the church which building exists?
- 21 A. That would be the parish hall and the Sunday school
- 22 building and the preschool.
- 23 Q. And the second church, the chapel, where does it exist?
- 24 A. It is on the north side of the main church.
- 25 Q. All right, sir. One more photograph. And this is --

1 A. Again, this is the steeple -- I'm not sure from what
2 direction it was taken -- again highlighting the cross. And
3 it's a national landmark in Charleston.

4 MR. PHILLIPS: All right, sir. Mr. Harrington, there
5 may be some questions from Mr. Runyan or from Ms. Golding and
6 then otherwise from the lawyers for either TEC or the
7 Episcopal Church South Carolina. Thank you.

8 THE COURT: Any other questions from the plaintiffs?

9 No. All right.

10 MR. TISDALE: Colonel Harrington, I'm glad to say due to
11 the thorough questioning of your counsel, I don't have any
12 questions.

13 THE COURT: Thank you, Mr. Tisdale.

14 Mr. Beers?

15 MR. BEERS: No, Your Honor.

16 THE COURT: No questions.

17 You may come down, sir. All right.

18 MR. GAILLARD: May it please the Court, Your Honor, I'm
19 Foster Gaillard, one of the attorneys for St. Philip's in
20 this matter, and I have got legible copies of St. Philip's
21 Exhibit 11, including this deed from Christopher Gadsden to
22 St. Philip's Church, and legible copies of St. Philip's
23 Exhibit 40 certified by the South Carolina Department of
24 Archives, so I'd like to substitute these.

25 THE COURT: Thank you, Mr. Gaillard. If you'll show it

1 to counsel let him take a look at it and then we will
2 certainly do that. Thank you so much.

3 (Plaintiff's Exhibits TED-1 through TED-19 premarked for
4 identification.)

5 JOHN CONRAD ZIMMERMAN, JR.,
6 being first duly sworn, testified as follows:

7 THE COURT: Please state your name again for our record.

8 THE WITNESS: John Conrad Zimmerman, Jr.

9 THE COURT: Very well. Your witness, Mr. Platte.

10 MR. PLATTE: Thank you, Your Honor. Andrew Platte on
11 behalf of Trinity Episcopal Church.

12 DIRECT EXAMINATION BY MR. PLATTE:

13 Q. Mr. Zimmerman, how old are you?

14 A. 70.

15 Q. Are you currently employed?

16 A. Yes.

17 Q. Where do you work?

18 A. Robert W. Baird & Company.

19 Q. What do they do?

20 A. They're investment advisers and brokers.

21 Q. Are you currently a member of a parish?

22 A. Yes.

23 Q. What parish is that?

24 A. Trinity Episcopal Church on Edisto Island.

25 Q. Where is that located on Edisto?

1 whether people who had arranged to be buried in the cemetery
2 at Edisto, Trinity Edisto, but no longer belong to that
3 parish because they're worshipping as Episcopalians, whether
4 their agreement to be buried can be honored there? You don't
5 know?

6 A. That's a legal question I've never heard the answer to.

7 MR. TISDALE: I don't have any further questions. Thank
8 you, Your Honor.

9 Thank you, sir.

10 THE COURT: All right. Any redirect or anyone else on
11 behalf of plaintiffs?

12 MR. PLATTE: No, Your Honor.

13 THE COURT: Very well. Thank you. You may come down.
14 Call your next witness, please.

15 MR. WALL: Good afternoon, Your Honor. John Wall again
16 from Church of the Good Shepherd. I have one more exhibit
17 that I would like to introduce today. I did not have it
18 available yesterday. It's a matter of public record. It is
19 the deed of outconveyance of the property the defendants
20 wanted to admit into evidence yesterday I believe as
21 Defendant's Exhibit No. 8. And I would like to approach the
22 bench and pass it to you and pass it to them as well.

23 THE COURT: All right. Any objection?

24 MR. TISDALE: It just wasn't in the package yesterday?

25 MR. WALL: No, sir. It wasn't in the package and it was

1 not in the documents in the church. I actually went to the
2 Court yesterday to get a copy of that document yesterday
3 afternoon and got it myself and I'd like to admit it into
4 evidence.

5 MR. TISDALE: It was admitted by us for ID purposes
6 yesterday so, of course, we have no objection to this.

7 MS. KOSTEL: Correct.

8 THE COURT: All right. Very well. This document is in
9 evidence as Good Shepherd's Exhibit 19.

10 MR. WALL: Yes, ma'am.

11 THE COURT: Thank you, Mr. Wall. Anything further from
12 you?

13 MR. WALL: No, ma'am.

14 THE COURT: All right.

15 MR. RUNYAN: Your Honor, that concludes the testimony.
16 We have a few housekeeping exhibits that we would like to
17 offer and publish a few requests for admissions.

18 THE COURT: All right.

19 MR. RUNYAN: First of all, we would like to offer into
20 evidence all of the photographs that have been displayed.
21 They are marked with the prefix associated with the parish.
22 They do not have a number because we didn't know the
23 sequential number that would follow. And we'd be happy to
24 get copies.

25 MR. TISDALE: If you're just telling us that's what they

1 THE COURT: But Bishop Lawrence, of course, is not an
2 individual -- well, I'll ask you to speak to it.

3 MR. RUNYAN: That's the heart of it, Your Honor. The
4 pleading he's referred to is drafted with the idea that they
5 would add individual defendants. And it's replete with those
6 kind of allegations. There are no individual defendants,
7 there are corporate defendants. And there's no allegation of
8 breach of corporate fiduciary duty. And I'm not really sure
9 what that defense is, but it's not a claim, it's a defense.
10 And it reads as if it relates to individual conduct on the
11 part of members of the plaintiff entities. And that
12 individual conduct, at least as to those individuals and
13 whether they breached some duty they owed, is just not
14 relevant.

15 MR. TISDALE: Well, obviously the corporation has to act
16 through the people who are acting for it and certainly they
17 have fiduciary responsibilities.

18 THE COURT: And so what you're telling me is that Mr.
19 Derfner is prepared to testify regarding the fiduciary duties
20 attendant to the plaintiffs, which are corporations, all of
21 them, and fiduciary duties to the defendant.

22 MR. TISDALE: Correct. Responsibilities, duties.

23 THE COURT: No, not responsibilities. Fiduciary duty.

24 MR. TISDALE: Well, yes, duty.

25 THE COURT: Let me see. Becky, I need you to pass me,

1 A. Yes, sir.

2 MS. GOLDING: Your Honor, I'm going to make an
3 objection. I don't see the relevancy of this testimony with
4 respect to the rolls of a church, and that's on behalf of the
5 parishes. We're here before this Court on corporate matters
6 with regard to the parishes and not an individual discontent
7 person that may have been a member. That's not raised in any
8 of the defenses or counterclaims.

9 MR. TISDALE: Your Honor --

10 THE COURT: I got it.

11 MR. TISDALE: Excuse me. I'm sorry.

12 MR. RUNYAN: I would just join on behalf of the diocese
13 on the issue of whether corporate control is vested in the
14 entities that presently control the diocese. I don't
15 understand the relevance of this testimony to that issue, so
16 I'd also base it on that grounds as well, irrelevant.

17 MR. TISDALE: Your Honor, first of all, we don't know
18 whether it's relevant until we hear what he's got to say.
19 But these parishes are substantial constituents of the
20 diocese.

21 THE COURT: Substantial what now?

22 MR. TISDALE: Constituents of the diocese, the parishes
23 are. The whole thing here is the manner, whether it was
24 lawful, wrong or not, of how the people who left left the
25 diocese and departed the diocese and how they handled the

1 THE COURT: I understand. Ms. Golding?

2 MS. GOLDING: Nothing additional, Your Honor.

3 MS. KOSTEL: Could I speak to that, Your Honor? As Your
4 Honor points out, one of the reasons that we've heard again
5 and again about why the parish has decided to disassociate
6 themselves from the Episcopal Church was because of the way
7 their bishop was treated. Now, if the bishop is treated a
8 particular way by the national church and it's via the
9 church's own disciplinary process, which we can prove or deal
10 with, then the proper way to deal with that is through the
11 church's disciplinary process and through the church's
12 system.

13 But what's happened in this case and what we're trying
14 to elicit further evidence on is that this particular issue
15 is one of the ecclesiastical issues -- disputes that's
16 actually at the heart of this dispute about corporation,
17 corporate control, and control of property, that what's
18 really going on here is a dispute over an issue that is
19 properly resolved by the church. And so if the discomfort
20 with what happened to the bishop were a secular kind of
21 complaint with the way the church treated the bishop, that
22 might be some sort of different issue. But we believe that
23 the evidence will show that the discomfort with the way the
24 bishop was treated was a discomfort about the way the church
25 was undertaking its disciplinary process, which is a purely

1 Q. Now, I think you just said that you were serving on the
2 standing committee and its president during the time of
3 Bishop Salmon's retirement, Edward Salmon?

4 A. Correct.

5 Q. And through the installation of Bishop Lawrence?

6 A. Not through the installation. I was only on standing
7 committee through the election process. My term ended before
8 the consent process was completed.

9 Q. The election process. And what I'd like you to do is
10 explain to the Court what with regard to -- what happens when
11 a bishop retires in a diocese. First of all, does the
12 standing committee and you, particularly as president, take
13 on any additional responsibilities?

14 A. Yes. We had a consultant from the Episcopal Church, the
15 Right Reverend Clay Matthews, who came to Charleston and
16 walked through with us as a standing committee the protocols
17 that were usually used and gave us advice and the timeframe.
18 We procured the services of the Reverend Jim Simons as our
19 chaplain, who came and led a retreat for us at Camp St.
20 Christopher. And we appointed, with the help of Bishop
21 Salmon, a nominating committee that would be representative
22 of the various contingencies of the diocese to search for the
23 next bishop and turned the work of the search over to the
24 nominating committee.

25 Q. All right. And was the search committee formed under

1 your tutelage as president of the committee?

2 A. I was president of the committee when the search
3 committee was formed.

4 Q. Right. And was such a search conducted?

5 A. Yes, it was.

6 Q. And were you involved in it?

7 A. I was not involved in the search in any way.

8 Q. During the course of the work of the search committee to
9 find a successor to Bishop Salmon, were you informed of the
10 progress of the committee as it proceeded?

11 A. Just that they were interviewing candidates, but because
12 of the need for confidentiality I myself did not know the
13 names nor identities of those who were being vetted, as it
14 were.

15 Q. Now, when it came time to have an election for bishop,
16 again to succeed Bishop Salmon, were you president of the
17 standing committee?

18 A. I was.

19 Q. Did you have any responsibility in connection with the
20 conduct of the special -- was there a special convention to
21 elect the bishop?

22 A. There was. On two successive Saturdays I presided over
23 what is known as the walkabout, wherein the potential
24 candidates or the candidates tell something about themselves
25 in a prepared statement and then answer questions from the

1 delegates who have been elected for that electing convention.
2 And then subsequent to that I presided over the convention
3 that elected in fact Mark Lawrence as bishop of South
4 Carolina.

5 Q. All right. Now, Father Sanderson, as it turned out, did
6 the search committee report at the appropriate time on the
7 persons who had been nominated to become bishop?

8 A. Yes, they did.

9 Q. To offer for election?

10 A. That is correct.

11 Q. And how many candidates were on the final nomination?

12 A. There were three candidates on the final nomination.

13 Q. And who were they?

14 A. The Reverend Ellis Brust, the Reverend Steve Wood, and
15 then Father Mark Lawrence.

16 Q. The special convention, do you remember when it was?

17 A. It was in September, I suppose, of 2006.

18 Q. Now, let me ask you this: Did the standing committee
19 meet during the course of the process leading up to the
20 special convention from time to time?

21 A. Certainly.

22 Q. And were there any members of the standing committee in
23 your presence, of course, at the meetings who at that period
24 of time, before the election, abdicated that the Diocese of
25 South Carolina depart from the Episcopal Church?

1 A. There were individuals both on and off the standing
2 committee who would voice that as their personal concern, but
3 there was never any standing committee action in that
4 direction.

5 Q. Of course. I was meaning personally in favor of
6 considering a departure from the Episcopal Church.

7 A. Yes, that is the case. That was the case from the time
8 that Bishop Lawrence was elected through his episcopate.

9 Q. That there were such people --

10 A. Sure.

11 Q. -- advocating departure from the Episcopal Church?

12 A. He heard it from them the moment that he landed on the
13 ground, so...

14 Q. All right. And would it be possible, do you recall who
15 some of those people were?

16 A. I recall that some of the priests who were more inclined
17 in that direction would have been perhaps Father Jeff Miller,
18 who became the president of the standing committee two terms
19 later.

20 Q. Okay.

21 A. There was Father Zadig perhaps, the rector of St.
22 Michael's. There were several people who voiced their
23 concern that we leave the Episcopal Church.

24 Q. Now, after -- I mean at the election, what was the
25 result of the election?

1 A. Bishop Lawrence was elected overwhelmingly on the first
2 ballot.

3 Q. And did you inform Bishop Lawrence of his election?

4 A. I was in the sacristy when that call was made. We
5 wanted to call the candidates who were not elected, one of
6 whom was present, one was not. We wanted to make sure they
7 knew that before it started getting out on the blogs and
8 other news. So we called the others first, and then we
9 called Father Lawrence. And Bishop Salmon actually spoke to
10 him directly I think that day.

11 Q. All right. Father Sanderson, explain to the Court,
12 please, what the process is after a candidate who is elected
13 indicates that he or she would accept the position.

14 A. Right.

15 Q. First of all, did Bishop Lawrence agree to accept the
16 election as bishop?

17 A. He did.

18 Q. All right. And what happens after that in the church
19 procedure?

20 A. There are two things that have to take place before a
21 consecration date can be set. There has to be a
22 psychological exam, which I think Father Lawrence actually
23 was subjected to two of them. He did one locally and then it
24 was required that he do another in California, where he was
25 then living. And we were required to receive the consents of

1 party to this case, the chief officer of the parish. They
2 would say head of the board of directors.

3 THE COURT: Okay. I will hear it for the purpose of the
4 opinion of the Parish of St. Helena.

5 MR. TISDALE: Thank you.

6 THE COURT: It will be limited to that exception.

7 MR. TISDALE: Thank you.

8 THE COURT: Okay.

9 Q. Father Sanderson, let's go back. Did you get a
10 telephone call from Father Miller?

11 A. I did. May I just proceed and describe the nature of
12 that conversation and what followed?

13 Q. I would like you to tell the Court, please, about the
14 conversation.

15 A. Sure. Jeff was concerned that Bishop Lawrence was not
16 moving quickly to take the Diocese of South Carolina out of
17 the Episcopal Church. The 2009 general convention had just
18 concluded and the sort of impetus to start that conversation
19 anew was very heated. There followed a diocesan clergy day
20 at St. James Church on James Island.

21 Shall I continue?

22 Q. Please.

23 THE COURT: This is not responsive. You asked him about
24 the conversation.

25 Q. Tell us about the phone conversation and then you can

1 give us the background that I think you intended to do that
2 led to the phone call.

3 A. Right, the only point --

4 Q. Can you do that? I think the -- is the clergy day that
5 you mentioned leading up to the phone call?

6 A. The clergy day came after the phone call.

7 Q. Okay. Go ahead with the phone call first.

8 A. All right. The phone call was simply Jeff's concern.
9 He just called to express his displeasure. And it's
10 memorable because I addressed this conversation in a letter
11 with Bishop Lawrence so it stuck in my mind. I just remember
12 it.

13 Q. Do you remember what he said?

14 A. We elected -- don't you remember we elected him to take
15 us out of the Episcopal Church.

16 Q. Bishop Lawrence?

17 A. Correct.

18 Q. All right. Now, you were getting ready to explain what
19 happened at a clergy day at James Island related to this
20 issue.

21 A. The reason that I went directly to the clergy day is
22 that Father Miller's passion was not his alone, it was shared
23 by many at that clergy day. There was a --

24 Q. And that was when?

25 A. That was in late summer of 2009.

1 A. Right.

2 Q. In your experience in the Episcopal Church, your
3 knowledge of the constitution and canons of the diocese and
4 the national church, do you know of any situation that
5 authorizes a standing committee that prescribes as its duties
6 to be board of directors of a corporation?

7 MS. GOLDING: Your Honor, I'm going to make an
8 objection. He's seeking an opinion, number one, he's seeking
9 a legal opinion.

10 THE COURT: Sustained.

11 MS. GOLDING: Thank you, Your Honor.

12 MR. TISDALE: I can't ask him whether he knows about it.

13 THE COURT: If you want to qualify him as an expert, you
14 certainly may do that.

15 MR. TISDALE: I will not. He would like me, but I will
16 not.

17 THE COURT: Okay.

18 Q. Do you recall being in a meeting -- and tell me whether
19 it was standing committee or another meeting -- where it was
20 discussed among leadership of the diocese to change bank
21 accounts?

22 A. I do recall that. I think it was the last standing
23 committee meeting I ever attended.

24 Q. All right. Were you president of the standing committee
25 or president (sic)?

1 A. I was not president of the standing committee at the
2 time, I was simply a member-at-large.

3 Q. Member of the standing committee. And when would this
4 have been?

5 A. You know, I think probably sometime in 2011. I'm not
6 certain.

7 Q. 2011?

8 A. Right.

9 Q. So can you relate for the benefit of the Court, please,
10 the nature of the conversation concerning changing bank
11 accounts?

12 A. Yes. There was a concern that if any disciplinary
13 action against Bishop Lawrence would be taken, that the
14 assets of the diocese -- and there perhaps I think had been a
15 precedent for this -- would be frozen. And so there was
16 conversation about finding friendly bankers in South Carolina
17 who would give us assurances that that would not happen.

18 Q. And did in fact the committee decide to change banks?

19 A. As I said, that was my last standing committee meeting.
20 It was discussed at that meeting, but I believe that that
21 subsequently did happen.

22 Q. And do you know which bank the diocese was using prior
23 to this meeting or at the time of the meeting?

24 A. I know that all of their investments were being managed
25 by Wachovia Securities.

1 Q. Do you know whether those accounts were changed to
2 another bank?

3 A. Yes, they were changed.

4 Q. Do you know what bank it was changed to?

5 A. I do not.

6 Q. Was that announced to anyone?

7 A. I'm certain it was, I just don't recall.

8 MR. TISDALE: Your Honor, bear with me just one second.

9 THE COURT: Of course.

10 MR. TISDALE: Father Sanderson, thank you very much for
11 your time here today. And I would ask you to answer any
12 questions any other counsel here have for you.

13 THE WITNESS: Certainly.

14 THE COURT: Cross-examination?

15 MS. GOLDING: Indulge the Court for just a moment, Your
16 Honor.

17 THE COURT: Sure.

18 MR. RUNYAN: Sorry, Father, as we get our ducks in a row
19 here.

20 THE WITNESS: That's all right, Alan.

21 CROSS-EXAMINATION BY MR. RUNYAN:

22 Q. Father, do you recall asking for a quitclaim deed?

23 A. I received a quitclaim deed; yes.

24 Q. Do you recall, who is Patrick Allen?

25 A. Patrick Allen was my assistant at the time.

1 Q. Do you recall if Patrick Allen asked to get a quitclaim
2 deed?

3 A. No, I don't think so.

4 Q. Don't recall. Okay.

5 A. He wouldn't have had any reason to, he was never rector
6 of the parish.

7 Q. Okay. But you don't know if he asked on your -- you
8 don't recall him asking on your behalf?

9 A. I do not.

10 Q. Okay. Thank you. Have you ever heard the phrase
11 "intact and in TEC"?

12 A. I was going to use that phrase a moment ago before I was
13 not allowed to answer the question. But yes, I do recall
14 that.

15 Q. Who coined that phrase?

16 A. Mark Lawrence.

17 Q. What's your understanding of the meaning of that phrase?

18 A. I think, if I may address it within the context of the
19 very clergy day that I just was referencing, it was Bishop
20 Lawrence who said that that's what he wished to do, to remain
21 intact as a diocese and in TEC.

22 Q. This conversation about freezing accounts, do you recall
23 being provided a copy of a letter that Mr. Beers wrote to an
24 institution in Illinois directly without involving the Court
25 and that being discussed at the standing committee?

1 again in a statement written on 6 November, 2006, I will make
2 the vows of conformity as written in the book of common
3 prayer and the constitution and canons, Article 3.11.8, and I
4 will heartily make the vows conforming, quote, to the
5 doctrine, discipline and worship, end quote, of the Episcopal
6 Church, as well as the trustworthiness of the holy
7 scriptures. So to put it as clearly as I can, my intention
8 is to remain in the Episcopal Church, period, end quote.

9 Response: Denied, period. It is admitted that Mark J.
10 Lawrence wrote a letter dated March 7, 2007, to the standing
11 committees of the dioceses, plural, stating as follows:
12 Quote, I have been told that some diocesan standing
13 committees have graciously offered to reconsider their denial
14 of consent to my election as XIV Bishop of South Carolina if
15 they only have assurance of my intention to remain in the
16 Episcopal Church, period. Although I previously provided
17 assurance of my intention, this has not been sufficient for
18 some standing committees which are earnestly seeking to make
19 a Godly discernment. Therefore, take into heart the
20 apostolic admonition of 1 Timothy 3:2, now a bishop must be
21 above reproach, temperate, free from rashness, sensible,
22 dignified, hospitable, and apt teacher. I am reminded to
23 make every attempt to reason with those who have denied
24 consent or who have not yet voted. As I stated at the
25 walk-about in Charleston on September 9, 2006, and again in a

1 statement written on 6 November, 2006, I will make the vows
2 of conformity as written in the BCP and the constitution and
3 canons 3.11.8. I will heartily make the vows conforming to
4 the doctrine, discipline and worship of the Episcopal Church,
5 as well as the trustworthiness of the holy scriptures. So to
6 put it as clearly as I can, my intention is to remain in the
7 Episcopal Church, period.

8 End of response. Thank you.

9 MR. RUNYAN: And we would object on the grounds of
10 relevance.

11 THE COURT: Okay.

12 MR. TISDALE: Are you ready for us to call the first
13 witness, Your Honor?

14 THE COURT: Very well. With regards to the objection on
15 relevance, Mr. Runyan, at this juncture, I would
16 conditionally admit it, admit that request to admit, and let
17 me be clear why. There may be issues related to the
18 signature on the quitclaim deed that may or may not become
19 relevant. So at this juncture, I am concerned about
20 excluding it.

21 MR. RUNYAN: Thank you, Your Honor.

22 THE COURT: Yes.

23 MR. TISDALE: Your Honor, we would call to the stand
24 Martin McWilliams.

25 CLERK OF COURT: Raise your right hand. State your full

1 THE COURT: Very well. So have you got your expertise?

2 Are you ready?

3 THE WITNESS: Yes, ma'am.

4 MR. SMITH: Thank you, Your Honor.

5 THE COURT: Yes.

6 Q. Professor McWilliams, we'll start with, can you explain
7 to the Court your understanding of what we've asked you to do
8 in this case and what we've asked you to opine on?

9 A. Well, yes. I've been asked to give opinions today on,
10 first of all, the fiduciary obligations of the management, if
11 you will, including the bishop, the management of the
12 nonprofit corporation, which is the plaintiff diocese, on the
13 understanding that the existence of fiduciary duty is for the
14 Court to decide. But I am -- I'm confident -- I'm confident
15 that the Court will find that there is a fiduciary duty owed
16 in this case.

17 MS. GOLDING: Your Honor, I'm going to make an objection
18 as to his testimony as to confidence as to what the Court
19 will find. I think that's inappropriate. He can only
20 testify as to, you know, the facts that he has been provided
21 and then his opinion, based upon those facts, based upon the
22 Court's qualification.

23 THE COURT: Sustained. You may proceed.

24 THE WITNESS: And because I understand that it's the
25 Court that will determine whether there is a fiduciary duty

1 or not, I've been asked to give an opinion whether the
2 standards that must be met under those fiduciary obligations
3 in these facts and circumstances were met or not.

4 THE COURT: Yes.

5 THE WITNESS: And it will be my opinion that they were
6 not met, Your Honor. So that's the first opinion that I
7 expect to give.

8 The second opinion I've been asked to give is whether
9 the -- as a matter of corporate governance -- and again, I'm
10 not going to testify as to what the law is. I mean,
11 here's -- you know, let the record show I have a copy of the
12 code right here, and the code is pretty clear as to what the
13 law is, and that's for the Judge to decide. But I'm going to
14 expect to give an opinion -- I've been asked to and expect to
15 give an opinion that the statutory requirements of the code
16 in these particular facts and circumstances were not met by
17 the bishop and by the other officers of the corporation.

18 And, Your Honor, when I refer to the corporation, I mean
19 the nonprofit corporation that was chartered in 1973, which
20 is the way in which the plaintiff diocese is organized today.

21 THE COURT: I understand.

22 THE WITNESS: And so I will give a second opinion that
23 the bishop and the other officers, management of the
24 corporation, did not satisfy the statutory requirements for
25 the ways in which they purported to carry out the governance

1 of the corporation.

2 And drawing on from those two opinions, it will be my
3 opinion, based on the facts and circumstances of this case,
4 that the purported amendment of the corporation's charter in
5 the year 2010 was invalid and of no effect.

6 Q. Thank you, Professor. Can you tell the Court what
7 documents you've reviewed preparing to testify?

8 A. I've reviewed the -- I've had a pretty thorough review
9 of the record in the case. I've seen all of the -- I believe
10 I've seen all of the depositions. Certainly, I've seen the
11 pleadings. I have spent a good bit of time going through the
12 minutes and other corporate books and records that were
13 received in discovery.

14 As far as other matters, other documents, that I've
15 looked at, of course, I've reviewed the code. And I have a
16 copy here with me. In case I need it, I also have a copy of
17 the previous version of the code, Your Honor, which is the
18 code that was in effect at the time that the 1973 charter of
19 the corporation was filed with the Secretary of State. And,
20 of course, I've looked at the 1973 charter and at subsequent
21 charters of the corporation. So a pretty thorough review of
22 the record, I'd say.

23 Q. Thank you. Have you reviewed any of the early
24 transcripts of the trial testimony in this case?

25 A. I have. I reviewed the trial transcripts from the first

1 two days. I have an unedited, sort of rough copy from the
2 first two days. Yes, I've read those.

3 THE COURT: Thank you for not -- you know, in fairness
4 to Ms. Mott, as extraordinary as she is, that could not be
5 considered a transcript nor would that be fair to her because
6 I know that she -- while she may be producing those for you,
7 they're pretty close, but they don't have the review and the
8 editing and everything to be called a transcript, but they're
9 pretty good, pretty awesome. So, in other words, as you said
10 the rough. Because she has realtime, she has the ability to
11 produce that.

12 THE WITNESS: Yes, ma'am. I understand that they are
13 preliminary transcripts.

14 THE COURT: And I also say that just because if there's
15 a request for the transcript, she wants to be able to charge
16 y'all for that. I've got to kind of protect her on that.

17 Q. So where does your analysis on these issues begin?

18 A. I think a good place to begin is Plaintiff's Exhibit 7,
19 and that's the 1973 charter. Now, mindful that I'm not
20 testifying as to the law, I think that I still would like to
21 remind ourselves and put in the record that the '73 charter
22 is the founding document of the corporation. This is the
23 seminal corporate document of the corporation. That's not an
24 opinion that I'm giving. I mean, that's what a charter is.
25 And this is the initial charter that began the life of the

1 corporation.

2 And it's my intention to go through this and see what we
3 can glean from the '73 charter. We begin -- there's a little
4 number up at the top, 10,676. That may be somebody's
5 pagination or Secretary of State's number. I don't think
6 it's a relevant number.

7 What we have here -- what we're looking at in
8 Plaintiff's Exhibit 7 is the form that the Secretary of State
9 promulgated back in these days. It's 1973, again, mindful
10 that the statute we have today wasn't enacted until 1994. So
11 this charter -- this charter was filed with the Secretary of
12 State, you know, almost 20 years before our present statute
13 came into being.

14 And this is the form the Secretary of State would hand
15 you when you asked for a form to charter a nonprofit
16 corporation. And there is a -- it begins right at the top,
17 you notice "whereas" is printed and then typed in. You get a
18 blank form. You type in the answers. Whereas, the Right
19 Reverend Gray Temple, and gives his address, reverend Canon
20 George Chassey, who are two or more of the officers or agents
21 appointed to supervise or manage the affairs of the
22 Protestant Episcopal Diocese of South Carolina.

23 Now, what are we saying here?

24 THE COURT: I'm sorry to interrupt you.

25 (Off the record.)

1 A. All right. Well, here's where we are, right here,
2 (indicating). As we'll see in a minute, of course, Bishop
3 Temple was the bishop, and George Chassey was a canon to
4 Bishop Temple.

5 Now, where we are at this point is the nonprofit hasn't
6 been formed yet. The Protestant Episcopal Diocese of South
7 Carolina is an unincorporated association at this point, what
8 I'm going to refer to as the plaintiff diocese. And so what
9 the Secretary of State wants is to have a couple of
10 responsible people, officers or agents, to make the
11 declaration that's going to be part of this application for
12 incorporation.

13 Duly and regularly organized, it says, on the 14th day
14 of November, 1973... Well, this shows you a little bit of
15 the clumsiness of the forms that the Secretary of State had
16 to work with in 1973. In those days, there was a Nonprofit
17 Corporation Act, and I have it here (indicating). It really
18 was only made up of about 25 sections. It didn't have much
19 content to it at all. And nonprofits were treated a lot like
20 business corporations. And so this form looks a lot like a
21 form that a business corporation might fill in.

22 So you'll see that this is printed material in the
23 Secretary of State's form, which is organized -- which is
24 organized. Then the two officers or agents did on the 14th
25 day of November 1973 -- you'll see the typed-in stuff --

1 file. Okay. So this -- up to this point, it's just a
2 recitation that two responsible people filed this written
3 declaration.

4 And, once again, we get to sort of a Secretary of State
5 boilerplate, that at a meeting of the aforesaid organization
6 held pursuant to the bylaws or regulations, they were
7 authorized to apply for incorporation. That is boilerplate.
8 When the bishop and Canon Chassey signed this, they, of
9 course, are agreeing that that's correct.

10 The next thing we get to is that the organization
11 desires to hold property for. Now, you'll notice that is
12 printed material, but then we have fill-in-the-blank stuff,
13 religious, educational, social, fraternal, charitable or
14 other eleemosynary purpose typed in.

15 Now, that is the purpose clause of this -- of this
16 filing. And the reason it's in there is because to get a
17 501(c)(3) tax exemption, you have to put into your articles
18 of incorporation that you are formed for a charitable
19 purpose. And so the Internal Revenue Service will make
20 sure -- the Internal Revenue Service will review your
21 articles and make sure that you have some charitable purpose
22 in your purpose clause. And it is not organized for the
23 purpose of profit or gain to the members. And that again is
24 Internal Revenue Service stuff. The whole point of nonprofit
25 corporations that would get a 501(c)(3) tax exemption is that

1 it is an eleemosynary purpose, a charitable purpose, a
2 religious purpose, not for gain to the members. And it's not
3 an insurance company.

4 And then they, Bishop Temple and Canon Chassey -- and I
5 bet I can do this. No, I can't do that. How can I make this
6 go up? Because I need to look further down on the document.
7 Could we slide this down a little bit? I want to get down to
8 the part about the news and courier.

9 In 1973, in order to form a nonprofit under the 1973
10 statute, the incorporators had to publish notice in a
11 newspaper published in the county in which the nonprofit is
12 going to operate. So we get the News and Courier in
13 Charleston typed in. And so notice has been given that this
14 document would be filed.

15 And so the declarants and petitioners declare and
16 affirm, first of all, who they are; second, the name of the
17 corporation, Protestant and so on; and the place at which its
18 headquarters will be. Now, then we get to paragraph four.
19 Now, you'll notice, once again, the constraints that we're
20 under, using this old-fashioned form, this 1973 vintage form.
21 And one of those constraints is that printed in the document
22 is "The purpose of the proposed corporation is," and then
23 something has to be filled in there. Something is then
24 filled in by the incorporators.

25 And so what Bishop Temple and Canon Chassey filled in at

1 this point is the words we see typed here, "To continue the
2 operation." Now, I'm going to sort of parse this. And it's
3 important, so I'm going to take some time with it, is to
4 continue the operation. So we're going to -- we're forming a
5 brand spanking new corporation in 1973, but the corporation
6 is not for something new or some new line of business or some
7 new charity. It's to continue what is already in operation;
8 an Episcopal diocese, an Episcopal diocese. The point is to
9 continue the operation of an Episcopal diocese under the
10 constitution and canons of the Protestant Episcopal Church in
11 the United States of America.

12 Now, that's an old name, I don't think used anymore, for
13 what is often referred to in this litigation and other places
14 as The Episcopal Church, with a capital T, The, capital T,
15 Episcopal, TEC.

16 THE WITNESS: I'm going to refer to that institution,
17 Your Honor, if it's okay with you, as the national church.

18 THE COURT: That would be wonderful because we've been
19 doing that to keep everyone separate. So thank you for that.

20 THE WITNESS: Yes, ma'am. And I will try as I continue
21 through these materials to stick with the names that have
22 already been agreed to by everybody.

23 THE COURT: Well, exactly. And what we've done is we
24 have the national church, and then we have the plaintiff
25 diocese, and then we've referred to the diocese in South

1 Carolina or defendant diocese. And what that does is it sort
2 of keeps -- I think it's done a good job, at least for me, of
3 keeping everybody separate. It took me a while to get there,
4 but that really allows me to keep them separate, because the
5 names -- all of the names are so close.

6 THE WITNESS: Thank you, ma'am. And as long as we're on
7 that topic, I might as well just fill it in and say when I
8 refer to the bishop, I'm referring to Bishop Lawrence --

9 THE COURT: Thank you.

10 THE WITNESS: -- the Bishop, Bishop Lawrence.

11 THE COURT: Got it.

12 THE WITNESS: Now, to continue the operation of an
13 Episcopal diocese under the constitution and canons of the
14 national church. Now, this fourth paragraph is real
15 important. And the reason is that when we fill in these
16 documents, there's a chance to put in a purpose clause, and
17 that's -- and let me point out to -- let me put on the record
18 that I have brought up with me a little no-content outline of
19 the act, the '94 Act. I've brought this up here with me to
20 make it easier for me to find my way through the statute.
21 And if anybody wants a copy of this, we have copies
22 available. It's just -- there's no content. I don't think
23 it needs to be an exhibit. It's just a memory refresher.

24 And right now I'm looking at it because I want to make a
25 point about what is Section 33-31-202 of the present --

1 33-31-202 of the '94 Act. And that permits articles -- and
2 these are articles of incorporation. That section permits
3 articles to have a purpose clause in them, as this one does
4 and as this one must have for tax exemption reasons, but also
5 permits the articles to set forth -- and I'm reading from the
6 statute. I'm quoting from the statute -- provisions
7 regarding, one, managing and regulating the affairs of the
8 corporation; and two, defining, limiting and regulating the
9 powers of the corporation, its board of directors and
10 members, if any. I'm going to read that again.
11 Provisions -- you can put in your articles provisions
12 regarding to the management and regulation of the affairs of
13 the corporation. That is the kind of stuff you might find in
14 bylaws, for example, or special rubrics for management, and
15 then defining, limiting and regulating the powers of the
16 corporation, its board. Corporations and nonprofit
17 corporations can limit the powers of their board of
18 directors. How do you limit those powers? You put it in the
19 articles.

20 Now, what do we have here? We have in front of us
21 here -- it says continue the operation, not new. We're going
22 to keep doing what we've been doing of an Episcopal Diocese
23 under the constitution and canons of the national church,
24 under -- under the constitution and canons of the Protestant
25 Episcopal Church of the United States of America.

1 This document -- this form of words subordinates or
2 continues the subordination of the defendant -- sorry, the
3 plaintiff diocese, continues the subordination of the
4 plaintiff diocese to the constitution and canons of the
5 national church.

6 Further, what this does is incorporate by reference
7 those constitution and canons in this charter. In other
8 words, the constitution and canons of the national church are
9 embedded in this charter. They are part of the founding
10 document of this corporation -- of the corporation. They're
11 a part of the founding document. That means that this little
12 one-page Exhibit 7 is really about a 300-page document,
13 because the constitution and canons are incorporated by
14 reference right there.

15 Fifth -- and this continues to be of substantial
16 importance. There's nothing we can just skip over in this
17 document. Paragraph five, the names and residence of all you
18 have to identify. Managers, trustees, directors or other
19 officers. So now, that's printed in the form. The Secretary
20 of State requires the petitioners, the incorporators, to
21 identify all -- notice, all of the managers, trustees,
22 directors or other officers. And so whose names are here?
23 We've got the bishop, the Right Reverend Gray Temple. We
24 have Canon Chassey. The secretary. That's a corporate
25 officer -- that's a corporate office. The secretary is a

1 corporate office. And we have Tom Myers, treasurer, a
2 corporate office.

3 Now, we have to remember that in this part of the
4 document all officers and directors have to be named, and
5 there are only three. Two of them are officers.

6 MS. GOLDING: Your Honor, I would move to strike that
7 because he is trying to revise the wording of the document,
8 because the document clearly says all managers, directors
9 or -- so he is trying to change the language in this
10 document, and I believe that that's improper.

11 MR. RUNYAN: Your Honor, could I also -- I'm not
12 objecting to the substance except as she did, but I think
13 maybe this should be question and answer. We don't have a
14 question on the table, as I heard it.

15 THE COURT: In other words, you're concerned about the
16 degree of the narrative?

17 MR. RUNYAN: Yes.

18 THE COURT: All right. Very well. The document speaks
19 for itself, so I concur with that. The document speaks for
20 itself. And with regards to the narrative, Mr. Smith, every
21 once in a while you might just want to pop in there.

22 MR. SMITH: I'm happy to, Your Honor.

23 THE COURT: I don't know that Professor McWilliams
24 really needs one, but you might just want to do it just for
25 fun. Good exercise for you. You know what I mean?

1 (Off the record.)

2 MR. SMITH: Can I ask Professor McWilliams to continue
3 analyzing the fifth provision of this charter?

4 THE COURT: How about that?

5 THE WITNESS: With the Court's permission, there's just
6 one more point I wanted to make, and that is that Bishop
7 Temple signed as bishop. And if somebody were to ask me what
8 is the effect of signing as bishop, what I would say is that
9 by default we have two people named as secretary and
10 treasurer, and the document absolutely speaks for itself in
11 that respect. By default -- and also another requirement of
12 this document is that the corporation has to have a board of
13 directors. And so by default, the bishop is the director.
14 There's no one else. As counsel has pointed out, the
15 document speaks for itself. This is all of them. There has
16 to be a director. It's the bishop. As bishop -- now, in the
17 nonprofit world, you can get directors in three ways. One is
18 they can be elected. They can be elected by members, but
19 this corporation doesn't show that it has any members. If
20 there are no members, directors can be elected by the board
21 of directors, but at this point there's no board of directors
22 yet. Directors can be appointed. There might be some senior
23 organization that has the right to appoint directors. We
24 don't see any evidence of that in this document. That speaks
25 for itself. Or directors may be designated, designated.

1 What does designated mean? What designated means is that
2 some jural person designates a person as a director, and that
3 person continues -- and that has to be on the face of the
4 articles. The designation has to be on the face of the
5 articles, and the designation lasts until either the articles
6 are amended to take the designation away or until the person
7 who is designated ceases to exhibit the characteristics that
8 stimulated the designation. And that can be either by
9 resignation or by dying or something like that.

10 Now, one of the examples that the official comments use
11 for a designated director is bishop. And the point of a
12 designated director is that when the original designated
13 director moves on, for some reason, their successor in the
14 designated -- in the designated status succeeds them. And so
15 what we have here is the designated director is not Gray
16 Temple. The designated director is the bishop. And when
17 Bishop Temple ceases to be bishop, his successor became the
18 designated director. And on -- in an unbroken line of
19 bishops in the plaintiff diocese right down to Bishop
20 Lawrence and I would argue Bishop vonRosenberg, an unbroken
21 line of designated directors.

22 Now, the statute also permits a nonprofit corporation to
23 delegate to persons or even just one person some or all of
24 the duties and responsibilities of the board of directors.
25 By implication, then -- because we only have one director,

1 and that's the bishop, whoever the bishop is from time to
2 time. There are no other directors. Then that one director
3 is given, by implication, all of the duties and
4 responsibilities of the board of directors.

5 So can you have a one-person board of directors in a
6 South Carolina nonprofit? Yes, you can. Can that one person
7 be delegated all of the rights, duties and responsibilities
8 of the board of directors? Yes, that can happen, and it has
9 happened in the corporation, an unbroken line of succession
10 of bishops as designated one-person boards of directors,
11 right through to the present time.

12 Q. Professor, can I ask what your analysis is -- the
13 relationship between the fourth and fifth paragraph and the
14 interplay between those two paragraphs, their effect on each
15 other?

16 A. Well, the fourth paragraph is the one that incorporates
17 by reference -- it's the paragraph that incorporates by
18 reference the constitution and canons of the national church.
19 The fifth paragraph is the one that designates the bishop
20 from time to time as the one-person board of directors.

21 Now, to be bishop, you have to do certain things,
22 certain things that are required by the constitution and
23 canons of the national church. And so the connection between
24 the fourth and fifth paragraphs is that the starting place
25 with Bishop Temple was that Bishop Temple had to do those

1 things required by the national church to become a bishop.
2 He then signs this document as bishop, implicating the
3 authority of the national church over this corporation via
4 the incorporation by reference of the constitution and canons
5 of the church.

6 Does that answer your question?

7 There's a relevant section of the statute, by the way,
8 Section 1030 of the '94 Act -- and by the way, the '94 Act is
9 the one that's in effect now, of course -- that permits
10 organizations to be given powers over directors of nonprofit
11 corporations. There are many nonprofits that are sort of
12 subsidiaries of other nonprofits. So Section 1030 permits
13 one entity to have authority over the directors of another
14 entity, and that's what's happening here. That is the
15 template that is set up by the 1973 -- by the 1973 Articles
16 of Incorporation.

17 And I want to just say it one more time. This is the
18 initial seminal, fundamental founding document of the
19 corporation.

20 Q. Professor, in your analysis, how does this corporation
21 have the flexibility to incorporate by reference the
22 constitution and canons of the national church?

23 A. Well, that's part of -- that's part of this fourth
24 paragraph. It's part of Section 202 C3. The corporation at
25 the time of its founding in 1973 was able to put into its

1 charter, become part of its charter, provisions regarding
2 managing and regulating the affairs of the corporation,
3 defining, limiting and regulating the powers of the
4 corporation, its board of directors and members, if any. So
5 the corporation -- the corporation had the power at the time
6 of its founding to incorporate the constitution and canons as
7 part of its founding documents.

8 THE WITNESS: Whoever has got the handle on this, could
9 we scroll down to the bottom of this document? Can we get
10 all the way down past the seal?

11 Sixth, incorporated in perpetuity. A nonprofit can be
12 organized for a particular purpose, for a particular period
13 of time or in perpetuity, and that's what we have here. And
14 then when Frank Thornton signed this back in 1973, as of that
15 moment, the corporation was formed and came into being. And
16 the significance of that is that the diocese as of the 14th
17 day of November 1973 is the corporation. The corporation is
18 the diocese. Just like an enterprise for profit can be
19 organized as an LLC and subject to the LLC Act or organized
20 as a business corporation, subject to the Business
21 Corporation Act, the diocese, which had been an
22 unincorporated association, converts hereby from being an
23 unincorporated association to being a nonprofit corporation,
24 thereby putting itself within the aegis, within the
25 regulation, the regulatory control, of the Nonprofit

1 Corporation Act and at the same time, as we've seen,
2 incorporates by reference the constitution and canons of the
3 national church.

4 Now, a couple of things -- would you like to ask me
5 another question?

6 Q. I would.

7 A. I'd be glad to be asked a question, Counselor.

8 Q. Professor, can you speak to the environment around this
9 time? Generally, what was going on with nonprofit
10 corporations back in this time and how that might relate to
11 your analysis as to what the overall intent of this charter
12 was?

13 A. Well --

14 MR. RUNYAN: '73, 1973, is that the question?

15 MR. SMITH: That's the question.

16 MR. RUNYAN: Thank you.

17 MS. GOLDING: Your Honor, I'm going to object to any
18 testimony with respect to intent. They're going through the
19 back door trying to get the legislative history, and I don't
20 think that's proper.

21 MR. SMITH: Your Honor, I'm not going to the legislative
22 history. I'm just asking him to speak as to what was going
23 on with corporations at that time, not about the law, just
24 how were nonprofit corporations operating around that time.
25 He's very knowledgeable in this area.

1 THE COURT: Sustained.

2 Q. Professor, are there any other provisions in here that
3 we haven't gotten a chance to talk about that you'd like to
4 that are a significant part of your analysis? We can come
5 back to it as we go forward with other documents. But is
6 there anything we've missed?

7 A. Well, yes, there is -- and the reason I went all the way
8 to the bottom on the document was there's something that is
9 significant in this case that grows out of this -- that grows
10 out of this document. And that is that the current Nonprofit
11 Corporation Act, the 1994 Act, by which the corporation is
12 now regulated is designed to make it possible for religious
13 corporations to -- it's designed, in part, to make it
14 possible for religious corporations to be incorporated as
15 nonprofits, thereby getting the benefits of the nonprofit
16 while still being able to cling onto their ecclesiastically
17 informed polity. Now, that is a complicated sentence.
18 What's all that about? Well, South Carolina --

19 MS. GOLDING: Your Honor, I believe, and I'm sorry to
20 say, but based on his statement, what he's going into now,
21 he's going into legislative history. He's going into intent,
22 and I think that's completely improper.

23 THE COURT: Here's -- what I'm happy to hear is that you
24 were relating to the relevance of this language as it relates
25 to this corporation. And I don't want to keep you from

1 answering that.

2 THE WITNESS: Thank you, ma'am.

3 THE COURT: Yes.

4 THE WITNESS: And I understand, and that's exactly where
5 I'm headed.

6 THE COURT: Got it. And let me tell you what concerns
7 me much, much less. I'm not particularly -- I don't
8 really -- I'm not concerned about what's going on with
9 nonprofits generally in the world or even in the world in
10 South Carolina because that is of no moment to me or help.
11 This is unique. And because of the uniqueness of the issues
12 with which I must deal, that is clutter for me. So I'm not
13 interested in that.

14 With regards to where the legislature was and what the
15 legislature may have intended, while I think y'all are brave
16 to even venture into that, I would be interested in the
17 reporters' comments. I am, obviously, guided by the statute
18 itself. But beyond that, I'm so very reluctant to go beyond
19 that. Just because sausage gets made in Columbia and there's
20 so many -- imagine that I would know that. But because
21 there's so many different forces at work, I think that I am
22 more comfortable with the official reporters because that's
23 what they intended for me to see, the legislature, and, of
24 course, the language itself.

25 Now, if you need to bring in other statute, that's

1 different. I believe this language means this because I'm
2 also aware of this language. Something like that is
3 certainly fine. But beyond that, it's just going to be
4 clutter for me. I hope that handles it.

5 MS. GOLDING: Thank you, Your Honor. Yes, Your Honor.

6 THE COURT: Now, just to direct where we are, you were
7 talking to me about the concluding language in this document
8 from '73 and the relevance that that has for your opinion,
9 your analysis?

10 THE WITNESS: Yes, ma'am, in this particular
11 corporation --

12 THE COURT: Yes.

13 THE WITNESS: -- and in this particular set of
14 circumstances -- and as Your Honor points out, there are a
15 lot of special things about a religious corporation. This
16 one is no different than any other in that respect.

17 Now, this corporation, by filing these articles of
18 amendment, provides its officers and directors --

19 Q. Professor, I think you said articles of amendment, and
20 we're still on the --

21 A. Articles of incorporation.

22 Q. Sorry.

23 A. Articles of incorporation, 1973 charter. By doing this,
24 this corporation -- I'm sure Canon Chassey was all over this
25 and Bishop Temple was all over this -- is providing --

1 MS. GOLDING: Your Honor, I'm going to make an
2 objection. I don't think that he has any way to know the
3 intentions --

4 THE COURT: You're talking about the state of mind?

5 MS. GOLDING: State of mind of these individuals.

6 THE COURT: I understand.

7 MS. GOLDING: And he's going now into intent again, into
8 the legislative intent. And I think he needs to stick to the
9 document and not assume or presume what other people were
10 thinking.

11 MR. SMITH: Your Honor, I would say he's not going into
12 legislative intent at all. When he's talking about intent,
13 it's the incorporators' intent. He's not trying to read
14 anybody's mind, but he's analyzing this document and saying
15 what is the intent of this charter as a whole.

16 THE COURT: Let me just say this. With regards to
17 whether or not Bishop Gray Temple or Canon Chassey were all
18 over it or not, I think it's impossible for you to know that.
19 Their lawyer might have been all over it and they just went
20 along. So they're here. The document is here. Whether they
21 are all over it or not really is of no moment. It's here.
22 They signed it. They're on it. It's done. Continue on.
23 But as to the state of mind, I would sustain the objection.

24 MS. GOLDING: Thank you, Your Honor.

25 THE WITNESS: And I would withdraw that. You're --

1 absolutely. Absolutely. I'm carried away by my enthusiasm,
2 Counselor, if you'll permit me.

3 One of the effects, whether intended or not, of this
4 filing is to give the officers and directors of this
5 brand-new corporation protection, immunity -- almost immunity
6 from personal liability for activities of the corporation.
7 Now, when they do that, they pay a price, "they," being the
8 incorporators. They pay a price for that benefit. And that
9 is that they are now regulated by the Nonprofit Corporation
10 Act, which is really different than what they were regulated
11 by before in this particular case. And, therefore -- could
12 I -- could we scroll back up on the document? Okay. That's
13 good.

14 What I'm looking at is the fourth paragraph, the fourth
15 numbered paragraph. Whether they intended to do this or not,
16 the incorporators of this nonprofit corporation dealt with
17 that price they were paying in a way that, whether they
18 intended to or not, matched up what their governance was
19 going to be going forward very closely to what their
20 governance had been up to now. Up to now, their governance
21 had been to operate an Episcopal Diocese under the
22 constitution and canons of the national church. That had
23 been their governance. Whether they meant to do it or not,
24 by organizing this corporation to continue the operation
25 under, subservient to, the constitution and canons of the

1 national church, they preserved -- whether they meant to or
2 not, they preserved governance that was almost the same as it
3 had been before.

4 Now, you say to yourself, well, wait a minute. What
5 happens if under your new area of governance, which is the
6 '94 Nonprofit Act, there are governance provisions that
7 conflicts with the constitution and canons of the church,
8 conflict in ecclesiastical ways? And I'm not going to
9 testify about the constitution and canons and the
10 ecclesiastical side of this. But just what would happen if
11 in ways that were important to the polity of the national
12 church the constitution and canons conflicted with stuff
13 that's in the statute? Which trumps? Are they stuck now
14 with changing or what's in the statute? And the answer is,
15 whether they intended or not to do it this way, there in
16 Section 108 [sic] of the statute that says that where
17 religious corporations have matters of organization and
18 governance that conflict with this statute, the organization
19 and governance of the religious corporation trumps to the
20 extent required by the constitution of the United States, the
21 first amendment, the freedom of religion, the freedom of --
22 and so the effect of that -- and again, I'm not saying what
23 the law is. I'm saying in particular circumstances like
24 these, the effect is that where the constitution and canons
25 of the national church conflict with matters that are in the

1 corporation act, to the extent that the constitution and
2 canons of the church have ecclesiastical content, they trump.
3 What they become is neutral principles of corporate law. The
4 constitution and canons are converted -- are converted by
5 Section 180. I think I said 108 a minute ago, but it's
6 180 -- are converted from canonical provisions to neutral
7 principles of corporate law of governance by Section 180.

8 What that does is it has the effect -- whether it is
9 intended or not by the drafters of this statute, it has the
10 effect of keeping the -- this corporation in the same
11 governance mode it was in when it was an unincorporated
12 enterprise. And that is crucial to the way in which this
13 enterprise, this nonprofit corporation, was founded. In
14 short, right here on the page it is a founding principle
15 through the operation of Section 108, a founding principle --

16 THE COURT: 180.

17 THE WITNESS: 180. Thank you, ma'am.

18 -- a founding principle of this nonprofit corporation
19 that its governance will be under the Nonprofit Corporation
20 Act to the extent that doesn't conflict with the constitution
21 and canons of the national church. And to the extent that it
22 does conflict under Section 180, the constitution and canons
23 of the national church become neutral principles of corporate
24 governance law.

25 I welcome your next question.

1 Q. Thank you, Professor. Again, relating back to the
2 relationship, the interplay, between the fourth and fifth
3 paragraphs, could you explain your analysis as to how any
4 duties of loyalty or fiduciary duties arise pursuant to those
5 provisions?

6 A. Well, I think it's the Judge who's going to have to tell
7 us if any duties arise. And the -- maybe you want to
8 rephrase your question.

9 MR. HOLMES: Could you provide the basis for your
10 opinions on the issues related to whatever is you're talking
11 about?

12 Q. Could you provide the basis of your opinions -- let's
13 just go to the next question.

14 (Attorneys confer.)

15 Q. In your analysis of this document, did you try to
16 determine if the convention of the diocese has any authority?

17 A. Well, you know, the document speaks for itself. And
18 there's nothing on the -- there's nothing on the face of this
19 document that gives any authority to the convention. I
20 assume you're talking about the annual convention of the
21 diocese --

22 Q. Correct.

23 A. -- of the plaintiff diocese, which is now as of this
24 document, a nonprofit corporation. There's nothing on the
25 face of this document that gives the convention of the

1 diocese any authority whatever.

2 Q. In your analysis of this document, are there any members
3 of the corporation that would be entitled to vote?

4 A. I see nothing in this document that designates members.
5 And that's consistent with -- that's consistent all the way
6 through to 2010. And I might add that if you're going to
7 have members -- since 1994, if you're going to have members
8 of a nonprofit corporation, members, being people who are
9 entitled to elect the board of directors, those members have
10 to be named or designated in the articles.

11 This first set of articles, which on its face, speaking
12 for itself, does not mention anything about any members.
13 Right through -- zooming right through 1994 up to 2010, there
14 was never any mention of members. So this is a corporation
15 without members.

16 Q. In your analysis of this charter, is there any way for
17 it to be amended, or is it set in stone and it can never be
18 amended?

19 A. It can be amended. The old law and the present law is
20 that the articles can be amended by members, if you have
21 members, but we don't have any, or the articles can be
22 amended in that case by the board of directors. And the
23 board of directors that we have on the face of this charter
24 is a one-person designated directorship, which is the bishop
25 of the diocese, which was Bishop Temple at the time.

1 Q. In your analysis, what kinds of -- what are examples of
2 things that the bishop might be able to amend in this
3 charter?

4 A. Well, the -- I mean, the bishop, being the board -- you
5 know, acting as, having all of the duties, responsibilities
6 and powers of the board of directors, the bishop can -- has
7 sort of a plenary authority to make amendments and has made
8 some amendments over the years. I think there is an
9 amendment to alter the name a little bit. The bishop signed
10 that. And there is -- if memory serves, there is an
11 amendment to change the authorized agent for process or
12 something like that. So the bishop, acting as the board, can
13 make amendments up to a point.

14 Now, this gets us back to some other clear words on the
15 face of the document, that -- these words under the
16 constitution and canons of what we're calling the national
17 church. It's possible, of course, for there to be
18 limitations on the powers of the board of directors. As I
19 mentioned earlier on, it's possible for the articles
20 themselves to limit the powers of the board of directors.

21 In this case, when the constitution and canons of the
22 national church are incorporated by reference into these
23 articles, what's happened is that the constitution and canons
24 themselves serve as a limit to the powers of the bishop to
25 amend. And because the nonprofit is organized under the

1 constitution and canons, then any attempt by the bishop to
2 amend this charter in a way that's inconsistent with the
3 constitution and canons would be outside of his powers.

4 Q. Now, Professor, would there have to be -- in the
5 constitution and canons, would there have to be a particular
6 provision that talked specifically about amending the
7 corporate charter filed by the diocese?

8 A. No. No. Anything inconsistent -- I mean, it would just
9 follow from the drafting of the document that anything
10 inconsistent with the constitution and canons would be
11 outside of the bishop's authority. You know, the bishop is,
12 after all, the creature of the national church. You can't be
13 a bishop if the national church doesn't make you a bishop.
14 That was tried in the case of Bishop Lawrence when his first
15 go at being made bishop worked as far as getting elected by
16 the diocese was concerned. But it's very interesting that
17 even though the diocese, evidently, voted to elect him as
18 bishop, the requirements of the national church were not met;
19 and, therefore, he didn't become a bishop. And it's
20 interesting that the diocese and the convention, the diocesan
21 convention and the standing committee, much as they wanted
22 Bishop Lawrence for a bishop, they couldn't have him because
23 he didn't pass the requirements of the national church. Then
24 when he went up a second time and he did pass the
25 requirements of the national church, then he became bishop.

1 And my point here is that the bishop is the creature of
2 the national church and cannot be a bishop --

3 MS. GOLDING: Your Honor, I'm going to make an
4 objection. This is outside of his qualifications. He
5 certainly is not qualified or hasn't been qualified as to the
6 position of a bishop in any church, so I do not believe that
7 that should be -- his testimony should not be permitted.

8 THE COURT: Sustained.

9 Q. We're going to move to the next exhibit in your stack.
10 It's Plaintiff's Exhibit 8. And you referred to it a minute
11 ago. This is the 1987 amendment to the charter. And if I
12 could ask how this document plays into your analysis.

13 A. These are articles of amendments. In '87, we're
14 14 years down the calendar, so you see it's a different
15 fill-in-the-blank form. And notice the word "eleemosynary."
16 Here we have the Protestant Episcopal Diocese -- that is the
17 nonprofit corporation -- having published, as was still the
18 requirement in 1987 -- having published its intent to amend
19 its charter, resolved that the bishop and executive secretary
20 are hereby authorized and directed to apply to the Secretary
21 of the State of South Carolina for an amendment of the name
22 of the charter of this organization from, quote, the
23 Protestant Episcopal Diocese of South Carolina, closed quote,
24 to, quote, the Protestant Episcopal Church in the Diocese of
25 South Carolina, closed quote.

1 And the -- that amendment, having been approved by
2 convention, the bishop and executive secretary of the
3 convention are authorized to file this document. And there's
4 the change at the bottom of the fill in the blanks. And then
5 you'll notice that it is -- it's signed by Bishop Allison as
6 bishop. It's also signed by the executive secretary, John
7 Beckwith.

8 What this document does is demonstrate the continuity of
9 bishops, the bishop, from time to time, of the plaintiff
10 diocese, having the authority to amend the charter in ways
11 that don't conflict with the constitution and canons of the
12 national church.

13 Q. Let me ask you, what is the significance of the fact
14 that there was a resolution by the convention? Because I
15 believe your prior testimony was that --

16 MS. GOLDING: Your Honor, I'm going to make an objection
17 as to any questions with respect to his prior testimony. I
18 don't think that that's proper.

19 MR. TISDALE: Just leave that part out.

20 MR. SMITH: Okay.

21 Q. Just the first part of the question, what is the
22 significance of the convention having resolved -- made a
23 resolution prior to this amendment?

24 MS. GOLDING: Your Honor, I'm not sure that this witness
25 is qualified to testify as to significance of conventions in

1 an Episcopal Diocese.

2 Q. What I'm asking is, based on the '73 charter -- based on
3 our understanding and our analysis of the '73 charter, what
4 does this language mean in this amendment, this corporate
5 amendment?

6 A. Neither the '73 charter nor the statute that was in
7 effect --

8 THE COURT: Hold on. I'm sorry.

9 THE WITNESS: I'm sorry.

10 THE COURT: There was an objection that was interposed.
11 Let me say that when I heard that testimony, I had some
12 concern because -- well, move it over for me a little bit.
13 All right. The document speaks for itself. And let me say
14 this. When Professor McWilliams was talking about the items
15 that he had an opportunity to review, he talked about
16 depositions. He talked about pleadings. What he did not
17 discuss was having reviewed the journals. And so my concern
18 is that the testimony that certain things were done at a
19 convention. This says what it says, and I understand that.
20 But unless you can give me more foundation, which I'm happy
21 to receive, this document would speak for itself because
22 what he has testified to, he hasn't let me know that he's
23 about to review it. And I hope that's making sense. In
24 other words, I think he's doing what I'm doing, which is
25 reading that. And I gather, presuming, because it says the

1 executive secretary of the convention be and are hereby
2 authorized, that he believes that that came from the
3 convention based on this language. But what he hasn't told
4 me is that he's read the journals and, in fact, it came from
5 the convention. See what I'm saying? Does that handle the
6 objection?

7 MS. GOLDING: Yes, Your Honor. Thank you.

8 THE COURT: Let me say this to you. I was concerned
9 about that also and wondered had he reviewed that. He didn't
10 tell me that he had reviewed it, but maybe he's just reading
11 what I'm reading.

12 MR. SMITH: Okay. Let me try again.

13 THE COURT: Sure.

14 Q. Based on the '73 corporate charter, was it necessary to
15 have a resolution from the convention to file this amendment?

16 MS. GOLDING: I object, Your Honor. There again, you're
17 going to the convention. He has absolutely no foundation as
18 to the basis of the convention and the words "authorized" and
19 "directed." And he's attempting with that question to vary
20 the terms of Exhibit 8.

21 THE COURT: At this time, Mr. Smith, what this expert
22 has not been asked is, Did you connect those dots? Have you
23 connected the dots with regards to the management of the
24 diocese's business as it relates to these documents? Now, if
25 you want to go back and lay a foundation, that's different.

1 But at this moment, we have to deal with the language as we
2 see it.

3 MR. SMITH: One second.

4 THE COURT: And, Mr. Smith, if it's helpful, he can just
5 presume that it is a hypothetical that it occurred.

6 MR. SMITH: Let me try it this way.

7 THE COURT: Sure.

8 Q. Going back to our Plaintiff's Exhibit 8, does it make
9 any difference whether this resolution is in this document or
10 not?

11 MS. GOLDING: Your Honor, there again, he is attempting
12 to vary the terms of the document. He cannot change what
13 this document says, and that's exactly what defendants are
14 trying to do.

15 MR. SMITH: Could I try again, Your Honor?

16 THE COURT: Sure.

17 Q. Does this language have any effect on the validity of
18 the name change through this amendment?

19 A. No.

20 THE WITNESS: She didn't get her objection out fast
21 enough. Sorry. I'm trying, Your Honor.

22 MS. GOLDING: They're just trying to vary the terms of
23 the document. They cannot interpret this document. It
24 speaks for itself. And that's what they're attempting to do.

25 MR. SMITH: Your Honor, I would say that this is his

1 analysis of the effect of the document. We're not trying to
2 vary the terms. I agree they are what they are. Was it
3 necessary for that to be there? That's the question. Could
4 this amendment have been passed without a vote at the
5 convention?

6 MS. GOLDING: That's a hypothetical, and that's
7 speculative, totally speculative.

8 THE COURT: Let me say this: There's insufficient
9 foundation at this moment -- not that it can't be laid, but
10 there's insufficient foundation at this moment, I believe,
11 for this witness to opine with regards to whether or not the
12 resolution is necessary, really, and for several reasons.
13 Number one, because of his prior testimony with regards to
14 the constitution and the canons and with regards to the fact
15 that any foundation regarding the effect vis-a-vis governance
16 of a convention and vis-a-vis that governance with regards to
17 this resolution. And again, Mr. Smith, that foundation very
18 well may be able to be laid with this witness, but at this
19 moment I don't believe it's in there.

20 MR. SMITH: Thank you, Your Honor.

21 THE COURT: And that's a way of just telegraphing to you
22 that I don't have the information that I need to make that
23 determination.

24 MR. SMITH: Okay.

25 Q. Professor, before we move on, was there anything else in

1 this document pertinent to your analysis that we haven't
2 touched upon?

3 A. No.

4 Q. Moving now to Plaintiff's Exhibit No. 9.

5 A. I have it.

6 Q. Okay. What is this document?

7 A. Articles of amendment of the charter, of the --

8 MR. BEERS: Excuse me, Your Honor. If we're starting a
9 new document, would this be an appropriate time for our
10 morning break?

11 THE COURT: If you request it, it is. Absolutely. Good
12 time for a -- excellent time for a morning break. We'll take
13 15 minutes. Thank you.

14 (Recess held.)

15 MR. HOLMES: Very quickly, Your Honor, opposing counsel
16 has agreed I can open these. We're designating depositions.
17 There are two here that are in their original state, still in
18 their little thing. We want to open them so we can designate
19 them. It's okay with them, but I've never done it without
20 asking the Court.

21 THE COURT: Thank you so much. And which ones are they,
22 just so our record is complete?

23 MR. HOLMES: They are Stewart Marshall Huey and Conrad
24 Zimmerman, Jr.

25 THE COURT: Thank you so much. You get to take the

1 copy.

2 MR. SMITH: Thank you.

3 Q. Professor, have you reviewed the constitution and canons
4 of the national church?

5 A. Yes, I have.

6 Q. And have you reviewed the constitution and canons of the
7 Diocese?

8 A. Yes, I have.

9 Q. Is this the type of material that an expert of your
10 expertise ordinarily would examine when asked for an opinion
11 involving a nonprofit corporation with a designated director?

12 A. Yes, in circumstances like this, in particular.

13 Q. I'm going to move now to Plaintiff's Exhibit No. 9.

14 A. I have it.

15 Q. Have you reviewed this document?

16 A. Yes, I have.

17 Q. And what is it?

18 A. These are articles of amendment to the charter of the
19 corporation, 2013. And the date is significant in two
20 respects. One is it's post 1994. And that means, of course,
21 that the 1994 statute was in effect. And 2013 --

22 Q. Professor, the stamp on here, I think, is 2013, but
23 the -- this is an amendment back in 2010. This is just --
24 that's the stamp, the registered copy, from the Secretary of
25 State.

1 A. And so this exhibit that I just testified I had
2 reviewed, I was looking at the stamp to see what the date
3 was.

4 Q. Right.

5 A. Thank you for pointing that out to me. Okay. Nonprofit
6 corporation articles of amendment.

7 Can you give me a chance to review this and make sure
8 that I have reviewed this?

9 Q. Yes.

10 A. Thank you. (Reviewing document.)

11 Yes, I recognize this document. I've reviewed this.

12 Q. And can you explain where this fits in in your analysis?

13 A. Yes. To go back to where I was a minute ago, the --
14 this is not a 2013 document. It's 2010. And so I'll go back
15 to my original point. This is after the 1994 statute had
16 been enacted and was in effect, number one. And number two,
17 this is at the time when the various articles of amendment
18 under the original charter of the corporation had always been
19 approved by the bishop as the -- what is, in effect, the
20 board of directors, the one-person board of directors. In
21 this particular one -- and I'm -- you know, we have it here
22 on the screen. The operative section of this, paragraph
23 numbered four says the applicant represents -- and I'm going
24 to go ahead and read it, even though it's up on the screen,
25 if that's all right. The applicant represents that, A,

1 approval of the amendment by members was not required, and B,
2 the amendment was approved by a sufficient vote of the board
3 of directors.

4 Now, this is significant in two respects. One is this
5 confirms that as late as 2010 there still were no members in
6 this nonprofit corporation, so a nonmember nonprofit still
7 here in the year 2010. And when you don't have members who
8 can amend articles, then you have to turn to the board of
9 directors. And what this paragraph four is telling us, that
10 a sufficient vote of the board or the incorporators voted in
11 favor of the amendment.

12 Now, the incorporators are the people who form a
13 corporation in the first instance. That would have been in
14 1973 in this case. So that's -- a vote of the incorporators
15 is irrelevant. So the operative section is 4B. What the
16 Secretary of State is being told is that the amendment was
17 approved by a sufficient vote of the board.

18 When we look over to the next page which has the --
19 well, let's look up to three, first, before we go to the next
20 page. What three does is purport to amend the important
21 operative part of the 1973 charter, the part that said that
22 the corporation was being formed under the constitution and
23 canons of the national church.

24 What's happening here is the -- this amendment purports
25 to change those words to make the operative governance

1 provisions of the charter be changed from the national church
2 to the Protestant Episcopal Church in the Diocese of South
3 Carolina, in other words, shifts the governing policy from
4 the national church to the diocese, the constitution and
5 canons of the Diocese of South Carolina, which is, of course,
6 the corporation itself.

7 Now, when we -- if we could look at the second page,
8 whoever's got control. Date, October 19th, 2010, and there
9 is the name of the corporation, and it's signed by Bishop
10 Lawrence. But what the Secretary of State wants to know is,
11 what is the source of authority for whoever signs a document
12 like this? And in this case, Bishop Lawrence has not signed
13 as the bishop. He has signed as president, and it doesn't
14 say president of what. You might -- I mean, when I first saw
15 this document, I thought, oh, well, he's signing as president
16 of the corporation, but the record shows that that's not the
17 case. As I read the record, he was signing as president of
18 the convention.

19 Now, what we've seen since 1973 is a board of directors
20 constituted of one designated director, the bishop in office
21 from time to time as bishop, signing as bishop. And that is
22 congruent with the requirement under the 1994 statute, that
23 the board of directors can modify, can amend articles.
24 There's nothing in the 1994 statute that says that an officer
25 can amend articles, and there's nothing in the statute that

1 gives the convention -- and here I'm not -- I want to make
2 sure everybody understands I'm not testifying about the
3 powers of the convention. What I'm saying is that the
4 statute doesn't have anything in it that would authorize the
5 convention to amend articles. And this form from the
6 Secretary of State and the preceding forms from the Secretary
7 of State, none of them authorize the convention to amend
8 articles. And so I think this is an example of Bishop
9 Lawrence purporting to act outside of his authority in two
10 ways. One way he's acting outside of his authority is he is
11 purporting -- he is purporting to sign as president, and that
12 is not an appropriate person to sign. And so he's acting
13 outside of his authority in that respect.

14 Now, at this point, he's still bishop. And I know that
15 I've seen -- if I'm allowed to refer to this, I've seen in
16 his testimony that it's his view that when he puts the cross
17 in front of his name, that implies bishop signing as bishop,
18 but it doesn't say that in the document. So we have -- and
19 so he's outside here of the usual practice going back to 1973
20 of any amendments being made by the bishop as bishop.

21 Now, further, the other reason that he is, in my
22 opinion, outside of his authority in purporting to make this
23 amendment is the amendment is inconsistent as a matter of
24 neutral principles of corporate governance law, not as an
25 ecclesiastical matter -- because I'm not testifying about

1 ecclesiastical matters -- as a matter of neutral principles
2 of corporate governance law, an amendment that purports to
3 vary the crucial words of the founding document, the 1973 --
4 the 1973 articles of incorporation. That is as manifestly
5 inconsistent with the constitution and canons of the national
6 church as this is, lies outside of Bishop Lawrence's powers
7 as a bishop, not as an ecclesiastical bishop -- this is not
8 an ecclesiastical issue -- outside of his powers as bishop
9 who is the sole director of this board of directors as
10 bishop. And his powers are limited by the 1973 charter to
11 make amendments, if any, that are consistent with the
12 constitution and canons of the national church. And as I've
13 explained before, under Section 180 of the statute, the
14 constitution and canons of the national church become under
15 Section 180 the neutral rules of law of corporate governance.
16 This flatly contradicts that and, therefore, lies out -- the
17 bishop's powers are limited as a matter of corporate law to
18 what he can do, and this lies outside those limitations.

19 Q. Thank you, Professor. Have you reviewed the section on
20 ordination of a bishop that's in The Book of Common Prayer?

21 A. Yes, I have.

22 Q. Does Bishop Lawrence's ordination and promises that he
23 would have made in this ordination ceremony -- do they play
24 into your analysis at all?

25 MS. GOLDING: Your Honor --

1 MR. RUNYAN: Your Honor --

2 THE COURT: Sustained. I gather your objection is he's
3 not been qualified as an expert in the field of ecclesiastic
4 law; yes?

5 MR. RUNYAN: Among others, yes, Your Honor.

6 THE COURT: All right.

7 MR. SMITH: Your Honor, I'm not offering this for any
8 ecclesiastical purpose. Our position is that Bishop Lawrence
9 assumed any and all corporate authority over this corporation
10 at the instant he finished this ordination. And, therefore,
11 this should be viewed from a secular perspective and it
12 constitutes a promise.

13 THE COURT: Thank you so much. You may proceed, but not
14 with this.

15 Q. If I could direct you to Plaintiff's Exhibit 6C.

16 MR. TISDALE: What number?

17 MR. SMITH: 6C.

18 Q. Have you reviewed this document, Professor?

19 A. Yes, I have.

20 Q. Can you explain what it is?

21 A. It purports to be bylaws of the plaintiff corporation.

22 Q. And how does this fit into your analysis?

23 A. Well, back in 1973, a nonprofit corporation didn't have
24 to have bylaws if it didn't want to have them. And so there
25 was no document that was called bylaws promulgated with

1 respect to this nonprofit corporation until this document in
2 2010.

3 Now, the record -- the testimony of the chancellor of
4 the diocese was that the constitution and canons of the
5 diocese were, in effect, the bylaws of the diocese from 19 --
6 they weren't called that, but that's okay. They are -- it is
7 a governance document. And so up until 2010 -- well, in
8 1994, in the new statute there came in a requirement that
9 nonprofit corporations have bylaws. It's mandatory. They
10 shall have bylaws. And so what I assume is that -- and
11 pardon me for making an assumption, but -- so let me take
12 back the words "I assume." So it might well be -- and I'm
13 speculating -- that since no bylaws appear --

14 MR. RUNYAN: By his own mouth, I think he's speculating.

15 THE COURT: Sustained.

16 THE WITNESS: May I revise my answer?

17 Q. Professor, if there were no documents labeled "bylaws"
18 up until 2010, did the corporation, in fact, have bylaws
19 prior to that point?

20 A. If we agree with the chancellor of the diocese that the
21 constitution and canons of the diocese were, in effect,
22 bylaws, then yes. And there's no reason why they couldn't
23 be. And, therefore, maybe the way to say it is it doesn't
24 matter that nothing called bylaws came into play until 2010,
25 because the statute, arguably, was complied with.

1 In 2010, there appeared on the scene what we're looking
2 at in Exhibit 6C called bylaws. Now, where do bylaws come
3 from? Where do we get bylaws? In these days, bylaws are
4 usually adopted right at the beginning of a corporation's
5 existence at something called the organizational meeting.
6 And right away you have bylaws.

7 Now, what happens if you don't have any bylaws at an
8 organizational meeting? Where can you get bylaws? Who has
9 the authority to create bylaws? Well --

10 MS. GOLDING: Your Honor, I'm going to make an objection
11 to this line of testimony. This witness has already
12 testified that bylaws were in existence when this corporation
13 was formed. He testified that he accepts the chancellor's
14 testimony that the canons were the bylaws. He just testified
15 to that.

16 THE WITNESS: May I correct her representation of my
17 testimony, Your Honor?

18 THE COURT: He can ask you another question. Do you
19 want to ask another question?

20 MR. SMITH: Sure.

21 Q. Professor, can you talk about bylaws versus rules that
22 are incorporated by reference under the '73 charter?

23 A. Well, there's a sharp distinction. Rules that are
24 incorporated into a charter become part of the charter, and
25 that would include the constitution and canons of the

1 national church. They're part of the charter. The charter
2 trumps bylaws. And in this case, accepting the chancellor's
3 analysis that the constitution and canons of the diocese --

4 MS. GOLDING: Your Honor, that is not responsive to the
5 question that was asked. He's now gone beyond the question
6 that was asked in his response.

7 Q. Professor, based on your review, were there any bylaws
8 as in the constitution and canons of the diocese that were
9 inconsistent with the constitution and canons of the
10 Episcopal Church prior to 2010?

11 MR. RUNYAN: I think he -- I have a foundational
12 objection. He hasn't laid the foundation as to his knowledge
13 about the constitution and canons of the Episcopal Church.
14 He just asked him if he reviewed them.

15 MR. SMITH: I did.

16 MR. RUNYAN: Yes, you did. I don't think you laid the
17 foundation.

18 MR. SMITH: I did ask him that.

19 THE COURT: You do need foundational questions. Because
20 here's what you've asked him. You've asked him, Have you
21 compared them? How do they compare? What is the
22 significance of that comparison? Yes. I mean, that's what
23 you want to know.

24 MR. SMITH: That's right.

25 THE COURT: So you've got to lay a foundation for that

1 because at this point, his expertise doesn't -- he doesn't go
2 there. It stays over on the secular side.

3 MR. SMITH: Okay.

4 Q. Professor, have you examined the constitution and canons
5 of the national church with respect to the charter and
6 compared them with constitution and canons of the diocese
7 from 19 -- in the period between 1973 and 2010?

8 MR. RUNYAN: Foundation objection as to the diocese. He
9 hasn't laid the foundation as to that either.

10 THE COURT: At this point, he just asked him, Did you
11 look at them?

12 MR. RUNYAN: Yes.

13 THE COURT: And I'll allow, Did you look at them?
14 You can answer did you look at them.

15 THE WITNESS: Yes, I did.

16 Q. And what did you find?

17 MS. GOLDING: Your Honor, I'm going to make an
18 objection.

19 THE COURT: Yes. Yes. Sustained.

20 MS. GOLDING: Thank you.

21 THE COURT: And let me be clear. Because they speak for
22 themselves. There are two documents. They speak for
23 themselves. If you're going to -- so then are you eliciting
24 some sort of expert testimony in that regard? He hasn't been
25 qualified as an expert in that, just so my ruling is clear.

1 MR. SMITH: Thank you, Your Honor.

2 THE COURT: Yeah.

3 Q. In this exhibit before you, who -- what does this
4 document purport to do?

5 THE COURT: Which one? I'm so sorry.

6 MR. SMITH: I'm sorry. 6C, Plaintiff's Exhibit 6C.

7 THE COURT: Thank you.

8 MS. GOLDING: Your Honor, of course, the document speaks
9 for itself.

10 THE COURT: It does speak for itself. I'm so sorry,
11 Mr. Smith.

12 Q. Have you examined this document, Professor?

13 A. I have.

14 Q. And how does this document fit into your analysis?

15 A. There were bylaws, which were the constitution and
16 canons of the diocese, according to the chancellor's
17 testimony. These -- what this referred to itself as the
18 bylaws is different than the constitution and canons of the
19 diocese. And those -- both of those documents speak for
20 themselves. Anybody could look and see that they are
21 different. So what do we have here? And this is part of the
22 testimony of the chancellor, that these bylaws in 2010 didn't
23 make the constitution and canons go away. They added to the
24 constitution and canons. And, in other words, this is an
25 amendment, an amendment to the bylaws that were in effect in

1 2010. So how do we amend bylaws under the statute? And the
2 statute speaks for itself when it says in Section 33-31-1020,
3 that if there are no members, the bylaws can be amended by
4 the board. In 2010, who was the board? It was Bishop
5 Lawrence, as the sole designated director.

6 We look at Exhibit 6C in vain to see who produced this
7 document and how this document fit into the corporate
8 governance rules under the '94 Act. And the officers -- the
9 testimony of the officers of the corporation is that they
10 don't know who produced this document or how it got to be the
11 bylaws, and they don't know what authority -- by what
12 authority the bylaws were amended.

13 And now, the bylaws purport to create directors. And
14 there's a group of people listed in here as directors of the
15 corporation, board of directors. Now, there are a couple of
16 problems with this. Well, of course, one part of it is it
17 happens the people on this list are also members of the
18 standing committee at the time that this was promulgated, but
19 it doesn't say that here. This document does not vest the
20 standing committee with the powers of the board of directors.
21 It just vests 12 people, who happen to be the members of the
22 standing committee. And there is a difference between
23 individuals being vested with authority as directors and an
24 institution of corporate governance, if you will, that is,
25 the board from time to time in office. And so that's a bit

1 clumsy. Nevertheless, I don't think these bylaws are
2 effective because they -- this is an example of the
3 governance of the corporation that was carried out
4 inappropriately by people not authorized to do what they
5 purported to be doing. And so it's my opinion that this
6 document is not a valid set of bylaws.

7 Q. Can you turn next to Plaintiff's Exhibit 6A?

8 A. I have it.

9 Q. And have you reviewed this document?

10 A. Yes, I have.

11 Q. And can you explain how this document fits into your
12 analysis?

13 A. Well, it purports to be another set of bylaws. This
14 set -- sorry. I'm looking for the effective date. This is
15 12/16/10. The set that we just looked at is 10/22/10. So
16 the -- for whatever reason, whatever the intent of the
17 corporation was -- and I won't speculate what that was -- a
18 new set of bylaws is promulgated. Once again, who under the
19 '94 statute can amend bylaws? Because this is clearly an
20 amendment of the ones we just looked at. And it would be
21 cumulatively also an amendment of the constitution and canons
22 of the diocese, you know. So it's a cumulative amendment of
23 both, you know, what was probably the bylaws from 1973 up to
24 2010 and then these purported bylaws of 2010, which I think
25 were ineffective. We now have a further amendment. Who can

1 amend bylaws? Members, but there are no members. The board,
2 then, is the only party that can amend the bylaws. The
3 default rule is either the board or the members can amend the
4 bylaws. But where there are no members, you're just left
5 with the board.

6 At this point in 2010, who is the board? Well, it's
7 Bishop Lawrence as the sole designated -- he's the bishop,
8 the sole designated director in this unbroken line of bishops
9 as bishops being the sole designated director.

10 How did these bylaws come into being? By what authority
11 were these bylaws promulgated? Well, once again, there's
12 nothing in the record about it. And I've reviewed the record
13 for this purpose, and I can't find anything in the record
14 that says how these were promulgated and by what authority
15 they were promulgated. And when I say the record, I'm not
16 just talking about the minutes of the meetings and the
17 journals. I'm also talking about -- when I talk about the
18 record in this respect, I'm talking about the testimony of
19 the officers of the corporation. And nobody -- nobody can
20 establish any authority for the promulgation of this set of
21 bylaws.

22 Now, this one does purport -- you'll notice this is a
23 larger document. It's got a lot more material in it. This
24 does purport to making the -- making the board -- is this the
25 one that makes the board be coextensive with the standing

1 committee? (Brief pause.)

2 The problem with this document, once again -- well,
3 there are two problems with this document. One is we don't
4 know who had the authority to promulgate all this stuff. And
5 another is that, in some respects, this one is inconsistent
6 with the constitution and canons.

7 Q. Professor, if I could direct you to the second page.

8 It's the second paragraph up from the bottom, starting, "The
9 bishop of the body now known as..." If you could review that
10 and tell me how that paragraph fits into your analysis.

11 A. I'm going to -- this is not up on the board. I'm going
12 to read this into the record. "The bishop of the body now
13 known as the Protestant Episcopal Church in the Diocese of
14 South Carolina, hereinafter the bishop, shall be an
15 ex-officio member of the board with seat and voice but no
16 vote. In the event of a dispute or a challenge regarding the
17 identity of the bishop of the Protestant Episcopal Church in
18 the Diocese of South Carolina, the elected directors shall
19 have the sole authority to determine the identity and
20 authority of the bishop." And the bishop is Mark Lawrence,
21 Diocese of South Carolina.

22 Now, the -- what this provision of the bylaws purports
23 to do is take away from the constitution and canons of the
24 national church the power --

25 MS. GOLDING: Your Honor, we've already -- there is no

1 foundation as to his expertise with respect to the
2 constitution and canons of the national church. So I believe
3 that testimony is not proper, nor does his opinion express --
4 nor does his written opinion, which we received, express any
5 opinion that Bishop Lawrence has contravened the constitution
6 and canons of the national church. That is not in his
7 opinion in any respect.

8 THE COURT: Okay.

9 MS. GOLDING: Further, Your Honor -- and because -- and
10 I bring that up because of your order dated June 9, 2014, in
11 which you specifically state that any opinions that are
12 attempted to be -- that he provides 72 hours before his
13 deposition are the only opinions he can testify to, and now
14 he's gone beyond that.

15 THE COURT: Yes, sir, Mr. Smith.

16 MR. SMITH: Your Honor, I'll say that we provided a
17 six-page report within that timeframe. We provided him for a
18 deposition. He traveled from Columbia to Charleston to take
19 that deposition. Ms. Golding and Mr. Runyan asked him ten
20 minutes worth of questions. It was their intent to try to do
21 what they're doing now. They don't -- they didn't want to
22 know the substance of his testimony. His expert report is
23 quite detailed. And if they wanted to flesh out more support
24 for it, they had every opportunity to do that, and they chose
25 not to.

1 THE COURT: Okay. Well, let me see it. Just let me see
2 what was provided the 72 hours in advance.

3 We'll mark this as the Court's 4.

4 (The Court's Exhibit 4 marked for identification.)

5 THE COURT: All right. Let me hear the question.

6 (Record read.)

7 THE COURT: All right. Ms. Golding, I want you to look
8 at page -- really, beginning at the bottom of -- well, I was
9 going to say at the bottom of page 4, but page 4 deals with
10 the '73 charter. Then we've got the amendment of the
11 charter. And reading on on page 5 and page 6, Do you
12 believe -- the first question is, Do you believe that you all
13 were notified that this witness would testify that the
14 actions of Bishop Lawrence were those impermissible actions
15 to invalidate parts of the national constitution that was
16 incorporated in the original articles of incorporation?

17 MS. GOLDING: Not bishop, no. With respect to the
18 opinion, he takes -- he states in his opinion the actions
19 purportedly taken by Bishop Lawrence.

20 THE COURT: Right.

21 MS. GOLDING: And those cooperating with him were ultra
22 vires and unenforceable.

23 THE COURT: That's right.

24 MS. GOLDING: He does not state in this opinion that the
25 bylaws are in contravention of the charter. He does not

1 state that the bylaws are in contravention of the National
2 Episcopal Church constitution and canons. And that last part
3 is just what this witness was trying to say. There is
4 nothing in his opinion as to the validity and enforceability
5 of the bylaws. And that's where my objection is, Your Honor.

6 MR. RUNYAN: Your Honor, I would add to that one more.
7 I believe his last word was "power."

8 THE COURT: Right.

9 MR. RUNYAN: That implicitly brings an opinion into
10 play, which is an opinion that he should not have the
11 expertise to express in terms of the national canons.

12 THE COURT: All right. Mr. Smith, let me hear from you.

13 MR. SMITH: Your Honor, without some time to sit down
14 and try to pick through this report, I think it speaks for
15 itself. I think he's covered the issues generally. And
16 again, I would say that they spent five or ten minutes
17 deposing him, so...

18 THE COURT: Okay. Well, it's 1:00, and we're going to
19 take lunch. And let me look at this line of questioning.
20 I'll look at what's now the Court's Exhibit 4 and give you my
21 decision at 2:15, which is when we'll reconvene.

22 MS. GOLDING: May I?

23 THE COURT: Yeah.

24 MS. GOLDING: When I took his deposition, I had
25 subpoenaed his entire file, Your Honor. And with his file,

1 Professor -- he had set forth a list of documents he had
2 reviewed. And, of course, these bylaws were not part of the
3 list, nor were the constitution and canons of the national
4 church. And I'd like to, for your edification on this, on
5 his deposition and what he did present, his file, may I
6 present his original deposition?

7 THE COURT: You may.

8 MS. GOLDING: Thank you, Your Honor. I'm showing
9 Mr. Tisdale the original deposition.

10 THE COURT: And you're going to open it for me?

11 MS. GOLDING: Yes, I'll be glad to, Your Honor.

12 THE COURT: You're so kind. I'll certainly take a look
13 at that portion of the deposition, as well. And I will see
14 everyone at 2:15.

15 (The Court's Exhibit 5 marked for identification.)

16 (Lunch recess held.)

17 THE COURT: All right. Yes, sir. You were going to
18 look at your document over lunch and tell me whether you
19 believed that under the document as provided to the
20 defendants that Professor McWilliams was eligible to testify
21 regarding the effect of the constitution and canons of the
22 National Episcopal Church. I think that was the question;
23 yes?

24 MS. GOLDING: As to the bylaws.

25 THE COURT: Sans constitution and canons, bylaws.

1 MR. SMITH: Your Honor, at the deposition, the professor
2 produced --

3 THE COURT: Mr. McWilliams.

4 MR. SMITH: -- he produced a summary of documents that
5 he had reviewed. And among them are listed corporate bylaws.
6 And I believe there's nothing wrong with him continuing to
7 review materials as trial approaches. So I'm not sure if he
8 reviewed the constitution and canons prior to trial or not,
9 but I would think that he should be able to testify to that
10 now if he has done so.

11 THE COURT: Except I messed you up. It was bylaws, not
12 constitution and canons. That was my mistake. I messed you
13 up. Bylaws. Bylaws.

14 MR. SMITH: Oh, the corporate bylaws?

15 THE COURT: Yes. The question is whether or not he
16 should be able to testify regarding the effect of the bylaws
17 of the national church, right?

18 MS. GOLDING: He was about to opine that the bylaws of
19 the plaintiff diocese were in contravention of the canons and
20 constitution of the national church.

21 THE COURT: Right. I guess where my head is, is to do
22 that, he's got to be able to testify and know the
23 ecclesiastic part.

24 MS. GOLDING: That's correct, Your Honor.

25 THE COURT: He's here doing the corporate part, but it's

1 the ecclesiastic part that causes me consternation. And
2 that's the part that I've been focusing on. In other words,
3 is he qualified -- has he been qualified as an expert in the
4 field of the ecclesiastical part of this case so that he can
5 do the comparison? That's where I've been focused. Because
6 I think he can testify and has been testifying regarding the
7 corporate law of South Carolina as it applies to nonprofit
8 corporations and the code. And he's talked about the bylaws.
9 He's talked about the amendments and the articles of
10 incorporation and the statute. The question then gets to be,
11 when you start doing this comparison, he cannot compare the
12 constitution and canons of the national church with the
13 amendments unless he is qualified to testify with regards to
14 the ecclesiastic information.

15 My concern is that piece of it, whether or not Professor
16 McWilliams has been offered as an expert for the ecclesiastic
17 part.

18 MR. SMITH: The answer to that is no, Your Honor. We're
19 not offering him as an ecclesiastic expert.

20 THE COURT: Okay. So then ask him another question.

21 Q. Can you please turn to Plaintiff's Exhibit 32?

22 A. I have it.

23 Q. And is this a document you have reviewed?

24 A. Yes.

25 Q. Can you tell me how this document fits into your

1 analysis?

2 THE COURT: Can I ask you a question? Could you please
3 tell me what Plaintiff's Exhibit 32 is, because I would like
4 to be able to follow along?

5 MR. SMITH: Right. It is entitled Minutes of the
6 Meeting of the Standing Committee of the Protestant Episcopal
7 Church in the Diocese of South Carolina, October 2, 2012.

8 THE COURT: Thank you, sir.

9 Q. And, Professor, I'll direct you towards the end of the
10 page, the last paragraph on this first page.

11 A. I'm going to read this paragraph, if that's appropriate.

12 Q. Yes, please.

13 A. And this is quoted from a motion made by a member of the
14 standing committee of the plaintiff diocese. Quote, The
15 Protestant Episcopal Church in the Diocese of South Carolina,
16 through its board of directors and its standing committee,
17 hereby withdraws its accession to the constitution of the
18 Episcopal Church and disaffiliates with the Episcopal Church
19 by withdrawing its membership from the Episcopal Church.
20 This decision shall be effective immediately upon the taking
21 of any action of any kind by any representative of the
22 Episcopal Church against the bishop, the standing committee
23 or any of its members or the convention of this diocese or
24 any of its members, including purporting to discipline,
25 impair, restrict, place on administrative leave, charge,

1 de-recognize or any other actions asserting or claiming any
2 supervisory, disciplinary or other alleged hierarchical
3 authority over this diocese, its leaders or members.

4 And then there's another paragraph. The chancellor
5 shall certify to the ecclesiastical authority and to the
6 board of directors that such condition has occurred which
7 certification shall be conclusive.

8 Q. Thank you. And can you tell me how -- in reviewing this
9 paragraph, how that fits into your expert analysis?

10 A. The point of this paragraph appears to me --

11 MS. GOLDING: Your Honor, I would like to make an
12 objection for the record that there is nothing in the
13 expert's opinion relating to this exhibit or the provision
14 that he has just made -- provision he has just read. So I
15 believe that under his opinion he's restricted to his
16 opinion, and he is now going outside of his opinion.

17 MR. RUNYAN: In addition to that, I believe it speaks
18 for itself. The document speaks for itself.

19 MR. SMITH: Your Honor, I would just say that this
20 resolution is clearly one of the core disputed issues in this
21 case as to whether this resolution is effective or proper. I
22 believe, again, that his report covers these issues generally
23 and that he should be allowed to testify as to this.

24 THE COURT: As to whether or not that resolution was
25 entered properly?

1 MR. SMITH: Yes, as to whether it was proper, as to
2 whether it's a proper process to have a retroactive
3 resolution, corporate resolution.

4 THE COURT: That was a motion -- as I understand it,
5 that came from the minutes of the standing committee, right?

6 MR. SMITH: That's right.

7 THE COURT: And that was a resolution before the
8 standing committee, correct?

9 MR. SMITH: That's right.

10 THE COURT: Was there an appeal from that resolution and
11 determination by the standing committee?

12 MR. SMITH: I'm not aware of what you mean by appeal.

13 THE COURT: Well, in other words, was that the highest
14 ecclesiastic body that addressed that resolution?

15 MR. SMITH: At this time, Your Honor, the standing
16 committee, pursuant to the plaintiff's arguments, is
17 purporting to act as the corporation.

18 MR. HOLMES: Your Honor, I think the question that's
19 being asked is what is the -- from a neutral principle
20 standpoint, what is the effect of this document on this
21 secular corporation?

22 MR. TISDALE: Right, that's correct.

23 THE COURT: That's a different question, Mr. Holmes.
24 That might be a good one. But what is the effect of that on
25 this? Because I can't go behind that, you see.

1 MR. HOLMES: No, I don't think the professor intends
2 to -- although I haven't really discussed it with him, but I
3 don't believe he plans to go there. I think he's going to
4 say if you look at this document and apply neutral principles
5 of corporate and business law to it, what does it do in the
6 context of this corporation?

7 THE COURT: Okay. So tell me where you believe in
8 the -- because -- if you would do this for me. Just look at
9 the expert report and tell me where you think -- or you can
10 ask him where it is he thinks this issue lies within his
11 report.

12 MR. SMITH: If I could have a moment, Your Honor.

13 THE COURT: Absolutely.

14 MR. TISDALE: Ask him.

15 MR. SMITH: Professor, please, if you could look at it,
16 as well.

17 On page 5, the last sentence in the bullet point:
18 Actions taken by corporate officers in violation of their
19 fiduciary duties of loyalty are invalid.

20 And then on page 6, the first bullet point on page 6:
21 The actions purported to be taken by Bishop Lawrence and
22 those cooperating with him in the course of attempting to
23 withdraw from TEC were ultra vires and unenforceable.

24 And this, obviously, is the withdrawal resolution. This
25 resolution in the standing committee minutes in 2012 is what

1 the plaintiffs purport to have effectuated their withdrawal.

2 And then I'll read another paragraph, the third point
3 there on page 6: The record as developed in this case up to
4 the present does not make clear how Bishop Lawrence at one
5 point was authorized to characterize himself as president of
6 TECDSC or how others subsequently adopted that title or how
7 or by what authority the standing committee was called the
8 directors or indeed by what authority virtually any of the
9 corporate actions taken on Bishop Lawrence's watch were
10 justified.

11 And this is just another one of the purported corporate
12 actions and, obviously, a very important one.

13 And I would add, Your Honor, it can be no surprise to
14 the plaintiffs that we're bringing this issue up. This is
15 their -- one of their key pieces of evidence in this case
16 that they withdrew through this standing committee.

17 THE COURT: All right. But the question you want to ask
18 this witness is what, so that I am absolutely crystal clear?

19 MR. SMITH: Based on his -- I want to know the corporate
20 effect. I don't want to go anywhere ecclesiastical.

21 THE COURT: Okay.

22 MR. SMITH: Does this have any corporate effect?

23 THE COURT: Does that resolution have any corporate
24 effect?

25 MR. SMITH: Right. This type of resolution.

1 THE COURT: This resolution?

2 MR. SMITH: This resolution, yes.

3 THE COURT: All right. Okay. How about that?

4 MS. GOLDING: It's clearly not in his report.

5 THE COURT: Now, he does say that the attempt to
6 withdraw was ultra vires.

7 MS. GOLDING: I understand that. But I think that he --
8 has given an opinion, and your order strictly said you can't
9 give any opinions out of what you have given.

10 THE COURT: He's going to tell me he thinks it's ultra
11 vires.

12 MS. GOLDING: I understand, but he's not -- I
13 understand, Your Honor.

14 THE COURT: What he can't do is he can't go behind it,
15 because under the Pearson, that's it. It's ecclesiastic. It
16 was done. I cannot look behind it. It exists. But taking
17 it as it is, does it have a corporate effect?

18 You already said it's ultra vires. Anything else? Do
19 you understand the question.

20 THE WITNESS: I believe I do. Let me have a shot at it.

21 Q. Could you please provide your analysis, Professor?

22 THE COURT: Understand, I cannot allow you to opine
23 regarding the way that the resolution came about. The
24 resolution was done in an ecclesiastic forum. Pearson says
25 I've got to take it. I cannot go behind it. That is where

1 the separation -- one of the places where the separation of
2 church and state finds me. So I will accept the resolution.
3 So just take that as reality.

4 Does it have a corporate effect?

5 THE WITNESS: Yes, Your Honor, it does, in my opinion.
6 The first is -- will be a point that I think is familiar in
7 our context today, and that is that it purports to do
8 something that is outside the corporate -- the corporate
9 powers of the diocese, which is also the corporation. And
10 that is it is manifestly inconsistent with the -- it's
11 manifestly inconsistent with the 1973 charter.

12 THE COURT: Got it.

13 MR. RUNYAN: The problem with that opinion, in order to
14 come to that conclusion, he has to be opining on what that
15 charter incorporates. If it is incorporating the
16 constitution and canons, then he's really opining that it is
17 inconsistent with those constitution and canons. Otherwise,
18 he couldn't say what he said.

19 THE COURT: I know.

20 MR. RUNYAN: And so we object to that.

21 THE COURT: I understand that. The document says what
22 it says. And his opinion is that the resolution withdrawing
23 it is at odds with that, and that's his opinion. Okay.

24 Q. Professor, could I get you to focus your analysis on the
25 purported retroactivity of this resolution?

1 THE COURT: There is nothing in this piece that talks
2 about any retroactive action, I don't think, unless I missed
3 it. And I could have. So if I did, help me.

4 MR. SMITH: All right. Can I rephrase?

5 THE COURT: Sure.

6 Q. Professor, can you talk about -- can you analyze whether
7 this resolution -- the good standing of the people passing
8 this resolution at the time it's passed?

9 MS. GOLDING: Clearly, Your Honor, good standing,
10 there's absolutely no foundation as to that -- what is good
11 standing with respect to this witness having any knowledge of
12 such.

13 MR. HOLMES: Your Honor, he certainly can testify as to
14 whether or not status in good standing would make a
15 difference in terms of the action that was taken. Whether or
16 not these people are in good standing, I don't know that he
17 has to know that. He just simply has to say, Does it matter?
18 And as Your Honor knows from the cases, the standing of
19 people to do things is a matter inquiry for the Court, even
20 if it's an ecclesiastical issue. At some point, Your Honor
21 is entitled to make the decision as to whether or not they
22 were or they weren't. It may be an ecclesiastical
23 determination that's handed to you by the highest
24 ecclesiastical authority, but its effect on a corporate
25 document on neutral principles is something that the Court

1 seems to be able to say that you can look at, like in the
2 bishop case where the court decided that the bishop had been
3 defrocked and, therefore, would not have standing to do what
4 it was he was trying to do. Deferral was to the ecumenical
5 power, but the effect of that was a legal question.

6 MR. RUNYAN: Your Honor, on the record before us, this
7 decision is a decision of the standing committee. The
8 standing committee is -- subject to the bishop, is a little
9 bit higher, the highest ecclesiastical authority of the
10 diocese. And he wants to ask him about standing under an
11 ecclesiastical concept to pass the resolution. It was
12 passed, and the effect of that, I think, is for the Court.

13 MS. GOLDING: Just the other thing I want to add,
14 Mr. Holmes, his reference to deferral or deference, that's
15 not law in South Carolina.

16 THE COURT: That's correct. And let me just maybe add
17 this. I know where this is coming from. I know where this
18 inquiry is coming from. The inquiry is coming from -- oh,
19 what's the term where you ask a question and you don't really
20 look for an answer? And it's in the All Saints case. And
21 what it says is, is that there's no evidence before the Court
22 whether or not those who were voting were in good standing or
23 not. And he just sort of makes that in passing. In other
24 words, we've got people voting. We've got a majority. We've
25 got a quorum. But there was no evidence before the Court

1 whether or not those who were voting were those who ought be
2 voting, were they in good standing? And they just sort of
3 make that in passing and say since nobody raised this, this
4 is not before the court, since there's no evidence, we will
5 assume that everybody who voted was in good standing. And
6 that would go to be true whether it was a board of -- whether
7 it was an election by the membership of John Deere or Intel
8 or Apple or anybody else. There are those members who are
9 allowed to vote and those who aren't allowed to vote. And
10 there's some passing reference to that in the All Saints
11 case. And I believe that's where this is coming from.
12 That's an evidentiary matter. And there isn't any -- that
13 I'm aware of, there isn't any evidence on that issue. And at
14 this point, unless you can tell me otherwise -- do you intend
15 to offer evidence that the individuals who actually voted on
16 this particular resolution were not people who were allowed
17 to vote because they were not in good standing?

18 MR. SMITH: Your Honor, my intent with this question was
19 not to go into ecclesiastical waters at all. I want to know
20 simply from a corporate perspective, a resolution that
21 purports to be automatic to activate at a later time but is
22 passed by people at a time when they may have had authority,
23 but when the resolution takes effect, it effectively accedes
24 whatever authority they have, is that -- is that an effective
25 legal typical corporate resolution?

1 THE COURT: That's a different question.

2 MR. SMITH: That's what I want to ask the professor. I
3 don't want to go into ecclesiastical, who has ecclesiastical
4 standing with this question at all.

5 THE COURT: Okay. In other words, you want to ask him
6 if there is a resolution that is a self-executing resolution
7 at some point in the future based upon conditions that may
8 exist in the future, is that allowed?

9 MR. SMITH: Yes.

10 THE COURT: Something like that?

11 MR. SMITH: Something like that.

12 THE COURT: Something like that? All right. That's
13 different.

14 MR. SMITH: May I ask that, Your Honor?

15 THE COURT: Sure.

16 Q. Can you answer that question?

17 THE COURT: It would be an executory resolution.

18 THE WITNESS: That's well put, Your Honor.

19 THE COURT: Well, thank you.

20 THE WITNESS: The issue in corporate law is can a board
21 bind a future board that is made up of different people with
22 perhaps different levels of authority. And the answer is no
23 in corporate law. A board today cannot bind a future board
24 based on events that happen in the future.

25 In this particular case, you have folks who have -- you

1 know, arguably, they have authority to act on behalf of the
2 standing committee. We're anticipating events that may mean
3 that some of those people don't have authority in the future,
4 perhaps. Can this group bind a future group that has a
5 different level of authority? And in corporate law, the
6 answer would be no.

7 THE COURT: That wasn't really the question, though.
8 The question was, can a board pass an executory resolution?

9 THE WITNESS: An executory resolution is one that is not
10 today executed.

11 THE COURT: Necessarily.

12 THE WITNESS: Necessarily.

13 THE COURT: Depending on conditions preceded, occurring
14 in the future.

15 THE WITNESS: It will be executed at -- today's board
16 makes an executory resolution to something that will happen
17 later. Boards can make executory resolutions, but they're
18 always conditioned upon what the circumstances are in the
19 future when they actually get executed.

20 I go back to my original point, which is that a board
21 cannot bind a future board. And that's a clear rule of
22 corporate law.

23 THE COURT: Okay. Next.

24 MR. SMITH: Thank you.

25 Q. Professor, if you could turn to Plaintiff's Exhibit 28.

1 A. I have it.

2 THE COURT: Tell me what that is.

3 MR. SMITH: It is a lease agreement.

4 THE COURT: Okay.

5 Q. And have you reviewed this agreement, Professor?

6 A. I have.

7 Q. Can you give me your analysis on this document?

8 A. This is a lease agreement for the benefit of Bishop
9 Lawrence.

10 MS. GOLDING: Your Honor, I'm going to make an objection
11 again that this lease agreement was never mentioned in his
12 report and, therefore, should not be part of his testimony.

13 THE COURT: I don't see it, but you all help me. I had
14 lunch with this.

15 MR. SMITH: Your Honor, it would go to some of the same
16 points I just read to the Court.

17 THE COURT: Okay. Something about the lease? Okay.

18 MR. SMITH: Your Honor, the last bullet point on page
19 6 --

20 THE COURT: Okay.

21 MR. SMITH: And I'll skip to the middle of that
22 paragraph: The corporate assets have been and are being
23 misapplied and wasted.

24 THE COURT: Okay.

25 MR. SMITH: And that's going to be the focus of this

1 testimony.

2 THE COURT: Okay. All right.

3 Q. Professor, could --

4 MS. GOLDING: Your Honor, I'd just make -- at the time
5 of his deposition, certainly he had not reviewed this
6 document. This document was not in his file, nor had it been
7 mentioned in any of the documents that he provided that were
8 part of his file.

9 THE COURT: The lease?

10 MS. GOLDING: I'm sorry, Your Honor?

11 THE COURT: The lease?

12 MS. GOLDING: The lease, yes, ma'am.

13 THE COURT: Okay.

14 Q. Have you reviewed it, Professor?

15 A. I have reviewed it, yes.

16 MS. GOLDING: Not at the deposition.

17 THE COURT: Yes. When? Ask him when.

18 Q. When did you review it?

19 A. I cannot tell you the date on which I reviewed it.

20 THE COURT: Was it before or after your deposition?

21 THE WITNESS: Well, if it had been before the
22 deposition, it would be on the list, Your Honor.

23 THE COURT: I gotcha. Okay. Moving right along.

24 Q. So, Professor, can you tell me why it is your analysis
25 that this lease agreement evidences --

1 THE COURT: I'm so sorry, Mr. Smith. See, here's the
2 thing, you've got to move on.

3 MR. SMITH: Your Honor, I'm just informed it is on the
4 list of documents we identified for the deposition. It is
5 part of a form. So it was on the list.

6 THE COURT: Okay. If you could help Ms. Golding and
7 help me find that, that would be wonderful.

8 MS. GOLDING: I don't see it on Exhibit 6.

9 MR. SMITH: It's listed on the IRS Form 1023. You all
10 produced it.

11 MS. GOLDING: It's got IRS Form 1023, Your Honor.

12 MR. SMITH: It's an attachment to that. That's how we
13 received it from you.

14 MS. GOLDING: But it's not part of the file. It was not
15 part of the file. It was not in his file.

16 MR. SMITH: I mean, it's listed as one of the things he
17 reviewed. I'm not sure that he gave you copies of everything
18 he reviewed. You produced it to us, again, at this point.
19 And he's identified exactly what it is in his list.

20 MS. GOLDING: It's not in his exhibits.

21 THE COURT: All right. Now, I don't see the lease on
22 here.

23 MR. SMITH: Your Honor, it's attached. There was a form
24 filed with the IRS that had all sorts of attachments to it,
25 and this lease was one of those attachments. And that's how

1 we received it from them.

2 MR. HOLMES: What's the name of it in the list?

3 MR. TISDALE: IRS 1023.

4 THE COURT: Have you all got it? Did you get that? Did
5 you look at the IRS Form 1023?

6 MS. GOLDING: That is our document we had provided
7 during discovery, Your Honor, the plaintiff diocese, Your
8 Honor.

9 THE COURT: I understand. And do you know if the lease
10 was attached to it?

11 MS. GOLDING: Yes, Your Honor, it was attached to that
12 document.

13 THE COURT: Okay. Go ahead.

14 MR. SMITH: Thank you.

15 Q. Professor --

16 A. To eliminate the discussion we've just had, it was
17 actually as an exhibit to Form 1023 that I saw in Exhibit 28.
18 And it's -- what you have to do -- what 1023 is, is an
19 application for a 501(c)(3) tax exemption.

20 THE COURT: I know. We've got that. We've passed that
21 row. We've plowed it. So now the question is the wasting of
22 the assets on the lease.

23 THE WITNESS: And one of the things the IRS wants to
24 know about is whether there --

25 MS. GOLDING: Your Honor, I'm going to make an objection

1 as to what the IRS wants to know. He's not a tax person.
2 He's not been qualified as a tax person. And so I don't
3 think that this witness is competent to testify to that
4 respect.

5 MR. HOLMES: He's qualified as an expert in business and
6 corporate matters, which, unfortunately, in this country
7 includes taxes.

8 THE WITNESS: Let me just move on to the document. It's
9 a lease entered into between the trustees of the diocese, the
10 trustees --

11 MS. GOLDING: Your Honor, I'm going to make an
12 objection. There's nothing in his opinion as to the
13 plaintiff trustees. His opinion only relates to the
14 plaintiff diocese.

15 MR. SMITH: The plaintiffs claim to be the beneficiaries
16 of that trust, Your Honor. I would think --

17 MS. GOLDING: It is not a trust, Your Honor. Plaintiff
18 trustees is a South Carolina corporation.

19 THE COURT: I think you're trying to get to the part
20 which they have pointed out to me that says the corporate
21 assets have been and are misapplied and wasted. Go there.

22 THE WITNESS: May I continue? The corporate assets are
23 owned by the corporation. The diocesan assets, which are the
24 corporate assets, are owned by the corporation, which is the
25 trustees.

1 MS. GOLDING: Your Honor, I'm going to make an
2 objection. This witness does not have any qualification nor
3 any foundation as to the ownership of property and who the
4 beneficiaries may be of the ownership of property. And,
5 clearly, that was not within his exhibit. They're trying to
6 get in the back door where they can't get in the front door
7 and create -- and create issues that are not even in the
8 pleadings, Your Honor, with respect to this corporate
9 plaintiff trustees.

10 THE COURT: I'm with you. And you would add by saying?

11 MR. RUNYAN: The asset question --

12 THE COURT: Yes.

13 MR. RUNYAN: -- is exclusively owned by the trustees --

14 THE COURT: Yes.

15 MR. RUNYAN: -- to which he added no opinions in his
16 opinion.

17 THE COURT: Okay. Try it this way. I'm going to hand
18 you this. And that last bullet is the one that they said the
19 lease falls under. Go for it.

20 THE WITNESS: This lease gives the bishop the free --
21 virtually free use --

22 MS. GOLDING: Your Honor, again, that's not under the
23 bullet point. His whole report is about the Protestant
24 Episcopal Church in the Diocese of South Carolina, the
25 plaintiff diocese, nothing about the plaintiff trustees.

1 THE COURT: Gotcha.

2 MR. SMITH: Your Honor, again, if they had actually
3 taken a real deposition, they could have asked him about this
4 bullet point.

5 MR. RUNYAN: It's not our obligation to do that. It's
6 your obligation to lay out the opinions.

7 THE COURT: Hold on. Hold on.

8 MR. RUNYAN: I apologize, Your Honor.

9 THE COURT: That's okay. I got the point. I'm with you
10 completely. Yes. So what I need to know from you is, with
11 regards to the diocese, how did the diocese waste the
12 property?

13 THE WITNESS: The diocese is the corporation. The
14 diocese -- it is clear in the record that property of the
15 diocese is held by the corporation called the trustees for
16 the benefit of the diocese.

17 MS. GOLDING: That's completely in error.

18 THE COURT: That would be for cross-examination.

19 MS. GOLDING: I'm sorry, Your Honor.

20 THE COURT: Yes. All right.

21 THE WITNESS: This is a house which the bishop is given,
22 essentially, the free use of, at a very nominal rent, for
23 years, not only while he's the bishop, but even after he
24 ceases to be the bishop. And, therefore, the use of this
25 property is being wasted, in effect, by giving him the use of

1 the house, even when he's no longer the bishop of the
2 diocese.

3 THE COURT: Okay.

4 THE WITNESS: That is waste of the property of the
5 corporation, and it is a self -- this is important. It is a
6 self-interested transaction because the bishop was the
7 president of the corporation called the trustees at the time
8 this was entered into. So this is an interested officer
9 transaction. The Nonprofit Corporation Act holds those
10 transactions to be wrongful unless certain steps are taken to
11 have them approved. Those steps were not taken in this case.
12 So this is an example of corporate waste, breach of fiduciary
13 duty, in a self-interested transaction that's not cured.

14 MR. SMITH: Thank you, Professor. That is all I have.
15 Please take questions from the plaintiffs.

16 THE COURT: First of all, national church, any
17 questions?

18 MR. BEERS: No, Your Honor.

19 THE COURT: All right. Very well. All right.

20 MS. GOLDING: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION BY MS. GOLDING:

23 Q. Mr. McWilliams, for some reason, you didn't tell this
24 Court that you've been a member of a church in Columbia for a
25 long time. Why is that?

1 Q. All right. Look down at paragraph 5 on that same page.
2 Would you read the question that appears and tell us which
3 box is checked?

4 A. Paragraph 5. "Does the organization control or is it
5 controlled by any other organization?" Checked is "no."

6 Q. Okay.

7 A. Next question. "Is the organization the outgrowth of
8 another organization or does it have a special relationship
9 to another organization by reason of interlocking
10 directorates or other factors?" "No."

11 MR. RUNYAN: And one final document.

12 (Plaintiff's Exhibit DSC-66 marked for identification.)

13 Q. Have you seen this document before?

14 A. No.

15 Q. You weren't furnished this one either?

16 A. I haven't seen it.

17 Q. Okay. So you weren't furnished it?

18 A. Presumably, not, no.

19 Q. Okay. Who's the author?

20 A. Tom Tisdale.

21 Q. Who's it addressed to?

22 A. Arnold Blackman at the Diocese of South Carolina.

23 Q. Is that the same person who signed the application that
24 we just looked at?

25 A. It is.

1 Q. What's the date of the letter?

2 A. March 23rd, 1977.

3 Q. What's the date of the application?

4 A. June 22, 1977.

5 Q. Okay. Would you read the paragraph, please, sir?

6 A. "Dear Arnold, Enclosed herewith is a pertinent portion
7 of Internal Revenue Service forms to obtain tax exempt status
8 for the diocese and its institutions. I would like you to
9 fill out and get the information together for as much of the
10 forms as you can, while at the same time I'll do the same
11 thing, and in a few days we will get together and attempt to
12 get it all together for filing. With best wishes."

13 MR. RUNYAN: Move those last two documents into
14 evidence. I believe there's no objection.

15 MR. BEERS: We have no objection.

16 THE COURT: Very well. Any objection?

17 MS. ST. AMAND: No objection.

18 THE COURT: Very well. Thank you.

19 (Plaintiff's Exhibits DSC-65 and DSC-66 admitted into
20 evidence.)

21 Q. Do boards of directors appoint officers?

22 A. Yes.

23 Q. If an officer leaves or dies or in some way is
24 incapacitated, would you expect the board of directors to
25 appoint his or her replacement?

1 A. Yes.

2 MR. RUNYAN: Thank you. That's all I've got.

3 And also move Exhibit 64 into evidence.

4 THE COURT: And that is the declaration and petition for
5 incorporation?

6 MR. RUNYAN: Yes.

7 THE COURT: And you all were looking to see if you had a
8 certified copy.

9 MR. RUNYAN: We do have. I will find it.

10 THE COURT: All right. Very well. Of course, that
11 makes it a self-authenticating document, and it will be
12 admitted once you're able to locate that. Thank you.

13 (Plaintiff's Exhibit DSC-64 admitted into evidence.)

14 THE COURT: I'm so sorry. Mr. Orr has a question on
15 behalf of the plaintiffs.

16 MR. ORR: Just a few quick questions.

17 THE COURT: Sure. I'm sorry. Yes, sir.

18 CROSS-EXAMINATION BY MR. ORR:

19 Q. Professor McWilliams, my name is Larry Orr. I represent
20 two of the parishes.

21 A. Yes, sir.

22 Q. As I understand the opinions that you expressed earlier
23 this morning, by paragraph No. 4 on the certificate of
24 incorporation in 1973 --

25 A. Exhibit 7?

1 THE COURT: Are the plaintiffs ready to proceed.

2 MR. RUNYAN: Yes, Your Honor.

3 THE COURT: Defense?

4 MR. TISDALE: Ready, Your Honor.

5 THE COURT: Wonderful.

6 MR. TISDALE: Your Honor, we would like to call the next
7 witness, if we may.

8 THE COURT: I'd be excited.

9 MR. TISDALE: Rebecca Lovelace.

10 REBECCA LOVELACE,
11 being first duly sworn, testified as follows:

12 THE COURT: If you would state your full name for the
13 record and spell your last name.

14 THE WITNESS: Rebecca Lovelace, L-O-V-E-L-A-C-E.

15 THE COURT: Thank you so much. Your witness,
16 Mr. Tisdale.

17 MR. TISDALE: Thank you very much, Your Honor.

18 DIRECT EXAMINATION BY MR. TISDALE:

19 Q. Ms. Lovelace, where do you live?

20 A. Conway, South Carolina.

21 Q. And how long have you lived in Conway?

22 A. All of my life, except for I left for education and so
23 forth, but all of my life.

24 Q. All right. And in Conway, are you connected with a --
25 let me say, before the fall of 2012, were you connected, were

1 you a member or communicant of a parish in Conway?

2 A. St. Paul's Episcopal Church, all of my life, yes.

3 Q. All right. Ms. Lovelace, in addition to your
4 involvement at St. Paul's in Conway and subsequent to that,
5 have you been involved in the affairs of the Diocese of
6 South Carolina since leading up to the departure of
7 Bishop Lawrence?

8 A. I'm not sure.

9 MS. GOLDING: I object to the question. I don't know
10 what he's talking about "departure." I think that's a
11 confusing question.

12 MR. TISDALE: I don't think the witness is confused,
13 Your Honor.

14 MS. GOLDING: I think she's --

15 THE WITNESS: No, I am confused.

16 THE COURT: Well, there you have it. Sustained.

17 THE WITNESS: I was involved with diocesan conventions
18 from St. Paul's Episcopal Church as a delegate to quite a few
19 conventions, and then since that time, I've been involved
20 with the Episcopal Church in South Carolina.

21 Q. South Carolina.

22 A. Yes.

23 Q. Okay. Well, thank you for clarifying that. Now, were
24 you a member of a steering committee to reorganize the
25 Diocese of South Carolina in the fall of 2012?

1 A. Yes.

2 Q. All right. And what was the purpose of that group?

3 A. Our purpose was, since we were left without an
4 ecclesiastical authority, to reorganize, get a new bishop and
5 move on.

6 Q. Right. And was that achieved?

7 A. Yes.

8 Q. All right. And, Ms. Lovelace, since the Episcopal
9 Church in South Carolina got a new bishop, have you been
10 involved in the organization of that body?

11 A. Yes. I am on the standing committee.

12 Q. Standing committee of the Episcopal Church in South
13 Carolina?

14 A. Yes. Since January 2013 I have served on the standing
15 committee.

16 Q. And are still serving?

17 A. Yes.

18 Q. Now, with respect to St. Paul's in Conway, I think you
19 said you had been a communicant there and grew up there?

20 A. Yes.

21 Q. Pretty much all your life?

22 A. Yes.

23 Q. And were any other members in your family connected with
24 that parish?

25 A. My parents, my four -- my three siblings, my husband, my

1 children, yes.

2 Q. All right. How did it happen that you discovered that
3 it would not, beyond a certain point, be an Episcopal Church?

4 A. On the Sunday after it was made -- it was revealed that
5 the standing committee had passed a resolution that they
6 would -- that they would separate from the Episcopal Church,
7 on that Sunday when I went to church, the priest announced
8 that we were no longer in the Episcopal Church, and that's
9 how.

10 Q. Who was the priest?

11 A. Tripp Jeffords.

12 Q. And is he, just for identification purposes, the same
13 priest from St. Paul's who testified, I think, perhaps last
14 week?

15 A. Yes.

16 Q. All right. And he simply announced that you were no
17 longer an Episcopal Church?

18 A. Yes. And then we had -- he had a meeting, he had two
19 meetings after, the one that evening, and then at my request,
20 because I couldn't be there that evening, he met a second
21 time on Tuesday for questions and explanation; and, yeah, the
22 gist of it was we are no longer part of the Episcopal Church.

23 Q. Did the parish ever consider and take action on that
24 issue, or was it simply only the announcement made by the
25 priest?

1 A. The parish, that parish never had a congregational vote.

2 My assumption is but I don't understand --

3 MS. GOLDING: Your Honor, I would make an objection to
4 the assumptions.

5 THE WITNESS: I don't know if anybody ever voted. I
6 know the congregation did not vote.

7 Q. You did not vote?

8 A. No.

9 Q. Did anyone in your family know anything about a vote?

10 A. There wasn't one.

11 Q. There wasn't one.

12 A. Not a congregational vote.

13 Q. So, Ms. Lovelace, what did you do and others like you do
14 to continue if you wished to be an Episcopalian in Conway?

15 A. Organized a new church by -- within -- within five days
16 of the announcement -- well, actually within three days of
17 the priest's announcement, I had already lined up a priest to
18 do services for the group that wanted to remain aligned with
19 the national church.

20 Q. All right. And where did you begin to have such worship
21 services or meetings?

22 A. The first service that we held we held at St. Paul's in
23 the chapel. I had asked the priest if we could use that
24 chapel. And he -- and I met with the vestry, and they
25 approved the use of the chapel. But it came with so many

1 written conditions that we worshiped there once, and then we
2 left there and found space to worship in on the campus of
3 Coastal Carolina University. And that's where we still are.

4 Q. Now, without going into a lot of detail, what sort of
5 restrictions were placed on the use of the chapel?

6 A. Well, number one, it --

7 Q. At St. Paul's, excuse me.

8 A. It stated in the conditions that the vestry would review
9 the --

10 MS. GOLDING: Your Honor, if she's referring to anything
11 that was ever in writing, I think that that needs to be
12 presented to the Court. We haven't seen that, and obviously,
13 that would be the best evidence.

14 MR. TISDALE: Well, I certainly haven't seen it.

15 THE COURT: I understand. But the best evidence rule
16 would certainly dictate, if there is a writing, that that
17 writing be produced.

18 Q. Do you have such a writing, Ms. Lovelace?

19 A. I don't have it in my hand, but I see Mr. Shelton
20 passing something up. Is that it?

21 MR. TISDALE: Mr. Shelton, do you have a copy of it?

22 MR. SHELTON: A copy of what? I'm sorry.

23 MR. TISDALE: The writing she's talking about putting
24 restrictions on the use of the chapel at St. Paul's.

25 MR. SHELTON: Not in my possession.

1 MR. TISDALE: I'm simply trying to ask her to tell us a
2 couple of the restrictions that she remembers were put on
3 them for the use of the chapel.

4 THE WITNESS: Well, I will tell you that --

5 THE COURT: No, ma'am, when I'm handling an objection,
6 I've got to do my work, and you just relax.

7 If there is a writing and if there is a reference to a
8 writing and there is an objection with regards to the best
9 evidence rule, obviously -- it really is two. It really is
10 best evidence as well as hearsay because, obviously, it's at
11 least double if not triple hearsay.

12 MR. TISDALE: I understand, Your Honor.

13 THE COURT: Yes.

14 MR. TISDALE: Thank you.

15 MR. HOLMES: May I speak to that just very briefly?

16 THE COURT: Okay.

17 MR. HOLMES: Under Rule 801 --

18 THE COURT: Yes.

19 MR. HOLMES: -- she's testifying this was a document
20 that was created by a party and that the content --
21 therefore, the content of it is a statement by a party.
22 Under 801, it's not hearsay. At least that would be -- I
23 believe that's the rule.

24 THE COURT: Sure, it is. It's hearsay because it is in
25 a writing. That's the first level of hearsay. And as you

1 know, you must admit evidence, and you must satisfy each and
 2 every level of hearsay. Minimally, minimally, it's double
 3 hearsay. It very well may be triple hearsay, depending on
 4 what is in the content of the letter. Number one, it's
 5 hearsay because it's in a writing. Number two, you're
 6 exactly correct, if we had the writing, it very well may be
 7 admissible because it's an admission by a party opponent,
 8 therefore, nonhearsay. But the first level is, it's hearsay.

9 MR. HOLMES: I understand.

10 THE COURT: Thank you.

11 MR. HOLMES: It was handed to her by a representative of
 12 the party, so I think that takes it out of the rule.

13 THE COURT: I don't think so.

14 MR. TISDALE: Thank you very much. May I proceed, Your
 15 Honor?

16 THE COURT: Yes, sir. Thank you, Mr. Tisdale.

17 Q. Ms. Lovelace, as a result of the restrictions -- without
 18 saying what they are, but as a result of restrictions that
 19 were placed upon your use of the chapel at St. Paul's, did
 20 you move your worship activities to another location?

21 A. We did.

22 Q. And I think you testified earlier that was to -- where
 23 were they moved to?

24 A. Lackey Chapel on the campus of Coastal Carolina
 25 University, and that's where we still are today.

1 Q. All right. And approximately when did the new
2 organization begin using Lackey Chapel?

3 A. Early November.

4 Q. Of?

5 A. 2012.

6 Q. 2012?

7 A. Yes.

8 Q. And that's where you are today?

9 A. Yes.

10 Q. Now, approximately how many Episcopalians are connected
11 with that organization at Lackey Chapel?

12 A. I don't have an exact number but more than 100.

13 Q. All right. Ms. Lovelace, does the new organization of
14 continuing Episcopalians have a name?

15 A. St. Anne's Episcopal Church.

16 Q. And does it have a status in the Episcopal Church in
17 South Carolina?

18 A. Yes. We are a mission church admitted at the last
19 convention.

20 Q. Is St. Anne's Church in Conway in union with the
21 convention of the diocese of the Episcopal Church in South
22 Carolina?

23 A. Yes. And we're also in union with the national church,
24 yes.

25 Q. All right. Ms. Lovelace, before becoming and accepted

1 as a mission church at the convention, as you testified, what
2 was the organization, the form of the organization called?

3 A. Early on, we were the Conway worshiping group.

4 Q. That's what I -- worshiping group?

5 A. Correct.

6 Q. All right. And about when did it become St. Anne's,
7 growing out of the worshiping group?

8 A. I think maybe by April. I filed articles of
9 incorporation and by the time I did that, we were already --
10 we had adopted the name St. Anne's Episcopal. We were
11 incorporated as St. Anne's Episcopal Church.

12 Q. Okay. And who is the leadership of St. Anne's Church?

13 A. Dan Ennis is the senior warden, I am junior warden and
14 we have a vestry.

15 Q. Okay.

16 THE COURT: Mr. Tisdale, could she spell Ennis just for
17 our court reporter.

18 MR. TISDALE: E-N-N-I-S.

19 THE COURT: Is that it?

20 MR. TISDALE: Is that correct?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 Q. Is he a professor at the Coastal Carolina University?

24 A. He is the professor and dean of humanities.

25 Q. Okay. Dan Ennis. Thank you.

1 Ms. Lovelace, before Father Jeffords announced that you
2 were no longer Episcopalians or in the Episcopal Church, was
3 there any, were any presentations made or anything of that
4 nature to the congregation leading up to that event to
5 educate the congregation about what was going on?

6 A. We had many conversations over the years about the
7 national church and many representations that they were never
8 planning to leave the national church, because that's a
9 question I asked frequently, and the answer I always got was,
10 "We are never leaving."

11 Q. Right. Did your family, through the years and in
12 history, contribute financially to the parish of St. Paul's
13 Conway?

14 A. Significant contributions, yes.

15 Q. And did your parents, upon their demise --

16 MS. GOLDING: Your Honor, I'm going to make an
17 objection. That clearly is hearsay, what her parents did or
18 may have been bequeathed. I don't think that's appropriate.

19 THE COURT: If she knows of her own knowledge, and I
20 don't know at this point what relevance it may have, but it
21 may have some.

22 MR. TISDALE: Thank you very much.

23 Q. Did your parents, upon their demise, and their estates
24 make bequests to St. Paul's Conway?

25 A. \$358,000 was bequeathed to St. Paul's Episcopal Church

1 in my mother's will.

2 Q. Thank you.

3 Before it was announced that you were no longer going to
4 be an Episcopal Church, did you have any conversations with
5 Father Jeffords and perhaps Bishop Lawrence, if you did,
6 about fund-raising activities in the parish that they were
7 undertaking?

8 A. Well, there was a major capital campaign to build.

9 Q. When was that?

10 A. I'd say it was 1999, 2000, somewhere in there. 1999 --
11 we started a new church, building a new church, 2000, so yes.

12 Q. And were you involved in at least the solicitation for
13 that campaign, or your family?

14 A. Oh, yes.

15 Q. And who did you confer with from the parish management
16 about that?

17 A. I mean --

18 Q. I mean --

19 A. -- my husband was one of the major leaders of the
20 campaign.

21 Q. Okay. Were you given any assurances, in connection with
22 considering your contribution to that fund, as to what the
23 future of the parish would be with respect to the Episcopal
24 Church?

25 A. We had numerous discussions over the years, and always I

1 was told --

2 Q. By whom?

3 A. By the priest. And I've heard Bishop Lawrence also
4 assure the congregation on his visits to St. Paul's, and also
5 before him, Bishop Salmon's visits to St. Paul's, always, "We
6 are not leaving the Episcopal Church." In fact, one time the
7 statement was made, "We will never leave them. They might
8 leave us, but we're not going to leave them."

9 Q. Okay. And did your family make contributions to
10 whatever fund-raising campaigns were undertaken, including
11 the capital campaign?

12 A. Yes. Significant. They asked for sacrificial giving
13 and I gave sacrificially, yes.

14 MR. TISDALE: Okay. Thank you very much, Ms. Lovelace.
15 Answer any questions --

16 MS. GOLDING: I just have a few, Your Honor.

17 THE COURT: Yes, ma'am. Cross-examination. I should
18 first ask, national church, do you all have any?

19 MS. KOSTEL: No, Your Honor.

20 THE COURT: Very well. Yes, ma'am. Ms. Golding.

21 MS. GOLDING: Thank you.

22 CROSS-EXAMINATION BY MS. GOLDING:

23 Q. Now, Ms. Lovelace, isn't it a fact that in October 2012,
24 you and some other members in your worship group sent a
25 letter to the presiding bishop, to the national church

1 saying, "We don't want St. Paul's property. It's got too
2 much debt"?

3 A. I didn't send that letter, no.

4 Q. Well, didn't you sign that letter?

5 A. I don't believe I did.

6 Q. You don't think you did?

7 But isn't it a fact that in your group, your St. Anne's
8 group, your worship group, many sent a letter saying, "We
9 don't want St. Paul's."

10 MS. KOSTEL: Objection, Your Honor.

11 Q. "It's got too much debt"?

12 MS. KOSTEL: Objection, Your Honor. We're talking about
13 the best evidence rule. If there's a letter, let the letter
14 speak for itself if they want to put it into evidence.

15 THE COURT: In other words, I'm with you completely.
16 Yes, ma'am.

17 Q. Okay. Take a look.

18 A. Is my signature on that letter?

19 Q. Guess what, I get to ask you the questions.

20 MS. GOLDING: Can you please mark that as an exhibit?

21 (Plaintiff's Exhibit DSC67 marked for identification.)

22 Q. Let me give you Plaintiffs' 67 for identification
23 purposes, and you will see that this is a letter to the
24 presiding bishop of the defendant, national church, which
25 contains no signatures; is that correct?

1 A. That's correct. There are no signatures.

2 Q. And that's not the first time -- today is not the first
3 time you've seen that letter, is it, Ms. Lovelace?

4 A. First time I've seen it in this form.

5 Q. You've seen this type of letter before; have you not
6 seen this letter before?

7 A. I'm aware of the letter.

8 Q. Okay. Good.

9 A. I think you said something that I signed the letter. I
10 don't believe I ever did sign the letter.

11 Q. Okay. But you're not -- but there are a number of your
12 associates at St. Anne's that signed that letter?

13 A. I don't know who signed the letter. I've never seen the
14 letter with the signatures, so no.

15 Q. I'm not asking you --

16 A. I'm not through.

17 MR. TISDALE: Your Honor, please ask the witness to -- I
18 mean Ms. Golding not to interrupt the witness.

19 THE COURT: Let me just lay down some rules. If you
20 hear "objection" --

21 THE WITNESS: Shut my mouth. Okay.

22 THE COURT: No. I would just simply do like this
23 (indicating).

24 THE WITNESS: I can have a sip of water while I wait.

25 THE COURT: Indeed. And the reason for that is there

1 are matters of law that I have to handle.

2 THE WITNESS: I'm sorry.

3 THE COURT: That is absolutely not a problem.

4 MR. TISDALE: My objection was simply that I would -- I
5 object to her interrupting the witness while the witness was
6 answering a question.

7 THE COURT: I'm with you.

8 And, Ms. Golding, if you believe that she's being
9 nonresponsive, if you will direct that to me.

10 MS. GOLDING: I will, Your Honor.

11 THE COURT: I will handle that.

12 MS. GOLDING: I will. Thank you, Your Honor.

13 THE COURT: Very well. Absolutely. Now back to it.

14 Q. Okay. So what you're telling this Court is that even
15 though you were on the steering committee to form the
16 defendant diocese, right?

17 A. Yes, ma'am, I was.

18 Q. Okay. And even though you were the active member of
19 St. Anne's in putting it all together, right?

20 A. Correct.

21 Q. Okay. You did not sign this letter to the presiding
22 judge [sic] which said we don't want St. Paul's property?

23 A. I don't think I did sign it. I know that Dan Ennis
24 signed it, and I can't tell you who else signed it because I
25 never saw the signed copy; so I don't know who signed it.

1 MS. GOLDING: Okay. Thank you.

2 THE WITNESS: You're welcome.

3 THE COURT: And may I, for clarification purposes, since
4 this is a nonjury matter, Ms. Golding, you said "Did you send
5 it to the presiding judge?"

6 MS. GOLDING: Excuse me. Presiding bishop of the
7 defendant national church.

8 THE COURT: I just --

9 MS. GOLDING: I apologize.

10 THE COURT: I mean, ecclesiastically, there may be an
11 ecclesiastic judge. I don't know. Thank you. All right.
12 And that would conclude your cross?

13 MS. GOLDING: Yes, that is my cross. Thank you, Your
14 Honor.

15 THE COURT: Thank you.

16 MR. SHELTON: Your Honor, if it may please the Court,
17 Rob Shelton for St. Paul's Conway.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION BY MR. SHELTON:

20 Q. Good morning, Ms. Lovelace.

21 A. Good morning.

22 Q. You testified a moment ago that there was no
23 congregational meeting at St. Paul's?

24 A. I said not that I was ever made aware of.

25 Q. Okay. Are you aware of the meeting that took place

1 January 6, 2013?

2 A. No.

3 Q. So --

4 A. I was never sent a notice to be at the meeting.

5 Q. Are you aware -- are you familiar with the bylaws of
6 St. Paul's?

7 A. Yes.

8 Q. Is it not true the bylaws require notice be posted in
9 the narthex for two weeks prior to a parish meeting?

10 A. That I don't know.

11 Q. So you wouldn't know whether notice was properly posted
12 in the narthex during those two weeks. Then?

13 A. No, I would not.

14 Q. And, therefore, you wouldn't have been made aware of the
15 meeting?

16 A. No.

17 Q. Did you attend St. Paul's during the two weeks preceding
18 January 6?

19 A. Did I go to church there then?

20 Q. Yes.

21 A. No.

22 MR. SHELTON: Thank you, Ms. Lovelace. I have no
23 further questions.

24 THE COURT: Very well. Anyone else on behalf of the
25 plaintiffs? Cross-examination? No. Redirect.

1 requirements for regular audits and so forth.

2 So all of the indicia are present to indicate that there
3 is a -- an organization that oversees and controls the nature
4 and the quality and the character of the services offered
5 under this name, under this brand.

6 Q. And would that be an indicia of the existence of a
7 license?

8 A. If others were permitted to use the brand under those --
9 under those constraints, yes, that would be a license.

10 Q. Can you speak to how the public's perception of the
11 marks fits into your analysis?

12 MS. GOLDING: Your Honor, I'm going to make an
13 objection.

14 THE COURT: Sustained.

15 Q. So what opinions have you been asked to provide?

16 A. The basic opinion is whether it would -- whether it
17 would be permissible for a group that is leaving the national
18 church to continue to use the name of the national church,
19 and if not, why not, and the --

20 Q. And what was your opinion on that issue?

21 A. That it would not be permissible because there would be
22 an overwhelming likelihood of --

23 MS. GOLDING: Your Honor, I'm going to make an
24 objection.

25 MR. RUNYAN: It's going right to the issue that we don't

1 believe is relevant, Your Honor.

2 MR. SMITH: Your Honor --

3 MS. GOLDING: Further objection, there's no foundation
4 for that opinion.

5 MR. SMITH: Your Honor, I'm not sure how likelihood of
6 confusion could be irrelevant in a trademark case.

7 MR. RUNYAN: For starters, it's not a trademark case.
8 And secondly, if it's not a trademark case, confusion doesn't
9 matter. It's not relevant to your defenses.

10 MR. SMITH: It's not a trademark case?

11 MS. GOLDING: Further, there's no foundation as to this
12 witness --

13 MR. RUNYAN: Unless it's confusion through the misuse of
14 our marks.

15 MR. SMITH: Your Honor, I believe the second cause of
16 action in the plaintiffs' complaint is for service mark
17 infringement.

18 THE COURT: Yes, for theirs.

19 MR. SMITH: Right.

20 THE COURT: Not for yours.

21 MR. SMITH: Right. But as I read --

22 THE COURT: Do you want theirs?

23 MS. GOLDING: No, Your Honor.

24 THE COURT: I didn't think you did. Do you want to use
25 theirs? Are you okay with them keeping theirs?

1 MS. GOLDING: Yes, Your Honor.

2 THE COURT: That's what I thought. You just want yours.

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: And you'd like to use yours; am I right?

5 What am I missing? What am I missing?

6 MR. SMITH: Your Honor, your presumption that the marks
7 are theirs is the starting point.

8 THE COURT: They've got some registered marks and you've
9 got some registered marks, right?

10 MR. SMITH: Your Honor, I would argue that their
11 registered marks are, one, invalid; and, two, common law
12 trumps any type of state registration. And under common
13 law --

14 THE COURT: Stop. Didn't they have theirs before you
15 had yours?

16 MR. SMITH: No, Your Honor.

17 THE COURT: Didn't you have yours before they had
18 theirs?

19 MR. RUNYAN: According to the --

20 THE COURT: Stop.

21 MR. RUNYAN: -- dates of first use.

22 THE COURT: Yes.

23 MR. RUNYAN: I believe so.

24 THE COURT: Right.

25 MR. RUNYAN: And possibly for other reasons as well.

1 THE COURT: Aren't yours different than theirs?

2 MR. RUNYAN: Yes.

3 MS. GOLDING: Yes.

4 THE COURT: Okay. And they got -- and they have federal
5 registrations, yes.

6 MR. RUNYAN: They have three, four, which work out to be
7 two, essentially, yes.

8 THE COURT: Right. You don't want them?

9 MR. RUNYAN: No.

10 THE COURT: You just want yours?

11 MR. RUNYAN: Yes, Your Honor.

12 THE COURT: Do you want theirs?

13 MR. SMITH: Your Honor, our position is --

14 THE COURT: Answer me. Do you want theirs?

15 MR. SMITH: Well, we want ours, and we believe that
16 theirs are ours.

17 THE COURT: Well, then that's yours to use. Don't worry
18 about yours. Do you want theirs?

19 MR. SMITH: Yes.

20 THE COURT: Even though they're registered with the
21 State of South Carolina, yes?

22 MR. SMITH: Yes, they're registered.

23 THE COURT: And even though they have been in use by
24 them before you even existed.

25 MR. SMITH: That's not true.

1 MS. KOSTEL: No.

2 THE COURT: Okay. Well, before you registered yours.

3 MR. SMITH: Your Honor, can I make a general point?

4 THE COURT: No. Answer my question.

5 MR. SMITH: Yes, we want theirs --

6 THE COURT: You want theirs.

7 MR. SMITH: -- because we think ours is theirs and, yes,
8 we want it.

9 THE COURT: Then that's where your testimony must go --

10 MR. TISDALE: Right.

11 THE COURT: -- because they don't want yours. That's
12 not an issue. You can have yours. They're cool with that.

13 MR. SMITH: Okay.

14 THE COURT: See what I'm saying?

15 MR. SMITH: Okay.

16 THE COURT: Don't want them, don't want to use them,
17 taking them down, taking the flags down. Remember, I
18 listened to --

19 MR. SMITH: Right.

20 THE COURT: -- like, five days of taking flags down,
21 taking "the Episcopal Church Welcomes You" down, remember
22 that? Did that all week.

23 MS. KOSTEL: If I may, Your Honor.

24 THE COURT: No. He's got the witness. You can handle
25 it in a minute.

1 Are you with me? You want their marks.

2 MR. SMITH: Our defense, our basic defense is their
3 marks are our marks, and that is a defense to trademark
4 infringement.

5 THE COURT: Let's be clear what our issues are. These
6 marks are not identical. They are different. If your eyes
7 look at them, they're not the same. You've got some that are
8 federally registered, yes?

9 MR. SMITH: Yes.

10 THE COURT: Don't worry about those. They don't want
11 them, okay? Do you think they're using your federal ones?

12 MR. SMITH: Yes.

13 THE COURT: You think they're using your federal ones?

14 MR. SMITH: Yes. We think -- the difference between our
15 marks and their marks, our mark is the Episcopal Church.
16 Their mark adds the word "diocese" and "South Carolina." In
17 trademark terms, both of those are geographic descriptors.
18 They are not -- they do not create an independent mark from
19 the Episcopal Church.

20 THE COURT: That's where your testimony needs to go,
21 then, with regards to their marks. They don't want yours.
22 See what I'm saying? Yours are not in issue. Your federally
23 registered marks are not in issue. They do not wish to use
24 those, okay?

25 Where your testimony's got to now go is that based on

1 this witness's expertise, for some reason, she would opine
2 that their marks, although registered with the State of South
3 Carolina and they're in existence for a very long time, you
4 need to know that, that they really don't belong to these
5 folks. You see what I'm saying?

6 MR. SMITH: Yes, Your Honor.

7 THE COURT: But what's not in issue, and what you don't
8 need to spend any time on is yours, because they don't want
9 them. See what I'm saying?

10 Now, if you want to say they're too similar, they've
11 conceded that yours are yours, okay?

12 MR. SMITH: Okay.

13 THE COURT: Okay. So talk about theirs, because those
14 are the ones you want, right?

15 MR. SMITH: Right.

16 THE COURT: Okay. And the reason, you say why am I
17 referring to them as theirs, because they are registered to
18 them. I have seen those documents. They are registered to
19 the plaintiffs for the State of South Carolina. There's
20 testimony now in this trial that centuries before they were
21 actually registered, they were in use for the plaintiffs. So
22 that's where your testimony, I think, needs to focus with
23 regards to this witness. And since I've got to make the
24 decision, that's probably, if I were you, where I'd go, okay?

25 MR. SMITH: Thank you, Your Honor.

- 1 who have seat, voice and vote.
- 2 Q. And because you have seat, voice and vote you can speak
- 3 to issues in debate?
- 4 A. Correct, yes.
- 5 Q. And the roll call is called in order of consecration,
- 6 the order of your consecration, senior to junior?
- 7 A. No, in alphabetical order by diocese.
- 8 Q. Okay. Alphabetical order by diocese. And there's a
- 9 special place where you sit, bishops?
- 10 A. Oh, yes, we sit at round tables, yes.
- 11 Q. But it's the bishops -- the bishops sit there --
- 12 A. Yes.
- 13 Q. -- is that right?
- 14 A. Yes, that's right.
- 15 Q. Okay. Now, 2009, was Mark Lawrence present as far as
- 16 you know?
- 17 A. Yes, yes.
- 18 Q. Did he have seat, voice and vote?
- 19 A. Yes.
- 20 Q. And in 2012 was Mark Lawrence present?
- 21 A. Yes.
- 22 Q. Did he have seat, voice and vote?
- 23 A. Yes.
- 24 Q. Okay. You mentioned the province four, and you had some
- 25 discussion about that. I don't think I heard you to say that

1 Church, to be effective you must follow the rules associated
2 with that process?

3 A. The canons, yes.

4 Q. Okay. And would you agree with me that a province, a
5 provincial senate -- what is a provincial senate?

6 A. Provincial senate is made up of the bishops of the
7 diocese and the members of dioceses of a province. Sometimes
8 the provincial senate before general convention sits with the
9 deputations from the various dioceses to review matters
10 coming before the general convention. Other times assorted
11 representatives of the dioceses may come to consider other
12 programmatic issues.

13 Q. Would it be fair to say that that provincial senate is a
14 meeting of a group of persons from a group of dioceses that
15 are geographically located?

16 A. Depends on the meeting.

17 Q. All right. But in province four we're talking about a
18 province that would include the State of South Carolina.

19 A. Yes.

20 Q. Okay. Would you agree with me that province four has no
21 power to regulate or control the internal policy or affairs
22 of any of its constituent dioceses?

23 A. Well, it certainly has canonical authority in terms of
24 how the church is structured and how the life is carried out.
25 Can the provincial senate walk into the Diocese of East

1 Carolina and say, you're not doing it right, we want you to
2 do it this way, no.

3 Q. I'm not trying to trick you, Bishop.

4 A. I'm just trying to answer your question as I understand
5 it.

6 Q. I understand. I was quoting from a canon. If you would
7 like to see it, I'll be happy to give it to you.

8 A. Just read it.

9 Q. Okay. Section 8, Powers of Provincial Senate: The
10 provincial senate shall have power, A, to enact ordinances
11 for its own regulation and government.

12 A. Yes.

13 Q. B, to elect judges of the provincial court of review.

14 A. Yes.

15 Q. C, to perform such duties as may be committed to it by
16 the general convention. D, to deal with all matters within
17 the province provided, however, that no provincial senate
18 shall have power to regulate or control the internal policy
19 or affairs of any constituent diocese.

20 A. Yes.

21 Q. Do you agree with that?

22 A. Sure, that's what I just said.

23 MS. KOSTEL: Excuse me, Mr. Runyan, could you clarify
24 what version of the canons -- what year you're reading from?

25 MR. RUNYAN: 2006.

1 MS. KOSTEL: Okay. Thank you.

2 MR. RUNYAN: May be just about done.

3 THE COURT: Sure.

4 Q. Bishop, when your diocese, either East Carolina or your
5 present diocese, amends its constitution and canons, do you
6 have to send those before amendment to the national church
7 for their approval?

8 A. No, but as long as those amendments or changes are in
9 accord with the constitution and canons of the Episcopal
10 Church. We're not free to be rebels.

11 Q. There's not something that says, this one's going to be
12 different, so we have to send it?

13 A. I think common sense says if I'm going to change a --
14 introduce a constitutional change that takes us away from the
15 structure, the order, the doctrine, discipline and worship of
16 the Episcopal Church then, first of all, I don't see any
17 point in taking it to you, you're rebelling anyway, so as
18 long as the constitutional changes subscribe to and accede to
19 the constitution and canons of the Episcopal Church, no.

20 Q. That's common sense.

21 A. Yes.

22 MR. RUNYAN: Thank you.

23 THE WITNESS: That's common sense.

24 THE COURT: All right. Any other plaintiffs?

25 All right. Redirect.

1 THE COURT: Let me tell you what my memory is because
2 you all may want to check my memory because of what you may
3 or may not consider that letter with regards to its
4 importance. My memory is it was published and perhaps marked
5 for identification but not placed into evidence. You might
6 want to check.

7 MR. TISDALE: That is correct.

8 THE COURT: Okay.

9 MR. TISDALE: You're correct.

10 THE COURT: All right. Anything from the national
11 church?

12 MR. BEERS: No, Your Honor.

13 THE COURT: All right. Very well. Recross.

14 RECROSS-EXAMINATION BY MR. RUNYAN:

15 Q. Bishop, just one question, but I'm going to hand you two
16 big old heavy documents before I ask it, and would you just
17 look at those two and tell me what they are?

18 A. Well, the top page says constitution and canons.

19 Q. Would you look at the next page and tell us what year?

20 A. Next page says 2006 on one set and 2009 on the next set.

21 Q. Okay. And those are the constitution and canons for
22 those two years of the national church, that's not the
23 diocese, is it?

24 A. Yes, yes, yes, the national church.

25 Q. Would you please turn to the page in those two where it

1 says the diocese cannot withdraw from the Episcopal Church
2 and read it to us?

3 A. You're asking me to find the page, you're going to have
4 to wait a little while.

5 Q. I am.

6 A. What is your question?

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

11 A. I don't believe so.

12 MR. RUNYAN: Thank you, sir.

13 THE WITNESS: But I may be wrong.

14 MR. RUNYAN: I'm sure it will be pointed out if you are.
15 Thank you, Bishop.

16 THE COURT: Anything further from any of the plaintiffs,
17 cross-examination?

18 Thank you, sir, you may come down.

19 THE WITNESS: Thank you.

20 THE COURT: Very well.

21 MR. TISDALE: I just wanted to, about the third time
22 I've tried improperly, I'd just like to identify this. It is
23 marked as an exhibit for identification, and it is responses
24 to requests for admissions, just for identification in the
25 record, from the plaintiff diocese dated August 15th, 2013,

1 communion with the Archbishop of Canterbury, a member of the
2 Anglican communion.

3 For a number of years we worshiped at Trinity Edisto, we
4 gave money to Trinity Edisto. We now worship with the
5 Episcopal Church on Edisto when we're on the island.

6 Q. Were you ever an official member or communicant of
7 either Trinity or Edisto --

8 A. No, sir.

9 Q. -- of an Episcopal Church on Edisto?

10 A. No, sir. My membership -- I've had two memberships in
11 my life, the church in which I grew up, All Saints, Mobile,
12 and then I was transferred to Trinity Columbia in 1972.

13 Q. Now, Dr. Edgar, let's talk about your professional life
14 for a few minutes.

15 What educational background do you have in your field of
16 work?

17 A. I did my undergraduate work at Davidson College where I
18 was a major in history, did my graduate work at the
19 University of South Carolina, both my masters and my Ph.D.
20 Among the individuals I studied with are renowned historians
21 George C. Rogers, Jr. and Daniel Walker Hollis.

22 After my military service I had a postdoctoral
23 fellowship from the National Archives and worked on the
24 papers of Henry Laurens, which were housed -- the editorial
25 project was housed at the University of South Carolina.

1 Q. Have you been a faculty member at the University of
2 South Carolina?

3 A. I have been a faculty member. In fact, I retired two
4 years ago after 40 years at the University of South Carolina.

5 Q. And would you just give us an example of what you taught
6 in your position on the faculty?

7 A. In the course of teaching, introduction to US history to
8 250 students, South Carolina, 1670 to 1865. That was an
9 upper division course. I taught courses in historic
10 preservation. I taught honors seminars. I taught courses in
11 contemporary southern culture, so -- and graduate seminars.
12 I also directed theses and dissertations, graduate theses and
13 dissertations.

14 Q. Have you written any books on history, books of history
15 concerning the history of South Carolina?

16 A. I have written two books. One is "South Carolina in the
17 Modern Age." The other is "South Carolina: A History," and
18 I also was editor in chief of the South Carolina
19 Encyclopedia.

20 Q. Did you not also write a book about the American
21 Revolution in South Carolina?

22 A. Yes, sir, I did, "Partisans and Redcoats. The Southern
23 Campaign that Turned the Tide of the American Revolution."

24 Q. Now, Dr. Edgar, in connection with preparing to testify
25 in this matter, could you give the Court a general idea of

1 what sort of research, study and reading you have done to
2 answer questions about documents that we would like to show
3 you beginning in a few minutes?

4 A. Since I will be -- I am a factual witness, not an expert
5 witness, I used primary documents, documents at the National
6 Archives, documents at the South Carolina Historical Society,
7 documents at the University of South Carolina, South
8 Caroliniana Library, and those documents are detailed in the
9 report that I believe, sir, is filed with this Court.

10 Q. Have you also studied, read and studied, journals of the
11 convention of the Diocese of South Carolina?

12 A. Yes, sir. I have read every journal of the Diocese of
13 South Carolina from 1785 to 2010.

14 Q. All right, sir. What has been your intent to learn
15 about in the examination of all the documents you just
16 testified about, testified that you looked at?

17 A. My intent was to learn about the relationship between
18 the Diocese of South Carolina and the Episcopal Church.

19 Q. And the Judge has asked us, and we will try to do that,
20 do this, when you say the Episcopal Church, do you mean the
21 national church?

22 A. Yes, sir.

23 Q. One and the same for our conversation?

24 A. Yes, sir.

25 Q. All right. So let's ask you to begin in a minute by

1 taking a look at some of these documents. And I first would
2 like to ask you to look at a series of documents and tell us
3 from those documents what you can about the historic
4 connection between the diocese and the national church.

5 MR. RUNYAN: Your Honor, we have an objection here.

6 THE COURT: Okay.

7 MR. RUNYAN: As a lay witness, I don't believe he can
8 testify from documents in this fashion, nor do I believe that
9 makes the documents admissible. He cannot offer opinion
10 testimony. So we are at a place where he seeks to elicit
11 from this witness information that is not in his personal
12 knowledge as a lay witness and I don't think he can do that,
13 and I can speak to that with case law as needed, but he's a
14 lay witness, not an expert.

15 MR. TISDALE: Your Honor, we intend to show him a lot of
16 documents that he knows of his own knowledge exist and knows
17 the contents of. We're going to put them on the screen for
18 everybody to see and ask him to read from them. That's all.
19 He's not going to give any expert opinion about them. He's
20 simply going to read from documents for what they say. And
21 they are relevant to his study of the connection between the
22 national church and the Diocese of South Carolina, which is
23 certainly an issue in this case.

24 MR. RUNYAN: Your Honor, may I reference one case if I
25 could?

1 documents and the documents speak for themselves, even if
2 they are done in summary fashion, or based upon Mr. Edgar's
3 knowledge, training and experience he is opining with regards
4 to what the relationship may or may not be.

5 So while, just given the ease of it, it would certainly
6 be nice for me to have somebody read me a story, I'm not
7 allowed to do that.

8 MR. TISDALE: Right.

9 THE COURT: Because of -- and Mr. Runyan spoke of one
10 case, but there are many cases that talk to expert testimony,
11 so the question is when he does that, is he then going to say
12 this is an example of the relationship that existed between
13 the Diocese of South Carolina and the national church,
14 which -- the National Episcopal Church. See, I've learned so
15 much over the last two weeks. You know, we can do National
16 Episcopal. I got that now.

17 But I guess that would be the question, and at the point
18 in time when he shifts from saying this is what it says to
19 this is what it means, it's at that point that we've come
20 across to expert testimony, so that would be my question.

21 MR. TISDALE: Agreed, Your Honor, agreed, and I can tell
22 you exactly what we intend to do is put a document on the
23 screen, get him to identify the document, get him to say he's
24 read this document, and ask him does this document contain
25 anything in its own right, in its language, that has to do

1 with the issue we're interested in and will he read that
2 portion. That's all.

3 THE COURT: That's expert testimony.

4 MR. RUNYAN: That is expert testimony.

5 THE COURT: For this reason, for this reason: Because
6 he's a historian, familiar with these issues, at that point
7 he is opining that this text has this meaning which is
8 relevant to these issues.

9 MR. TISDALE: Okay. Well, Your Honor, let's take
10 another look at it, and maybe we can handle it this way.

11 THE COURT: Okay.

12 MR. TISDALE: He was listed as an expert witness.

13 THE COURT: Yes.

14 MR. TISDALE: His deposition was scheduled.

15 THE COURT: Yes.

16 MR. TISDALE: They indicated they did not wish to take
17 his deposition.

18 THE COURT: Yes.

19 MR. TISDALE: We thought it was a lot simpler then not
20 to offer him as an expert because we thought his testimony's
21 factual along the lines that we talked about; however --

22 THE COURT: Not only did you list him as an expert, I
23 listed him as an expert in my order.

24 MR. TISDALE: However, he is an expert, and I just told
25 Mr. Runyan Friday, I think, that we didn't think he would be

1 giving any expert testimony. We filed the report that you
2 have that says he is.

3 THE COURT: Yes.

4 MR. TISDALE: So given your ruling, we offer him as an
5 expert, exactly.

6 THE COURT: Now let's talk about that.

7 MR. TISDALE: All right.

8 THE COURT: Let's talk about that.

9 MR. TISDALE: Not your ruling but your indication?

10 THE COURT: Right. If he were to testify -- here's
11 what's very clear: He's clearly an expert --

12 MR. TISDALE: Yes.

13 THE COURT: -- with regards to -- he's the preeminent
14 expert regarding South Carolina history, period, nuance and
15 all of it. I know when it comes to Charleston Robert Rosen,
16 you know, he'd want to arm wrestle you about that.

17 THE WITNESS: We've discussed that, Your Honor.

18 THE COURT: I think he'd lose.

19 But, in any event, having said that, let me tell you
20 what my concern is: My concern is that are we going to the
21 hierarchical relationship, what are we doing when we do that.
22 Help me there.

23 MR. TISDALE: Well, I mean his testimony will relate to
24 beginning of what the relationship was between the Diocese of
25 South Carolina and the national church, how it developed in

1 is the Episcopal Church controlling the nature of the
2 services and the quality of the services. That's another
3 issue.

4 MR. TISDALE: Correct.

5 THE COURT: I gotcha. Yes.

6 MR. RUNYAN: There are completely independent bases for
7 the objection as well that we haven't gotten to yet, but on
8 the issue of a constructive trust, in South Carolina a
9 constructive trust is not a fiduciary relationship. I would
10 cite for that the case of, well, there are about five of
11 them.

12 THE COURT: Similarly, constructive trust is not. Did I
13 say it was? I meant not. I'm sorry.

14 MR. RUNYAN: There is no such thing in South Carolina as
15 an implied trust independent of the two --

16 THE COURT: Right.

17 MR. RUNYAN: -- resulting trust and constructive trust.
18 So I don't think it's relevant to that, but I will go on to
19 tell you what I really stood up to say, and that is that,
20 first of all, as an expert he has made it clear that the
21 purpose of his testimony is about the hierarchical nature of
22 the church, and I'll just read from Paragraph 2 of his
23 summary.

24 As an example, I will testify about the governance of
25 the diocese as prescribed by the constitution and canons of

1 the diocese and the Episcopal Church throughout history and I
2 will testify about the structural nature of the church and
3 explain its hierarchical nature, the ordering of its
4 governance.

5 And following that he lists bullet points of factual
6 information of the type that I would expect him to show on
7 the screen, but, and here is the reason we did not take his
8 deposition, at the conclusion of this report which is
9 supposed to, according to the Court's order of June 9,
10 contain the expert's opinions and the facts supporting each
11 opinion. No opinion outside the opinions provided 72 hours
12 prior to each expert's deposition can be offered at the trial
13 of this action.

14 His concluding two paragraphs in his 12-page summary say
15 as follows: I will use my expertise as a professional
16 historian to give a proper analysis and interpretation of any
17 of the voluminous documents that are involved in the factual
18 history I have been asked to present. I will render an
19 expert opinion whenever necessary to explain the context of
20 the history of the diocese as it relates to these matters.
21 It would be impossible for me to list each and every expert
22 opinion I might be required to render because such will
23 depend upon issues raised by the Court and counsel in search
24 of correct interpretations of the documents I am asked to
25 inspect.

1 In short, he says he's going to testify about the
2 hierarchical nature, but other than that, he is -- they do
3 not elicit in this report any opinions because I guess he was
4 called upon himself to formulate them. He says it's
5 impossible.

6 And so on that basis we don't think it complies with the
7 Court's order as well.

8 THE COURT: I got it. Yes.

9 MS. GOLDING: The other final objection is that this
10 witness does not have any qualifications in the religious
11 aspect. He is not an expert in any religious area;
12 therefore, he cannot testify as to what is hierarchical and
13 what is not, because that's not within his expertise.

14 MR. CAMPBELL: Thank you, Your Honor. For the record,
15 Pierce Campbell joining with Ms. Golding in that objection on
16 behalf of my parishes.

17 The list Mr. Tisdale read out, even if that was somehow
18 able to supplement the lack of a list in his original report,
19 included many things about canonical law, pension funds and
20 other things which, even if Dr. Edgar was considered an
21 expert in historical matters, I do not believe that canonical
22 law, pension fund, financial affairs goes to that history,
23 and instead the document speaks for itself, as we've already
24 said, and so trying to have a historian of some note reading
25 it gives it some additional credibility to the Court when

1 determination, but I would want our record to be very clear
2 in every way that the defendants have done everything within
3 their ability to establish the hierarchical nature of this
4 church, that I accept that, and that our Courts have said we
5 will not enforce the hierarchical decisions of churches but
6 we are a neutrality state, and that on appeal I anticipate,
7 if there is an appeal, assuming there is an appeal, that you
8 want to be, you, the defendants, would want to be in a
9 position to argue against precedent in South Carolina.

10 MR. TISDALE: That is correct.

11 THE COURT: And I am mindful of that, and so I would
12 want our record to be very clear that we are at crossroads in
13 that regard because you must preserve this record so that in
14 the event there is an appeal that you place yourself in a
15 position to argue against precedence, and I'm mindful of
16 that.

17 MR. TISDALE: Thank you.

18 THE COURT: So I want our record to be very clear that
19 you all have stood on 14 soapboxes and said, this ought to be
20 decided with regards to hierarchical determinations as other
21 states in the United States have done, we want to argue
22 against precedence, and I want you to be able to preserve
23 that.

24 I, on the other hand, want to thank you for your share
25 and tell you that we are a neutrality state and I am very

1 to do that.

2 What I don't want -- and if he's being offered for the
3 proposition of hierarchical, let's play like he did that
4 because I don't want to hear it because I've got that. You
5 all know I've got that and where I am about that. I don't
6 want to hear it. I would just play like we did it.

7 If he wants to talk about why he believes based upon the
8 information that he has reviewed that a constructive trust
9 very well may lie, I'm sort of interested in that.

10 MR. TISDALE: Your Honor, what we propose to do is
11 present the documents --

12 THE COURT: Yes.

13 MR. TISDALE: -- seriatim that he's considered, ask him
14 how these documents relate to the issue that he's willing to
15 say they support.

16 THE COURT: Okay. Tell them what it is during the
17 break, what that issue is, and I don't want to hear it. I
18 want to go take a break because I've had now a couple of
19 communications with a colleague, so let me run and do that.
20 Everybody take a break.

21 (Recess held.)

22 THE COURT: Okay.

23 MR. TISDALE: I will proceed, Your Honor, and I hope I
24 will be able to do so in accordance with what you indicated
25 we should do.

1 MR. RUNYAN: No. It's exhibited to the witness and the
2 question was asked, but they didn't go into evidence, we
3 didn't move them into evidence, and they were the Episcopal
4 Church constitution and canons.

5 MS. KOSTEL: Right, they were not journals.

6 THE COURT: That's right. Okay. Then I'm not concerned
7 about that. All right. If you all are good with the
8 excerpts, I'm good with the excerpts. You're going to have
9 to resolve the issue what you do about your constitution and
10 the canons that are in those journals. If you can't work out
11 a stipulation and it's important to you, then you're going to
12 have to --

13 MR. TISDALE: For this witness, we're just going to
14 refer to excerpts, and we've marked this particular one as
15 Exhibit 256.

16 THE COURT: Okay.

17 Q. Dr. Edgar, what is the document that's on the screen?

18 A. The document is the constitution of the Protestant
19 Episcopal Church in the Diocese of South Carolina. In 1841
20 there was a new Article 1. It's entitled "Of acceding to the
21 constitutions and canons of the general convention."

22 Q. What does that tell us about from this document the
23 connection between the diocese and the national church?

24 MS. GOLDING: Your Honor, I object. The best evidence
25 is the document itself, and he can't --

1 MR. TISDALE: He was told to summarize it, was what the
2 Judge said, not to read it.

3 THE COURT: The question was what does it say. I've got
4 to read it.

5 Q. Dr. Edgar, would you read this excerpt, please?

6 A. Yes, sir.

7 It is Article 1. The title is "Of acceding to the
8 constitution and canons of the general convention." The
9 Protestant Episcopal Church in South Carolina accedes to,
10 recognizes and adopts the general constitution and canons of
11 the Protestant Episcopal Church in the United States of
12 America and acknowledges their authority accordingly.

13 Q. Now, Dr. Edgar, does this document say whether or not
14 that provision passed the vote of the convention?

15 A. This passed on the floor of the convention unanimously.

16 Q. All right, sir. Let's go now to what's been marked as
17 Exhibit 259, and I will ask you to tell us what this is?

18 A. This is the cover for the convention of 1844.

19 Q. And have you considered this in your research as to
20 establishing connection between the diocese and the national
21 church?

22 A. Would you please repeat that, sir?

23 Q. Have you considered an excerpt from this journal, 1844,
24 to establish the connection between the national church and
25 the diocese?

1 A. Yes, sir. In terms of elections in South Carolina?

2 Q. Yes.

3 A. There were two journals when I did not actually see
4 references to testimonials, but since the individuals
5 concerned were consecrated, the testimonials had to have been
6 submitted. That could not have happened without them being
7 submitted.

8 Q. All right. Now, the next exhibit is 422 that we'll look
9 at briefly. What journal is this?

10 A. This is the journal of the 2008 convention.

11 Q. 2008?

12 A. Yes, sir.

13 Q. And along the lines of conformity with the rules, what
14 does this indicate that --

15 A. This is a continuation of a recessed convention, and
16 from the journal on September the 16th, 2006, we, referring
17 to the diocese, elected Mark Lawrence at a special electing
18 convention. His election was judged null and void, as a few
19 of the needed standing committee consents were not submitted
20 properly.

21 Q. Okay. So what happened?

22 A. They had another election.

23 Q. All right. Now I want to turn to a subject you
24 mentioned a few minutes ago, and that is the role or the
25 interaction between the national church and the diocese when

1 in that journal of the convention of the diocese concerning
2 the proposal to divide the state into two?

3 A. The bishop in his address --

4 Q. What bishop was that?

5 A. This is Bishop William Alexander Guerry in his address
6 to the convention.

7 I would remind you, however, that division under our
8 church law would not be possible until the next general
9 convention, or nearly three years from date.

10 Q. All right. So let's go to 336, which I think is the
11 1922 journal. What is the journal?

12 A. This is the journal for the 1922 convention.

13 Q. All right. I think they want you to read the excerpt,
14 if you will, if it relates to this proposal to divide the
15 state into two.

16 A. Yes, sir, this is for the division of the diocese.

17 Resolved, that the consent of the council of the Diocese
18 of South Carolina be and is hereby given to the erection and
19 establishment within the limits of this diocese of a new
20 diocese to be composed of the territory embraced within the
21 following counties.

22 THE WITNESS: Do you want me to read the counties, Your
23 Honor?

24 THE COURT: You don't need to.

25 Q. Skip the counties.

1 A. And that this council requests the bishop of the diocese
2 and its duly elected deputies to present to the general
3 convention at its next ensuing session a memorial setting
4 forth all necessary canonical information accompanied by the
5 proper documents and evidence and praying that the said
6 division of this diocese be sanctioned and confirmed.

7 Q. Dr. Edgar, as a matter of history, were the two
8 dioceses -- was the diocese of Upper South Carolina created?

9 A. It was. At the national convention in Portland in 1923
10 the general convention acceded to the division of the
11 diocese.

12 (Attorneys confer.)

13 MR. TISDALE: I'm going to show you -- this document is
14 not scanned. It's been marked as Exhibit 17, and we're
15 giving copies to everybody. Have you got one for the Judge?
16 I'll pass it up, if I may. 1923 journal. It has to do with
17 the same subject of the division of the diocese.

18 (Defendant's Exhibit 17 marked for identification.)

19 Q. Can you tell us whether the general convention -- you
20 said 1923. Could it have been 1922?

21 A. Yes, sir. What page are you referring?

22 Q. Look at Page 115.

23 A. Yes, sir, it was 1922. I misspoke.

24 Q. And just to clear that up, in 1922 did the general
25 convention give consent for the division?

1 A. Yes, sir, it did.

2 Q. Okay. And that's shown by the exhibit you're looking at
3 now, which I think is -- what's the number on the front?

4 A. No. 17.

5 Q. 17. Thank you, Doctor.

6 Now let's move to another topic briefly. I am going to
7 point to an exhibit or two and ask you to consider what we
8 looked at in light of the question or to view the question of
9 how the relationship between the diocese and the national
10 church involves the control over geographic boundaries of the
11 various dioceses, and I'll show you a couple documents to
12 look at. The first one is 414. What is that?

13 A. It's the journal for 2000.

14 Q. And what can you derive from it to talk about the
15 control of the general convention over the diocesan
16 boundaries? And there's an excerpt I think.

17 A. Okay. I've got to lean close with my trifocals.

18 THE COURT: Sure.

19 A. This is a report of the standing committee.

20 Consented to the ceding of that part of the territory of
21 the Episcopal Diocese of Minnesota consisting of Clay County,
22 Minnesota, to the Episcopal Diocese of North Dakota in
23 March -- on March 22, excuse me, March 22, 1999.

24 Q. Have you seen other examples of this same issue in other
25 journals?

1 Q. And would you look at the excerpts that are marked there
2 to see and read to us what relates to this issue in that
3 particular journal of 1822?

4 A. This is from the bishop's address.

5 Q. Who's the bishop?

6 A. 1822 it's going to be Bishop Gadsden.

7 Q. Could it possibly be Dehon?

8 A. I'm trying to remember when Bishop Dehon died.

9 Q. It doesn't matter. Just go ahead.

10 A. It's from the bishop's address, sir.

11 Q. All right.

12 A. The receiving of the new congregation of Manchester into
13 the convention by their delegates reminds me again to suggest
14 for your consideration the importance of instituting some
15 regular uniform mode of receiving churches newly organized
16 into our diocesan association.

17 Q. Okay. Now can we look at Page 39 of that journal? Is
18 it this same journal, I believe, in 1822?

19 A. Yes, sir, and at that particular convention.

20 MR. TISDALE: Page 39, just for the record.

21 Q. Go ahead, sir.

22 A. They passed Canon 1. The title of that canon is "Of the
23 admission of churches or parishes into the convention."

24 Q. This is Diocese of South Carolina convention?

25 A. Yes, sir.

1 Q. Would you read that, please?

2 A. Whenever a church or parish not now entitled to a
3 representation shall be desirous of uniting with the
4 convention of the church in this diocese, they shall apply by
5 letter to the bishop, or, when there is no bishop, to the
6 standing committee stating the due organization of their
7 church, the election of their vestrymen and church wardens,
8 their means or prospects for the support of a minister, and
9 their willingness to conform to the constitution and canons
10 of the general convention and the constitution and canons of
11 the convention of this diocese which are now or hereafter may
12 be enacted by authority of the same.

13 Q. This was what year?

14 A. 1822.

15 Q. Okay. Let's go to 238, Exhibit 238.

16 A. This is the journal of 1823.

17 Q. What does it do with regard to parish -- requirements of
18 a parish to conform with whatever it is?

19 A. They replaced Canon 1 with what would become initially
20 the fourth article, and it goes as follows: That the canon
21 adopted at the present convention, 1822, regulating the
22 admission of churches newly organized into conventions be
23 made an article of the constitution. The question being
24 taken, agreeing on the article of the report, it carried
25 unanimously.

1 constitution of the general convention and the constitution
2 and canons of this diocese, close quote, and whereas All
3 Saints Parish Waccamaw currently finds itself unwilling to
4 conform with Article VIII, Section 2, and -- and there's
5 several -- the final part of the resolution, all the
6 whereases now down to the resolved, to give them seat and
7 voice in convention.

8 Q. All right, sir. Now, has this canon requiring the
9 accession that you've testified about remained the same over
10 time in the journals and in the history you've considered?

11 A. Yes, sir.

12 Q. And if we look at Exhibit 422 from the 2008
13 convention --

14 A. Yes, sir.

15 Q. 2008?

16 A. Yes, sir.

17 Q. My question to you is, is the canon on the admission of
18 parishes still in the constitution in 2008? We'll look at
19 Article Roman Numeral VIII. There it is.

20 A. Yes, sir, Article VIII under of admitting parishes and
21 missions into the convention.

22 Q. Go ahead and read that.

23 A. Parishes must have been organized, as provided by canon,
24 for not less than one year may apply for and be admitted into
25 union with the convention by vote of the convention provided

1 that the requirements hereinafter set forth have been met.

2 Q. All right. And go on down. And now we're looking at
3 subsection what?

4 A. I believe it's 2-E.

5 Q. 2-E, what does it say?

6 A. Its willingness to conform to the constitution and
7 canons of the general convention and the constitution and
8 canons of the diocese, of this diocese, which are or
9 thereafter may be enacted by the authority of the same.

10 Q. Was that the constitution of the Diocese of South
11 Carolina in 2008?

12 A. Yes, sir.

13 Q. Okay. Now I have a few questions to relate some more to
14 the relationship of the diocese in the national church, and
15 I'm asking us to look at 220. Exhibit 220, what journal is
16 this?

17 A. 1804.

18 Q. What does it say concerning the issue of the mutual
19 relationship?

20 A. It says at a meeting of clerical and lay deputies --
21 and, Your Honor, where it has abbreviations, do you want me
22 to say Protestant Episcopal Church, or do you want me --

23 THE COURT: Doesn't make a bit of difference. Doesn't
24 matter.

25 A. At a meeting of clerical and lay deputies of the

1 expected to furnish the committee with the testimonials
2 required by the seventh canon of the general convention of
3 1853 and give them evidence that he has informed the bishop
4 of his intention according to the requisitions of the same
5 canon.

6 Q. Now we move to Exhibit 331, 1917 journal.

7 A. Title page 1917.

8 Q. And what does this tell us about required compliance
9 with general convention canons by the diocese?

10 A. Okay. The committee calls attention to the fact that
11 the general convention of 1916 adopted a new canon numbered
12 Canon 50 in the digest entitled, quote, Of Business Methods
13 in Church Affairs, close quote. This canon of necessity
14 supersedes and abrogates any and all diocesan canons relating
15 to the same subject whereby the date of our fiscal year
16 terminates April 30, see Canon 13, Section 6, does now
17 terminate December 31, thereby bringing into conformity in
18 point of time all statistical data relating to the church
19 wherever the same exists.

20 We, and that's the committee, therefore recommend that
21 Canon 49 and Section 1 of Canon 50 be substituted in place of
22 our diocesan Canon 13, Sections 4, 5 and 6.

23 We further recommend the adoption of the following
24 resolution; viz, that the secretary of this council be
25 directed to send a copy of diocesan Canon 13 as amended and

1 also of Sections 1 and 2 of Canon 50 of the general canons to
2 the treasurer of each parish and mission in the diocese and
3 that their attention be called to the same that they may
4 conform to the changes rendered necessary thereby.

5 Q. Do those refer to compliance with the general convention
6 canons?

7 A. Yes, sir.

8 Q. Exhibit 346.

9 MS. GOLDING: He didn't finish reading that.

10 MR. TISDALE: I'm sorry.

11 Q. Can you go back to 331?

12 MR. TISDALE: I'm sorry. I thought he had. He didn't
13 finish reading it, apparently. I'm sorry.

14 A. And they recommended the adoption of the following canon
15 of the church pension fund, Section 1, in conformity with the
16 legislation adopted by the general convention setting forth
17 the principles upon which a pension system for the clergy of
18 the church and their dependents should be constructed
19 pursuant to which the corporation, the church pension fund --
20 and those are italicized, ma'am -- has been created to carry
21 these principles into effect, the Diocese of South Carolina
22 adopts the system of the church pension fund.

23 Q. All right. Going now to 346.

24 A. This is the journal from 1932.

25 Q. And how does it relate to the topic we've been talking

1 Q. And have you noted relevant portions of that report?

2 A. Yes, sir.

3 Q. Read it, please.

4 A. Article 4 of the constitution of the Episcopal Church in
5 the United States of America states, quote, in every diocese
6 a standing committee shall be appointed by the convention
7 thereof. When there is a bishop in charge of the diocese,
8 the standing committee shall be his council of advice. If
9 there be no bishop or bishop coadjutor or suffragan bishop
10 canonically authorized to act, the standing committee shall
11 be the ecclesiastical authority of the diocese for all
12 purposes declared by the general convention. The standing
13 committee gives or refuses to give consent for the election
14 and consecration of bishops, recommend postulates, and that I
15 believe is an error, but for admission as candidates
16 recommends ordinations to the diaconate and priesthood.
17 Canon 11 of the national church states in every diocese the
18 standing committee shall elect from their own body a
19 president and a secretary.

20 Q. All right. Now moving on and getting not too far from
21 the end, I want to talk to you about what you've discovered
22 in the examination of your work, your study, about the issue
23 of some, but not all, of the financial aid to the diocese
24 from the national church?

25 MR. RUNYAN: Your Honor, this is not a document. It's a

1 were a part of the group exemption, I know that, so, I mean,
2 I know that.

3 MR. BEERS: And I guess we want to close the loop that
4 it's a response to a particular application, and that
5 application listed the Diocese of South Carolina as part of
6 the group.

7 THE COURT: I know. That's in your letter.

8 MR. BEERS: Sorry?

9 THE COURT: That's in your letter.

10 MR. BEERS: Yes. And the only point that we were
11 offering this for is that we have a group exemption --

12 THE COURT: Yes.

13 MR. BEERS: -- which covers the Diocese of South
14 Carolina.

15 THE COURT: It's already been testified to by somebody.

16 MR. BEERS: But let me tell you, Your Honor, in the
17 30(b)(6) depositions, witness after witness after witness
18 denied that they knew anything about this. But if you're
19 satisfied that there is evidence in the record that the South
20 Carolina -- people in South Carolina elected to be part of
21 the group exemption, that's fine.

22 THE COURT: And this letter doesn't add anything to
23 that. It doesn't detract anything, but it doesn't add
24 anything to it. And your letter is very general. Your
25 letter just says South Carolina.

1 Q. Now, Mr. Duffy, would you turn to 446.

2 MR. RUNYAN: Is there a question?

3 MR. BEERS: There's no question.

4 MR. RUNYAN: Okay, thank you.

5 MR. BEERS: Do you want me to ask one?

6 MR. RUNYAN: You would have to sooner or later.

7 THE COURT: Do you have this document?

8 MS. GOLDING: We have a document that says the Diocese

9 of Maryland, Your Honor.

10 MR. RUNYAN: And we only have a few pages. We don't

11 have the whole -- -

12 THE COURT: How can you tell it even says that?

13 MS. GOLDING: From their list.

14 MR. RUNYAN: It's from their list, that's the only way.

15 MR. BEERS: No, it's not the only way. The word

16 Maryland's right there at the top of the page next to the

17 date 1790.

18 THE COURT: Mine's got a hole in it.

19 MR. BEERS: Well, why don't we find out what Mr. Duffy

20 has to say about this document.

21 Q., Mr. Duffy, tell me, what is this document and where did

22 you get it?

23 A. All right. So the archives maintains a comprehensive

24 collection of the journals of each diocese of the church,

25 foreign and domestic. This is a -- what I'm looking at is an

1 excerpt from the 1790 journal of the Diocese of Maryland held
2 in the archives in better condition.

3 THE COURT: Okay. It's authenticated. Tell me what the
4 relevance is. It's Maryland.

5 MR. BEERS: This is a collection of expressions by the
6 Diocese of Maryland regarding their compliance with the
7 canons of the national church.

8 These are documents we offer to show that this diocese
9 understood that it was bound by the canons of the church and
10 it was reporting on that -- the degree of that compliance, at
11 very early on 1790 -- starting in 1790 and running up through
12 1818. Now, Ms. Kostel's --

13 Oh, yes, there are two things. One is that in this
14 document, the Diocese of Maryland is entitled the Protestant
15 Episcopal Church in the Diocese of Maryland. We offer that
16 because there has been some suggestion in this case that the
17 diocese claims that the term "Protestant Episcopal Church in
18 the Diocese of South Carolina" was somehow unique or unusual,
19 and we're going to show through this exhibit and several
20 others that it was in common use in several dioceses. That's
21 number one.

22 And number two, it is an explanation of the manner in
23 which they have obeyed the canons and the reasons why.

24 MR. RUNYAN: Your Honor --

25 THE COURT: Sustained.

1 MR. BEERS: Would you, with respect, ask you --

2 THE COURT: Let's make this an offer of proof.

3 MR. BEERS: Sorry?

4 THE COURT: Let's make this an offer of proof. In other
5 words, this exhibit will be marked. We can either mark it
6 for identification purposes or we can mark it as a Court's
7 exhibit and make it an offer of proof.

8 MR. BEERS: All right. Let me consult with Ms. Kostel
9 on that.

10 (Brief pause.)

11 MR. BEERS: Now, in order to speed up, I would like to
12 ask Mr. Duffy some questions before --

13 Yes, Your Honor, we offer that as -- present that as an
14 offer of proof.

15 THE COURT: Thank you.

16 MR. BEERS: So I guess it's Exhibit 446 for
17 identification.

18 THE COURT: Perfect.

19 Q. Now, Mr. Duffy, would you tell me what 447 is.

20 A. Well, these I know well. These are the -- well, that is
21 an excerpt from the journal of the diocese of Massachusetts.

22 Q. From -- excerpts from various --

23 A. From 1799.

24 Q. Various -- several journals?

25 A. Yes, well, I'm looking at the 1799, but the list I have

1 indicates that there are several in this packet, yes.

2 Q. All right. Now I'm going to go on to 448.

3 A. Okay. So this is from excerpts from material in the
4 archives from -- these are excerpts of the journals of the
5 Diocese of New Hampshire, also in the archives.

6 Q. 448 or 449?

7 A. Well, the one I'm looking at on the screen is --

8 THE COURT: It says 4th Convention 1804, it doesn't
9 have --

10 THE WITNESS: This is 448, I assume.

11 Q. All right. And 449?

12 A. 449, oh, it's New Jersey. Okay. So this is an excerpt
13 from the journal of the Diocese of New Jersey.

14 Q. Journals?

15 A. Journals. There are several in here.

16 Q. 450?

17 A. These are excerpts from the journals of the Diocese of
18 New York.

19 Q. 451?

20 A. These are excerpts from the journals of the Diocese of
21 Pennsylvania in the archives.

22 Q. 452?

23 A. These are excerpts from the journals of the Diocese of
24 Rhode Island.

25 Q. 454?

1 THE COURT: Vermont.

2 THE WITNESS: Thank you, ma'am. These are excerpts from
3 the journals of the Diocese of Vermont.

4 Q. 455?

5 A. These are excerpts from the journals of the Diocese of
6 Virginia.

7 Q. 477?

8 A. These are excerpts from the journals of the Diocese of
9 Connecticut.

10 Q. And, I believe, 478.

11 A. And these are excerpts from the journals of the Diocese
12 of Delaware.

13 MR. BEERS: If the Court please, we offer -- we offer
14 all of these for the same reasons that we offered the
15 original ones from the Diocese of Maryland.

16 THE COURT: Got it.

17 MR. BEERS: And we would have each marked for
18 identification and put in the record as a proffer.

19 THE COURT: Thank you so kindly.

20 Q. Now, would you please look at 463.

21 A. Okay. This is a -- these are excerpts from the journal
22 of the general convention for the -- for 1964, which is
23 located in the archives.

24 MR. BEERS: And we offer this in evidence, Your Honor,
25 I'll be glad to explain why.

1 not supposed to stop?

2 MR. RUNYAN: It ends as follows, colon, blank.

3 MR. BEERS: No, page 271.

4 MR. RUNYAN: Where's the rest of it?

5 MS. KOSTEL: But that's not the same subject. See the
6 hash mark?

7 MR. RUNYAN: Well, how do I know what the subject is?

8 MS. KOSTEL: Read it. There's a hash park on page 270.
9 There's a hash mark on page 271. It's beginning and end.
10 It's obvious.

11 MR. RUNYAN: Okay. I have a relevance and an
12 incompleteness objection.

13 MR. BEERS: Can I address the relevance first, Your
14 Honor?

15 THE COURT: Yes.

16 MR. BEERS: This is an amendment to the constitution to
17 make it clear that dioceses may not, on their own, change
18 their boundaries or cede territory back to the church without
19 the consent of the general convention.

20 MR. RUNYAN: I --

21 MR. BEERS: I'm not finished. It is the official
22 expression by the general convention that the general
23 convention controls the -- this aspect of the dioceses. The
24 dioceses may not change their boundaries without the consent
25 of the general convention.

1 MR. RUNYAN: And my objection on that basis is the
2 document speaks for itself. I don't believe how counsel read
3 that is what's in there, but that document speaks for itself.
4 The document's incomplete. Obviously it's an issue of
5 importance.

6 MR. BEERS: Well, seems to me he can't have it both
7 ways. He can't say, well, we object to its relevance, and
8 then I tell him why we think it's relevant and then he says,
9 well, you can't do that because the document speaks for
10 itself. That's a little circulative.

11 MR. RUNYAN: Mr. Beers' testimony is not in the record.
12 So to the extent the document is relevant, it speaks for
13 itself.

14 THE COURT: I understand.

15 MR. RUNYAN: And right now is incomplete.

16 THE COURT: I understand what you're saying. Now let me
17 ask you this question: Are pages 270 and 271 what are being
18 offered?

19 MS. KOSTEL: The text between the hash marks, so there's
20 a line on 270 where a new subject begins.

21 THE COURT: All right. So only Constitution Article 5
22 Section 8 is being offered?

23 MS. KOSTEL: Well, I think actually above that, Your
24 Honor, where it says the house of bishops received house of
25 deputies' message, just because it's saying that this came

1 forward to the house and so that's where the hash mark is and
2 I think the way the journals work is that sets out the topic,
3 so there's that hash mark.

4 THE COURT: So you would begin your offer from "the
5 house of bishops received"?

6 MS. KOSTEL: Yes.

7 THE COURT: And you would conclude it with "communicated
8 to the house of deputies"?

9 MS. KOSTEL: Yes.

10 THE COURT: Let me read it, then, and let me see.

11 (Brief pause.)

12 THE COURT: Okay. The objection is sustained. We'll
13 mark it for -- well, it will remain marked for identification
14 purposes and be an offer of proof.

15 MR. BEERS: Thank you, Your Honor. No. 464 I'll
16 represent to the Court is an excerpt of the journal of
17 general convention for 2009 on the same subject. And I'm
18 assuming we have the same objection?

19 THE COURT: I don't know. I don't know. I have to see
20 it.

21 MR. BEERS: Same objection?

22 MR. RUNYAN: Can you give me just a second?

23 MR. BEERS: Sure.

24 MR. RUNYAN: Your Honor, two points to make in addition
25 to that. I'm looking at the exhibit that they introduced

1 A. I recognize this as an excerpt from the journal of
2 general convention of 2009.

3 Q. And comes from your files?

4 A. Yes, sir.

5 MR. BEERS: We offer this, 465, Your Honor.

6 MR. RUNYAN: Objection on the grounds of relevance.

7 MR. BEERS: Relevance?

8 THE COURT: Yes.

9 MR. BEERS: This is a decision by the highest
10 legislative authority in the Episcopal Church, the general
11 convention, that dioceses may not leave. This is a
12 recognition of the reorganized dioceses or continuing
13 dioceses in each of four dioceses who recognize that they are
14 the diocese and that they did that before South Carolina.
15 The diocese in South Carolina took its action. This is a
16 decision by the highest authority in the church.

17 THE COURT: You can't testify to that and he didn't
18 testify to that and it's not evident on its face, so what are
19 we going to do about that?

20 MR. BEERS: Well, let's take it on its face. The
21 general convention -- the general convention recognized the
22 continuing dioceses in four other dioceses. Leave it at
23 that.

24 THE COURT: Go to the top of it.

25 MR. BEERS: Yes.

1 THE COURT: Go to the top of the document.

2 MR. BEERS: Yes.

3 THE COURT: It says the bishop in northern Carolina made
4 a further resolution --

5 MR. BEERS: Oh, I'm sorry, Your Honor.

6 THE COURT: -- the motion's defeated, the question was
7 called.

8 MR. BEERS: Sorry, Your Honor, you do not have the hash
9 marks.

10 THE COURT: I'm sorry?

11 MR. BEERS: I'm looking at the bottom of the page, final
12 text of resolution that was adopted.

13 THE COURT: Okay. This document on its face says what
14 it says.

15 MR. BEERS: Yes.

16 THE COURT: It's got -- it has -- on its face, it has
17 absolutely nothing to do with South Carolina. Now, having
18 said that, if you want to identify it and have -- we've had
19 Mr. Duffy testify to the authenticity of it and then hold it
20 back and leave it marked for identification purposes and then
21 you have someone else who's able to testify to make it
22 relevant, maybe that's the appropriate thing to do.

23 You can't testify to what you just testified to because
24 none of that is stated in here. So it's authenticated. It's
25 in, in terms of authentication for identification purposes.

1 Perhaps someone else will testify to what it means. Yes?

2 MR. BEERS: Just one quick response.

3 THE COURT: Sure.

4 MR. BEERS: It has a great deal to do with the Diocese
5 of South Carolina in that -- in that --

6 THE COURT: I want to stop you there.

7 MR. BEERS: Okay.

8 THE COURT: Because it doesn't say that on its face and
9 you don't -- you have to have someone testify and connect
10 those dots. And I'm not saying that you cannot do that. I'm
11 just saying that it isn't evident on its face. It's just an
12 attaboy for folks in Fort Worth, Pittsburgh, Quincy, and
13 San Joaquin. It's a kudo, and that's what it says.

14 I'm not keeping you from calling or having additional
15 witnesses who can say this is what this is. You can't do
16 that because you're not a witness.

17 MR. BEERS: Fine. Thank you, Your Honor.

18 THE COURT: Yes. So let's do this, it's authenticated,
19 it's a piece of it and we'll leave it, at this point, for
20 identification purposes, and it's been identified, and it's
21 been authenticated.

22 MR. BEERS: Thank you, Your Honor. May we now turn to
23 466?

24 THE COURT: And the question is: What is it?

25 THE WITNESS: Okay. I recognize this as what we call

1 the certified resolutions that come out of executive council
2 that are found in the archives in the records of the
3 secretary of executive council.

4 Q. And do you recognize the signature?

5 A. Yes, sir, this is the signature of Gregory Straub, who
6 was the secretary of general convention and the secretary of
7 executive council.

8 THE COURT: Okay. Yes, sir.

9 MR. RUNYAN: It's identified as a letter in their
10 exhibit list. I don't see who it's to, for starters.

11 And secondly, it's obviously hearsay. Mr. Straub is not
12 here.

13 And third, I don't see the relevance to this diocese. I
14 don't see it. I don't see us listed there anywhere.

15 MR. BEERS: I think, Your Honor -- Your Honor, please --

16 THE COURT: Yes.

17 MR. BEERS: -- it does have a lot to do with this
18 diocese. First of all, just taking the text as it is with
19 regarding the four other dioceses, it is a clear expression
20 by the board of directors of the Episcopal national church as
21 to what is the policy and the polity of the church, and the
22 Court can give such weight as it wants to that, but it is an
23 official expression of the understanding of the church's
24 polity by its board of directors. That's number one. And
25 that applies beyond -- that applies to all dioceses.

1 And it says on its face, that any amendment to a
2 diocesan constitution that purports in any way to limit or
3 lessen an unqualified accession to the constitution and
4 canons of the Episcopal --

5 THE COURT: Oh, no, you can't go that fast.

6 MR. BEERS: I know, I suddenly just woke up.

7 -- unqualified accession to the constitution and canons
8 of the Episcopal Church is null and void.

9 And that is not limited to these four dioceses. It
10 does -- it is intended to cover other dioceses. That's
11 number one -- no, excuse me, number two.

12 MR. RUNYAN: Well, Your Honor, as to those points, first
13 of all, there's a conclusion at the bottom that is, at least
14 in this Court, a legal conclusion, which I don't believe
15 there's any foundation for this gentleman to offer.

16 MR. BEERS: He's not offering it. Mr. Straub's not
17 offering it.

18 MR. RUNYAN: Well, he is if this goes in.

19 MR. BEERS: Mr. Straub, as the secretary, is merely
20 certifying its authenticity.

21 MR. RUNYAN: Secondly, there is no relevance under the
22 standard of the United States Supreme Court on hierarchy
23 which requires that it must be the highest judicatory to
24 which the matter has been taken. "The matter" is the
25 departure of this church. And this is not a judicatory, so

1 on that basis, it's irrelevant as well.

2 THE COURT: All right. Here's what I'm going to do with
3 this document, it's going to be marked for identification
4 purposes only at this point. It's 2007. It says what it
5 says. It's hearsay. It's been authenticated in terms of it
6 is a document that was written and has been authenticated.

7 The relevance on its face is not apparent, but if it
8 could be made -- you know, sometimes to admit a document,
9 there have to be several steps. What I see at this point
10 does not get this document to have relevance with regards to
11 this case. Number one, I don't know who this went to; number
12 two, I don't know that it was ever communicated to the
13 plaintiffs; number three, I don't know whether or not there
14 was a -- it's 2007. And the relevance, while it certainly
15 might exist, it may become relevant. At this point, it isn't
16 relevant on its face for the reasons I've already mentioned.

17 MR. BEERS: If I may just respond to a couple aspects of
18 that.

19 THE COURT: Sure.

20 MR. BEERS: It's not a letter. It's a certified copy of
21 the resolution adopted by the board of directors.

22 MS. KOSTEL: I think Mr. Duffy testified to that.

23 MS. GOLDING: Your Honor, we received -- the list we
24 received from the defendants identifies this clearly as a
25 letter.

1 MS. KOSTEL: That was a mistake.

2 MR. BEERS: That was a mistake. We all make them.

3 What's funny about that?

4 THE COURT: Hey, stop.

5 MR. BEERS: Gee whiz.

6 MR. HOLMES: Your Honor, I'm sorry, would it be 803(6)
7 of the hearsay?

8 THE COURT: I'm going to handle what's going on out here
9 first. That's to stop. You all address me.

10 MR. BEERS: Yes, ma'am, I apologize.

11 THE COURT: Yes, sir. You don't practice law in the
12 state of South Carolina, but we have -- we have rules that
13 govern the means and the manner in which counsel speak with
14 one another, and they will be complied with.

15 You have to be sure that they are complied with. So
16 that's the first thing.

17 MR. HOLMES: Yes, ma'am. Thank you.

18 THE COURT: The second thing is you address the Court.
19 You do not address each other.

20 Thirdly, I've ruled. You need to explain that you don't
21 argue with the Court in South Carolina, right?

22 MR. HOLMES: Yes, ma'am.

23 THE COURT: Thank you kindly. You would like for me to
24 review a rule. Tell me that rule again, sir.

25 MR. HOLMES: 803(6), Your Honor.

1 THE COURT: Thank you. Let me take a look at it.

2 MR. HOLMES: Of the rules of evidence, of course.

3 THE COURT: Okay. I'm with you.

4 MR. HOLMES: If you'll give me the opportunity, I would
5 ask -- and I don't know it's important enough to raise, but
6 maybe the IRS' determination, I think that's 8038, I found a
7 federal district court case that would support that argument.

8 THE COURT: Okay. Now tell me which one. Give me a
9 number.

10 MR. HOLMES: With the 803 -- Rule 803(6), that being
11 that this report that's being offered in evidence is a record
12 of an activity conducted in the regular course of business of
13 the church, based on the testimony of the witness, the
14 archivist, and the content's consistent with that.

15 THE COURT: I agree with that part. That's the
16 reason -- that's the reason, Mr. Holmes, that I said that
17 it's an authenticated document.

18 MR. HOLMES: Yes, ma'am.

19 THE COURT: It wouldn't be excluded on the basis of
20 hearsay.

21 My concern -- and then I went on to say it ought --
22 because, as you know when you admit a document -- I know
23 you've done enough, particularly criminal law, that it takes
24 many steps.

25 The first step, this step, you're exactly correct, I

1 think it's authenticated. I think that Mr. Duffy can
2 authenticate it. The problem is that on its face, it doesn't
3 have relevance to these issues, but that doesn't keep someone
4 else from connecting those dots. The authentication dot,
5 done.

6 The problem is that we're talking about June the 25th,
7 2007. We're talking about other places. And because it
8 doesn't say "Charleston" on its face, there needs to be a
9 witness to connect those dots.

10 So what I'm saying at this point isn't that it is
11 excluded for all time. I'm just simply saying that at this
12 point the relevancy has not been established. Doesn't mean
13 at all that that can't happen. There may be somebody that
14 can come in and say, oh, well, boy, were we having trouble in
15 2007. Here's evidence of it. We issued this because we were
16 getting ready. You better believe this went out to
17 Charleston and we talked about it at the next convention.

18 In other words, there's lots of testimony that can come
19 out that will make this relevant, it just isn't on its face.
20 It is what it is. It may become relevant, but it isn't yet.

21 Do you see what I'm saying?

22 MR. HOLMES: Yes, ma'am.

23 THE COURT: But you are correct, I agree with you.

24 MR. HOLMES: Thank you.

25 THE COURT: And that's why I said, it is marked for

1 identification purposes because the hearsay now is handled.

2 MR. HOLMES: Thank you.

3 THE COURT: Yes.

4 MR. BEERS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Q. 467.

7 MR. RUNYAN: Presuming that the witness will testify
8 that he got this out of the archives, our objection would be
9 relevance.

10 MR. BEERS: Your Honor, in order to speed things along,
11 may I suggest the following?

12 THE COURT: Okay.

13 MR. BEERS: Exhibit 467 --

14 Q. Mr. Duffy, would you just tell us what that document
15 appears to be.

16 A. This is a letter to bishop -- Presiding Bishop Schori
17 from Bishop Dorsey Henderson indicating the results of the
18 title 4 review committee decision.

19 Q. That's fine. And that comes from the -- that's kept in
20 the archives?

21 A. Yes, yes, sir.

22 Q. And 468?

23 A. This is a notification to a number of groups and
24 important bodies in the church regarding the deposition of
25 Bishop Schofield.

1 Q. And 469?

2 A. This, I believe, is the letter informing Presiding
3 Bishop Schori of the decision of the review board in the
4 case -- the disciplinary board in the case of Bishop Robert
5 Duncan.

6 Q. And 470?

7 A. And this is the notification to all the important bodies
8 of recordkeeping, what have you, of the deposition of Bishop
9 Duncan, all held in the archives.

10 MR. BEERS: Your Honor, we're offering all of these and
11 I'm grouping them together to try to move things along.

12 One has to do with charges against Bishop X, and then
13 the second one is the result of that -- the outcome of that
14 charge. And then the next one is the charge against Bishop
15 Y, and the outcome of that.

16 And I don't think there probably is going to be problems
17 with authenticity, but I figured the relevance objections
18 probably all could be dealt with together, if you have them.

19 THE COURT: So tell me, what is the relevance?

20 MR. BEERS: I'm sorry?

21 THE COURT: Let me ask you this question: It appears to
22 me that these are bishops somewhere else; yes, is that
23 correct?

24 MR. BEERS: Yes.

25 THE COURT: They're not in Charleston?

1 MR. BEERS: Correct.

2 THE COURT: Okay. So tell me, what is the relevance
3 with regards to these matters?

4 MR. BEERS: The general convention by canon allots to
5 the -- something called the disciplinary board -- well, a
6 disciplinary board --

7 THE COURT: Sure.

8 MR. BEERS: -- and to the house of bishops and to the
9 presiding bishop the authority to discipline bishops in
10 certain circumstances.

11 THE COURT: Right.

12 MR. BEERS: These documents show that this disciplinary
13 board, the house of bishops, and the presiding bishops dealt
14 with a charge about two bishops and, as the highest authority
15 in the church under the canons, made a decision in that
16 regard, and that decision was to depose them for violating
17 the -- violating the rules of the church or repudiating the
18 rules of the church. And that -- those are decisions by the
19 highest bodies in the Episcopal Church --

20 THE COURT: Yes.

21 MR. BEERS: -- in regard to those two bishops.

22 THE COURT: Yes.

23 MR. BEERS: And the charges are that those two bishops
24 attempted to lead their dioceses out of the Episcopal Church.

25 THE COURT: Okay.

1 MR. BEERS: And these documents talk about that, they
2 say that, and that's why they were deposed.

3 THE COURT: Got it.

4 MR. BEERS: That is a decision by the highest body in
5 the church that a bishop who tries to lead a diocese out of
6 the church is going to be deposed because that is contrary to
7 the rules of the church.

8 We're trying to establish, obviously, that
9 Bishop Lawrence tried to -- has tried to lead his diocese out
10 of the Episcopal Church, and this is a decision by the
11 highest body in the church that says that that is a violation
12 of our constitution and canons.

13 THE COURT: Got it. Okay. And that's the relevance of
14 these matters?

15 MR. BEERS: Yes.

16 THE COURT: Okay. Is there an objection?

17 MR. RUNYAN: Yes, Your Honor. If there's relevance, it
18 would be Bishop Lawrence and not the bishops in other
19 locations.

20 Secondly, this is, obviously, cumulative because, to the
21 extent there are any such rules, they're contained in the
22 constitution and canons which are already in evidence. So he
23 can use those to say that they say what they say.

24 These are replete -- the hearsay that's contained in
25 this is unbelievable. There's hearsay upon hearsay upon

1 hearsay, and, again, having to do with other people, not the
2 Diocese of South Carolina.

3 I mean, not to mention the lack of foundation on -- from
4 this witness except that they're in the archives. I mean,
5 there's just -- there's -- I don't even know where to begin
6 on these. They're just not relevant. I mean, that's the
7 simple idea, the idea that somehow the deposition of a bishop
8 on other charges from another part of the church has
9 relevance to whether a diocese can leave or whether they have
10 an interest in the property of the diocese and parishes is
11 just beyond me.

12 THE COURT: Well, here's what I'm going to do at this
13 point. Again, there are layers of hearsay. This document
14 will continue to be marked for identification purposes. And
15 at this point, there may be other layers of hearsay that must
16 be handled, but additionally, with regards to the relevance,
17 there very well may be someone, a witness who can speak to
18 that and tell me why these letters, these actions have
19 relevance with regards to South Carolina.

20 I can tell you this, that if there was simply a result
21 that was presented, Pearson says I must accept the result. I
22 can't go behind it, not going to go behind it, which I think
23 probably makes the issue of whether it is relevant or not --
24 which certainly bears on whether it's relevant or not, but
25 there's got to be somebody else that could testify to that.

1 For now it is one layer of the hearsay in that it is a
2 document that's handled and it remains marked for
3 identification purposes.

4 MR. BEERS: Could I ask a question for clarification,
5 Your Honor?

6 THE COURT: Sure.

7 MR. BEERS: 468 and 470 each embody, on their face, the
8 result.

9 THE COURT: Come on back to that because, you know, we
10 sort of went through them quickly. I didn't have a chance to
11 read that.

12 MR. BEERS: Sorry, if you would look at 468.

13 THE COURT: Okay.

14 Q. Mr. Duffy what is that?

15 A. This is a notification to various bodies of the
16 Episcopal Church of the deposition of Bishop John David
17 Schofield.

18 THE COURT: And tell me what it is that you want me to
19 do with this.

20 MR. BEERS: Admit it into evidence on the ground that --
21 on the ground that --

22 THE COURT: Yes.

23 MR. BEERS: -- the highest authority in the church under
24 our rules has deposed this bishop.

25 THE COURT: Okay.

1 MR. BEERS: Now, it doesn't have the charge itself,
2 which is why we introduced the charge so that one could see
3 why he was deposed, but we may be able to put in a witness on
4 that subject. But the action is deposition of that bishop.
5 And 470 is the deposition of the other bishop. That's the
6 official action. And it seems to me that's clearly
7 admissible.

8 And as to the relevance --

9 THE COURT: Yes, that's what I'm looking for.

10 MR. BEERS: Yes.

11 THE COURT: Tell me about that.

12 MR. BEERS: The highest body in the church deposes a
13 bishop because -- assuming we can connect this up --

14 THE COURT: Okay. I understand.

15 MR. BEERS: -- because the bishop attempts to lead the
16 diocese out of the Episcopal Church.

17 THE COURT: Right.

18 MR. BEERS: And he's deposed because he's charged with
19 violating the rules of our polity.

20 THE COURT: Right.

21 MR. BEERS: Okay?

22 THE COURT: Right.

23 MR. BEERS: All right. And in that way they're saying
24 that dioceses can't leave. That's our polity.

25 THE COURT: Got it.

1 MR. BEERS: And there are two of them. Now we have, in
2 this case, a case where we have a bishop who purported to
3 lead the diocese out of the church.

4 THE COURT: Right.

5 MR. BEERS: We have a ruling from the highest body in
6 the church that that conduct is not consistent with our
7 polity, it's a violation of our polity.

8 THE COURT: Got it.

9 MR. BEERS: That seems, to me, to be relevant.

10 THE COURT: But here's the interesting part --

11 MR. BEERS: Okay.

12 THE COURT: -- if we were hierarchical jurisdiction,
13 where the way that we, as a state, resolved the disputes with
14 churches was to enforce the hierarchical nature of a church,
15 and we assumed the hierarchical nature for purposes of
16 argument, then there would be one of two things. I presume
17 that at some point you're going to tell me this is what
18 happened to Bishop Lawrence. I guess I would say good-bye,
19 Bishop Lawrence. But we are not a hierarchical jurisdiction.
20 And Pearson would tell me that for whatever purposes, I guess
21 if -- that's where the relevance gets to be rather tricky.
22 Because while Pearson says that I must accept the Church's
23 determination, once the Right Reverend John Schofield is, I
24 gather, deposed, I can't go behind that decision, under South
25 Carolina law. But nobody's asking me to go behind that

1 decision. That's not what we're about here.

2 So then you take a look at the fact that whether or not
3 this action regarding John David Schofield has any relevance
4 with regards to South Carolina. I don't know. I mean, I'm
5 having difficulty finding that relevance because there are,
6 A, unanswered questions.

7 I know -- see, I know based on the All Saints case that
8 our churches are allowed to make amendments to their
9 constitution and their bylaws and allowed to take certain
10 steps which have a very dramatic effect on the way that
11 church disputes are resolved.

12 And while I am reluctant to exclude this piece of
13 evidence, other than the fact that at this moment it is
14 authenticated in that it is a document that is in the
15 archives, obviously regularly kept type of document within
16 the archives, and that level of hearsay has been met, and I'm
17 not at the conclusion of the case, it seems to me to be
18 appropriate at this point to leave it marked for
19 identification purposes only rather than to exclude it, only
20 because I hadn't heard all the testimony.

21 I can tell you, though, that, as you are well aware,
22 we're not a hierarchical jurisdiction.

23 MR. BEERS: Well, let me respond very briefly, Your
24 Honor.

25 THE COURT: Yes.

1 MR. BEERS: Just for clarification.

2 THE COURT: Sure, of course.

3 MR. BEERS: I'm not contending. Obviously, this is
4 helpful for the record because we contend that hierarchy is
5 important. But if we are able to show that, hierarchy or
6 not, that there was a mutual understanding between the
7 national church and the Diocese of South Carolina that in
8 return for the benefits of having an identity in the
9 Episcopal Church they agreed to abide by the constitution and
10 canons of the church, then we get over the hump on the
11 hierarchy and we are, it seems to me, entitled to win this
12 case on the grounds that they have breached their agreements
13 with the Episcopal Church.

14 And this evidence is relevant to that because this is
15 relevant to showing that the polity of the church -- to which
16 we say they agreed in return for benefits -- the polity of
17 the church is that a diocese cannot leave. We have to
18 establish that the polity of the church is that dioceses may
19 not leave, and we intend -- we intend -- we think the record
20 will show that, and it may be too coarse to say there was a
21 deal, but in return for coming into the church and receiving
22 its benefits over the years and growing as an Episcopal
23 Church they agreed, for all time, to abide by the polity of
24 the church, then we have a breach that's material. And that
25 breach is explained by these documents.

1 Now, I just needed to get that out for where we are.

2 THE COURT: I understand. I'm with you. And as I say,
3 that is exactly the reason why at this point it remains
4 marked for identification.

5 MR. BEERS: Thank you.

6 THE COURT: It is not excluded in the event that you can
7 connect those dots.

8 MR. BEERS: Thank you, Your Honor.

9 THE COURT: Yes.

10 Q. Mr. Duffy, would you now turn to Exhibit 479 --

11 MR. BEERS: Is that right, Ms. Kostel?

12 A. This is an excerpt from the journal of general
13 convention for 1964 and it's found in the archives.

14 Q. Yes.

15 MR. BEERS: We are not offering the whole volume.

16 THE COURT: Okay.

17 MR. BEERS: There may not be hash marks.

18 MS. KOSTEL: There is a hash mark on the left page.

19 THE COURT: I don't know what it is. What is this?

20 MS. KOSTEL: Mr. Duffy said it was an excerpt from the
21 journal of the general convention of 1964.

22 THE COURT: Oh, 1964, there's the date. It's a
23 resolution?

24 MS. KOSTEL: Yes.

25 MR. BEERS: It's a resolution adopted by the general

1 A. It's located in the parish hall complex, which is 100
2 West Gate Street, G-A-T-E -- excuse me -- West Gale Street,
3 G-A-L-E, Edenton.

4 Q. I think you said you didn't remember the exact date
5 because your records were at St. Paul's, but was it still in
6 2005 you think?

7 A. When they made their visit?

8 Q. Yes.

9 A. It was either late 2005 or early 2006. I don't recall
10 specifically.

11 Q. All right. Now, would you please relate, as narrowly as
12 you can and as clearly as you can, the interview, from the
13 beginning to the end, in your office? First of all, was
14 anybody else present other than the two priests and you?

15 A. No.

16 Q. All right. Tell us what was said by who.

17 A. Okay. We came into the office. I had things set up so
18 they could have something to drink, something to eat, if they
19 wanted, knowing that these interviews tend to last a fairly
20 lengthy time. We sat down. I think they asked me to open
21 with a prayer.

22 Q. Did you?

23 A. Yes. And then Father Kronz said, we've got some
24 questions that we want to ask you and we'd appreciate your
25 answering them forthrightly. The first question that was

1 asked --

2 Q. By who?

3 A. Father Kronz.

4 -- was, what can you do to help us leave the Episcopal
5 Church and take our property with us.

6 Q. How did you answer that question?

7 A. I answered him by saying I was shocked and surprised
8 that even such a question was being asked and that -- that it
9 was the first question.

10 So after noting that, I followed that up with, why in
11 the world would anybody even be asking a question like that?

12 Q. Did you say that?

13 A. Yes.

14 Q. All right.

15 A. To which Father Fuener said, well, we're interested in
16 having a bishop who is -- who either will or is willing to
17 lead us out of the Episcopal Church.

18 Q. All right. After that response to your question, how
19 did the interview go?

20 A. Well, one, I was -- that was the last question in the
21 world I expected to be asked.

22 Q. Why?

23 A. Well, it's difficult for me to imagine, in the election
24 process of a bishop, the first question is to take the
25 diocese out of the denomination of which it is a part of --

1 A. Yes, sir.

2 Q. Now, Bishop vonRosenberg, if you were elected, you were
3 already a bishop, of course. Had been in east Tennessee.

4 Did -- were any consents of the standing committees of the
5 church and other bishops required for you to be serving in
6 the capacity of provisional bishop of South Carolina?

7 A. No, sir.

8 Q. Is that because you were already a bishop?

9 A. That's correct.

10 Q. And already ordained?

11 A. That's correct, yes, sir.

12 Q. Now, when you were elected that day, then, on -- you
13 said January 26, 2013, when were you actually installed?
14 When did you take office?

15 A. At the same meeting after the election.

16 Q. Who conferred the office on you or installed you to that
17 position -- in that position?

18 A. The presiding bishop, Katharine Jefferts Schori.

19 Q. Okay. Now, what is The Episcopal Church in South
20 Carolina? If you would describe it. First of all, is it a
21 diocese of the church using the name The Episcopal Church in
22 South Carolina? Is it a diocese recognized by the Episcopal
23 Church?

24 A. It is.

25 Q. And is any other diocese in its geographic area, roughly

1 half of South Carolina, recognized as a diocese of the
2 Episcopal Church in that area?

3 A. No. We are the designated diocese of the Episcopal
4 Church in that area.

5 Q. Is any other diocese in that area designated as a part
6 of the Episcopal Church?

7 A. No, sir.

8 Q. Now, does The Episcopal Church in South Carolina have as
9 a part of it parishes and missions?

10 A. Yes, sir.

11 Q. And have you served and worked in the diocese, The
12 Episcopal Church in South Carolina, since the 26th of
13 January '13 and continuing to today?

14 A. Yes, sir.

15 Q. And we hope in the future.

16 A. Perhaps for a while, yes, sir.

17 Q. All right. Describe for the Court, please, the makeup
18 of The Episcopal Church in South Carolina in terms of
19 parishes, missions and so forth?

20 A. There are currently 10 parishes, 17 missions and 3
21 worshipping communities, which are congregations in formation
22 but not yet organized as a mission in union with the diocese.

23 Q. So how many congregations does that add up to in total?

24 A. Thirty.

25 Q. Thirty. And in the Episcopal Church generally and in

1 A. Parishes must be in a position that they can afford a
2 full-time Episcopal clergy person as their rector.

3 Q. When you say Episcopal clergy person, do you mean a
4 priest of the Episcopal Church?

5 A. Yes, indeed.

6 Q. Okay. And what is the -- what is the head, the person
7 in charge of a parish clergy-wise called, a title?

8 A. A rector.

9 Q. Rector, R-E-C-T-O-R?

10 A. Yes, sir.

11 Q. Bishop vonRosenberg, what are the fundamental governing
12 documents for parishes and missions and congregations and,
13 indeed, for the -- for The Episcopal Church in South
14 Carolina, what are governing documents that govern it?

15 A. The general convention is the highest authority in the
16 Episcopal Church.

17 MR. RUNYAN: Your Honor, I would object to his
18 characterization, because that is an opinion. This is a lay
19 witness. I have no problem with him describing what the
20 governing documents are, but once he goes into trying to
21 characterize which one is above the other, that is a lay
22 opinion, and I object to that. Lack of foundation and lack
23 of qualification.

24 THE COURT: Overruled. You may proceed.

25 MR. TISDALE: Thank you very much, Your Honor.

1 Q. What did you just say?

2 A. I said the general convention is the highest authority
3 in the Episcopal Church.

4 Q. Now, Bishop vonRosenberg, what are the sources of that
5 authority, if you know?

6 A. There are additional authorities which are part of that
7 primary authority, including the constitution and canons of
8 the national church, the Book of Common Prayer of the
9 Episcopal Church and the Bible.

10 Q. All right, sir. And does The Episcopal Church of South
11 Carolina have its own constitution and canons?

12 A. Yes, sir.

13 Q. And are those documents, constitution and canons of The
14 Episcopal Church in South Carolina, documents that were there
15 when you became bishop in 2013?

16 MS. GOLDING: I'm going to object to that, Your Honor.
17 This witness just testified that he was elected on
18 January 23rd, and he never -- excuse me, January 26, 2013.

19 THE COURT: Right.

20 MR. TISDALE: Right.

21 MS. GOLDING: Prior to that time he has not testified
22 that he had any association with the plaintiff diocese.

23 MR. TISDALE: Your Honor, I will -- I will withdraw my
24 question and ask it another way.

25 THE COURT: Okay.

1 Q. Bishop vonRosenberg, is The Episcopal Church in South
2 Carolina governed by a constitution and canons of the
3 diocese?

4 A. Yes, sir.

5 Q. All right. And since you have been bishop, have those
6 constitution and canons gone through a process of amendment?

7 A. Yes, sir.

8 Q. Okay. And a set of what we will call constitution and
9 canons is now in existence governing the diocese?

10 A. Yes, sir.

11 Q. Okay. I want to ask you a question: You mentioned the
12 Book of Common Prayer a few minutes ago, and I think it's in
13 evidence as of yesterday, I believe. But what generally --
14 how is the Book of Common Prayer used to direct the
15 activities of a parish and other congregations?

16 A. The Book of Common Prayer lays out the various
17 liturgies, the various services in regular use in the
18 Episcopal Church, and there also are rubrics and other notes
19 which have responsibility in governance as well.

20 Q. All right. And of course the Bible speaks for itself.

21 A. Indeed.

22 Q. Now, Bishop vonRosenberg, as bishop of a diocese and, in
23 particular, this diocese, The Episcopal Church in South
24 Carolina, what -- describe for the Court, please, your normal
25 and canonical duties and responsibilities as you go about

1 Schofield came to the House of Bishops.

2 Q. And was there action by the House of Bishops?

3 A. Yes, sir.

4 Q. And did you vote?

5 A. Yes.

6 MS. GOLDING: He can only testify as to what he -- what
7 was in the House of Bishops and what the vote was. That's
8 all he knows.

9 MR. BEERS: Well, let me proceed and see if I can deal
10 with this.

11 THE COURT: Okay.

12 Q. Was there a matter pending before the House of Bishops
13 regarding Bishop Schofield when you were a member of the
14 House of Bishops?

15 A. Yes, sir.

16 Q. And what was that matter?

17 A. Whether Bishop Schofield had abandoned The Episcopal
18 Church.

19 Q. And did the House of Bishops take some action in that
20 regard?

21 A. The House of Bishops took action affirming that he had,
22 indeed, abandoned The Episcopal Church.

23 Q. And did that abandonment relate in some way to the
24 Diocese of San Joaquin where he was bishop?

25 MS. GOLDING: Your Honor, I think this is now going

1 beyond the foundation he established. He can only
2 establish -- he can only testify as to his presence at the
3 House of Bishops and what was presented at the House of
4 Bishops and nothing beyond that.

5 MR. BEERS: But that was -- excuse me. I thought he was
6 in the process of telling us what was before the House.

7 MS. GOLDING: Well, then he has to establish -- number
8 one, the best evidence is the journal for that convention
9 vote; and number two, he can't go beyond that convention
10 vote. And I'm concerned with these questions that Mr. Beers
11 is trying to go beyond the convention vote. It appears that
12 way.

13 THE COURT: And I care why?

14 MR. BEERS: I'm sorry?

15 THE COURT: I mean, why do I care?

16 MR. BEERS: Well, I don't want to put words in the --

17 THE COURT: I mean, I really don't. I mean, I don't
18 understand, I'm a little bit lost, because I -- two things,
19 two things: If this witness knows that there was a
20 gentleman, Mr. Schofield, who was deposed as a bishop, and he
21 knows, of his own knowledge, that the highest order, if you
22 will, in the Episcopal Church deposed him, you can tell me
23 that, and I accept that. Pearson says I accept that, I don't
24 go beyond that.

25 My question is, why? I don't understand the nexus

1 between this case and Mr. Schofield. See what I'm saying?

2 So hence my question: Why do I care?

3 MR. BEERS: Well, I can respond to that in the form of a
4 proffer. How about that?

5 THE COURT: You don't even have to proffer it, because
6 it very well may be relevant. I just want you to tell me why
7 it's relevant. That's all.

8 MR. BEERS: The reason -- he's testified that
9 Bishop Schofield was found to have abandoned The Episcopal
10 Church.

11 THE COURT: Yes.

12 MR. BEERS: And the question is, on what grounds? Why?
13 What did he do that constituted that abandonment?

14 THE COURT: Okay. Why do I care?

15 MR. BEERS: Because the abandonment -- he abandoned --
16 the testimony would be that he abandoned the church because
17 he attempted and succeeded in leading his diocese out of the
18 Episcopal Church. That is -- it goes to the question
19 about -- precisely the question: May a diocese leave the
20 Episcopal Church.

21 He was deposed for leading his diocese out of the
22 church, and he was -- and that demonstrated that that conduct
23 was not permitted by our polity.

24 THE COURT: I don't want to try that case. I don't want
25 to try that case. I really don't, because, you know, I don't

1 want to try that case. That's not this case; that's that
2 case, because Pearson says I have to accept that he is no
3 longer a bishop. He is deceased, no longer a bishop. I got
4 that. And for whatever reason is the reason. I don't -- but
5 you've got to give me a nexus why that matters in this case.
6 See what I'm saying?

7 MR. BEERS: Well, the allegations that we're making in
8 this case is that Bishop Lawrence violated the polity of the
9 church by leading his diocese out of the Episcopal Church.

10 THE COURT: I got it.

11 MR. BEERS: That's our contention.

12 THE COURT: I figured that was coming.

13 MR. BEERS: Right.

14 THE COURT: And I figured that the highest body of the
15 Episcopal Church, right, national Episcopal Church, I gather,
16 deposed him, right? I mean, I don't know that.

17 MR. BEERS: No.

18 THE COURT: They didn't do that?

19 MR. RUNYAN: No.

20 MR. BEERS: No.

21 THE COURT: Okay.

22 MR. BEERS: No. There was a disciplinary process.

23 THE COURT: Well, they did whatever they did. I've got
24 to accept that. Pearson says I have to accept that, and I'm
25 going to accept that.

1 MR. BEERS: We're offering the testimony about
2 John David Schofield and also a man named Bishop --
3 Robert Duncan from Pittsburgh to show -- to demonstrate what
4 the polity of the Episcopal Church is.

5 THE COURT: Okay.

6 MR. BEERS: Now, if it is conceded that the polity of
7 the Episcopal Church is that dioceses may not leave and that
8 bishops who attempt to take them out of the diocese get
9 deposed, the evidence of what happened in Pittsburgh and San
10 Joaquin is relevant to --

11 THE COURT: No, it's not, for this reason, for this
12 reason, let me tell you why: I don't know what those states'
13 position is with regards to the analysis of church disputes.
14 I don't really care. What I do care about is the State of
15 South Carolina, what my Supreme Court tells me I do when I
16 analyze church disputes. See what I'm saying?

17 If, as I suspect, those are hierarchical states, you're
18 right. Whatever the hierarchical church did then becomes
19 very relevant and dictates very much the resolution of what
20 the civil court can do. I'm not going there. I'm not going
21 to the hierarchical part. I got that that's the position of
22 the defendants, as it should be. It is your strongest --

23 MR. BEERS: I'm sorry, I missed the "that." Sorry.

24 THE COURT: Well, we keep going -- from the defendants'
25 perspective, I can do nothing but notice that we keep going

1 back to the issue of the hierarchical nature of the
2 defendants' position regarding the actions taken by the
3 plaintiffs. I'm not going there. I'm not going down that
4 path. I'm not.

5 Pearson says that whatever happened with regards to the
6 national Episcopal Church, as it relates to whatever clerical
7 member, I've got to accept. I'm going to accept that. I
8 don't know what it is, but I'm going to accept it.

9 But in terms of whether or not the parishes in South
10 Carolina and the diocese in South Carolina were allowed to
11 leave the National Episcopal Church, I'm going to make that
12 determination on the basis of neutral principles of law under
13 South Carolina law.

14 I don't care what happened anywhere else. I care about
15 our -- we've got law that handles it. We've got a nonprofit
16 statute that talks about lots of things. We've got case law
17 on All Saints. We've got Pearson. Our Supreme Court has
18 pretty much set forth the position for me to follow and
19 that's what I'm going to do.

20 So I don't really -- what happened to Bishop Schofield
21 happened to Bishop Schofield in another state, and I don't --
22 see, here's the difference: If the Episcopal Church says
23 under the Episcopal Church's theory that no one can ever
24 leave the church, and that differs from what South Carolina
25 civil law says, South Carolina civil law is what I'm going to

1 follow.

2 MR. BEERS: That's helpful, Your Honor. So, in other
3 words, in your view, it is not relevant that the polity of
4 the Episcopal Church does not permit, under our rules, permit
5 a diocese to leave.

6 THE COURT: I'm not sure that's your polity, and let me
7 tell you why: I watched very carefully last week when
8 Bishop -- help me.

9 MS. KOSTEL: Daniel.

10 THE WITNESS: Daniel.

11 THE COURT: Thank you. Testified and Mr. Runyan popped
12 up some documents. And as I understand it, it was the
13 constitution and the bylaws that were in existence at the
14 time, yes?

15 MR. RUNYAN: Constitution and canons, yes, Your Honor.

16 THE COURT: Not bylaws but canons. There was nothing
17 written that says, "You're here forever." Now -- and I
18 really don't say that to be humorous because it is very --
19 it's a very serious matter.

20 So you want to tell me that's the polity of the church.
21 It's not written. It seems to me that it ought to be
22 written, but it isn't. It obviously happened to some folks.
23 I got that. But I'm not going to be bound by that. I'm just
24 not. I'm going to be bound by South Carolina law because
25 this row has been pretty well plowed. It's called All

1 Saints. And I know that you all differ with regards to the
2 parishes vis-a-vis the diocese, and we'll hash that out.

3 But for your purposes, that's why what happened to
4 Bishop Schofield in another state that I don't know that
5 state's law, I don't know what their position is regarding
6 whether or not they use neutrality or hierarchical decisions.
7 I don't know. I don't want to know because I don't care. I
8 don't think it's relevant. I've got enough to keep up with
9 my law.

10 MR. BEERS: Just a minute. Ms. Kostel wants to say
11 something and one more thing.

12 THE COURT: Sure.

13 MR. BEERS: So as I understand your view, with respect,
14 of course, is that whether the polity of the Episcopal Church
15 precludes dioceses from leaving, in your view, in this case
16 is not relevant.

17 MS. KOSTEL: We just went through that.

18 MR. BEERS: Okay.

19 MR. RUNYAN: Yes, we just went through that.

20 THE COURT: I'm not going to try Bishop Schofield's
21 case. I'm not going to try -- you mentioned some other
22 bishop's case. I'm not going there. That means that I've
23 got to go waltzing into ecclesiastic law. I'm not going
24 there. I'm not going to do it.

25 MR. BEERS: I understand..

1 THE COURT: And let's talk about what Pearson said for a
2 second. What Pearson said in South Carolina was -- and let's
3 see if we can talk about that relationship. And what that
4 relationship was about was it was about the Church of God.
5 And the Church of God said that if you commit adultery, then
6 under certain circumstances, you don't get pension benefits.

7 And what was for the Court to determine was whether or
8 not Mr. Pearson was entitled to pension benefits. What the
9 Court couldn't do was decide whether it was okay or not that
10 the church had made a determination that he was no longer
11 going to be a preacher because he committed adultery. That
12 was where the Court couldn't go.

13 In other words, the Court had to accept the fact that he
14 had committed adultery. Because he had committed adultery,
15 that was against the rules of the church, and therefore he
16 was no longer a minister. And the Court couldn't go decide
17 whether that was copacetic or not. Had to accept it.

18 So I'm not going into whatever the church may or may not
19 have done to Bishop Lawrence. They did what they did. It is
20 what it is. It was what it was. His status is what it is.
21 I'm not going behind that. What I am not going to do is I'm
22 not going to try the issue that -- whatever got tried in
23 Schofield's case and whatever got tried in anybody else's
24 case.

25 What I now know is that there is certainly no written

1 canon or constitutional provision applicable to these times,
2 at least according to Bishop Daniel, that says you can't
3 separate from the church; and quite frankly, I'm not sure
4 that that wouldn't be violative of the first amendment. But
5 I kind of want to try this case, not Schofield's case or
6 anybody else's case.

7 MS. KOSTEL: Your Honor, may I speak just to make some
8 points.

9 THE COURT: Sure. Yes.

10 MS. KOSTEL: Just to point out to the Court that I think
11 nearly all of our cases, and maybe all of them, but I don't
12 want to overrepresent, have been in neutral principle states.
13 So I just want to point that out to the Court.

14 And, secondly, this is relevant. Let me explain why we
15 think that it's clearly relevant to the hierarchy part.

16 THE COURT: Right.

17 MS. KOSTEL: But why we also think it's relevant to the
18 neutral principles, the Court's neutral principles
19 consideration. Because the way I understand it, the Court is
20 looking at the organic documents of the two entities to
21 determine -- help to determine their relationship. And the
22 Court, as you've just mentioned, has noted that the Episcopal
23 Church's constitution and canons don't say one thing one way
24 or the other whether a diocese can leave. It's silent on
25 that subject precisely.

1 Now, testimony has come in that the church's
2 constitution or canons, I can't recall which, does have a
3 provision that certain other types of dioceses, missionary
4 dioceses, can leave. So there's that provision. Does not
5 speak to geographic dioceses in the United States.

6 So the question is the document is silent. The Diocese
7 of South Carolina's document has been silent, and so what do
8 the organic documents say about whether a diocese can leave?
9 If the Court is going to go into the territory of deciding
10 that, which we think is a polity issue, but if the Court is
11 going to do that under neutral principles, and so if the
12 documents don't say one way or the other, then typically one
13 goes to parole evidence.

14 And we submit that the evidence of what the church's
15 highest body thought in 2007, years before this particular
16 situation unfolded. That evidence about what the church's
17 highest bodies thought about whether a diocese could leave is
18 relevant parole evidence to help the Court construe those
19 documents. And that's our position on why it's relevant to
20 the neutral principles analysis. Does that --

21 THE COURT: I got it. Thank you. That was very
22 helpful.

23 Yes, sir, Mr. Runyan.

24 MR. RUNYAN: Before this case is over with, what the
25 Court is going to be presented with at best -- at best -- is

1 an issue of uncertainty as to whether there is, in fact, a
2 hierarchy in the Episcopal Church and, in fact, what the
3 highest body might be in the Episcopal Church.

4 What Ms. Kostel has done with that argument is placed
5 squarely before the Court what precisely the Court cannot do
6 under the first amendment, and that is to search around
7 through parole evidence to look for that kind of information.
8 *Jones v. Wolf* makes that crystal clear: The only time a
9 Court can make a decision about the locus of control is if it
10 is expressed and very clear. And it is definitely not, by
11 that admission, expressed and very clear; so it's off limits
12 to the Court.

13 So our position is that very argument suggests that the
14 very testimony that they propose is irrelevant and cannot be
15 regarded anyway. If, on the other hand, as the Roman
16 Catholic canon law book that I have, flip to the front page
17 and it says, "The supreme pontiff is," and it has -- it's
18 very clear, very easy, very undisputed locus of control. And
19 that's a whole other matter.

20 And that's the difference. That's why this church
21 cannot constitutionally say its hierarchical, because it's
22 disputed and because it's not crystal clear.

23 MS. KOSTEL: I'm sorry. But --

24 MR. RUNYAN: I'm not -- excuse me.

25 MS. KOSTEL: Go ahead.

1 MR. RUNYAN: And so this whole wandering into this area
2 of, well, we need parole evidence, that's an unconstitutional
3 approach. It's not relevant for that very reason, because
4 it's asking the Court to do what it cannot constitutionally
5 do, and that is pick one side or the other in this kind of
6 dispute when both sides have not picked it already, which is
7 the case with the Roman Catholic church and other clear
8 hierarchical institutions. So I don't think it's relevant
9 for that reason as well.

10 MS. KOSTEL: Let me respond to that.

11 THE COURT: Okay.

12 MS. KOSTEL: What Mr. Runyan has argued is that it's
13 not -- he thinks it goes too far if the Court is trying to
14 decide if the church is hierarchical. But we just -- I just
15 said to the Court, we're not talking about its relevance to
16 the hierarchy issue. I'm talking about its relevance -- the
17 relevance of this issue to the neutral principles inquiry
18 that this Court has said that it is undertaking.

19 And if this Court -- I mean, Mr. Runyan wants to have it
20 both ways. He wants to have in the constitution and canons
21 and say what they say and what they don't say, but then he
22 doesn't want the Court to take into account ordinary evidence
23 that a Court would take into account to help construe those
24 documents. I mean, it's one or the other.

25 THE COURT: No. No. No. Let me tell you, rightly or

1 wrongly, this is how I'm going to analyze the case --

2 Are you feeling really strange sitting over there while
3 all this is going on?

4 THE WITNESS: This is a more comfortable chair than
5 those benches.

6 MR. BEERS: Your Honor, I take it your ruling is going
7 to be the same if I asked him the questions about the other
8 bishop.

9 THE COURT: Yes, of course.

10 MR. BEERS: May he be excused? I'm done.

11 THE COURT: You're finished?

12 MR. BEERS: Yes. Well, I guess there would be cross.
13 I'm sorry.

14 THE COURT: Let me tell you why that was important, why
15 it was important to go through the constitution and the
16 bylaws for each of the parishes, because they, the parishes,
17 have to, in an orderly fashion, based upon their rules, do
18 what they do, and that is, amend in accordance with their
19 rules. And that's part of the examination that I do. And I
20 don't go behind whether or not it's a good constitution and
21 bylaws or a bad constitution and bylaws. That's where I
22 don't go. But where I do go is make a determination whether
23 or not they, in fact, followed the rules and amended their
24 constitution in accordance with their rules and accordance
25 with the statutes of the State of South Carolina.

1 And the statute with regards to nonprofit corporations
2 pretty much dictates, unless, of course, it comes before
3 1900, and those that came before 1900 didn't hop on board and
4 say, we want to have a South Carolina corporation, which they
5 basically give up their charters if those -- their
6 corporations were done by the legislature historically. So
7 we have those issues.

8 So that's why the plaintiffs had to put that information
9 in, because they have to establish that the changes that they
10 made were done in accordance with their own governance.

11 Now, and just as I've done a review as it occurs, they
12 very well may have satisfied those requirements. If they
13 have satisfied those requirements, then the question is, have
14 they separated from the church. Yes, they have. I mean,
15 they simply have. They had the right to do it under our law.
16 If they've done it appropriately, then they've done it
17 appropriately.

18 And so then the question then gets to be, as we've
19 talked about, the ownership of property and the constructive
20 trust. And we've sort of plowed that. We know where we are
21 in terms of the property. And that's sort of where this case
22 is.

23 So to what extent am I going to delve into ecclesiastic
24 law? I'm not, just not, because Pearson says whatever
25 determinations -- whatever final determinations have been

1 made have been made, and that's where it is.

2 MR. BEERS: May I make a proffer and end this
3 discussion?

4 THE COURT: Sure.

5 MR. BEERS: What I would ask Bishop vonRosenberg is,
6 what was the charge in the case of Bishop Schofield and in
7 the case of Bishop Duncan in Pittsburgh that brought the
8 matter to the House of Bishops, where the action was taken.
9 And I proffer that the testimony would show that each bishop
10 was accused of violating the polity of the church by leading
11 and assisting the diocese, his diocese, in leaving the
12 church.

13 THE COURT: Okay.

14 MR. BEERS: Thank you.

15 MR. HOLMES: Your Honor, will you indulge one quick
16 thing on the issue of confusion?

17 THE COURT: Sure.

18 MR. HOLMES: There was an objection on hearsay, and
19 there was no discussion of the rules. I just offer to the
20 Court that under 803(3), the state of mind exception, and
21 also 801(c), that it's not offered for proof of the matter
22 asserted. And I cite a case, and there are many, but I'll
23 cite this one, with Your Honor's permission, *Armco, Inc. v.*
24 *Armco Burglary Alarm Company* 693 F. 2d 1155 at 1160 notes in
25 5th Cir. 1982 saying that both of those exceptions to the

1 MS. KOSTEL: Christ St. Paul's. It's D-CSP-2. That's
2 an organic document -- actually should I do that now?

3 MR. MCCARTY: It's already been admitted.

4 MS. KOSTEL: It's already been admitted. Okay.

5 MR. MCCARTY: Yes.

6 (Defendant's Exhibits CSP-1 through CSP-56 premarked for
7 identification.)

8 MS. KOSTEL: But I still need to give you the numbers so
9 you know what's in. So D-CSP-2, 4, 6, 8, 9, 12, 17, 22, 54
10 and 55.

11 THE COURT: Before we start this, I know people have got
12 to be getting hungry. We're going to start back at 2:15.
13 2:15. So this is going to be the last one we're going to do
14 for an hour and 15 minutes. So if you all want to run and go
15 get some lunch, that gives you just a few minutes, if you'd
16 like. We're going to go ahead and start, but if you quietly
17 want to leave, please feel free.

18 Okay. All right. Tell me which ones you're concerned
19 about.

20 MR. MCCARTY: Okay. I'd like to start with the -- let
21 me get over to it, Judge -- the one I mentioned yesterday
22 briefly.

23 THE COURT: Yes.

24 MR. MCCARTY: Which is the parish handbook.

25 THE COURT: Okay.

1 MR. MCCARTY: That is 17.

2 THE COURT: Yes.

3 MR. MCCARTY: That's the one testimony was elicited from
4 my client at his 30(b)(6) deposition and from -- and while he
5 testified here in Court. That was in our documents, but
6 nobody had ever used it, seen it, applied it, don't know how
7 it got to the church or anything. It's a 2006 vestry
8 handbook from the Episcopal Diocese of South Carolina.

9 THE COURT: I'll tell you what. Here's what I think:
10 I'm going to admit it. If you want to call somebody to say,
11 "We don't know a thing about this" --

12 MR. MCCARTY: He testified to that already.

13 THE COURT: Then you're done.

14 MR. MCCARTY: You're going to let that in?

15 THE COURT: Yes, it's in.

16 MR. MCCARTY: Okay. Based on that, the only other --
17 the only other ones I have, Your Honor, were already talked
18 about by Mr. Campbell, which include aid. And they are
19 Document No. 4, Document No. 22, and Document No. 55. Those
20 are basically letters regarding aid that the church got from
21 the diocese, and I object to those. I don't think they're
22 relevant. I don't think they comment to anything, but you've
23 already testified -- you've already said they're coming in;
24 is that correct? I just want to note my objection on the
25 record.

1 THE COURT: I think they're relevant. They're not
2 necessarily relevant for the reasons that they are being
3 offered, but they're relevant, yes, sir.

4 MR. MCCARTY: Okay. The last one was -- that I had a
5 question about was Document No. 56. That has to do with the
6 consecration. I'll just note my objection on the record to
7 that. I think you had already said it's not --

8 THE COURT: Yes --

9 MS. KOSTEL: I withdrew that.

10 MR. MCCARTY: Okay. Never mind. That's it.

11 (Defendant's Exhibits D-CSP-2, D-CSP-4, D-CSP-6,
12 D-CSP-8, D-CSP-9, D-CSP-12, D-CSP-17, D-CSP-22, D-CSP-54,
13 D-CSP-55 admitted into evidence.)

14 THE COURT: Great. Have a good lunch. I'll see
15 everybody at 2:15.

16 (Lunch recess held.)

17 THE COURT: All right. Who is next?

18 MR. BEERS: Preliminary matter, Your Honor.

19 THE COURT: All right.

20 MR. BEERS: We circulated to the plaintiffs the proposed
21 page and line designations for the 30(b)(6) depositions, and
22 we have heard back from about two thirds of the group.

23 THE COURT: Okay.

24 MR. BEERS: There's -- I think there are nine that are
25 ready to be admitted without objection.

1 I was thinking that with Mr. Orr, we'd mark those for
2 identification only.

3 THE COURT: Yes.

4 MS. KOSTEL: I think that's right.

5 THE COURT: Yes.

6 MR. EASTERLING: Okay.

7 MS. KOSTEL: Are we talking about 24 and 26?

8 MR. EASTERLING: 24 and 26.

9 MS. KOSTEL: Yes, I agree with that.

10 THE COURT: Okay.

11 MR. EASTERLING: That's all. Thank you very much.

12 THE COURT: Thank you, Mr. Easterling.

13 MR. EASTERLING: Yes, ma'am.

14 (Defendant's Exhibits SPB-9, SPB-10, SPB-17, SPB-18,
15 SPB-19, SPB-28, SPB-38, SPB-45, SPB-75, SPB-76, SPB-77
16 admitted into evidence.)

17 THE COURT: Who is next?

18 MS. KOSTEL: St. Paul's, Conway.

19 (Defendant's Exhibits SPC-1 through SPC-23 premarked for
20 identification.)

21 THE COURT: And the numbers are?

22 MS. MACDONALD: Your Honor, I spoke with Mr. Shelton
23 earlier today, and he said that other than the standard
24 objections, he was fine with everything else.

25 MS. KOSTEL: Okay. So those are D-SPC-1, 2, 3, 5, 7, 8,

1 17, 18, 20 and 22.

2 THE COURT: Okay.

3 (Defendant's Exhibits SPC-1, SPC-2, SPC-3, SPC-5, SPC-7,
4 SPC-8, SPC-17, SPC-18, SPC-20, SPC-22 admitted into
5 evidence.)

6 MS. KOSTEL: St. Paul's, Summerville.

7 (Defendant's Exhibits SPS-1 through SPS-69 premarked for
8 identification.)

9 MS. KOSTEL: This one is D-SPS-18, 34, 36, 37, 43, 44,
10 45, 59, and that's an ID only.

11 THE COURT: All right.

12 MS. KOSTEL: 60, an ID only.

13 THE COURT: Okay.

14 MS. KOSTEL: And that's it.

15 THE COURT: All right.

16 MS. LUMPKIN: Your Honor, Hope Lumpkin for St. Paul's,
17 Summerville. In regards to D-SPS-18, we're objecting on the
18 grounds of hearsay. It mentions another -- it's a letter
19 from the bishop at the time to the minister of our parish at
20 the time. It mentions another letter, but that other letter
21 is -- was not in our records. We don't know what it said,
22 and the whole purpose of this one letter is to say, "Pursuant
23 to the terms of your letter, we agree." So we don't know
24 what's being agreed to in this case; so we would object on
25 those grounds.

1 THE COURT: Thank you.

2 MS. KOSTEL: And we would also ask the Court to take
3 judicial notice of the four marks of the Episcopal Church,
4 which are available on the website. You know, they're
5 official documents of the U.S. Patent and Trademark Office.
6 I can read the registration numbers if they have an
7 objection.

8 THE COURT: I'm hoping that those -- if they're not
9 already in, that they'll go in.

10 MR. RUNYAN: I don't think they're relevant. There
11 isn't a claim in this lawsuit for anything related to those
12 marks. There's not an affirmative claim that they've been
13 infringed. There's a defensive claim that our marks are --

14 THE COURT: Similar.

15 MR. RUNYAN: -- similar.

16 THE COURT: Right.

17 MR. RUNYAN: I believe --

18 THE COURT: Right.

19 MR. RUNYAN: -- to, I guess, their marks.

20 THE COURT: Right.

21 MR. RUNYAN: It doesn't really say, but that's what it
22 sounds like.

23 THE COURT: Right.

24 MR. RUNYAN: And are these the Episcopal Church and the
25 Protestant Episcopal Church?

1 MS. KOSTEL: Yes. And actually -- and one of them is
2 the "Episcopal Church welcomes you."

3 MR. RUNYAN: That's not a mark you've plead. It's not
4 in your pleading.

5 MS. KOSTEL: Is that right?

6 MR. RUNYAN: That's right.

7 MS. KOSTEL: That's fine. I don't need that one. We've
8 got the Episcopal Church and the Protestant Episcopal Church
9 in the United States of America, which are part of our
10 defense.

11 THE COURT: I'm going to receive them. I'm going to
12 receive them for the purposes of it's been raised in terms of
13 the defense, and I've heard testimony about it, and I've
14 heard a lot about it from Ms. Lott. And one's registered
15 with the federal government, one's registered with the state
16 government. They've got pretty substantially different
17 names, but I want to be sure that I've looked at them fully;
18 so I would receive them, over the objection of Plaintiffs.

19 MS. KOSTEL: So these are Exhibit Nos. 18. Is
20 identifying them by number plenty?

21 THE COURT: Sure.

22 MS. KOSTEL: Okay. 18, 19 and 20.

23 THE COURT: Great.

24 I thought there were two federal ones. Were there three
25 federal ones?

1 Pennsylvania, where I assist the other regular clergy. I'm
2 in a nonstipendiary basis assisting in preaching,
3 administration of the sacraments, leading of various
4 meetings, conducting classes of various sorts, and in general
5 being available whenever the regular members of the staff are
6 simply too stretched in terms of schedule. I am, so to
7 speak, well, you might say, a designated hitter.

8 Q. Doctor, is St. David's a parish within a diocese that is
9 within the Episcopal Church?

10 A. Yes, it is. It is within the diocese of Pennsylvania
11 and it is one of the oldest parishes in the diocese of
12 Pennsylvania.

13 Q. And who is the present bishop of that diocese?

14 A. The present bishop is Clifton Daniels, who is the
15 provisional bishop of the diocese.

16 MR. RUNYAN: Thank you.

17 Your Honor, at this time I would submit Dr. Guelzo as an
18 expert in late 18th and 19th century American history,
19 intellectual history, church history, and Civil War history.

20 THE COURT: Is there any voir dire?

21 MR. TISDALE: No, thank you, Your Honor.

22 MR. BEERS: No, Your Honor.

23 THE COURT: Is there any objection?

24 MR. BEERS: No, Your Honor.

25 MR. TISDALE: No objection.

1 THE COURT: Very well.

2 DIRECT EXAMINATION BY MR. RUNYAN:

3 Q. Dr. Guelzo, is the Episcopal Church organized in a
4 hierarchical religious structure?

5 A. No.

6 MS. KOSTEL: Objection, Your Honor.

7 MR. BEERS: Objection, Your Honor. You have said 19
8 times, at least, that hierarchy, the hierarchical nature of
9 the Episcopal Church is not an issue in this case. We have
10 not put in evidence on hierarchy because you've said under
11 the law of this state hierarchy was not part of the game.

12 THE COURT: It is not. And I will not do any
13 interpretation with regards to the hierarchical analysis. As
14 you know, the Supreme Court in Jones versus Wolf discussed
15 the two likely or available analyses when it comes to church
16 disputes. One, of course, is the hierarchical analysis and
17 the other is the neutral principles analysis. The
18 hierarchical also being called the deferential or the
19 deference procedure.

20 My concern is this, and direct this, direct your
21 comments, and let me ask this: In terms of whether or not
22 there is a constructive trust and, number two, whether or not
23 there is confusion in the marks, as you will recall, Ms. Lott
24 went on for a very long time in her testimony about the
25 confusion that would occur in the marks. There has been an

1 awful lot of testimony from the defendants with regard to the
2 control that the national church has over both the diocese as
3 well as the parishes either directly or through the diocese,
4 and that affects who owns the property or in whose trust the
5 property is, as well as control as it relates to the
6 utilization of the marks.

7 So in order to make out your case on those issues, a
8 great degree of your proof has gone to the structure and the
9 control that the national church, as we have called it --
10 we've sort of morphed back into national Episcopal Church as
11 I have become more educated, you all knew it ab initio, I
12 have become more educated, and we have begun to talk to it in
13 terms of that. Speak to me of this witness testifying
14 regarding the structure, not as it relates to the
15 hierarchical analysis, because we know that I'm not going to
16 utilize that, but there has been an awful lot of proof which
17 has been offered even into the documents yesterday because of
18 the reference of the constitution and bylaws, the accession
19 as it relates both to the diocese from parish to diocese and
20 from diocese to national church and from parish to national
21 church, does it have no relevance with regards to those
22 issues. Boy that was a bunch.

23 MR. BEERS: I think the point we're trying to make is,
24 Your Honor, that he can testify about specific examples of
25 control, just as we put in evidence some specific acts of

1 control, but he's being called as an expert who's about to
2 give an expert opinion on whether the church is hierarchical
3 or not. That's a very different matter.

4 THE COURT: How so?

5 MS. KOSTEL: I think Your Honor has ruled us out from
6 getting near the hierarchy issue, and that's how we have
7 understood Your Honor's rulings throughout the presentation
8 of our case. And so we kept away from the issue of
9 hierarchy, understanding Your Honor's interpretation of the
10 law, and kept -- tried to stay in the neutral principles area
11 and proving specific instances of control.

12 THE COURT: Well, two things let me ask. Let's talk
13 about it a little bit because I want to stay within the
14 parameters of where we have been, clearly. But there were a
15 couple of things. If you will remember and harken back to
16 Professor McWilliams, he talks about that it is the
17 constitution and the canons of the national church that
18 become the neutral principles. Remember that?

19 MS. KOSTEL: Yes.

20 THE COURT: And he talks about that because of the
21 structure of the church, because you've got the national
22 church, then you've got, if you will, this ripple-down
23 effect, and then you have these parishes that make reference
24 to the constitution and the canons.

25 MS. KOSTEL: Well, I think -- excuse me.

1 THE COURT: Yes, so we've got that. We've got all of
2 that testimony again of Ms. Lott when she talks about control
3 and because of this control, the top-down control, the marks
4 cannot be used that are registered with the State of South
5 Carolina because of the confusion, and that arises out of
6 this control of the national church over the diocese and the
7 parishes.

8 And then we've got all this information that's just come
9 in and yet coming in that talks about the reference and the
10 vestry minutes and some of the deeds, and in all of this
11 information harkening back to the constitution and the
12 canons. We've even had the Book of Common Prayer come in as
13 being evidence of control.

14 You're right, I'm not going to use the hierarchical
15 analysis, yet this relationship, and you can call it
16 something else, but this trickle down, to use a Reagan-ism --
17 I guess it's a Bush-ism actually -- this trickle-down
18 control, if you will, is very much a part of this case, not
19 in terms of the analysis that I would use in terms of the
20 separation, but certainly as it relates to ownership of
21 property and certainly with regards to the marks. So how do
22 I keep the plaintiffs from being able to answer that? Tell
23 me.

24 MS. KOSTEL: Well, a couple things. First of all, I
25 think what Professor McWilliams testified was that because of

1 the 1973 corporate incorporation document of the plaintiff
2 diocese because of the way it used -- referred to the
3 national church's constitution and canons, it essentially
4 incorporated it. I did not understand him to be relying on
5 the hierarchical nature of the church to spell out his
6 analysis of the corporate issues. So that's number one.

7 Number two, on the issue of control, I would echo what
8 Mr. Beers says, which is that we put in evidence of control
9 for a neutral principles purpose, which was to take on the
10 trademark issue and perhaps also prove constructive trust.
11 But we too have witnesses that could say that the church is
12 hierarchical, but I think everyone in the room I think
13 understood that Your Honor did not want to hear that kind of
14 testimony based on your decision that whether or not the
15 church is hierarchical didn't matter in this case. Specific
16 evidence about control, that's a different thing, because
17 that's a neutral principles concept. So that's the
18 distinction we're drawing.

19 THE COURT: It's not a neutral. I don't see it as a
20 neutral. I don't see it as a neutral principle.

21 MS. KOSTEL: Don't see what?

22 THE COURT: It's evidentiary. It certainly is
23 evidentiary. But I've got to tell you I can't in fairness
24 keep the plaintiffs from being able to meet the nature of the
25 voluminous amount of evidence that the defendants have put in

1 regarding this control issue.

2 MS. KOSTEL: And I don't think we're trying to stop
3 that. I think what we're saying is meet the control evidence
4 but no conclusions about hierarchy.

5 MR. RUNYAN: Your Honor, may I speak to this?

6 THE COURT: Okay.

7 MR. RUNYAN: I generally agree with the concept that
8 hierarchy should not -- is not relevant, but, however, two
9 things give me pause. First of all, the only reason that
10 control is really in this case is for them to argue
11 eventually, as they have said they will do, for a change in
12 the law in South Carolina. They've indicated they intend to
13 make that argument. But more fundamentally Exhibit 431,
14 which they introduced over my objection, talks about members
15 of the clergy of this church and further represent the polity
16 and order of this hierarchical church. There is an exhibit
17 in evidence that speaks to the exact word that they say they
18 don't seek.

19 MS. KOSTEL: What is that?

20 MR. RUNYAN: 431.

21 MS. KOSTEL: That's not in evidence yet.

22 MR. RUNYAN: We have it as in evidence.

23 MR. KOSTEL: No, it's not, because it wasn't complete,
24 Alan. You objected that it wasn't complete so it's not in
25 evidence.

1 THE COURT: We'll ask our court reporter to take a
2 minute and just see.

3 MR. RUNYAN: I can adjust my question to the issue of
4 control.

5 MS. KOSTEL: Thank you.

6 THE COURT: Okay.

7 Q. Dr. Guelzo, is the Episcopal Church organized in such a
8 fashion that its governance controls the dioceses and the
9 parishes?

10 A. No.

11 Q. How would you characterize how it is organized?

12 A. The organization of the Episcopal Church is something
13 which has grown up over 200 years, so it isn't any single
14 line of growth or nor does it follow a single line of
15 development. It has tended to zigzag in various ways
16 depending on circumstances. Therefore, there's many issues
17 in the constitution and canons which it in fact does not
18 address. We might expect a document like that would be
19 comprehensive, but it is not, it is developed in response to
20 situations. So there is no clear sense in which the
21 relationships between dioceses and the national church
22 represent what you could legitimately call control. If by
23 control we are talking about authority and direction, then,
24 if anything, the authority and direction has over the history
25 of the Episcopal Church tended to flow from the bottom

1 upwards.

2 Q. Doctor, in terms of words of control, are words such as
3 "supreme" or "supremacy" found in any of the organizational
4 documents of the Episcopal Church?

5 A. I have never come across any such. In fact, if
6 anything, the foundation of the Episcopal Church was
7 struggling to avoid terminology of that sort in the 1780s
8 when the Episcopal Church was organized.

9 Q. Doctor, let's back up and pick up with history a little
10 bit. Does the word "Episcopal" predate the creation of the
11 Episcopal Church?

12 A. Yes.

13 Q. What does it mean?

14 A. It means government by episcopacy, by overseers, by
15 bishops.

16 Q. Are there other churches in the world that have the word
17 "Episcopal" in their names other than the national church in
18 this case?

19 A. Oh, yes, yes. I think, for one thing, of the Lusitanian
20 Episcopal Church. That's one example in western Africa.
21 There is a Portuguese Episcopal Church. There are Episcopal
22 churches of various description, such as the Methodist
23 Episcopal Church. And even in the 18th century the
24 parliament of England recognized the Moravians as an ancient
25 Protestant Episcopal Church.

1 Q. I'm going to hand you a document that I will mark for
2 identification as 69 for identification. Just hold your
3 thought for a moment, Doctor, while I give that to them.

4 (Plaintiff's Exhibit DSC-69 marked for identification.)

5 Q. Doctor, could you identify that document?

6 A. This document that I'm looking at here is an act of
7 parliament with direct reference to the Moravians, who I
8 mentioned before. If you would like, I could explain
9 something about that connection.

10 MR. RUNYAN: Let's get it in evidence first if we could.
11 We'd offer it in evidence, Exhibit 69.

12 THE COURT: Any objection?

13 MR. TISDALE: Give us just one minute, please, Your
14 Honor.

15 THE COURT: Sure.

16 MS. KOSTEL: We've never seen this.

17 MR. TISDALE: No.

18 MR. BEERS: Is this being introduced as an exhibit?

19 MR. RUNYAN: It is.

20 MR. BEERS: We've never seen that before.

21 MR. RUNYAN: It's reply. Didn't know I'd need it.

22 MR. TISDALE: I don't know enough about what it is to be
23 able to say whether we object or not.

24 MS. KOSTEL: It's hard to tell whether it's relevant at
25 this point.

1 MR. RUNYAN: All right. Let's lay some more foundation.

2 Q. Doctor, is this a statue of the parliament in England.

3 A. Yes. It was passed by parliament in the reign of King
4 George II.

5 MR. BEERS: Excuse me, Your Honor. Objection. I'd like
6 to know to what issue in this case.

7 MR. RUNYAN: We're getting there, Mr. Beers. Just give
8 me a second.

9 MS. KOSTEL: Ordinarily we weren't allowed to get there,
10 so we'd like to know in advance.

11 MR. RUNYAN: It goes to the issue of the use of the name
12 Protestant Episcopal Church many, many years before you guys
13 used it.

14 MR. BEERS: I don't know about the guys part, but no
15 objection to the rest.

16 THE COURT: Folks. Y'all.

17 MR. RUNYAN: Still object?

18 MR. BEERS: No.

19 MR. RUNYAN: Tom?

20 MR. TISDALE: No.

21 MR. RUNYAN: Your Honor, we'd offer this in evidence.

22 THE COURT: I think it's in evidence now without
23 objection.

24 (Plaintiff's Exhibit DSC-69 admitted into evidence.)

25 Q. Doctor, would you turn, please, to the second page.

1 And, first of all, would you tell the Court whether there is
2 an act of parliament set forth on that page and the
3 succeeding two pages?

4 A. Yes, this is an act of parliament.

5 Q. What does the act relate to?

6 A. The act relates to a group known as the United Brethren
7 or Unitas Fratrum, but more popularly known as the Moravians.
8 This was a group of Protestant pietists in Moravia, today we
9 would call that area the Czech Republic. The Moravians were
10 a Protestant pietist group in the domains of the Austrian
11 empire, and especially the domains known as Bohemia, now
12 today the Czech Republic. This Protestant group was
13 persecuted by the state authorities in the Austrian empire.
14 They moved into Germany into the Duchy of Saxony to find
15 refuge there. But eventually the Duke of Saxony wanted them
16 to conform to the state Lutheran church.

17 At this point they fled to other points where they could
18 have religious freedom, to England and to England's North
19 American colonies. The Moravians who moved to London and
20 those who moved to North Carolina and Pennsylvania petitioned
21 for recognition by the Church of England and were granted
22 this by act of parliament on the grounds that the Moravians
23 were, like the Church of England, an ancient Protestant
24 Episcopal Church, since they were governed by bishops, and
25 was granted equal status and exemption from any taxation or

1 other ecclesiastical difficulties and liabilities that would
2 otherwise have been laid upon dissenter churches in England
3 in the 18th century.

4 Q. Thank you, Doctor. Let's focus on just the words
5 "Protestant Episcopal Church" if we could for a moment. If
6 you would look at roughly at the center of that page, 463.
7 Could you just tell us what is set forth there, using those
8 words?

9 A. The aim here is to identify the Moravian congregations
10 as ancient, not literally going back into Roman or Greek
11 times but having a lengthy history. Protestant, in other
12 words, part of the family of Protestant churches that stem
13 from Martin Luther and the Protestant reformation, and
14 Episcopal in that the Moravians were governed by bishops.

15 Q. Doctor, would you refer down to the lower part of the
16 page. Does that phrase "Protestant Episcopal Church" appear
17 one other place?

18 A. Yes, it does; towards the bottom of Page 463 as copied
19 from the statute book. And it says: Every person being a
20 member of the said Protestant Episcopal Church known by the
21 name of Unitas Fratrum or the United Brethren.

22 Q. Doctor, leaving the UK and coming over to the United
23 States was the phrase "Protestant Episcopal Church" used for
24 any church other than the Protestant Episcopal Church in the
25 United States prior to its existence?

1 A. Yes. The term and title "Protestant Episcopal Church"
2 was used by the parishes of Maryland in the 1770s as they
3 attempted to organize themselves during the upheavals of the
4 Revolution. They assembled and described themselves as the
5 Protestant Episcopal Church as they were appealing to the
6 Maryland General Assembly for recognition of the titles of
7 their properties. They did this because during the
8 Revolution many of the state governments of the United States
9 enacted confiscatory statutes, confiscating the properties of
10 Tories and sympathizers with the British. These parishes in
11 Maryland wished to establish that they were not in sympathy
12 with the British occupation forces, and so they appealed to
13 the Maryland General Assembly for recognition as a separate
14 entity and gave themselves the title Protestant Episcopal
15 Church.

16 Q. Doctor, prior to the creation of the Episcopal Church,
17 how were the post-revolution churches in South Carolina
18 referred to?

19 A. They also used the title Protestant Episcopal Churches.

20 Q. Doctor, would you take a moment, please, and describe
21 for the Court how the Episcopal Church came to be the
22 national church?

23 A. At the end of the American Revolution the Church of
24 England congregations in what became the United States were
25 pretty much thrown on their own resources. Of the 286 clergy

1 resident in America, 131 of them went into exile, and many of
2 these congregations simply dissolved because it was felt that
3 these were appendages of the British government.

4 A number of congregations, though, began organizing
5 themselves. They created, actually borrowed, a mechanism
6 from the Revolution itself which was to organize as state
7 conventions. The Revolution had begun by states resolving
8 themselves as conventions. Maryland in 1779 is one of the
9 first and actually elects William Smith as their leader, as
10 their bishop, as their overseer. William White, the rector
11 of Christ Church Philadelphia, issued in 1782 a pamphlet
12 entitled The Case of the Episcopal Churches Considered in
13 which he outlines a plan for organizing these church of
14 England congregations on what he called the federal plan.
15 And he in fact called for the assembling of a Pennsylvania
16 state convention in 1784 in Philadelphia. That Pennsylvania
17 state convention in turn issues a call for the meeting of
18 nine state conventions which assembled in 1785 in
19 Philadelphia.

20 Summing it up, the long and short of it is that the
21 Episcopal -- the national church really comes into being by
22 the action of individual state church organizations
23 organizing themselves, then coming together, and then
24 proceeding to do business.

25 Q. So did the Episcopal Church create the state

1 organizations or did the state organizations create the
2 Episcopal Church?

3 A. Well, the state organizations were responsible for
4 creating the Episcopal Church. There was no Episcopal Church
5 beforehand to call it into being. Episcopal congregations
6 had received no oversight or instruction from the Archbishop
7 of Canterbury or the Bishop of London in England and,
8 curiously, it's not even on William White's authority that
9 the call goes out to the state conventions to come. It is
10 the Pennsylvania convention which invites the other state
11 conventions to assemble together.

12 Q. Dr. Guelzo, what was the attitude, if you can tell us,
13 of the former Anglican parishes to the idea of an episcopacy?

14 A. Dicey, the reason being mostly political. Anglican
15 churches were seen both before the Revolution and during the
16 Revolution as a kind of religious fifth column of the British
17 empire. So those who were loyal to Anglican worship and the
18 Anglican ethos had to walk a very narrow path for fear of
19 exciting hostility and retribution by people who would assume
20 that any attempt to organize a full-blown Episcopal church
21 would attract a great deal of negative publicity and maybe
22 even spark mob actions and riots.

23 Tories, of course, had been tarred and feathered with
24 some regularity during the Revolution, and these marooned
25 Church of England parishes were not eager to have the same

1 thing happen. So what they proposed by way of an
2 organization stays as far away from the vocabulary of a full
3 hierarchical structure or a full control structure, they're
4 even hesitant to use the word "bishop." When William White
5 lays out his case for the Episcopal churches considered, he
6 suggests that the term "overseer" be used rather than
7 "bishop" for fear of implying that some kind of top-down
8 control is being imposed from England.

9 Q. Were there any components of William White's proposal
10 for this type of a church in the case considered that
11 suggested that when these entities came into union, they
12 would only give so much authority as was needed for that
13 organization but retain the rest?

14 A. The only authority that the various state conventions
15 seemed to give at all to judge by the record of the original
16 convention, original national convention, was for the purpose
17 of electing bishops. And that, curiously enough, is an
18 authority which that same convention devolves back onto the
19 diocese in 1799.

20 Q. Bishop -- excuse me -- Dr. Guelzo, I'm going to show you
21 what's marked in evidence as Diocese Exhibit 41, which is a
22 copy of the Constitution, first Constitution, of the Diocese
23 of South Carolina. Have you seen that before?

24 A. I have seen this document.

25 Q. Do you see any of the principles that you just discussed

1 contained in any of the articles in Exhibit 41?

2 A. In the very first article: That the Protestant
3 Episcopal Church in these states is and ought to be
4 independent of all foreign authority, ecclesiastical or
5 civil. This is an attempt to establish that although
6 Episcopalians are coming together as Episcopalians, they
7 should not be mistaken as a branch of the Church of England,
8 they should not be mistaken as attempting to create any kind
9 of monarchical form of government.

10 Q. All right. Any others?

11 A. Moving on here, I point out that the doctrines of the
12 gospel should be maintained as now proposed by the church of
13 England and uniformity of worship to be continued as near as
14 possible.

15 MR. TISDALE: Your Honor, we object. Excuse me, Doctor.
16 Put an objection on the record that the document speaks for
17 itself. I think you've ruled that in other cases, similar
18 cases in the case.

19 MR. RUNYAN: I'll rephrase the question.

20 THE COURT: All right.

21 Q. Doctor, I'm going to read you a couple of things from
22 this document and then ask you a question about them. There
23 is Article IV -- I'm going to have a hard time reading it
24 actually -- that something in the ministry be agreeable to
25 the usage which require the three orders of bishops, priests,

1 and deacons, parentheses, with an exception, however, to the
2 establishing of bishops in the state, closed parentheses.
3 How does that exception relate to what you've just testified
4 about?

5 A. The exception suggests that in the original document
6 people were dicey, even very hesitant, even about the area of
7 suggesting that bishops were necessary to the reconstitution
8 of their association, that they could in fact move on quite
9 happily and continue to think of themselves legitimately as
10 Anglicans only with the orders of priests and deacons.

11 Q. I'll read you another article, article fifth: That to
12 make regulations, rules, and laws there be no other authority
13 than that of a representative body of the clergy and laity
14 conjointly.

15 Does that speak to the issue of a centralized authority?

16 A. I think very clearly what Article V is saying
17 unmistakably is that whatever authority there is, that the
18 authority remains within these representatives in South
19 Carolina.

20 Q. And the last article: That no power be delegated to a
21 general ecclesiastical government except such as cannot be
22 exercised by the clergy and vestries in their respective
23 congregations.

24 My first question is: Was that one of the elements of
25 William White's The Case?

1 A. This was, because White was very sympathetic to the
2 notion that the individual state organizations and dioceses
3 should have the full and open control of their property and
4 of their own government. White was looking less to create a
5 national church government than he was simply to secure a
6 legitimate succession of the episcopate, which he hoped to
7 obtain from the Bishop of London or from the Archbishop of
8 Canterbury. He also recognized that that might not be
9 forthcoming because there was no precedent at that point in
10 Church of England history for consecrating bishops for a
11 province outside the political boundaries of the British
12 empire. So White, always hedging his bets by saying, well,
13 if this is possible, if we can obtain the episcopate; if we
14 can't, we will move ahead nevertheless on our own authority.

15 Q. Dr. Guelzo, what was South Carolina's initial position
16 on whether they desired a bishop or not?

17 A. South Carolina was not entirely sure -- and this in this
18 respect is very similar to Maryland -- as to whether they
19 should even talk about bishops simply because the word itself
20 might conjure up much too much in the way of hostility to
21 their parishes and to their clergy and people.

22 Understand, the term "bishop" in America in the 1780s is
23 a loaded term because prior to the Revolution there had been
24 a good deal of discussion about the creation and consecration
25 of a bishop for the American colonies. There had been none

1 up till that point. In fact, the Bishop of London had the
2 overall oversight authority for the American parishes. He
3 never visited America, he stayed in London. He sent a
4 representative, a commissary, who lived in Virginia, but that
5 was about the extent of that representation. Many people
6 agitated strenuously for the appointment of a colonial
7 bishop, but it never actually happened because, well, in
8 large measure no one was willing to pay for it.

9 But it was suggested that the discussions, the attempts,
10 the plans to create a bishop for America were of a piece with
11 British imperial attempts to strengthen fiscal and political
12 control over the colonies so that, for instance, at the time
13 of the Stamp Act it was said by John Adams that the stamping
14 and episcopizing of America were two parts of the same
15 program, which, of course, the Revolution opposes. So,
16 therefore, using the term "bishop," that had to be done very,
17 very carefully because that term had a -- it had a history
18 among Americans that was not very, very tasty.

19 Q. Doctor, in fact, does the governance of the Episcopal
20 Church today require that a diocese even have a bishop?

21 A. Strictly speaking, no. It's one of the ironies of the
22 way that the documents themselves have been constructed over
23 the years, that the constitution and canons both of the
24 national church and the dioceses tend to respond to specific
25 situations and specific questions. And if it doesn't occur,

1 if it's not a particular challenge, then there tends not to
2 be legal material on that or statutory material on that. So
3 the exact idea that you must have a bishop in order for the
4 diocese to function itself doesn't really appear in the
5 documents.

6 Q. Doctor, are you familiar with a work known as "The
7 Episcopal Church And Its Work" authored by Powel Mills
8 Dawley?

9 A. Yes.

10 Q. Is that a work that you consider to be reliable as it
11 relates to the general history of the Episcopal Church?

12 A. Yes. It's one of a number of standard references and
13 surveys of the history of the Episcopal Church.

14 Q. Okay. I'm going to read a couple things and ask you a
15 question if I could. On Page 75 of that work the following
16 quote appears: The constitutional articles are the most
17 important laws of the church, and like those laws called
18 canons, which may be altered at any session of general
19 convention, the provisions of the constitution may be amended
20 only by the action of two successive conventions.

21 MS. KOSTEL: I'm sorry to interrupt. Is this an
22 exhibit?

23 MR. RUNYAN: No. I don't think I can introduce it. I
24 will if you'll consent to it.

25 MS. KOSTEL: Why are you reading it then?

1 MR. RUNYAN: That's the way we do it.

2 MS. KOSTEL: Only on reply, is that -- got it. Excuse
3 me.

4 Q. I'll start over, Doctor.

5 THE COURT: Hold on.

6 (Brief pause.)

7 THE COURT: Cross, not reply. I took your question to
8 be cross, not reply. I think you meant reply. I'm looking
9 at cross. I'm looking at cross. Hold on.

10 MS. KOSTEL: Okay.

11 MR. RUNYAN: Your Honor, I believe that this is
12 appropriate examination under Rule 803(18).

13 THE COURT: Well, I finally got it. I got right there.
14 Thank you. I'll put the rule on the record so we're all on
15 the same page. It is 803(18). To the extent called to the
16 attention of an expert witness upon cross-examination, which
17 is where my mind went, or relied upon by the expert witness
18 in direct examination; statements contained in published
19 treatises, periodicals, or pamphlets on a subject of history
20 is established as a reliable authority by the testimony; if
21 admitted, the statements may be read into evidence but not
22 received as evidence.

23 There you go. You may proceed.

24 Q. Doctor, let's refresh our recollection. The Episcopal
25 Church and Its Work, is this a part of the Episcopal Church

1 teaching series?

2 A. Yes, it is, to the best of my understanding.

3 Q. All right. Back to where we were, I'm going to read a
4 statement from Page 75 and ask you a question. The
5 constitutional articles are the most important laws of the
6 church, unlike those laws called canons, which may be altered
7 at any session of the general convention. The provisions of
8 the constitution may be amended only by the action of two
9 successive conventions. Changes of a serious nature in the
10 structure or order of the church may not be made until there
11 has been ample time for study and deliberation.

12 Do you agree with that, Doctor?

13 A. Yes.

14 Q. I'll ask you another question from Page 106 concerning
15 the office of the presiding bishop of the Episcopal Church.
16 While the presiding bishop is invested with the prestige that
17 surrounds the archbishops and metropolitans in other churches
18 of the Anglican Communion, few of his canonical duties are
19 those historically associated with the office of archbishop.

20 MS. KOSTEL: Objection, Your Honor. The authority of
21 the presiding bishop is not an issue in this case.

22 THE COURT: Let me hear the question.

23 MS. KOSTEL: Okay.

24 MR. RUNYAN: I may not go there if she is conceding that
25 the presiding bishop has no authority over dioceses and

1 parishes at all.

2 MR. BEERS: That's not what we said at all.

3 MS. KOSTEL: The presiding bishop's authority is not at
4 issue, the general convention's authority is at issue.

5 THE COURT: To me, read. Let me hear the question.

6 MR. RUNYAN: What I am quoting from is as follows:

7 While the presiding bishop is invested with the prestige that
8 surrounds the archbishops and metropolitans in other churches
9 of the Anglican Communion, few of his canonical duties are
10 those historically associated with the office of archbishop:
11 He exercises no direct pastoral oversight of a diocese of his
12 own, nor does he possess visitorial or juridical powers
13 within the independent dioceses of the Episcopal Church.

14 THE COURT: And what is the nature of the objection?

15 MS. KOSTEL: That the authority of the presiding bishop
16 is not at issue in this case. Any authority of the presiding
17 bishop, I think that the testimony derives from the general
18 convention. And the issue in this case is the general
19 convention's authority over the diocese.

20 THE COURT: Got it. Overruled.

21 Q. Doctor, do you agree with that statement?

22 A. Yes, I do.

23 Q. From Page 115: At the time that the American Revolution
24 forced an independent organization upon the Anglican Colonial
25 parishes, the first dioceses existed separately from each

1 other before they agreed to the union in 1789 into a national
2 church. That union, like the original federation of our
3 states, was one in which each dioceses retained a large
4 amount of autonomy. And today the dioceses still possess an
5 independence far greater than that characteristic in most
6 other churches with Episcopal polity.

7 Do you agree with that?

8 A. Yes, I do.

9 Q. Page 116 of the same book: Diocesan participation in
10 any national program or effort, for example, must be
11 voluntarily given, it cannot be forced. Again, while the
12 bishop's exercise of independent power within the dioceses is
13 restricted by the share in church government possessed by the
14 diocesan convention or the standing committee, his
15 independence in respect to the rest of the church is almost
16 complete.

17 Do you agree with that statement?

18 A. Yes, I do.

19 Q. And finally, from the same page: Neither the general
20 convention nor the National Council lacking control over the
21 larger part of the church's resources --

22 THE COURT: The national church's?

23 MR. RUNYAN: Resources.

24 THE COURT: Thank you.

25 MR. RUNYAN: -- can put men and money to work in

1 missionary districts or other areas of crucial challenge
2 without the voluntary cooperation of the dioceses.

3 Do you agree with that statement?

4 A. Yes, I do.

5 Q. You obviously have some familiarity and expertise with
6 the American Civil War, do you not?

7 A. That is true.

8 Q. Would you tell the Court what happened to the southern
9 dioceses that were a part of the -- in union with the
10 Episcopal Church when the Civil War broke out?

11 A. With the outbreak of the Civil War the dioceses
12 represented in the seceding states of the confederacy came
13 together to form their own organization, and that was styled
14 the General Council of the Protestant Episcopal Church in the
15 Confederate States. This was a motion arising from the
16 dioceses themselves to federate in this fashion and they
17 functioned through the Civil War on that basis.

18 At the end of the Civil War representatives of these
19 dioceses appeared at the next general convention of the
20 Episcopal Church in 1866 and were welcomed back as dioceses.
21 In other words, by detaching themselves from the Protestant
22 Episcopal Church in the United States, they had not acquired
23 some entirely new identity which forced them to be redefined
24 as dioceses, they came back as the same dioceses they had
25 been with the same authority that they had and were indeed

1 welcomed back by the presiding bishop of the Episcopal Church
2 and by the resolution that was passed at that time in the
3 1866 general convention.

4 Q. Doctor, I'm going to hand you a document which is the
5 1866 proceedings of the Diocese of South Carolina. I'll ask
6 you, sir, if you've seen that before?

7 A. Yes, I have.

8 THE COURT: Is this in evidence at this point?

9 MR. RUNYAN: It is not, Your Honor.

10 THE COURT: Okay.

11 MR. RUNYAN: I would at this time offer it in evidence.

12 (Plaintiff's Exhibit Diocese-70 marked for
13 identification.)

14 THE COURT: You all have the document; correct?

15 MS. KOSTEL: Yes.

16 MR. TISDALE: He gave us one and I passed it over to
17 Ms. Kostel.

18 THE COURT: All right. You may proceed, Mr. Runyan, to
19 ask him questions.

20 Q. Doctor, what is this document?

21 A. This document is a journal of the proceedings of the
22 Diocese of South Carolina as it was coming at the end of the
23 Civil War.

24 Q. What was the year?

25 A. 1866.

1 Q. Does it contain on the first page just opposite the
2 title something entitled "Preamble and Resolutions" of
3 another entity?

4 A. Yes, it does. "Preamble and Resolutions of the General
5 Council of the Protestant Episcopal Church," it looks as
6 though it forgot to put the definite article in, "in the Late
7 Confederate States."

8 Q. Was there a separate organization of the southern
9 dioceses during the Civil War?

10 A. Separate in respect of the Episcopal Church in the
11 United States, yes. There was no new diocese organized under
12 the aegis of this General Council of the Protestant Episcopal
13 Church. In fact, to the contrary. It was the dioceses of
14 states like South Carolina which come together and organize
15 not only a new convention of their own, but in fact give it a
16 different title than the general convention of the Protestant
17 Episcopal Church of the United States. They call it a
18 General Council to distinguish it. It is very much a
19 creation of these dioceses.

20 Q. Doctor, I'm going to read you a paragraph from that
21 preamble and resolution and ask you a question about.

22 THE COURT: Hold on one second. Is it in evidence?

23 MR. RUNYAN: It is not.

24 THE COURT: Is it offered?

25 MR. RUNYAN: It is offered.

1 MS. KOSTEL: No objection.

2 MR. TISDALE: No objection.

3 MS. KOSTEL: 70?

4 THE COURT: 70. Very well.

5 (Plaintiff's Exhibit DSC-70 marked for identification.)

6 (Plaintiff's Exhibit DSC-70 admitted into evidence.)

7 Q. Would you turn to the paragraph marked, looks like,
8 Resolved 1? Doctor, this says that in the judgment of this
9 Council it is perfectly consistent with the good faith which
10 she owes to the bishops and dioceses with which she has been
11 in union since 1862 for any diocese to decide for herself
12 whether she shall any longer continue in union with this
13 Council.

14 Doctor, does that speak at all, in your opinion, to the
15 issue of the independence of the dioceses?

16 A. It suggests that the diocesan authorities were enjoying
17 and were given permission to make their own decisions about
18 affiliation or re-affiliation with the Episcopal Church,
19 Protestant Episcopal Church of the United States. The
20 diocese would make its own decision.

21 Q. Doctor, based upon your knowledge as a professional
22 historian, your understanding of the creation of the
23 Episcopal Church, and your review of records surrounding its
24 creation, in your opinion is there anything associated with
25 that creation that suggests to you that a diocese who helped

1 create the Episcopal Church, once joining it, could never
2 leave again?

3 A. I can recollect nothing which insists on a permanent
4 subordination of dioceses in the national church to the
5 authority of either the bishops or even the general
6 convention of the Episcopal Church.

7 MR. RUNYAN: Thank you, sir.

8 THE COURT: Any other direct from any other plaintiffs?
9 All right. Cross-examination, Mr. Beers.

10 MR. BEERS: May we have a few moments, Your Honor?

11 THE COURT: Of course.

12 MR. BEERS: Your Honor, given the fact we did not know
13 about this witness -- and I'm not complaining about that --
14 would you mind if Ms. Kostel and I split the cross?

15 THE COURT: No, I don't.

16 MR. BEERS: Thank you.

17 THE COURT: And I know it's not typically normally done,
18 but I'm going to allow it under these circumstances.

19 CROSS-EXAMINATION BY MS. KOSTEL:

20 Q. Good morning, Dr. Guelzo.

21 A. Good morning.

22 Q. I'm Mary Kostel and I represent the Episcopal Church.
23 We're referring to it as the national church here. Dr.
24 Guelzo, you're familiar with someone named Francis Hawks,
25 right, who was a clergyman and historian alive in the 19th

1 century?

2 A. Yes.

3 Q. And you're aware, I'm certain, that he wrote a book in
4 that century called Contributions to the Ecclesiastical
5 History of the United States of America?

6 A. That is correct.

7 Q. And I'm certain you're aware -- and I need to get my
8 glasses. Excuse me.

9 Getting back to Francis Hawks, you're aware that in that
10 book Francis Hawks was speaking about dioceses and wrote:
11 What did the several dioceses surrender when they came into
12 the general convention?

13 MR. RUNYAN: Your Honor, I'm sure she can do it, but
14 you've missed a foundational question. I would object to the
15 foundation.

16 MS. KOSTEL: He's aware of it. He's a historian in the
17 19th century.

18 Q. Correct?

19 A. Correct.

20 Q. Yes. I thought I had established that.

21 MR. TISDALE: You did.

22 Q. Yes. So Francis Hawks wrote: What did the several
23 dioceses retain when they -- what did they surrender when
24 they came into the general convention as we apprehend, he
25 wrote, the following things: Number one, such an exercise of

1 independency as would permit them to withdraw from the union
2 at their own pleasure and without the assent of other
3 dioceses.

4 You're aware that he wrote that; correct?

5 A. Yes.

6 Q. Okay. And you're familiar with Francis Vinton, also a
7 19th century writer, teacher, professor of ecclesiastical
8 polity at law in the general theological seminary of the
9 Episcopal Church and a priest? You're aware of him?

10 A. And also a rector in New York City.

11 Q. Yes, exactly. And I'm sure you're familiar with a
12 manual commentary of the general canon law and the
13 constitution of the Protestant Episcopal Church in the United
14 States that Francis Vinton wrote?

15 A. Yes.

16 Q. And so I'm certain you're aware that Francis Vinton
17 wrote in his manual commentary a question and answer type of
18 essay, piece, and one question was, Q: What is the relation
19 of the general convention to the diocesan conventions? A,
20 his answer: It is that of a supreme legislature whose
21 constitution is the fundamental law of the Protestant
22 Episcopal Church in the United States and whose canons either
23 overrule or sanction the canons of the several diocesan
24 conventions; correct?

25 A. That statement is one of his statements.

1 Q. Yes. And he wrote that in the 19th century; correct?

2 A. That is correct.

3 Q. And you're familiar, I'm sure, with Hill Burgwin, who
4 was also living in the 19th century, was the chancellor of
5 the Diocese of Pittsburgh and is a lawyer. And Mr. Burgwin,
6 I'm sure you know, wrote an article called "The National
7 Church and the Diocese"?

8 A. Yes.

9 Q. And I'm sure you're aware that he wrote the following,
10 which is long: But suppose the attempt to do so -- and he's
11 referring to remove a diocese from the church -- were made
12 and that the convention of a diocese with the bishop at its
13 head should, by an overwhelming majority and for a cause
14 sufficient to satisfy them, resolve to withdraw from the
15 union with the national church and thereupon set up an
16 independent organization. What would then be the
17 ecclesiastical and also the civil status of the different
18 parties concerned?

19 As to the former, all those who should remain faithful
20 to the national church, whether as individuals or parishes,
21 however small a remnant and however unorganized and widely
22 scattered, would compose the Protestant Episcopal Church in
23 that diocese. If not strong enough to organize themselves as
24 a diocese, they would be taken under the foster and care of
25 the national church and perhaps be organized temporarily as a

1 missionary jurisdiction.

2 As to the others, their acts would be that of
3 individuals only, being beyond the scope of their powers as
4 members of the convention. It would be of no legal effect
5 and the diocese would still remain potentially and when
6 subsequently reorganized actually in union with the national
7 church, while any subsequent organization of the majority
8 would be simply schismatical, especially after their bishop
9 had been deposed, as he would be at once.

10 Not only would this be the ecclesiastical status of all
11 the parties as held by the national church, but they would be
12 regarded in the same light by the civil law and with this
13 most important consequence that all the property in the
14 diocese held in trust for the church purposes -- for church
15 purposes -- excuse me -- whether by the diocese at large, by
16 parishes, or by any other corporations or individuals, would
17 remain for the use and benefit of those whom the law held to
18 be, though in a minority, yet members of the Protestant
19 Episcopal Church in the United States of America and her
20 lawful representatives in the diocese concerned.

21 Hill Burgwin wrote that in the 19th century; isn't that
22 right?

23 A. Can you supply me the exact date on that?

24 Q. Yes. Well, it's an April 1885 issue of the American
25 Church Review.

1 A. And you are aware that in fact that was inaccurate and
2 indeed contradicted by the case of Chase, et al., versus
3 Cheney in 1871.

4 Q. In 1871. But Hill Burgwin wrote this in 1885.

5 A. I'm aware of that. But I will also have to point out
6 that this is an opinion of a gentleman flying in the face of
7 and in denial of what was already an established court case
8 in the Diocese of Illinois and in the Illinois State Supreme
9 Court.

10 Q. And that case that happened in the Diocese of Illinois
11 happened before the church adopted new canons setting out its
12 control over property; isn't that right?

13 A. You're right. You're reading canons or you're reading
14 Mr. Burgwin's opinion?

15 Q. I'm talking about canons now.

16 A. And there were canons in 1880 to that effect? I'm
17 unaware of such.

18 Q. That's fine then.

19 A. No. I think you're reading opinions of a particular
20 person writing about canon law, but there are no such canons.

21 Q. So you're not aware of canons that were adopted by the
22 general convention after the Cheney case?

23 A. Not of that nature, not representing that gentleman's
24 opinion, no.

25 Q. I'm talking about canons regarding church property that

1 were adopted by the general convention after the Cheney case
2 was decided.

3 A. But those canons, of course, were not in fact put into
4 effect. And what's more, they had to wait until 1977 with
5 the resolutions surrounding the Dennis canon.

6 Q. What canons do you think you're talking about that were
7 not put into effect?

8 A. I'm talking about canons with reference to church
9 property.

10 Q. So you're not aware of any canons that were adopted in
11 the 1870s regarding church property?

12 A. None that were put to any sort of test.

13 Q. That expressly spoke about protecting church property
14 against persons who abandoned the Episcopal Church.

15 A. No. You are reading, are you not, Mr. Burgwin's
16 opinion?

17 Q. I'm not reading anything. I'm asking you if you're
18 aware of a canon that had that language in it.

19 A. If you can supply me with the text of the canon so that
20 I can be sure of the exact wording, I would be happy to give
21 you my opinion about the canons. But you have asked me for
22 an opinion about Mr. Burgwin's article.

23 Q. No. I asked you whether you were aware of Mr. Burgwin's
24 article.

25 A. I am aware of Mr. Burgwin's article. That's all.

1 Q. Okay. But you're not aware of canons passed in the
2 1870s?

3 A. Can you cite me a case?

4 Q. You're either aware of it or you're not, Dr. Guelzo.

5 A. Well, I'm not aware of them because you cannot cite a
6 case for me.

7 Q. Thank you.

8 A. It doesn't exist, a vapor.

9 Q. You're familiar, I'm sure, also with Murray Hoffman, who
10 was a layman in the Episcopal Church in the 19th century and
11 published a paper called "Remarks Upon the Question of What
12 Is Schism"?

13 A. Yes.

14 Q. And in that paper Hoffman quoted Francis Hawks, did he
15 not?

16 A. Yes, he did.

17 Q. And in agreement with Francis Hawks said: He enumerates
18 what the several dioceses retained and then asks what did
19 they surrender, as we apprehend the following things: Number
20 one, such an exercise of independence as would permit them to
21 withdraw from the union at their own pleasure and without the
22 assent of the other dioceses.

23 That was in Hoffman's article, wasn't it?

24 A. That is correct. Are you aware of the disposition of
25 these authors whom you have been reading, from Cox to

1 Hoffman?

2 Q. I'm asking the questions.

3 A. I know you're asking the questions.

4 THE COURT: Stop. Both of you stop. When you
5 cross-examine an expert with regards to a document, it has to
6 be accepted as a learned treatise by the witness before you
7 can ask him. This is of no use to the Court if this witness
8 doesn't consider what you're reading to be learned treatises.
9 You're not laying the proper foundation. I know there hadn't
10 been an objection, but this is of no use to me to have you
11 have a debate with this witness about whether he believes
12 what you're reading is legitimate or not. That doesn't help
13 me.

14 MS. KOSTEL: But, your Honor, I'm offering it -- may I
15 finish?

16 THE COURT: No. You cannot under our rules. When you
17 cross-examine an expert with regards to a treatise, the
18 expert has to accept the document as a learned treatise.
19 That is missing from your foundation. I know it hadn't been
20 objected to, but this is nonjury, people, and I have to be
21 able to rely on it. And there's a ton of information. I'm
22 not going to have this kind of information thrown at me, and
23 I have got to discern what was legitimate and what wasn't.

24 MS. KOSTEL: Fair enough. Let me ask about --

25 THE COURT: So start over and ask him do you consider

1 this document to be a learned treatise.

2 MS. KOSTEL: Fair enough. But, Your Honor, can I skip
3 reading all the excerpts again?

4 THE COURT: Absolutely. Absolutely.

5 Q. So let's go back to Francis Hawks. Do you agree that
6 Francis Hawks wrote a number of works about the history of
7 the Episcopal Church; correct?

8 A. Yes. But I don't believe that's the question at issue.

9 Q. No. I'm going to follow up that question.

10 A. Very good.

11 Q. Yes. And "Contributions to the Ecclesiastical History
12 of the United States of America" was one of those works;
13 correct?

14 A. Correct.

15 Q. And that's what I read from just a moment ago.

16 A. Correct.

17 Q. Yes. And do you consider that a learned treatise?

18 A. No.

19 Q. And why is that?

20 A. Because it was a party statement. Understand that Cox,
21 Vinton, especially Francis Vinton, were partisans for a
22 particular party within the church known as the ritualists or
23 the Anglo-Catholics, as they're sometimes called, who were
24 agitating for movement of the Episcopal Church to a structure
25 and to theology more closely resembling Roman Catholicism,

1 hence the name Anglo-Catholic. They were advocates, they
2 were partisans, they produced works of theological
3 speculation, but in no sense were they speaking
4 authoritatively for the church. And their positions were in
5 fact frequently and roundly condemned in the general
6 convention of the Episcopal Church. What you are -- what you
7 are reading effectively would be like reading excerpts from
8 articles written by members of the Tea Party to describe the
9 Constitution of the United States.

10 Q. How about Dawley; is that a learned treatise?

11 A. I believe it is.

12 Q. So your view is that Hoffman is not a learned treatise?

13 A. I would say so.

14 Q. And Burgwin, the chancellor of the Diocese of
15 Pittsburgh?

16 A. Definitely.

17 Q. And Vinton as well?

18 A. Definitely above all Vinton, who is probably among the
19 authors you read the most forward as a partisan of the
20 ritualist party.

21 Q. Let me ask you this: Were they known? Were they known
22 people?

23 A. Oh, they were certainly known, but so was Jesse James.

24 Q. Yes. That's fine. But they were known figures in the
25 Episcopal Church in the 19th century?

1 A. They were known as radicals, they were known as members
2 of a fringe group; yes.

3 THE COURT: Now, would you do this for me -- and I hate
4 to do this because I know you've been through it, but it's
5 important because you've read some things that are very
6 important for me to hear -- the gentleman that he just
7 acknowledged was a learned treatise, can you go back through
8 the quote that you gave him.

9 MR. KOSTEL: That was not one of the quotes. That was
10 the treatise that Mr. Runyan introduced.

11 THE COURT: Okay.

12 Q. Let me ask you, Dr. Guelzo, about William Jones Seabury.
13 Is it your view that he has produced learned treatises?

14 A. No.

15 Q. Okay.

16 THE COURT: Can you spell that for me?

17 MS. KOSTEL: Yes. William Jones Seabury, S-E-A-B-U-R-Y.

18 Q. Can you tell us a little bit about who he was?

19 A. The gentleman was, as my memory serves me, an Episcopal
20 clergyman and a partisan and the author of partisan material.

21 Q. How about William Stephens Perry?

22 A. William Stephens Perry is the author of learned
23 treatises and especially not -- I think the word "treatise"
24 is probably inaccurate. He was the editor of documents. He
25 was well known as a historian collecting elements of

1 historical documents of the Episcopal Church, which he then
2 edited in a series of volumes in the 19th century.

3 Q. But in those volumes sometimes he included his own
4 comments; correct?

5 A. Yes; as introductory material.

6 Q. And in your view did his views carry any weight?

7 A. The documents do, yes. The documents are an important
8 collection of resources which save scholars like myself from
9 having to make excessive trips to the library.

10 Q. Yes, I understand. I'm familiar with those types of
11 collections. But what I'm asking you is setting aside the
12 documents he was collecting, his commentary on the documents.

13 A. His comments are generally considered to be neither here
14 nor there because for one thing you're dealing with someone
15 who's observing the situation from the 19th century, and
16 documentary editing in the 19th century was a much more
17 loosey-goosey affair than documentary editing is today.

18 Q. Yes. And so how is Dawley different from all these
19 people?

20 A. For one thing much shorter, much more precise, and much
21 more careful, also much more recent.

22 Q. So Dawley writes more recently?

23 A. My understanding is that, yes, Dawley's approach is a
24 much more cautious, careful, and recent approach.

25 Q. And is there anyone you know of in the 19th century who

1 was writing in a cautious and careful way?

2 A. Not too many. I will cite, though, Calvin Colton.

3 Colton in 1853, who was an Episcopal clergyman and not really

4 identified with any of these parties, wrote a landmark

5 treatise on the structure of the Episcopal Church called

6 "Genius and Mission of the Episcopal Church in the United

7 States." His insistence was that the Episcopal Church was

8 not in any way a type of the English church, it was not

9 monarchical. Its genius, Colton said, is republican, with a

10 small r; in other words, meaning that there is no hierarchy,

11 no monarchy, no top-down authority, rather authority moves

12 from the bottom up. Even in terms of the authority of

13 bishops, bishops act only as providing officers of a dioceses

14 and the authority remains within the dioceses themselves.

15 That includes the presiding bishop. Colton was at pains to

16 make clear that the presiding bishop was merely an executive

17 officer.

18 And, in fact, it is curious in this respect that

19 presiding bishops of the Episcopal Church were also serving

20 as diocesan bishops; in other words, the office of presiding

21 bishop was a part-time add-on because there really was so

22 little in the way of authority or exercise of authority

23 attaching to that office.

24 Q. Yes.

25 A. And that is Colton in 1853. I'm sure you're aware of

1 Colton's treatise.

2 Q. Just to flesh out the presiding bishop's office, that
3 changes somewhat by the action of general convention in the
4 20th century; for example, the presiding bishop can no longer
5 continue to have jurisdiction over a diocese while acting as
6 presiding bishop.

7 A. That is true. There is a conflict of interest involved.

8 Q. That's a fairly recent development.

9 A. That is. And being a history person, of course, the
10 closer I get to the present, the less I know about
11 everything.

12 Q. Fair enough. Let me ask you about, are you aware of
13 anyone writing in the 19th century who took the opposite view
14 of whether a diocese could leave?

15 A. It's difficult for me to put a finger on a particular
16 person who is actually addressing that question.

17 Q. Other than the folks who we --

18 A. Other than the Anglo-Catholics.

19 Q. Right.

20 A. The consensus opinion was that the Episcopal Church was
21 a federation of its dioceses and functioned in that light.
22 The general convention, if you look carefully at the
23 proceedings, the published proceedings of each general
24 convention mostly came together for the consideration of
25 reports from the dioceses and from the voluntary societies of

1 the church and did very little in the way of what you might
2 call legislation.

3 Q. Let me ask you this: So you said that the consensus at
4 the time was that the church was -- the general convention I
5 think was a confederation. Did I say that correctly?

6 A. Yes.

7 Q. But it's true that William Stephens Perry, who I think
8 you acknowledge, did make some valid commentary, did you not?

9 A. Yes.

10 Q. Yes. Stated in the history of the American Episcopal
11 Church, 1587 to 1883, he did say the following: Now how is
12 it with our ecclesiastical constitution? I must say that
13 after a careful and anxious scrutiny of the constitution and
14 canons of our general church, the power of the general
15 convention seems to me unlimited, while that of the diocesan
16 convention is only that which the general convention is
17 pleased to concede.

18 He did say that, didn't he?

19 A. Yes, he did. And I suppose we could put Stephens and
20 Colton together in a ring and they could slug it out. I
21 think the point there is that there is not any one single
22 opinion on this; that, in fact, there has been no
23 authoritative determination in the 19th century on that
24 status, no one in fact has thought to put a finger down on
25 it, on the question of that relationship, so that you will

1 find someone offering an opinion here, you will find someone
2 offering an opinion in another direction and in yet another
3 direction. That does not suggest that there is any kind of
4 settled law on the subject.

5 Q. And you don't know so much about the 20th century you
6 have testified; is that right?

7 A. No. The 20th century fades away for me.

8 Q. Well, we're in the 21st, so hang on.

9 A. That's fading even faster. Ask me about 1861 and I'll
10 tell you about everything that was going on, but yesterday,
11 hopeless.

12 Q. I can sympathize.

13 MS. KOSTEL: Let me collect my thoughts for a moment.

14 If I may consult with Mr. Beers.

15 CROSS-EXAMINATION BY MR. BEERS:

16 Q. Father, my name is David Beers and I represent the
17 Episcopal Church as well. There was some discussion about
18 canons in the 1870s regarding real estate. Do you remember
19 that?

20 A. Yes.

21 Q. Do you remember that the canons were adopted in the late
22 1860s and early 1870s about the alienation of property?

23 A. There were some canons, yes.

24 Q. Do you remember what they said?

25 A. Not specifically.

1 Q. Would it refresh your recollection if I were to say that
2 a parish could not alienate consecrated property without the
3 consent of the bishop and the standing committee?

4 A. Yes. And this was a direct attempt to close the barn
5 door on the horse that had galloped away with Charles Edward
6 Cheney and Christ Church Chicago.

7 Q. Is that your reference to the reformed Episcopal Church?

8 A. Indirectly. The case was not determined in connection
9 with the reformed Episcopal Church because that was not
10 organized until 1873. The case of Chase, et al., versus
11 Cheney is heard in 1871.

12 Q. And are you familiar with the breakaway of the churches
13 in the reformed Episcopal Church? I'm sure you are.

14 A. Yes, I am.

15 Q. Do you remember, have any idea how many churches broke
16 away?

17 A. There were no churches that broke away. The reformed
18 Episcopalians were a movement. They were not a diocese, they
19 were not parishes, they were a movement. And once they had
20 separated from the Episcopal Church, they organized
21 themselves by their own lines.

22 Q. And so who left the Episcopal Church?

23 A. Well, starting at the very top, the --

24 Q. No. I mean what --

25 A. I thought you were asking about personalties.

1 Q. You said they left the Episcopal Church. What do you
2 mean by "they"?

3 A. Well, all right, then I go to some personalities.

4 Q. Fine.

5 A. The assistant bishop of Kentucky, George David Cummins;
6 Charles Edward Cheney; William Tufnell Sabine; Benjamin B.
7 Leacock. And the names will come to me, coming swimming out
8 of my memory, but I think you get the idea. These were a
9 number of Episcopal clergy, some of whom in fact at that
10 point were nonparochial clergy, but they leave the Episcopal
11 Church and adhere to the reformed Episcopal Church when it is
12 organized on December 2nd, 1873.

13 Q. And how many of those attempted to take parish property
14 with them?

15 A. None. They were not -- they were not doing this as
16 parishes.

17 Q. That man you mentioned in Kentucky, He did try to take
18 the property of the parishes, didn't he?

19 A. No, he did not.

20 Q. He was not involved in litigation?

21 A. No, he was not.

22 Q. Do you remember any member of the reformed Episcopal
23 Church in Kentucky that tried to take property away and was
24 involved in litigation?

25 A. The only question that ever was raised was by Emmanuel

1 Church Lexington. And the actual outcome of that particular
2 case I believe was an out-of-court settlement, but even there
3 what was involved was minimal. This was a movement, these
4 were not parishes or dioceses.

5 Q. And so you disagree with me if I said that my
6 understanding is about 100 parishes, reformed, 100 parishes
7 left the Episcopal Church without their property to become
8 part -- to help form the reformed Episcopal Church?

9 A. Oh, no, no. They did not leave as parishes. These were
10 individuals who were part of the movement. And when they
11 reorganized, once the reformed Episcopal Church has its
12 initial organizational meeting in New York City, then they
13 begin to address the question of shall we have parishes, are
14 we going to organize, then later on they become the
15 organization of senates. But that is subsequent to that.
16 There were no attempts to take parish property or to take
17 diocesan property out as a whole.

18 Q. Let me ask you another question in the same era about
19 the Civil War. Did the Episcopal Church believe or
20 understand that the so-called southern dioceses left?

21 A. As far as they were concerned, no. They believed that
22 those dioceses still had some kind of connection to the
23 Episcopal Church of the United States of America. The
24 difficulty is in determining exactly what that was legally.

25 Q. But when the general convention met during the Civil

1 War, when they called the roll, they included all those
2 dioceses, didn't they?

3 A. That is correct; just as the United States Congress did
4 for the seceded states.

5 Q. And when the individuals in those dioceses showed up at
6 the next convention of the general convention, they were
7 seated as deputies of those dioceses?

8 A. That is correct.

9 Q. The general convention created no new dioceses?

10 A. That is correct.

11 Q. So they just came -- the individuals came back, but as
12 far as the Episcopal Church was concerned, those dioceses
13 never left?

14 A. That is correct, because the dioceses had an identity
15 entire to themselves apart from the general convention of
16 either the Protestant Episcopal Church of the United States
17 or of the Protestant Episcopal Church of the Confederate
18 States.

19 Q. All right. Now, we've talked about the property canons
20 in the 1860s and early 70s. Those canons only applied to
21 consecrated property; is that right?

22 A. As I understand it, yes.

23 Q. Did the church subsequently adopt a canon that extended
24 that anti-alienation provision to all real estate?

25 A. I would have to say that I'm uncertain about all real

1 estate because that covers a wide sway of category.

2 Q. Do you have a recollection that there was a canon?

3 A. Yes, there was canonical action that was taken in the
4 wake of the Cheney case.

5 Q. I'm talking about in the 20th century.

6 A. Oh, the 20th century. The 20th century I'm mostly
7 familiar with the adoption or the resolution around the
8 Dennis canon in 1977. But, again, I must warn you, I am a
9 history person and current events are not my long suit.

10 Q. Are you aware of a canon that prescribes that the parish
11 property shall always be under the control and jurisdiction
12 of the rector?

13 A. I know that there are some parishes which in fact do
14 have arrangements and did have arrangements of that sort.

15 Q. Are you aware of such a canon?

16 A. I'm aware of such arrangements.

17 Q. Are you aware of such a canon?

18 A. No. I am not a canon lawyer.

19 Q. Well, let's go back to your early career. When did you
20 first enter a process for ordination?

21 A. In 1978.

22 Q. In which diocese?

23 A. This would have been within the reformed Episcopal
24 Church in the senate of New York and Philadelphia.

25 Q. And when were you received in the Episcopal Church?

- 1 A. In the year 2000.
- 2 Q. And where?
- 3 A. In the Diocese of Quincy.
- 4 Q. And at that time did you execute the declaration of
- 5 conformity?
- 6 A. Yes.
- 7 Q. And were you a priest by then or a deacon?
- 8 A. I was a priest.
- 9 Q. Are you familiar with the canons relating to ordination
- 10 in the Episcopal Church?
- 11 A. Yes.
- 12 Q. Where are they?
- 13 A. Canons regarding ordination are in the constitution and
- 14 canons of the church.
- 15 Q. And where?
- 16 A. I cannot quote you chapter and verse. Again, I am not a
- 17 canon lawyer.
- 18 Q. I'm not asking you to quote them, I'm just asking where
- 19 in the canons all that appears.
- 20 A. My recollection is that it would be in Section 3.
- 21 Q. Let me ask you this: Let's talk about bishops. You
- 22 would agree with me that the constitution sets out the basic
- 23 rules for the election and duties -- the election of bishops?
- 24 A. Yes.
- 25 Q. And are you familiar with how bishops are elected?

1 A. Yes.

2 Q. Would you tell us?

3 A. A bishop can be elected by a diocesan convention and
4 then within 120 days that election must receive consents from
5 the other dioceses of the Episcopal Church, a majority of
6 those dioceses.

7 Q. Are there age requirements?

8 A. There is a retirement age at the very top. I will
9 confess, never having aspired to being a bishop, I'm not sure
10 what the lower limits might be if there are such.

11 Q. And would you agree with me that the canons relating to
12 the election of bishops in the constitution are mandatory and
13 binding on the states, I mean in the dioceses?

14 A. They direct the dioceses. The dioceses are the ones,
15 however, which give the consents. If we were dealing with
16 another situation, if, for instance, we were dealing with the
17 Church of England, appointment of bishops would be remanded
18 to the Crown Appointments Commission.

19 Q. Would you agree with me that the constitution mandates
20 what the electing convention must do?

21 A. The constitution describes what the process is.

22 Q. It doesn't mandate it?

23 A. It describes it.

24 Q. Father, I'm going to hand you what's been admitted as
25 the Constitutions and the Canons of the Episcopal Church in

1 2009. Would you turn to Article II, Page 3?

2 A. Yes.

3 Q. Please turn to Section 1. Would you just read the first
4 sentence stopping at the word "provided" just to move along
5 quickly?

6 A. "In every Diocese the Bishop or the Bishop Coadjutor
7 shall be chosen agreeably to rules prescribed by the
8 Convention of that Diocese."

9 Q. Now would you turn to Section 2 and read the first
10 sentence up to the semicolon?

11 A. "No one shall be ordained and consecrated Bishop until
12 the attainment of thirty years of age."

13 Q. And Section 3, read up to the word "elected," if you
14 will.

15 A. "A Bishop shall confine the exercise of such office to
16 the Diocese in which elected, unless" --

17 Q. That's far enough. Section 4, could you just read up to
18 the comma?

19 A. "It shall be lawful for a Diocese."

20 Q. Fine. I meant the next comma. Pardon me.

21 A. I'm sorry. "...at the request of the Bishop of that
22 Diocese..."

23 Q. And, I'm sorry. Just to the next comma.

24 MR. BEERS: I apologize for this, Your Honor.

25 THE WITNESS: "...to elect not more than two Suffragan

1 Bishops..."

2 Q. Thank you. Section 5, just read up to the comma.

3 A. "It shall be lawful for a Diocese to prescribe by the
4 Constitution and Canons of such Diocese that upon the death
5 of the Bishop..."

6 Q. Thank you. And turn the page to Section 7, read up to
7 the comma.

8 A. "It shall be lawful for the House of Bishops to elect a
9 Suffragan Bishop who..."

10 Q. And how about Section 9?

11 A. "Upon attaining the age of seventy-two years a Bishop
12 shall resign from all jurisdiction."

13 Q. Now, that's mandatory language, isn't it?

14 A. It's descriptive language.

15 Q. It's not mandatory?

16 A. It always describes what the bishop is doing in a
17 diocese. It is putting the entire purpose of the election of
18 a bishop in the lap of a diocese. It does not say that the
19 house of bishops will select a bishop from its own ranks or
20 that it will mandate the election of a new bishop.

21 Q. But it does say the bishop must resign at 72, he shall
22 or she shall resign.

23 A. Yes.

24 Q. That's mandatory.

25 A. Yes.

- 1 Q. That's mandatory.
- 2 A. Yes. But that is not saying that it has authority to
- 3 tell the diocese what to do that way.
- 4 Q. Now, are you familiar with all the duties of bishops?
- 5 A. I'm sorry.
- 6 Q. Are you familiar with all the duties of bishops that are
- 7 set out in the constitution and canons?
- 8 A. I wish I could say I was intimately familiar with them,
- 9 but never having been a bishop, I am not.
- 10 Q. And so you don't know to what extent the constitution
- 11 and canons set out a broad array of duties that are
- 12 mandatory?
- 13 A. Sir, I am a historian, not a canon lawyer.
- 14 Q. As a historian you don't read or rely on canons?
- 15 A. I examine canons from the past.
- 16 Q. But you've not examined the ones that govern the
- 17 Episcopal Church today?
- 18 A. I do not examine them in the way that you are examining
- 19 them or want me to examine them.
- 20 Q. Do you examine them?
- 21 A. Oh, yes. I read them.
- 22 Q. The current canons?
- 23 A. Yes.
- 24 Q. By the way, what do the current canons say about the
- 25 authority of the presiding bishop with respect to the

1 discipline of bishops?

2 A. I am at a loss. I haven't read that in several years.

3 Q. Are you familiar with the provision --

4 A. I'm uncertain where your line of question is going. My
5 understanding is that I was speaking as a historian. Now
6 we're all afield and you might as well ask me what I think
7 the temperature of the weather is in Haiti today.

8 Q. If I'm going to ask you about the structure of the
9 church today as laid out in the constitution and canons, you
10 would not be the witness?

11 A. I am not in that immediate respect concerning this
12 edition of the constitution and canons an authority about
13 this edition of the constitution and canons.

14 Q. How about the editions of the constitution and canons
15 say for the last 20 years? You've already said that when you
16 get up to the late 20th century, you're not our man.

17 A. That's right.

18 Q. I see. Thank you. All right.

19 A. Do you have questions about the area that I am familiar
20 with?

21 Q. Are you familiar with the preamble of the Episcopal
22 Church?

23 A. I am.

24 Q. Could you turn to it? Well, if you're familiar with it,
25 tell me what it says.

1 A. "The Protestant Episcopal Church" --

2 Q. No, no, don't read it. Don't read it. Read it if you
3 need to, but, first of all, just let me ask you what you
4 remember about the preamble.

5 A. It establishes, first of all, the historic connection of
6 the Episcopal Church to the overall Anglican fellowship,
7 describes it as a fellowship, curiously enough, and not a
8 communion. It then also speaks of the dioceses as being
9 companions in following that tradition.

10 Q. It does?

11 A. Yes. "...duly constituted Dioceses...in communion with
12 the See of Canterbury, upholding and propagating the historic
13 Faith and Order as set forth in the Book of Common Prayer."
14 I don't see that it says set forth in this constitution and
15 canons, but maybe that's an oversight.

16 Q. Could you read the last sentence for me?

17 A. "This Constitution, adopted in General Convention in
18 Philadelphia in October, 1789, as amended in subsequent
19 General Conventions, sets forth the basic Articles for the
20 government of this Church, and of its overseas missionary
21 jurisdictions."

22 Q. So the preamble provides that the constitution sets
23 forth the basic articles for the government of the church?

24 A. Yes, yes, the basic articles, the operating rules, so to
25 speak.

1 Q. By the way --

2 A. They do not speak to a number of other questions,
3 however. You'll notice that there is no allusion here to the
4 theology of the church. There is no attempt on the part of
5 this preamble to establish a comprehensive authority.

6 Q. A comprehensive authority of what?

7 A. A comprehensive authority that would speak to all
8 matters of faith and doctrine.

9 Q. Are those matters set forth --

10 A. If there is, I have missed it completely.

11 Q. The constitution does provide for the adoption of the
12 prayer book, does it not?

13 A. Yes, it does.

14 Q. And in the Episcopal Church that is the basic faith
15 doctrine, isn't it?

16 A. Have you ever heard of the Articles of Religion?

17 Q. All 39 of them.

18 A. Thank you.

19 Q. But the substance of our faith is by and large set out
20 in the Book of Common Prayer, isn't it?

21 A. And by what determination was that made? You mean by
22 the prayer book alone and solely? By what authoritative
23 demonstration was that settled upon entirely apart from the
24 Articles of Religion or any other statement of faith? What
25 about the Apostles' Creed? What about the Chicago

1 Quadrilateral, sometimes known as the Chicago-Lambeth
2 Quadrilateral just to make things more difficult for
3 everybody.

4 Q. So my question would have been about the basic faith
5 document would be better if the -- well, the Apostles' Creed
6 is in the prayer book, isn't it?

7 A. Yes, it is; but not used at every service.

8 Q. Okay. And I suppose the prayer book would have more --
9 would be closer to the basic articles of faith if it had the
10 Chicago Quadrilateral in it?

11 A. It might be. Do you see any evidence of that in the
12 document?

13 Q. In the prayer book?

14 A. No. I mean in the constitution and canons.

15 Q. No. I'm talking about the prayer book.

16 A. Well, good. Then what we're talking about is the
17 constitution and canons, as I understand it, and I'm saying
18 to you that this provides general operating directions, but
19 it does not provide a comprehensive statement of faith
20 doctrine operations and so forth like that. It sets out
21 several basics.

22 Q. But the general convention adopted the prayer book?

23 A. Yes, that's true. But at the same time, if I may offer
24 this as an example, I live in a townhouse association. We
25 have rules and regulations that govern the common areas of

1 our townhouse association, but the houses themselves are
2 owned in fee simple and our deeds are registered in the
3 courthouse accordingly. The fact that we have rules and
4 regulations, however, does not mean that the rules and
5 regulations cover every aspect of our property. In fact, if
6 the association were to pass a rule and regulation declaring
7 that our property, our fee simple property, now belongs to
8 someone else, in this case the association, well, that would
9 provide quite a lot of interesting litigation on the county
10 courthouse. It would in fact fall flat because that would be
11 simply an example of fiat confiscation of property and it
12 would be treated as such.

13 Q. The constitution does provide for the adoption of the
14 prayer book, does it not?

15 A. Yes, it does.

16 Q. The constitution provides for the --

17 A. But doesn't provide for everything in the church.

18 Q. The constitution and canons together provide for the
19 discipline of all clergy, do they not?

20 A. Yes.

21 Q. And the duties of bishops?

22 A. Yes, it describes them. Does it describe all the duties
23 of bishops?

24 Q. And when --

25 A. It doesn't.

1 Q. And if the canon on the subject of duties of bishops
2 says "shall," you view that as a -- what was the term you
3 used, a descriptive term?

4 A. Yes.

5 Q. I see. And the duties of rectors provided by the
6 national canons?

7 A. They are described there, yes.

8 Q. One more question back in the old days. You said that
9 there was reluctance, I think, in the state church in South
10 Carolina to have bishops.

11 A. Correct. Or at least to use the terminology.

12 Q. But they called themselves an Episcopal Church, didn't
13 they?

14 A. That they did.

15 Q. Why?

16 A. If I was available from a time machine, I would probably
17 pose that question to them. Obviously they did not regard
18 having bishops as being of the essence of being an Episcopal
19 Church. And indeed it is an interesting theological
20 question, as I am sure you know, as to whether the possession
21 of the episcopate is of the esse of the church. That has
22 never been settled in Anglican circles.

23 Q. Just as you don't know much about the canons, I don't
24 know much about theology.

25 MR. BEERS: Could I have a moment with Ms. Kostel?

1 MS. GOLDING: I'm going to move to strike that last
2 comment of Mr. Beers. I think that was inappropriate and to
3 a certain extent insulting. It wasn't a question.

4 THE COURT: It was certainly not a question.

5 MR. BEERS: That's all I have, Your Honor. Thank you,
6 sir.

7 THE COURT: Yes, sir.

8 Mr. Tisdale.

9 MR. TISDALE: I think you'll be pleased with the length
10 of my questioning.

11 CROSS-EXAMINATION BY MR. TISDALE:

12 Q. Doctor, I'll just ask a question or two about the
13 creation of the reformed Episcopal Church that you testified
14 about in 1873, I think.

15 A. That is correct.

16 Q. Why did that body adopt the name reformed Episcopal
17 Church and not simply call itself the Episcopal Church?

18 A. Because they, first of all, wanted to establish that
19 they were an Episcopal Church fully as much as the Protestant
20 Episcopal Church was. They were founded by a bishop
21 consecrated in due order and succession. They also wished to
22 indicate they were reformed in the sense that they were
23 making an effort to purge out the more radical elements that
24 had disturbed the life of the Protestant Episcopal Church, in
25 this case Anglo-Catholic ritualist thinking.

1 Q. Would you agree that they wanted to distinguish
2 themselves from the Episcopal Church at least in that way
3 that you just described?

4 A. In that respect, yes.

5 Q. Thank you very much.

6 MR. TISDALE: Thank you, Your Honor?

7 THE COURT: All right.

8 Redirect?

9 MR. RUNYAN: None, Your Honor.

10 THE COURT: Very well. Anything from any other
11 plaintiff?

12 Thank you. You may step down.

13 All right. We'll take a 15-minute break and then we'll
14 have our next witness.

15 (Recess held.)

16 THE COURT: All right. If you would call your next
17 witness, please.

18 MR. RUNYAN: Plaintiffs call Bob Lawrence.

19 ROBERT STRATTON LAWRENCE,
20 being first duly sworn, testified as follows:

21 THE COURT: All right. If you'd state your full name
22 for our record again, please.

23 THE WITNESS: Robert Stratton Lawrence.

24 THE COURT: Your witness.

25 DIRECT EXAMINATION BY MR. RUNYAN:

1 Q. Father Lawrence, are you related in any way to Mark
2 Lawrence?

3 A. I am not, except as a brother in Christ.

4 Q. Where are you employed?

5 A. I am the executive director of St. Christopher Camp and
6 Conference Center. It's an appointed position. I'm on the
7 bishop's staff.

8 Q. At the testimony yesterday of Bishop vonRosenberg the
9 following question was asked and the following answer was
10 given, and I'm going to ask you about it:

11 Bishop vonRosenberg, since you have been bishop of the
12 Episcopal Church in South Carolina, have the people of the
13 diocese that you lead had any access to the assets and
14 institutions of the plaintiff, the Protestant Episcopal
15 Church in South Carolina, such as this, have you been able to
16 use the assets of Camp St. Christopher?

17 Answer: No, sir.

18 Father Lawrence, was the bishop mistaken?

19 A. Yes, sir, I believe he was, because in my time there,
20 and it will be four years as of the 30th of September, St.
21 Christopher has been available to all groups that have asked
22 to come and utilize the facilities. And, in fact, a number
23 of the parishes that now identify themselves under Bishop
24 vonRosenberg's authority have continued to utilize St.
25 Christopher. We have had summer camp staff as well as many

1 summer campers this summer coming from parishes of the
2 Episcopal Church in South Carolina.

3 And we intentionally altered a policy that used to give
4 preferential treatment to the diocese, the parishes of the
5 Diocese of South Carolina, and we have expanded that. And
6 there was a letter sent out to all bishops with Anglican
7 jurisdiction, including Bishop vonRosenberg, in September of
8 last year notifying them of that policy to where not only are
9 we available to them, they continue to get the exact same
10 preferential policies at reduced rates and being able to book
11 24 months in advance. So that policy is fully in place right
12 now for all parishes of the Episcopal Church in South
13 Carolina.

14 Q. And the facilities are available for use by parishioners
15 from the Episcopal Church in South Carolina?

16 A. Yes.

17 Q. And they have been so used?

18 A. Have been.

19 MR. RUNYAN: Thank you, sir.

20 MR. TISDALE: Is that it?

21 MR. RUNYAN: That's it.

22 THE COURT: All right. Cross-examination.

23 CROSS-EXAMINATION BY MR. TISDALE:

24 Q. Thank you, Father Lawrence. Is St. Christopher
25 available for use of any member of the public who files an

1 application that is accepted under the normal course of the
2 application process?

3 A. Yes. But I'm not sure what you mean in terms of
4 application. I mean --

5 Q. Well, if you want to go to camp, you file an application
6 to be accepted to go to camp, don't you?

7 A. Yes, sir.

8 Q. Is that available to any citizen to file such an
9 application to be accepted for that?

10 A. Yes, it is.

11 Q. It is. And you also have a group -- as you said, groups
12 can sign up to use it. And they're not limited to the
13 Episcopal Church, are they?

14 A. No, sir.

15 Q. Any group. In fact, there are a lot of things that
16 don't have anything to do with religion that use the camp
17 from time to time, don't they?

18 A. Yes, sir.

19 Q. Are any members of the Episcopal Church in South
20 Carolina associated with that diocese that you know of on the
21 governing board of Camp St. Christopher?

22 A. Again, the structure of St. Christopher, it is a
23 department of the diocese. There is a board of directors.
24 They're more of an advisory board. They don't really
25 function as a true board of directors in that I work for the

- 1 bishop and not for the board.
- 2 Q. All right. On that board of advisors did you say?
- 3 A. They're called a board of directors, but in effect
- 4 they're more of a board of advisors.
- 5 Q. Are any members of the Episcopal Church in South
- 6 Carolina members of that board of directors?
- 7 A. Right now, no, sir.
- 8 Q. No. Have they ever been since 2012?
- 9 A. No. But there was no transition, the people that were
- 10 serving as directors then by and large are still serving.
- 11 Q. All right. So is Bishop vonRosenberg on any board that
- 12 has anything to do with the operation of the camp?
- 13 A. No, sir. But he has full access and use of it if he
- 14 were to so choose in the same way that Bishop Lawrence does.
- 15 Q. As anybody does?
- 16 A. Yes.
- 17 Q. Anybody. So my question to you is obviously this: Does
- 18 the Episcopal Church in South Carolina have anything to do
- 19 with directing the operation and programs of Camp St.
- 20 Christopher?
- 21 A. No, sir, they do not.
- 22 Q. Does the Episcopal Church in South Carolina have any
- 23 ownership interest in Camp St. Christopher?
- 24 A. The proper ownership of St. Christopher is by the
- 25 trustees of the Diocese of South Carolina.

1 Q. Correct. And along those lines let me ask you this:

2 How is St. Christopher financed? Where does the money come
3 from to run it?

4 A. By the funds that we generate. We get no support from
5 the diocese outside of a portion of the diocesan budget
6 covering some debt service on an old loan from a capital fund
7 campaign of years ago.

8 Q. Does any money come to you, through the diocese or
9 otherwise, from the trustees of the -- trustees?

10 A. None outside of what they pay in normal fees for use of
11 the facility.

12 Q. The trustees?

13 A. If the trustees were to book an overnight retreat, they
14 would pay the normal fees as any other group.

15 Q. There's no financial allocation from the trustees either
16 through the diocese or directly to the camp?

17 A. Not to the operational budget, sir.

18 Q. To any part of the upkeep of the camp?

19 A. No, sir.

20 MR. TISDALE: All right. Nothing else, Your Honor.

21 THE COURT: All right.

22 Yes, from the national church?

23 MR. BEERS: No, ma'am.

24 THE COURT: All right. Any redirect?

25 MR. RUNYAN: None, Your Honor.

1 THE COURT: Anyone else on behalf of the plaintiffs?

2 Thank you, sir. You may come down.

3 All right. Call your next witness, please.

4 MS. GOLDING: Mr. Logan.

5 THE COURT: Mr. Logan has already been sworn in this
6 matter.

7 WADE H. LOGAN, III,
8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. GOLDING:

10 Q. Mr. Logan, how long have you served as chancellor for
11 the plaintiff diocese?

12 A. I believe officially since 2007.

13 Q. As chancellor for the plaintiff diocese, did you send a
14 letter to the chief financial officer for the defendant
15 national church in October 2012?

16 A. Yes, ma'am, I did.

17 (Plaintiff's Exhibit DSC-71 marked for identification.)

18 Q. And is this a letter that you sent in your capacity as
19 the chancellor?

20 A. Yes, ma'am.

21 MR. GOLDING: Okay. Your Honor, we would offer this
22 letter as Plaintiff Diocese Exhibit No. 71.

23 MR. TISDALE: No objection.

24 MR. BEERS: No objection.

25 (Plaintiff's Exhibit DSC-71 admitted into evidence.)

1 Q. For what reason did you send the letter which is October
2 29, 2012, Exhibit 71, to the CFO officer of defendant
3 national church?

4 A. It was our understanding that we were still listed, we
5 the diocese were still listed, under a group exemption which
6 the Episcopal Church held. I stated it was my understanding
7 that our permission had to be given for that and that we did
8 not give permission and asked that we be removed from the
9 listing of entities under the group exemption number.

10 Q. What response, if any, did you get from the defendant
11 national church with respect to Plaintiff's Exhibit No. 71?

12 A. I got no response.

13 Q. Okay. Let me then give you a letter dated November 19,
14 2013. And can you identify that letter, please?

15 A. Yes, ma'am. This is another letter that I wrote also to
16 Mr. Barnes dated November 19, 2013.

17 Q. And what was the reason for writing this letter in
18 November?

19 A. It was my understanding that there were a number of
20 congregations affiliated with the plaintiff diocese which
21 will continue to be listed under the group exemption. I
22 stated that it was -- they had not given permission to be
23 included and listed a number of the parishes and asked that
24 they be removed from that exemption list.

25 MR. GOLDING: Your Honor, we would mark that letter as

1 Exhibit 72.

2 (Plaintiff's Exhibit DSC-72 marked for identification.)

3 THE COURT: Any objection?

4 MR. BEERS: No.

5 MS. KOSTEL: No objection.

6 MR. TISDALE: No objection, Your Honor.

7 (Plaintiff's Exhibit DSC-72 admitted into evidence.)

8 MR. TISDALE: I've got a general objection to this
9 testimony. Perhaps she could clear it up. What is this in
10 rebuttal to? It may be it's been a long record, but I don't
11 see the connection to it.

12 MS. GOLDING: There was -- the defendants --

13 MR. TISDALE: I object to it for that reason.

14 THE COURT: Overruled.

15 MR. TISDALE: She was going to explain.

16 THE COURT: I can tell you. But you go ahead. I'm
17 sorry.

18 MS. GOLDING: During the defendants' case, Your Honor,
19 they brought in through the documentation and they in fact
20 introduced, I believe, or attempted to introduce IRS
21 regulations with respect to a group exemption for the
22 501(c)(3), and these letters are to show that we had
23 withdrawn our commission and we did not want to be listed
24 under those exemptions.

25 MR. TISDALE: Thank you.

1 Q. With respect to Plaintiff Diocese Exhibit No. 72, did
2 you receive any response to that, Mr. Logan?

3 A. No, ma'am, I don't believe I did.

4 Q. And, Mr. Logan, has the plaintiff diocese obtained its
5 own 501(c)(3) status?

6 A. Yes, ma'am.

7 Q. And to your knowledge, have the parishes associated with
8 the plaintiff diocese obtained their own 501(c)(3) status?

9 A. I believe some have. I don't know that others have, I
10 know some have.

11 Q. Okay. Next let me hand thank you this document, please.
12 Would you identify the document that I handed to you, please?

13 A. Yes, ma'am. This appears to be a copy of a filing from
14 the South Carolina Secretary of State for the Protestant
15 Episcopal Church in the United States of America, Inc.

16 Q. Is that the South Carolina Secretary of State?

17 A. Yes, ma'am.

18 MR. GOLDING: We would offer that document as Plaintiff
19 Diocese Exhibit 73.

20 (Plaintiff's Exhibit DSC-73 marked for identification.)

21 MR. TISDALE: No objection.

22 MR. BEERS: (Shaking head).

23 THE COURT: All right? Very well.

24 (Plaintiff's Exhibit DSC-73 admitted into evidence.)

25 MR. GOLDING: Next let me hand you another document.

1 (Plaintiff's Exhibit DSC-74 marked for identification.)

2 Q. With respect to the document I just handed you, Mr.

3 Logan, can you just identify this document, please?

4 A. Yes, ma'am. This appears to be a page from the legal
5 notices section of the News and Courier of Thursday, February
6 19, 1987.

7 Q. Okay. And is there a notice in this document that
8 references the plaintiff diocese?

9 A. Yes, ma'am, there is; filing notice.

10 Q. Was this notice within their books and records of the
11 plaintiff diocese under your control and custody?

12 A. Yes, ma'am.

13 MS. GOLDING: Your Honor, we would offer this document
14 in as Plaintiff's Exhibit No. 74.

15 MR. TISDALE: No objection.

16 MR. BEERS: No.

17 THE COURT: Very well, no objection from either party.

18 (Plaintiff's Exhibit DSC-74 admitted into evidence.)

19 Q. With respect to Exhibit 74, Mr. Logan, with respect to
20 the notice, can you, instead of reading the notice, just
21 identify who the bishop was at that time on this notice?

22 A. It was signed by the Right Reverend C.F. Allison, who
23 would be FitzSimons Allison, former bishop of the diocese.

24 Q. Okay. And is there a capacity for the bishop in this
25 notice?

1 A. Yes, ma'am. He signed as president.

2 Q. Okay. Mr. Logan, I want to take you into October of
3 2012. In October 2012 were you party to any communications
4 between Bishop Lawrence and the presiding bishop of the
5 defendant national church?

6 A. Yes, ma'am, I was.

7 Q. Okay. And do you know when that communication occurred?

8 A. I'll have to check my notes. I believe it was on
9 October 22nd -- excuse me -- October 15th.

10 Q. And tell me, was that communication by telephone?

11 A. Yes, it was.

12 Q. Okay. And can you tell me what you recall with respect
13 to the telephone call in which you were a party with Bishop
14 Lawrence and the presiding bishop for the defendant national
15 church?

16 A. Yes, ma'am. In addition to the presiding bishop and
17 Bishop Lawrence and myself, I believe that Mr. Beers was part
18 of the conversation. Bishop Schori, Jefferts Schori, advised
19 that she had received a written certificate of abandonment
20 from a body known as the Disciplinary Board of Bishops on
21 October 10th; that she was required under the applicable
22 canons of the national church, which our diocese does not
23 recognize, to restrict Bishop Lawrence's ministry; that Mr.
24 Beers would be sending a copy of a restriction and other
25 paperwork; and that she would still be willing to meet with

1 Bishop Lawrence on October the 22nd, which was a previously
2 arranged meeting; and that she would not publicize the fact
3 of these developments.

4 Q. Now, as of that telephone call on October the 15th,
5 2012, had you received a document entitled "Certificate of
6 Abandonment"?

7 A. No, ma'am.

8 Q. And to your knowledge, had the bishop, Bishop Lawrence,
9 received a document entitled "Certificate of Abandonment"?

10 A. To my knowledge, he had not.

11 Q. Subsequently had you ever received such a document?

12 A. I received an unsigned copy of that document, I believe
13 it was later that day, I believe it came from Mr. Beers. At
14 some time subsequent to that I received a copy of the
15 signature page, which I also believe had come from Mr. Beers.

16 Q. Okay. When you received the copy of the signature page
17 subsequently, was the signature page attached to the
18 certificate?

19 A. No, ma'am, just one page.

20 Q. Okay. To your knowledge, has Bishop Lawrence ever been
21 served or received from the defendant national church the
22 certificate of abandonment?

23 MS. KOSTEL: Objection.

24 THE WITNESS: To my knowledge, he has not.

25 MS. KOSTEL: Objection to relevance. I'm not sure how

1 it's relevant.

2 MS. GOLDING: Your Honor, the defendants presented
3 evidence and they presented a document entitled "Certificate
4 of Abandonment" which was marked as Defendant's Exhibit 22.

5 MS. KOSTEL: Correct.

6 MS. GOLDING: And it came in through the testimony of
7 Bishop Daniel, I believe, Clifton Daniel, and so we are
8 responding. It may have been another individual, but it was
9 definitely Defendant's Exhibit No. 22.

10 THE COURT: And this is in response to that.

11 MS. GOLDING: This is in response to that, Your Honor.

12 THE COURT: Very well. Overruled.

13 Q. Now, let me hand you what is a copy of Defendant's
14 Exhibit No. 22. And, first of all, let me ask you, are you
15 familiar with the constitution and canons of the national
16 church?

17 A. Very generally back then I was and I believe -- yes,
18 back then I was.

19 Q. With respect to the document, Defendant's Exhibit No.
20 22, under the constitution and canons what is to be the
21 process with respect to the issuance of a certificate?

22 MS. KOSTEL: Objection, Your Honor. This gets into
23 whether the church is following its procedures and how it's
24 following its procedures. That is clearly beyond the
25 province of the Court, if I understand where Ms. Golding is

1 going.

2 MS. GOLDING: I'm going because I believe the defendants
3 in their case have tried to present that Bishop Lawrence was
4 no longer in a position to undertake any acts as a bishop.
5 And I am going to just establish that he was not
6 disassociated in October at the time that the plaintiff
7 diocese voted to disaffiliate itself from the defendant
8 national church.

9 THE COURT: I understand. Any response?

10 MS. KOSTEL: So what Ms. Golding is trying to establish
11 is what the national church thought about the status?

12 THE COURT: No. What she's doing is she's saying that
13 there is a procedure that failed to be followed and,
14 therefore, his acts that were taken in October, because of
15 the failure of the national church to do whatever it did,
16 based on their theory, as certain actions were taken in
17 October, that he was within his purview and his authority to
18 undertake those acts at that time.

19 MS. KOSTEL: Well, I'm sure that Ms. Golding and Your
20 Honor are aware of the Supreme Court precedent that restricts
21 Courts from looking into the internal procedures of church
22 tribunals. And so if Ms. Golding is trying to show whether
23 or not the church --

24 THE COURT: Well, here's what she just showed me. She
25 responded to a document and tells me that the document wasn't

1 served. People get due process, got to serve something on
2 somebody before they got notice; right?

3 MS. KOSTEL: I don't think that's what she was after,
4 Your Honor.

5 THE COURT: I thought that was what you were after.

6 MS. GOLDING: I already answered that question.

7 THE COURT: I know.

8 MS. GOLDING: May I proceed with questioning the
9 witness? I'm not going to any intent, it's just to procedure
10 and the effect of that procedure as to Bishop Lawrence's
11 status, that's all.

12 MR. KOSTEL: And I just renew my objection.

13 THE COURT: All right. Here's where we are: Whatever
14 was the ultimate determination, I can't go behind that.

15 MS. GOLDING: No, no. There was no determination at
16 all.

17 MS. KOSTEL: Wait a minute. That's testimony, Your
18 Honor.

19 MR. RUNYAN: I think they will agree with me that the
20 certificate of abandonment was a charge, not a conviction.

21 THE COURT: They're saying it's a conviction.

22 MS. KOSTEL: No, we're not, Your Honor.

23 MR. RUNYAN: I don't think they're going to say that.

24 THE COURT: Okay. All right. Well, then why would
25 you --

1 MS. GOLDING: If they --

2 THE COURT: Stop, please. Then why am I having this
3 discussion if it's only a charge? As you know, I take the
4 final determination when it comes to the ecclesiastic
5 determination. And if it's not a determination, why are you
6 objecting?

7 MS. KOSTEL: Your Honor, it's not merely a charge. What
8 it is is it's a preliminary determination that under the
9 governance of the church temporarily strips the bishop of his
10 authority until there can be a final determination.

11 THE COURT: Okay. Well, it's the final determination,
12 of which I am limited. So why would you propose to tell me
13 that the document that is in evidence originally with your
14 objection is something other than what it is?

15 MS. KOSTEL: I'm not telling Your Honor that. I'm
16 telling Your Honor that it is what it is and the Court is
17 bound by it.

18 THE COURT: Let me tell you something, you better stop.
19 We're going to take a recess and you're going out with your
20 local counsel, because you're about to lose your pro hac
21 vice. Do you understand?

22 MS. KOSTEL: I do, Your Honor.

23 THE COURT: You better go out with Mr. Holmes right now
24 and you all better have a discussion about Rule No. 3.1.

25 Do you understand me, Mr. Holmes?

1 MR. HOLMES: Yes, ma'am.

2 THE COURT: We will take 15 minutes.

3 Do not discuss, please, your testimony with anyone.

4 (Recess held.)

5 THE COURT: Let me see that exhibit, please, Exhibit No.

6 22.

7 THE WITNESS: Judge (indicating).

8 (Brief pause.)

9 THE COURT: You may proceed, Ms. Golding.

10 MS. GOLDING: Thank you.

11 Q. Mr. Logan, with respect to the telephone conversation
12 on, I believe it was, October the 15th --

13 A. Yes, ma'am.

14 Q. -- of 2012 with the presiding bishop and Mr. Beers, as
15 counsel for the defendant national church, did you have a
16 subsequent communication with either of them after that
17 October with respect to Defendant's Exhibit 22?

18 A. I believe that the -- everything except the signature
19 page was sent to me by Mr. Beers later that day and that at
20 some later date, which I can't recall right now, after
21 request, I received a copy of the signature page.

22 Q. Okay. With respect to your understanding of Exhibit 22,
23 Defendant's Exhibit 22, once that document is served upon a
24 bishop, what is the procedure that's followed?

25 A. Well, actually what this is is a certificate of

1 abandonment of the Episcopal Church. And this is signed by
2 the Right Reverend Dorsey Henderson, who was chair of the
3 Disciplinary Board for Bishops, I believe, it's dated
4 September the 18th, and this was forwarded to the presiding
5 bishop.

6 My understanding of the procedure is that a written
7 restriction of ministry under their canons is then issued and
8 it must be served upon the bishop in question. And I should
9 tell you that -- I need to correct myself -- I don't know
10 that I have ever received this certificate of -- I must have
11 received the certificate of abandonment. When I told you
12 about what I had received from Mr. Beers, that was actually
13 the restriction. I apologize.

14 Q. Going forward with respect to what is the response under
15 the -- what's your understanding as to procedure with respect
16 to the certificate or restriction?

17 A. The procedure is that once the presiding bishop, as I
18 understand it, receives such a certificate, she must issue a
19 document called a restriction, I believe it's a restriction
20 of ministry, which then must be served upon the bishop in
21 question in order for the restriction to become effective.

22 Q. And then is there any response time with respect to the
23 restriction of ministry?

24 A. I believe it's 60 days.

25 Q. Okay. And then once the subject bishop has responded,

1 then what is the next step?

2 A. Then the presiding bishop needs to make a decision about
3 whether to suspend the bishop, take further action, or to
4 drop the charges, I believe, my general recollection.

5 Q. Now, before October of 2012, October the 15th of 2012,
6 did you have any knowledge of any possible complaints or
7 investigations against Bishop Lawrence that were proceeding
8 in the earlier part of the year?

9 A. There was a set of charges that were made which were
10 dismissed. I'm not sure about the timing, but it is my
11 understanding, which I learned subsequently, that a group of
12 complainants had filed charges against Bishop Lawrence and he
13 was notified of the filing of those charges after the fact.

14 Q. And to your knowledge, did Bishop Lawrence receive any
15 restrictions from the presiding bishop?

16 A. You would have to ask him that. I can just tell you
17 what I've seen. To my knowledge, he did not.

18 Q. That's what I want, to your knowledge.

19 THE COURT: I don't know that she's finished.

20 MR. BEERS: Oh, I'm sorry. I apologize, Your Honor.

21 MR. TISDALE: I thought she was too. I'm sorry.

22 THE COURT: Do you not see her having a conversation
23 with her co-counsel? You all have done it a hundred times.
24 Doesn't necessarily mean she's finished.

25 MS. GOLDING: Your Honor, I'm concluded with my

1 examination.

2 THE COURT: All right. Any further -- yes, sir --
3 direct?

4 MR. RUNYAN: Couple of questions.

5 THE COURT: All right.

6 DIRECT EXAMINATION BY MR. RUNYAN:

7 Q. Mr. Logan, to your recollection, when the restriction of
8 ministry was sent to you, was it signed?

9 A. No.

10 Q. After a certificate of abandonment is issued by a
11 disciplinary board for bishops, is there a period of time
12 during which the respondent, the bishop in question, has an
13 opportunity to respond?

14 A. After he receives notice of this in a restriction from
15 the presiding bishop, he has a 60-day period of time in which
16 to respond.

17 Q. And do the canons require that he be personally served
18 with that?

19 A. That's my recollection.

20 Q. And if there is a response, is there then a trial in the
21 House of Bishops?

22 A. That's my recollection, yes, sir.

23 Q. And if there isn't a response after a 60-day period,
24 certain actions may be taken of a more permanent nature by
25 the presiding bishop; is that correct?

1 A. That's correct.

2 MR. RUNYAN: That's all I have.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION BY MR. BEERS:

5 Q. Good morning, Mr. Logan.

6 A. Good afternoon.

7 Q. Good afternoon. In the telephone conversation of
8 September 15 -- I'm sorry --

9 A. It was actually October 15, I believe, Mr. Beers.

10 Q. October 15 -- sorry -- was the subject of restriction on
11 ministry discussed, mentioned?

12 A. Yes, it was.

13 Q. And do you recall Bishop Lawrence saying to Bishop
14 Jefferts Schori, you're going to have to restrict me, aren't
15 you?

16 A. I don't remember that exact language. There was a
17 discussion. I believe she said she was going to have to
18 restrict him.

19 Q. I see. But you don't remember who brought it up first?

20 A. I believe she did.

21 Q. I see. All right. And then you asked me for a copy of
22 the certificate?

23 A. Actually, I believe she said that she would be sending
24 it -- you would be sending it. And later that day I did get
25 the unsigned copy or at least everything but the signature

1 page.

2 Q. And then you later got -- I sent you the signature page?

3 A. Right.

4 Q. And you were representing Bishop Lawrence at the time?

5 A. I'm the diocesan chancellor.

6 Q. And so you were representing Bishop Lawrence?

7 A. I'm not his agent for service or process, if that's what
8 you're asking.

9 Q. No, I understand that.

10 A. I was acting as his lawyer, the diocesan chancellor,
11 giving advice to the bishop, yes, sir.

12 Q. Now, as I understand it, the standing committee met
13 shortly after that phone call.

14 A. I believe that they did.

15 Q. And as a result of that, Bishop Lawrence called Bishop
16 Jefferts Schori back; is that right?

17 A. I'll take your word for it. I think he did, yes.

18 Q. Maybe this will refresh your recollection. Did she call
19 him back -- call her back to say he under the circumstances
20 was not going to be able to meet, attend the meeting that
21 they had originally scheduled?

22 MR. RUNYAN: Your Honor, I object; lack of foundation.
23 Hadn't shown this witness participated in that discussion.

24 MR. BEERS: I'm just asking if he knows.

25 THE WITNESS: I don't know what was actually said. The

1 meeting did not take place.

2 Q. I see. Okay. Now, what action did the standing
3 committee take on either that day or the next day with regard
4 to the relationship between the diocese and the Episcopal
5 Church?

6 A. The standing committee had actually already passed a
7 resolution, which I think was dated October 2nd, which
8 basically said that upon the taking of any action against
9 Bishop Lawrence effective as of that date, or words to that
10 effect, that we were disassociated from the Episcopal Church.

11 Subsequent to that, actually I think it was later that
12 day, a requirement of the resolution was that I, as
13 chancellor, had to certify that in fact that condition had
14 occurred. I issued such a certification. I believe that
15 there was another meeting, I'm sure we had a later meeting,
16 of the standing committee.

17 Q. I'm --

18 A. You asked if there was a later meeting with the standing
19 committee.

20 Q. I think you've answered my question. There was a
21 meeting in which you were asked to certify that the action
22 had been taken or some action had been taken.

23 A. That was back on October 2nd.

24 Q. No. I'm sorry. I thought you were describing a meeting
25 you were asked to --

1 THE COURT: The question was, Mr. Logan, did the
2 standing committee take any action that day or the next day.
3 You can get it read back if you need it.

4 THE WITNESS: I am sure that they didn't take action
5 that day. I issued my certification that day. Either the
6 next day or very shortly after that, Your Honor, the standing
7 committee did have a meeting and in effect affirmed the
8 action.

9 Q. You don't have the minutes or your certification here,
10 do you?

11 A. No, sir.

12 Q. Okay. And then did there come a time when Bishop
13 Lawrence left the Episcopal Church?

14 A. I'm not sure what you mean by the term. He had never,
15 to my knowledge, issued a written abandonment of the
16 Episcopal Church.

17 Q. No. I mean after October 15 did there come a time when
18 he stated he was no longer a member of the House of Bishops
19 or no longer an Episcopal bishop?

20 A. To my recollection he made such a statement, yes.

21 Q. Do you remember when that was?

22 A. No, sir.

23 MR. BEERS: Thank you, Your Honor. That's all I have.

24 THE COURT: Okay. Mr. Tisdale, do you have any
25 questions?