

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

AUG -6 2015

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 1

*Attorneys for Appellants
(individual clients not listed)*

Thomas S. Tisdale
Jason S. Smith
David Booth Beers*
Mary E. Kostel*
Allan R. Holmes
Timothy O. Lewis
R. Walker Humphrey, II
John S. Nichols
Blake A. Hewitt
* admitted *pro hac vice*

*Attorneys for Respondents
(individual clients not listed)*

C. Alan Runyan
Andrew S. Platte
C. Mitchell Brown

*Attorneys for Respondents
(continued)*

Henrietta U. Golding
Amanda A. Bailey
Charles H. Williams
David S. Cox
Thomas C. Davis
Harry R. Easterling, Jr.
G. Mark Phillips
W. Foster Gaillard
Henry E. Grimball
I. Keith McCarty
William A. Scott
Mark V. Evans
David B. Marvel
John Furman Wall, III
Allan P. Sloan, III
Joseph C. Wilson, IV
Edward P. Guerard, Jr.

C. Pierce Campbell
Robert R. Horger
Saunders M. Bridges, Jr.
Lawrence B. Orr
Francis M. Mack
Robert S. Shelton
William A. Bryan
Harry A. Oxner
Susan P. MacDonald
James K. Lehman
P. Brandt Shelbourne
Stephen S. McKenzie
John B. Williams
George J. Kefalos
Stephen A. Spitz
Thornwell F. Sowell, III
Bess J. DuRant

COUNSELS' INFORMATION REQUIRED BY RULE 267

Appellants

Blake A. Hewitt # 73674 John S. Nichols # 4210 P.O. Box 7965 Columbia, SC 29202 (803) 779-7599 Attorneys for The Episcopal Church in South Carolina	Thomas S. Tisdale # 5584 Jason S. Smith # 80700 105 Broad St, Third Floor Charleston, SC 29401 (843) 414-9757 Attorneys for The Episcopal Church in South Carolina	Walker Humphrey II # 79426 3219 McKinney Ave. Dallas, TX 75204 (214) 357-6244 Attorney for The Episcopal Church in South Carolina
Allan R. Holmes, Sr. # 2576 Timothy O. Lewis # 74024 171 Church St., Ste. 110 Charleston, SC 29401 (843) 722-0033 Attorneys for The Episcopal Church	David Booth Beers (pro hac vice) 901 New York Ave, N.W. Washington, DC 20001 (202) 346-4224 Attorney for The Episcopal Church	Mary E. Kostel (pro hac vice) 901 New York Ave, N.W. Washington, DC 20001 (202) 346-4184 Attorney for The Episcopal Church

Respondents

C. Alan Runyan # 4837 Andrew S. Platte # 77801 2015 Boundary St., Ste. 239 Beaufort, SC 29902 (803) 943-4444 Attorneys for the Diocese, the Trustees, and several* parishes	Henrietta U. Golding # 2173 Amanda A. Bailey # 71085 P.O. Box 336 Myrtle Beach, SC 29578 (843) 444-1107 Attorneys for the Diocese, the Trustees, and St. Luke's Hilton Head	Charles H. Williams # 6119 P.O. Box 1084 Orangeburg, SC 29116 (803) 534-5218 Attorney for the Diocese and the Trustees
C. Pierce Campbell # 72539 P.O. Box 5478 Florence, SC 29502 (843) 656-4429 Attorney for All Saints, Holy Cross, and St. Bartholomews	I. Keith McCarty # 66447 P.O. Box 30055 Charleston, SC 29417 (843) 793-1272 Attorney for Christ St. Paul's	Harry A. Oxner # 65487 P.O. Box 481 Georgetown, SC 29442 (843) 527-8020 Attorney for Prince George Winyah and Christ the King

*St. Jude's - Walterboro, Church of the Cross, Church of Our Saviour, Church of the Epiphany, Parish of St. Helena, Trinity - Edisto Island, Parish of St. Andrew, St. John's - Charleston, St. David's Church, St. Philip's, and St. Michael's.

Thornwell F. Sowell # 5197 Bess J. DuRant # 77920 P.O. Box 11449 Columbia, SC 29211 (803) 231-7835 Attorneys for Holy Comforter	Robert R. Horger # 2635 P.O. Drawer 329 Orangeburg, SC 29116 (803) 531-3000 Attorney for Church of the Redeemer	Lawrence B. Orr # 4288 P.O. Box 2527 Florence, SC 29503 (843) 667-6613 Attorney for St. Matthews Church and St. John's - Florence
Harry Easterling, Jr. # 64946 P.O. Drawer 611 Bennettsville, SC 29512 (843) 454-1711 Attorney for St. Paul's - Bennettsville and St. David's	Mark V. Evans # 6490 147 Wappoo Cr. Dr., Ste 202 Charleston, SC 29412 (843) 762-6640 Attorney for St. James Church	Saunders Bridges, Jr. # 879 P.O. Drawer 1931 Florence, SC 29503 (843) 669-8787 Attorney for St. John's - Florence
Stephen S. McKenzie # 6919 2 N. Brook St. Manning, SC 29102 (803) 435-8847 Attorney for St. Matthias	Robert S. Shelton # 68543 P.O. Box 357 Myrtle Beach, SC 29578 (843) 448-2400 Attorney for St. Paul's - Conway	John F. Wall, III # 101071 14 Exchange Street Charleston, SC 29401 (843) 722-2904 Attorney for Church of the Good Shepard
William A. Bryan # 984 P.O. Box 14860 Surfside Beach, SC 29587 (843) 238-3461 Attorney for Church of the Resurrection - Surfside	Francis M. Mack # 3505 656 Fort Motte Road Saint Matthews, SC 29135 (803) 874-1648 Attorney for the Parish of St. Matthew	Brandt Shelbourne # 15143 131 E. Richardson Ave. Summerville, SC 29483 (843) 871-2210 Attorney for St. Paul's - Summerville
Susan P. MacDonald # 7943 P.O. Box 3939 Myrtle Beach, SC 29578 (843) 946-5654 Attorney for Trinity - Myrtle Beach	James K. Lehman # 15033 P.O. Box 11070 Columbia, SC 29211 (803) 255-5564 Attorney for Trinity - Myrtle Beach	Allan P. Sloan, III # 6914 Joseph Wilson, IV # 63002 P.O. Box 22437 Charleston, SC 29413 (843) 722-7733 Attorneys for Parish of Christ Church
Edward Guerard, Jr. # 2345 1106 Port Harbor Court Mt. Pleasant, SC 29464 (843) 852-4530 Attorney for Parish of Christ Church	David B. Marvel # 68803 636 King Street Charleston, SC 29403 (843) 722-7250 Attorney for St. Luke and St. Paul - Radcliffeboro	David L. DeVane # 1663 110 N. Main St. Summerville, SC 29483 (843) 285-7100 Attorney for St. Luke and St. Paul - Radcliffeboro

David S. Cox # 66195 P.O. Drawer H Charleston, SC 29402 (843) 577-7700 Attorney for the Diocese and the Trustees	Henry E. Grimball # 2313 P.O. Box 999 Charleston, SC 29402 (843) 720-4615 Attorney for Saint Michael's	Thomas C. Davis # 1603 P.O. Box 1107 Beaufort, SC 29901 (843) 524-3109 Attorney for the Diocese and the Trustees
G. Mark Phillips # 7945 P.O. Box 1806 Charleston, SC 29402 (843) 534-4383 Attorney for the Parish of St. Philip	W. Foster Gaillard # 2282 P.O. Box 999 Charleston, SC 29402 (843) 720-4610 Attorney for the Parish of St. Philip	William A. Scott # 15148 775 St. Andrews Blvd. Charleston, SC 29407 (843) 556-5656 Attorney for Holy Trinity Episcopal Church
John B. Williams # 6133 P.O. Box 1288 Moncks Corner, SC 29461 (843) 761-8232 Attorney for Trinity Church - Pinopolis	George J. Kefalos # 3325 46A State St. Charleston, SC 29401 (843) 722-6612 Attorney for St. Andrew's Church - Mt. Pleasant	Stephen A. Spitz # 5287 151 Meeting Street, Ste 350 Charleston, SC 29401 (843) 414-5085 Attorney for St. Andrew's Church - Mt. Pleasant
C. Mitchell Brown # 12872 P.O. Box 11070 Columbia, SC 29211 (803) 255-9595 Attorney for the Diocese and the Trustees	E. Hope Lumpkin # 100165 1255 23Rd St. NW, Ste 500 Washington, DC 20037 (202) 627-6435 Attorney for St. Paul's - Summerville	Oana D. Johnson # 100373 1 Carriage Lane, Bldg. H Charleston, SC 29407 (843) 410-1912 Attorney for St. Andrew's Church - Mt. Pleasant

INDEX

VOLUME 1

Orders

Consent Temporary Injunction (January 31, 2013).....	1
U.S. District Court Order of Remand (June 10, 2013).....	13
Order Denying Defendants' Motion to Join Additional Parties (September 27, 2013).....	33
Form 4 Order Denying Motions to Reconsider re: Discovery (December 31, 2013).....	39
Trial Court's Final Order (February 3, 2015).....	41

Pleadings and Motions

Plaintiffs' Second Amended Complaint (excerpts).....	90
Defendants' Motion to Reconsider (excerpts).....	99

Transcripts

Transcript of Pre-trial Hearing (excerpts) (October 11, 2013).....	108
Transcript of Pre-trial Hearing (excerpts) (November 25, 2013).....	111
Transcript of Pre-trial Hearing (excerpts) (December 30, 2013).....	115
Trial Transcript (July 8-25, 2014) (excerpts)	118

Wade H. Logan, III	
Direct.	118
Cross.	162
Redirect.	165
James Lewis	
Direct.	167
Cross.	220
Redirect.	231
Re-cross.	232
Robert Kunes	
Direct.	235
Iris Hodge	
Direct.	240
Craige Borrett	
Direct.	265
Cross.	285
Richard Bruce	
Direct.	289
Cross.	309
Lewis Middleton	
Direct.	312
Cross.	331
Thomas Hendrickson	
Direct.	334
Cross.	354
Beverly Conner	
Direct.	361
Cross.	368
Redirect.	368
Re-cross.	369
Alonso Galvan	
Direct.	370
Cross.	389
Redirect.	390
John Acken	
Direct.	391
Cross.	428
Judy McMeekin	
Direct.	432
Cross.	461
Julius Thompson	
Direct.	463
Cross.	482
Redirect.	483

VOLUME 2

Trial Transcript (continued)

Allie Walker	
Direct.	484
Laverne Fenters	
Direct.	500
Cross.	508
Redirect.	517
Re-cross.	518
Richard Brown	
Direct.	519
Susan Schwank	
Direct.	533
Cross.	554
Steven Rumpf	
Direct.	555
Cross.	570
Frank Sloan	
Direct.	571
Cross.	587
William Ervin	
Direct.	589
Arthur Jenkins	
Direct.	603
John Jackson	
Direct.	612
Samuel Gaillard	
Direct.	620
Cross.	624
Ann Willis	
Direct.	625
Cross.	629
David Thurlow	
Direct.	631
Martin Scarbrough	
Cross.	632
Myron Harrington	
Direct.	634
John Zimmerman	
Cross.	656
Armand Derfner	
Direct.	659

Warren Mersereau	
Direct.	660
Marshall Sanderson	
Direct.	662
Cross.	671
Martin McWilliams	
Direct.	675
Cross.	753
Rebecca Lovelace	
Direct.	757
Cross.	769
Leslie Lott	
Direct.	775
Clifton Daniel	
Cross.	782
Re-cross.	786
Walter Edgar	
Direct.	788
Mark Duffy	
Direct.	813
Thomas Rickenbaker	
Direct.	842
Charles vonRosenberg	
Direct.	844
Allen Guelzo	
Direct.	871a
Cross.	901
Robert Lawrence	
Direct.	935
Cross.	937
Wade Logan	
Direct.	941
Cross.	956

VOLUME 3

Trial Transcript (continued)

Nancy Armstrong

Direct.	960
Cross.	968
Redirect.	971

Mark Lawrence

Direct.	978
Cross.	1015

Trial Exhibits

Diocese of South Carolina

DSC 1 - Journal of the Diocese's Annual Convention (2009) (excerpts). . . .	1035
DSC 2 - Journal of the Diocese's Annual Convention (2010) (excerpts). . . .	1039
DSC 3 - Journal of the Diocese's Annual Convention (2011) (excerpts). . . .	1047
DSC 4 - Journal of the Diocese's Annual Convention (2012) (excerpts). . . .	1051
DSC 5 - Journal of the Diocese's Annual Convention (2013) (excerpts). . . .	1059
DSC 6A - Bylaws of the Diocese (December 16, 2010).	1063
DSC 6B - Bylaws of the Diocese (October 29, 2012).	1073
DSC 6C - Bylaws of the Diocese (October 22, 2010).	1085
DSC 7 - Certificate of Incorporation (November 14, 1973).	1089
DSC 8 - Application to Amend Corporate Charter and Certificate of Amendment (February 20, 1987 and March 13, 1987).	1091
DSC 9 - Amendments to Corporate Charter (October 19, 2010).	1094
DSC 13 - Act No. 222 of 1880.	1097
DSC 14 - Act No. 612 of 1902.	1100
DSC 16 - Bylaws of the Trustee Corporation (March 17, 2010).	1104
DSC 17 - Bylaws of the Trustee Corporation (January 4, 2013).	1108
DSC 18 - Quitclaim Deed to St. Luke's with Cover Letter and Memo.	1112
DSC 30 - Deed to Seabrook Island Property (July 30, 1951).	1119
DSC 32 - Minutes of Standing Committee Meeting (October 2, 2012).	1124
DSC 40 - Historical Society Agreement (November 13, 2013).	1128
DSC 41A- May 1786 Constitution (handwritten).	1130
DSC 41B - May 1786 Constitution (typed transcription).	1134
DSC 42 - Packets for Diocesan Conventions	
A - 2010 Convention (excerpts).	1137
B - 2011 Convention (excerpts).	1152
D - November 2012 Convention (excerpts).	1156
E - 2013 Convention (excerpts).	1159
DSC 44 D - Resolution R-6 (from Diocese's Oct. 2010 Convention).	1163
DSC 44 E - Resolution R-8 (from same Convention).	1166
DSC 44 F - Resolutions R-10 and R-11 (from same Convention).	1175

DSC 45 - Selected Materials from November 2012 Convention	
A - Resolution R-1	1177
B - Handout "On the Diocese of South Carolina's Withdrawal from the Episcopal Church"	1180
C - Resolution R-2	1183
D - Resolution R-3	1185
DSC 46 - State Trademark Registrations	1187
DSC 47 - Seal of the Diocese.	1193
DSC 48 - E-mail and Invitation to Clergy Day (November 7, 2012).	1195
DSC 49 - Diocese Letter re: Clergy Day (November 8, 2012).	1198
DSC 50 - E-mail Changing Location of Clergy Day (November 9, 2012). . .	1200
DSC 51 - Screen Shot of "Website Under Construction".	1202
DSC 52 - Registration Form for 2013 Convention of "Episcopal Diocese of South Carolina"	1204
DSC 53 - Home Page "The Episcopal Diocese of South Carolina".	1206
DSC 54 - Screen Shot of the Seal of "The Episcopal Diocese of South Carolina"	1208
DSC 56 - Minutes of the Diocesan Conventions, 1785 to 1799.	1211
DSC 57 - Journal of the Diocese's Annual Convention (1973) (excerpts). . .	1264
DSC 59 - Summary of Convention Voting on Certain Resolutions.	1269
DSC 60 - South Carolina Constitution (1778).	1273
DSC 61 - South Carolina Constitution (1790) (excerpts).	1285
DSC 64 - Petition for Incorporation (November 5, 1973).	1296
DSC 65 - Diocese's Application for 501(C)(3) Tax Exemption (June 22, 1977) (excerpts).	1305
DSC 68 - Journal, Convention of the Protestant Episcopal Church (1789).. .	1319
DSC 69 - Excerpts from Statutes at Large of England and Great Britain (1743 to 1750).	1347
DSC 70 - Journal of the Diocese's Annual Convention (1866) (excerpts). . .	1352
DSC 72 - Letter of November 19, 2013.	1354
DSC 74 - Page from Legal Notices Section of Post and Courier.	1357
DSC 75 - Summary of Money Flow.	1359
DSC 76 - Statement of Bishops on the polity of the Episcopal Church.	1361
DSC 77 - Letter of October 2, 2012.	1383
DSC 78 - Letters Dimissory.	1400
DSC 79 - Letter of December 5, 2012.	1408

Defense Exhibits

D 5 - Diocese's Application for IRS Exemption.	1410

VOLUME 4

Defense Exhibits (continued)

D 5 - (continued from previous volume).....	1432
D 23 - Deposition Transcript of Nancy Armstrong (excerpts).....	1475
D 24 - Deposition Transcript of Mark J. Lawrence (excerpts).	1479
D 24, Ex. 6 - Constitution and Canons of The Episcopal Church (2006). . . .	1518
D 159 - Constitution and Canons of The Episcopal Church (1878) (excerpts).	1790
D 190 - Constitution and Canons of The Episcopal Church (1970) (excerpts).	1792
D 193 - Constitution and Canons of The Episcopal Church (1979) (excerpts).	1798
D 202 - Constitution and Canons of The Episcopal Church (2006) (excerpts).	1801
D 203 - Constitution and Canons of The Episcopal Church (2009) (excerpts).	1810
D 383B - Journal of the Diocese's Annual Convention (1969).....	1825
D 423B - Journal of the Diocese's Annual Convention (2009) (excerpts).	1842
D 425 - Constitution and Canons of The Episcopal Church (1789) (excerpts).	1850
D 512 - Book of Common Prayer (excerpt).....	1855
D AS 6 - All Saints (Florence) Articles of Association (1960).....	1859

Parish Exhibits

Parish Church of St. Helena PCSH 4, 5, 23, 34.	1862
Trinity Episcopal Church - Edisto TED 3.....	1879
Parish of St. John's, Charleston County SJC 2, 3.	1884
St. Michael's SMI 2, 3, 17, 26.	1891

VOLUME 5

Parish Exhibits (continued)

Parish of St. Andrew	
OSA 3.....	1922
Church of the Holy Cross-Stateburg	
HCS 1, 2.....	1925
Prince George Winyah	
PG 4, 5.....	1936
St. Philip's	
SPH 3, 5, 36.....	1949
St. Matthew's - Fort Motte	
SMFM 1.....	1961
Christ Church	
CC 24, 25.....	1968

Other Materials

Exhibits 6 through 13 from "Plaintiffs' Memorandum in Opposition to Defendants' Motion to Vacate" (October 11, 2013).	1981
Tom Tisdale letter to Judge Goodstein re TRO (January 29, 2013).	2294
Alan Runyan Letter to Judge Goodstein (January 29, 2013).	2297
Materials Submitted Confidentially to Judge with Respondents' Pre-Trial Briefing	
Diocese of Quincy Opinion and Order (September 9, 2013).....	2301
Diocese of Quincy Order and Judgement (October 9, 2013).....	2323
Materials not submitted at Trial	
Chart of Respondents' Creation Dates.....	2329
Certificate of Counsel.	2331

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

The Protestant Episcopal Church In The)

Diocese Of South Carolina; The Trustees of)

The Protestant Episcopal Church in South)

Carolina, a South Carolina Corporate Body;)

All Saints Protestant Episcopal Church, Inc.;)

Christ St. Paul's Episcopal Church; Christ)

The King, Waccamaw; Church Of The)

Cross, Inc. and Church Of The Cross)

Declaration Of Trust; Church Of The)

Holy Comforter;)

Church Of The Redeemer;)

Holy Trinity Episcopal Church; Saint)

Luke's Church, Hilton Head; Saint)

Matthews Church; St. Bartholomews)

Episcopal Church; St. Davids Church;)

St. James' Church, James Island, S.C.; St.)

John's Episcopal Church of Florence, S.C.;)

St. Matthias Episcopal Church, Inc.; St.)

Paul's Episcopal Church of Bennettsville,)

Inc.; St. Paul's Episcopal Church of Conway;)

The Church Of St. Luke and St. Paul,)

Radcliffeboro; The Church Of Our Saviour)

Of The Diocese of South Carolina; The)

Church Of The Epiphany (Episcopal); The)

Church Of The Good Shepherd, Charleston,)

SC; The Church Of The Resurrection,)

Surfside; The Protestant Episcopal Church,)

Of The Parish Of Saint Philip, In Charleston,))

In The State Of South Carolina; The)

Protestant Episcopal Church, The Parish Of)

Saint Michael, In Charleston, In The State)

Of South Carolina and St. Michael's Church)

Declaration Of Trust; The Vestry and Church)

Wardens Of The Episcopal Church Of The)

Parish Of Prince George Winyah; The Vestry)

And Church Wardens Of The Episcopal)

Church Of The Parish Of St. Helena and The)

Parish Church of St. Helena Trust; The)

Vestry and Church Wardens Of The)

Episcopal Church Of The Parish Of St.)

Matthew; The Vestry and Church Wardens)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

FILED - RECORDED
2013 JAN 31 PM 5:29
SHERYL B. BARNETT
CLERK OF COURT
DORCHESTER COUNTY

Case No. 2013-CP-18-00013

**TEMPORARY INJUNCTION
(CONSENT)**

Of The Episcopal Church Of The Parish Of)
St. Andrew's Church, Mount Pleasant; The)
Vestry and Wardens Of St. Paul's Church,)
Summerville; Trinity Church of Myrtle)
Beach; Trinity Episcopal Church; Vestry and)
Church-Wardens Of The Episcopal Church)
Of The Parish Of Christ Church; Vestry)
and Church Wardens Of The Episcopal)
Church Of The Parish Of St. John's,)
Charleston County)

PLAINTIFFS,)

v.)

The Episcopal Church (a/k/a, The)
Protestant Episcopal Church in the)
United States of America))

DEFENDANT.)

This matter is before the Court pursuant to this Court's Temporary Restraining Order ("TRO") issued on January 23, 2013 at 5:11PM. The TRO provided that a hearing would be held on February 1, 2013 at 9:00AM in the Richland County Courthouse "to determine whether the present Order should be extended or a temporary injunction should issue." By consent of the parties, this Order resolves that determination.

IT IS THEREFORE ORDERED,

The reasons for the issuance of this temporary injunction are set forth in the TRO and the Court incorporates in all respects the TRO which is attached, and made a part of this Order. Pursuant to Rule 65 (d) the acts enjoined under this temporary injunction are as follows:

No individual, organization, association or entity, whether incorporated or not, may use, assume, or adopt in any way, directly or indirectly, the registered names and the seal or mark of The Protestant Episcopal Church in the Diocese of South Carolina as are set out below or any names or seal that may be perceived to be those names and seal or mark. The registered names

and mark that are subject to this order are: the seal of the Diocese of South Carolina as described in its registration with the South Carolina Secretary of State; the name "The Protestant Episcopal Church in the Diocese of South Carolina", as registered with the South Carolina Secretary of State; the name "The Diocese of South Carolina", as registered with the South Carolina Secretary of State; and the name "The Episcopal Diocese of South Carolina," as registered with the South Carolina Secretary of State. Again, this seal and these names are those registered by this Plaintiff corporation with the South Carolina Secretary of State.

The following persons employed by, or serving as the officers or directors of the Diocese of South Carolina or of the Trustees are not subject to this order:

- **Diocese of South Carolina:** Mark J. Lawrence, Chief Operating Officer; James B. Lewis, Registered Agent; John Wallace, Treasurer; Nancy J. Armstrong, Assistant Treasurer; Joy Hunter, Director of Communications; Paul C. Fuener, President and Director; John M. Barr, III, Director; J. Reid Boylston, III, Director; Ann Hester Willis, Director and Secretary; Julian Jeffords, III, Director; William G. Lyles, III, Director; Ed Mitman, Director; Andrew O'Dell, Director; Elizabeth Pennewill, Director; Suzanne Schwank, Director; Gregory A. Snyder, Director; A. Kenneth Weldon, Director;
- **Trustees:** Mark J. Lawrence, President; Craig Borrett, Trustee and Secretary; Jeffrey Miller, Trustee; Robert Horn, Trustee; Robert Kilgo, Trustee; Robert Kunes, Trustee; Glynn Watson, Trustee; and Ivan Anderson, Trustee.

Any party may move this Court upon written notice served at least 14 days before the time specified for the hearing, unless the parties consent to a shorter time, for an order modifying

or dissolving this temporary injunction. This temporary injunction will remain in effect until further order of the Court.

IT IS SO ORDERED!

A handwritten signature in cursive script, reading "Diane S. Goodstein".

Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit

January 31 2013

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

FILED-RECORDED
2013 JAN 23 PM 5:10
CLERK OF COURT
DORCHESTER COUNTY

Case No. 2013-CP-18-00013

TEMPORARY RESTRAINING ORDER

ISSUED AT 5:11 PM

JANUARY 23, 2013

CERTIFIED COPY
2013 JAN 23 PM 5:15
CLERK OF COURT
DORCHESTER COUNTY

Of The Episcopal Church Of The Parish Of)
St. Andrew's Church, Mount Pleasant; The)
Vestry and Wardens Of St. Paul's Church,)
Summerville; Trinity Church of Myrtle)
Beach; Trinity Episcopal Church; Vestry and)
Church-Wardens Of The Episcopal Church)
Of The Parish Of Christ Church; Vestry)
and Church Wardens Of The Episcopal)
Church Of The Parish Of St. John's,)
Charleston County)

PLAINTIFFS,)

v.)

The Episcopal Church (a/k/a, The)
Protestant Episcopal Church in the)
United States of America))

DEFENDANT.)

This matter is before this Court on a Motion for a Temporary Restraining Order pursuant to Rule 65 (b), South Carolina Rules of Civil Procedure. This action was commenced by the filing and service of a Summons and Complaint on January 4, 2013. An Amended Verified Complaint was filed on January 22, 2013 along with a Motion for a Temporary Restraining Order. The hearing on the Motion was held *ex parte* on Tuesday, January 22, 2013 in St. George. The moving Plaintiffs are The Protestant Episcopal Church in the Diocese of South Carolina ("Diocese of South Carolina") and the Trustees of the Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body ("Trustees"). Plaintiffs were represented by C. Alan Runyan, Esq., of Speights & Runyan, Beaufort, South Carolina and Charles H. Williams, Esq., of Williams & Williams, Orangeburg, South Carolina

The Amended Complaint seeks a declaratory judgment, as well as, temporary and permanent injunctive relief. This order deals only with the temporary restraining order.

This court has considered the Amended Complaint in its relevant verified portions; the Affidavits of James B. Lewis, Greg Snyder, Beth Snyder, Nancy J. Armstrong, Andrew S. Platte and Milan R. Shuler; and the memorandum and argument of counsel. The Court finds the following relevant facts are amply supported by the affidavits and the relevant parts of the Verified Complaint.

The Diocese of South Carolina is the owner of three names and one mark registered with the South Carolina Secretary of State. All were registered on November 5, 2010. The registered names are: "The Protestant Episcopal Church in the Diocese of South Carolina"; "The Diocese of South Carolina"; and "The Episcopal Diocese of South Carolina". The mark or seal of the Diocese of South Carolina was also registered with the South Carolina Secretary of State.

The Diocese of South Carolina withdrew its association with the Defendant. After that withdrawal, Plaintiffs through their affidavits allege that the Defendant, through its agents and those under its control or those acting in concert with it, began using these registered names and seal in a variety of ways, which have misled others as to the ownership of these registered names and seal. It is represented to the Court that a meeting is planned for January 26, 2013 in Charleston, South Carolina, and Plaintiffs contend that the intent of this meeting appears to be to make unauthorized corporate changes regarding Plaintiff.

This Court concludes as a matter of law that it has jurisdiction to hear and determine the issues raised by this motion and that this Court has authority under Rule 65(b), SCRPC, to issue a temporary restraining order. "Injunctive relief is equitable in nature," *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010) issued to prevent irreparable injury upon the showing of a likelihood of success on the merits, and the absence of an adequate remedy at law." *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). See also

Peek v. Spartanburg Reg'l Healthcare Sys., 367 S.C. 450, 454-55, 626 S.E.2d 34, 36 (Ct. App. 2005) holding modified by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). While this is an action between parties whose business happens to be religious, it nevertheless involves civil law issues concerning corporate control and interests in property. The South Carolina Supreme Court has "explicitly reaffirmed that when resolving church dispute cases, South Carolina courts are to apply the neutral principles of law approach," *All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of South Carolina*, 385 S.C. 428, 442, 685 S.E.2d 163, 171 (2009). The wrongful assumption of an existing commercial or charitable corporation's name by another entity is subject to injunctive relief. *Planters' Fertilizer & Phosphate Co. v. Planters' Fertilizer Co.*, 135 S.C. 282, 133 S.E. 706 (1926); *Purcell v. Summers*, 145 F.2d 979 (4th Cir. 1944). The statutes upon which part of this action is based and the cases clearly establish that existing South Carolina corporations are to be protected from those who seek to assume their identities. Injunctive relief is specified in the statutes as a remedy for that conduct. "When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present 'a fair question to raise as to the existence of such a right.'" *Peek*, 367 S.C. at 456 (quoting *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912)). A *prima facie* showing has been made as to the likelihood of success on the merits.

This Court further finds that it "clearly appears from specific facts shown", which have been submitted under oath that "immediate and irreparable injury, damage or loss" will result to the Diocese of South Carolina without an adequate legal remedy before notice can be served and a hearing had thereon. The reasons for this finding are as follows:

The Diocese of South Carolina has three registered names and one registered mark and, as shown by affidavit, the Defendant, or others appearing to act in its name or under its control,

have allegedly and repeatedly used these names and mark, including those so similar that they are perceived to be the Diocese of South Carolina. This use has the clear ability to cause extraordinary confusion over the identity of the corporate entity of The Diocese of South Carolina. The Diocese of South Carolina has been using these registered names and mark in the ordinary course of its business as the Diocese of South Carolina, both before and after its association with the Defendant. By affidavit Plaintiff states its concern that a meeting scheduled to be held January 26, 2013, by those purporting to be this corporate entity but who in reality are not the corporate entity of the Plaintiff, could intentionally affect the corporate status of those uninformed that the actors are not, in reality, the corporation. In order to avoid any confusion, this Order is issued.

The issue at bar is whether the taking of action by those not authorized with corporate authority will so infringe on the rights of the Diocese of South Carolina, that the Diocese of South Carolina will suffer immediate and irreparable harm for which the law cannot adequately remedy. The Court is convinced this burden has been met. The use of the names and marks of the Diocese of South Carolina can affect its good will, its third party relationships and create confusion among those with whom it deals in the ordinary course of its business. In short, the ongoing business of the Diocese of South Carolina could be irreparably injured if corporate changes occur in its name, implemented by those without actual corporate authority.

The Fourth Circuit Court of Appeals stated, in a case that involved the unlawful use of a church's name by another religious entity in South Carolina, that the "use by one organization of the name of another for the purpose of appropriating the standing and good will which the other has built up is a well recognized form of wrong" and courts "have not hesitated, in any jurisdiction, to use the full power of the injunctive process." *Purcell v. Summers*, 145 F.2d 979,

984 (4th Cir. 1944). "[T]he question is, not whether they have the right to use ... 'Episcopal' in a new name so constructed as to avoid confusion, but whether they have the right to use the old name in a way that amounts, as we think it does, to implied misrepresentation to the damage of plaintiffs." *Id.* at 988.

Based upon the affidavits of Plaintiffs, this Court finds that the *ex parte* nature of this proceeding was necessary and proper.

IT IS THEREFORE ORDERED.

No individual, organization, association or entity, whether incorporated or not, may use, assume, or adopt in any way, directly or indirectly, the registered names and the seal or mark of The Protestant Episcopal Church in the Diocese of South Carolina as are set out below or any names or seal that may be perceived to be those names and seal or mark. The registered names and mark that are subject to this order are: the seal of the Diocese of South Carolina as described in its registration with the South Carolina Secretary of State; the name "The Protestant Episcopal Church in the Diocese of South Carolina", as registered with the South Carolina Secretary of State; the name "The Diocese of South Carolina", as registered with the South Carolina Secretary of State; and the name "The Episcopal Diocese of South Carolina", as registered with the South Carolina Secretary of State. Again, this seal and these names are those registered by this Plaintiff corporation with the South Carolina Secretary of State.

The following persons employed by, or serving as the officers or directors of the Diocese of South Carolina or of the Trustees are not subject to this order:

- **Diocese of South Carolina:** Mark J. Lawrence, Chief Operating Officer; James B. Lewis, Registered Agent; John Wallace, Treasurer; Nancy J. Armstrong, Assistant Treasurer; Joy Hunter, Director of Communications; Paul C. Fuener,

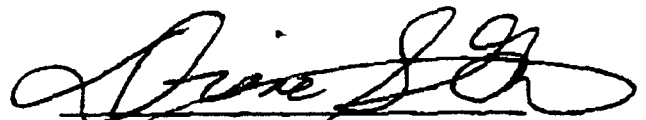
President and Director; John M. Barr, III, Director; J. Reid Boylston, III, Director; Ann Hester Willis, Director and Secretary; Julian Jeffords, III, Director; William G. Lyles, III, Director; Ed Mitman, Director; Andrew O'Dell, Director; Elizabeth Pennewill, Director; Suzanne Schwank, Director; Gregory A. Snyder, Director; A. Kenneth Weldon, Director;

- Trustees: Mark J. Lawrence, President; Craig Borrett, Trustee and Secretary; Jeffrey Miller, Trustee; Robert Horn, Trustee; Robert Kilgo, Trustee; Robert Kunes, Trustee; Glynn Watson, Trustee; and Ivan Anderson, Trustee.

This Order is issued this 23rd day of January at 5:11 pm. A hearing to determine whether the present order should be extended or a temporary injunction should issue is set for February 1, 2013, at 9 am, in the Richland County courthouse.

I find that adequate security for the issuance of this Order under Rule 65(c), South Carolina Rules of Civil Procedure to be \$50,000.00 which sum, in cash or its equivalent, shall be deposited with the Dorchester County Clerk's Office prior to the filing of this Order.

AND IT IS SO ORDERED!



Diane S. Goodstein
Circuit Court Judge
First Judicial Circuit

January 23, 2013

We consent to the entry of this Order.

The Protestant Episcopal Church In The
Diocese of South Carolina; and The
Trustees of the Protestant Episcopal
Church of South Carolina, a South
Carolina Corporate Body:

By: C. Alan Runyan

C. Alan Runyan, Esq.

Andrew S. Platte, Esq.

SPEIGHTS & RUNYAN

2015 Boundary Street, Suite 239

Beaufort, SC 29902

(803) 943-4444

By: Henrietta U. (Henri) Golding

Henrietta U. Golding, Esq.

McNAIR LAW FIRM

P.O. Box 336

Myrtle Beach, SC 29578

(843) 444-1107

By: Charles H. Williams

Charles H. Williams, Esq.

WILLIAMS & WILLIAMS

P.O. Box 1084

Orangeburg, SC 29116-1084

(803) 534-5218

By: David Cox

David Cox, Esq.

WOMBLE, CARLYLE, SANDRIDGE &

RICE, LLP.

P.O. Box 999

Charleston, SC 29402

(843) 722-3400

By: Tom C. Davis

Thomas C. Davis, Esq.

HARVEY & BATTEY, PA

1001 Craven Street

Beaufort, SC 29901

(843) 524-3109

The Episcopal Church (a/k/a, The
Protestant Episcopal Church in the
United States of America)

By: Thomas S. Tisdale, Jr.

Thomas S. Tisdale, Jr. Esquire

NEXSEN/PRUET

205 King Street, Suite 486

P.O. Box 486

Charleston, SC 29402

(843) 720-1749

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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

Civil Action No.: 2:13-00893-CWH

ORDER

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

Plaintiffs,)

vs.)

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

Defendants.)

This matter is before the Court on the plaintiffs' motion to remand. (ECF No. 9). For the reasons set forth in this Order, the Court grants the plaintiffs' motion.

I. BACKGROUND

This case arises out of a dispute concerning South Carolina real and personal property, predicated upon The Protestant Episcopal Church in the Diocese of South Carolina's (the "Diocese's") purported membership withdrawal and disaffiliation from The Episcopal Church ("TEC"). (Second Am. Compl. ¶ 27; TEC's Answer & Countercls. 49, ¶¶ 42-43). The Diocese, along with The Trustees of The Protestant Episcopal Church in South Carolina (the "Trustees"), and thirty-five plaintiff parishes (collectively "the plaintiffs") claim that TEC and The Episcopal Church in South Carolina ("ECSC") (collectively "the defendants") have no "legal, beneficial or equitable interest in[,]" or "authority to possess, divert, encumber, alienate, transfer, or use" any

of the Diocese's real and personal property¹ presently disputed. (Second Am. Compl. ¶¶ 505(g)-(i)). All parties contend they are the lawful and rightful possessors/users of the real and personal property at issue. (Second Am. Compl. ¶ 494(c); TEC's Answer & Countercls. 51, ¶¶ 51-52).

A. THE PARTIES

1. The Plaintiffs

The Diocese is a non-profit, charitable corporation, incorporated in 1973, with its headquarters in Charleston, South Carolina. (Second Am. Compl. ¶ 1; TEC's Answer & Countercls. 39, ¶ 2). The Diocese was one of the participating entities that voluntarily coalesced to form TEC in 1789. (Second Am. Compl. ¶¶ 9-10). The Diocese is currently under the management, direction, and control of persons who have disaffiliated, and been removed from, the communion of TEC. (ECSC's Answer, Affirmative Defenses, & Countercls. ¶¶ 526-27).

The Trustees is a South Carolina non-profit corporation, incorporated in 1902. (Second Am. Compl. ¶ 29; TEC's Answer & Countercls. 39, ¶ 3). The Trustees' purpose is to receive, hold, and devise real and personal property voluntarily surrendered or gifted to it. (Second Am. Compl. ¶ 31). The Board of Directors of the Trustees consists of eight members meeting at least quarterly; Bishop Mark J. Lawrence is an ex officio member with a seat and voice but no vote. (Second Am. Compl. ¶ 30).

The plaintiff parishes amount to thirty-five South Carolina non-profit corporations located throughout the state; a number of the plaintiff parishes not only preexisted the Diocese and TEC, but also the formation of the United States. (Pls.' Reply to ECSC Resp. to Mot. to

¹ On November 8, 2010, the Diocese registered four service marks pursuant to S.C. Code §§ 39-15-1105 et seq. The Diocese-owned marks are "The Diocese of South Carolina", "The Episcopal Diocese of South Carolina", "The Protestant Episcopal Church in the Diocese of South Carolina", and the seal of the Diocese of South Carolina. (Second Am. Compl. ¶ 19).

#3
COA.

Remand 7; Second Am. Compl. ¶ 6). All of the plaintiff parishes claim to own their respective real property in fee simple. (Second Am. Compl. ¶¶ 35-468).

2. The Defendants

TEC is an unincorporated association headquartered in New York, New York, at least one of its members is a citizen of South Carolina, and it does business within the State of South Carolina. (TEC's Answer & Countercls. 39, ¶ 1; Second Am. Compl. ¶ 472). The plaintiffs allege, but defendants deny, that TEC is a voluntary association of corporately independent dioceses. (Second Am. Compl. ¶ 473; TEC's Answer & Countercls. 37, ¶ 329; ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 473).

TEC is a hierarchical religious denomination,² comprised of 111 geographically-defined, subordinate units known as "dioceses" and more than 7,600 congregations, mainly "parishes" or "missions," in the United States and other countries. (TEC's Answer & Countercls. 39-40, ¶¶ 1, 6). Each diocese is a subordinate unit of TEC and is bound by the provisions established in its Constitution, Canons, and Prayer Book—which, altogether, govern both temporal and spiritual matters. (ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 568).

ECSC officially formed as an unincorporated association in South Carolina on or about January 26, 2013. (Second Am. Compl. ¶ 483). ECSC is one of the 111 geographically-defined subordinate units of TEC and is comprised of parishes that chose to remain affiliated with TEC post-Diocese-schism. (Second Am. Compl. ¶¶ 481; ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 525).

² "[T]he Canons of the Episcopal Church clearly establish that it is a hierarchy." Dixon v. Edwards, 290 F.3d 699, 716 (4th Cir. 2002) (citing Hiles v. Episcopal Diocese of Mass., 744 N.E.2d 1116, 1121 (Mass. Ct. App. 2001) ("It is undisputed that the Episcopal Church is hierarchical in structure; there are no judicial holdings to the contrary.")).

2:13-cv-00000-OWH Document 107-1 Filed 06/10/13 Page 5 of 20

B. THE FACTS

As stated above, save a war time sabbatical from 1861-1866, the Diocese has been voluntarily associated with TEC since on or about 1789. (Second Am. Compl. ¶¶ 9-10, 12, 15). However, in November 2012, the plaintiffs, through a majority of voting delegates led by Bishop Lawrence, voted to disaffiliate from TEC; according to the defendants, this unilateral action violated TEC's Constitution, Canons, and polity. (Second Am. Compl. ¶¶ 26-27; Def.'s Resp. to Pls.' Mot. to Remand 8; ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 580). The defendants maintain that such diocesan disaffiliations are null and void, and that, for all purposes, the Diocese and the plaintiff parishes remain subordinate units of TEC and ECSC (the continuing diocese), respectively. (Def.'s Resp. to Pls.' Mot. to Remand 8).

After the plaintiffs withdrew from TEC, the defendants removed Bishop Lawrence in accordance with Church Canons and installed Provisional Bishop Charles G. vonRosenberg. (Def.'s Resp. to Pls.' Mot. to Remand 8-9). Further, the purported withdrawal rendered vacant all other offices in the Diocese and those as Trustees. (TEC's Answer & Countercls. 49, ¶ 45).

In January 2013, the defendants held a special meeting to elect persons to fill the vacancies created by the Diocese's purported withdrawal, including positions on the Diocese's Board of Directors and Standing Committee. (TEC's Answer & Countercls. 49-50, ¶ 46). TEC recognizes this elected leadership body as the rightful directors of its South Carolina diocese within the church's hierarchical structure; in effect, the defendants have supplanted the Diocese through creation of the ECSC. (TEC's Answer & Countercls. 49-50, ¶ 46).

The plaintiffs allege that ECSC, through the defendants' reformation of the Diocese and the Trustees, has attempted to assume the corporate identity of the Diocese by holding itself out as South Carolina's enduring diocese, and not as a newly christened religious association.

#5
CofA.

2:13-cv-00000-UNA Date Filed 06/10/13 Entry Number 107 Page 6 of 20

(Second Am. Compl. ¶¶ 487-88). ECSC counters that the Diocese's business and affairs have been, and continue to be, wrongfully conducted in open and direct contravention of TEC's Constitution, Canons, Prayer Book, and polity. (ECSC's Answer, Affirmative Defenses, & Countercls. ¶ 528).

C. PROCEDURAL HISTORY

On January 4, 2013, the Diocese, the Trustees, and sixteen other South Carolina non-profit corporations filed this action against TEC for declaratory and injunctive relief in the Court of Common Pleas for the First Judicial Circuit in Dorchester County, South Carolina. (ECF No. 1-2). On January 22, 2013, the plaintiffs filed a first amended verified complaint for declaratory and injunctive relief, adding additional South Carolina non-profit corporations as plaintiffs. (ECF No. 1-5). That same day, the Diocese and the Trustees filed a motion for the entry of a temporary restraining order. (ECF No. 1-3). On January 23, 2013, Judge Goodstein granted the plaintiffs' motion and issued a temporary restraining order holding "[n]o individual, organization, association or entity . . . may use, assume, or adopt . . . the registered names and the seal or mark of [the Diocese] . . ." except Bishop Lawrence and those under his control or acting in concert with him. (ECF No. 1-6, at 6). On January 31, 2013, based upon the parties' consent, Judge Goodstein issued a preliminary injunction, which incorporated the terms of the January 23, 2013 temporary restraining order. (ECF No. 1-9).

On February 19, 2013, the plaintiffs filed a motion to amend their complaint to add three South Carolina non-profit corporations as plaintiffs and ECSC as a defendant. (ECF No. 1-10). On February 28, 2013, Judge Goodstein signed an Order granting the plaintiffs' motion to amend their complaint. On March 5, 2013, the plaintiffs served the defendants with the second amended complaint. (ECF No. 1-11). The plaintiffs' second amended complaint advances three

#6
COA-

causes of action: (1) Declaratory Judgment for Interest in Real and Personal Property, pursuant to S.C. Code §§ 15-53-10, et seq. (Second Am. Compl. ¶¶ 490-94); (2) Service Mark Infringement, pursuant to S.C. Code §§ 39-15-1105, et seq. (Second Am. Compl. ¶¶ 495-99); and (3) Improper Use of Names, Styles and Emblems, pursuant to S.C. Code §§ 16-17-310 & 320 (Second Am. Compl. ¶¶ 500-05). On this same date, Bishop vonRosenberg, an agent of ECSC and a member of TEC, filed a parallel action in the United States District Court for the District of South Carolina.³ No. 2:13-cv-537-CWH. On March 28, 2013 and April 3, 2013, ECSC and TEC filed their answers and counterclaims to the second amended complaint, respectively. (ECF Nos. 1-24 & 1-23).

On April 3, 2013, ECSC removed this action to federal court pursuant to 28 U.S.C. § 1441(a). (ECF No. 1). ECSC claims this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1121, and 28 U.S.C. § 1367 because this matter raises federal questions under the First Amendment of the United States Constitution and the Lanham Act. (ECF No. 1, at 3). On April 10, 2013, the plaintiffs filed a motion to remand this action to the Court of Common Pleas for the First Judicial Circuit. (ECF No. 9). The plaintiffs claim remand is proper because this Court lacks the requisite jurisdictional basis to adjudicate their state law claims. (ECF No. 9). On April 29, 2013, ECSC filed its response to the plaintiffs' motion to remand. (ECF No. 110). On May 9, 2013, the plaintiffs filed their reply. (ECF No. 112). On June 6, 2013, this matter came before the Court for a hearing.

II. STANDARD OF REVIEW

"Federal courts are courts of limited jurisdiction." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); Strawn v. AT&T Mobility LLC, 530 F.3d 293, 296 (4th Cir.

³ A motion for preliminary injunction and a motion to dismiss this action are pending.

#7
CWH.

2:13-cv-00000-CWT Date Filed 06/10/13 Entry Number 107 Page 8 of 20

2008) (citation omitted); Lever v. Jackson Nat'l Life Ins. Co., No. 3:12-cv-03108-MBS, 2013 WL 436210, at *1 (D.S.C. Feb. 5, 2013) (stating “[b]ecause federal courts are courts of limited jurisdiction, removal raises federalism concerns and must be strictly construed in favor of state court jurisdiction”) (citation omitted). A defendant removing a case to federal court bears the burden of demonstrating that federal jurisdiction is proper. Strawn, 530 F.3d at 296 (citation omitted); see Lever, 2013 WL 436210, at *1 (stating “[i]f removal is challenged, the defendant has the burden of establishing federal jurisdiction”) (citing Mulcahey v. Columbia Organic Chem. Co., 29 F.3d 148, 151 (4th Cir. 1994)). The existence of federal jurisdiction should be determined as of the time the defendant files his notice of removal. See Pullman Co. v. Jenkins, 305 U.S. 534, 537 (1939).

A case may be removed from state to federal court pursuant to 28 U.S.C. § 1441(a), which provides:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a). The district courts’ original jurisdiction includes jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

A defendant may remove a case to federal court if a federal question is raised on the face of the complaint.⁴ “The presence or absence of [federal question] jurisdiction is governed by the ‘well-pleaded complaint rule,’ under which ‘federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.’” Rivet v.

⁴ Three circumstances exist that allow a defendant to remove a case to federal court: (1) if the parties are diverse and the amount in controversy for diversity jurisdiction is met pursuant to 28 U.S.C. § 1332; (2) if a federal question is raised on the face of the complaint; and (3) if there is complete preemption. This Order focuses only on the second circumstance as it is the only one that applies.

Regions Bank of La., 522 U.S. 470, 470 (1998) (quoting Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987)). In other words, “[t]his rule directs the Court . . . ‘to look no farther than the plaintiff’s complaint in determining whether a lawsuit raises issues of federal law capable of creating federal-question jurisdiction under 28 U.S.C. § 1331.’” Pigott v. Ostulano, No. 2:07-cv-90, 2007 WL 1448718, at *2 (E.D. Va. May 9, 2007) (quoting Custer v. Sweeney, 89 F.3d 1156, 1165 (4th Cir. 1996)). The well-pleaded complaint rule “makes the plaintiff the master of the claim[,]” thereby allowing him to “avoid federal jurisdiction by exclusive reliance on state law.” Caterpillar, 482 U.S. at 392 (citing The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25 (1913) (“Of course, the party who brings a suit is master to decide what law he will rely upon . . .”); Merrell Dow Pharm., Inc. v. Thompson, 478 U.S. 804, 809, n.6 (1986) (“Jurisdiction may not be sustained on a theory that the plaintiff has not advanced.”); Great N. R. Co. v. Alexander, 246 U.S. 276, 282 (1918) (“[T]he plaintiff may by the allegations of his complaint determine the status with respect to removability of a case”)).

The first step in determining whether the complaint raises issues of federal law capable of creating federal-question jurisdiction is to “discern whether federal or state law creates the cause of action.” Pigott, 2007 WL 1448718, at *2 (quoting Mulcahey, 29 F.3d at 151). Clearly, federal subject matter jurisdiction exists in cases where federal law forms the cause of action. Id. “However, a federal court may find that a plaintiff’s claim arises under federal law even though the plaintiff has not characterized it as a federal claim.” Carrollton Presbyterian Church v. Presbytery of S. La., No. 09-138-RET-SCR, 2009 WL 1605005, at *2 (M.D. La. June 4, 2009) (citations omitted). In this “small class of cases,” in which only state law creates the claims, a federal court may have subject matter jurisdiction if “the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law, in that federal law is a necessary

#4
Cob-

2:15-cv-00000-SWT Document 10-1 Filed 03/10/15 Page 10 of 20

element of one of the well-pleaded . . . claims.” Pinney v. Nokia, Inc., 402 F.3d 430, 442 (4th Cir. 2005) (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 808 (1988) (internal quotation marks omitted)); see also Dixon v. Coburg Dairy, Inc., 369 F.3d 811, 816 (4th Cir. 2004) (en banc) (stating “[a] plaintiff’s right to relief for a given claim necessarily depends on a question of federal law only when every legal theory supporting the claim requires the resolution of a federal issue”) (citation omitted); Carrollton Presbyterian Church, 2009 WL 1605005, at *2 (stating “a complaint creates federal question jurisdiction when it states a cause of action created by state law and (1) a federal right is an essential element of the state claim, (2) interpretation of the federal right is necessary to resolve the case, and (3) the question of federal law is substantial”) (citation omitted). Thus, “[i]f a plaintiff can establish, without the resolution of an issue of federal law, all of the essential elements of his state law claim, then the claim does not necessarily depend on a question of federal law.” Pinney, 402 F.3d at 442 (citing Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13-14 (1983)). In Gunn v. Minton, the United States Supreme Court stated that the Court must analyze the substantial federal question doctrine when a defendant seeks to remove a case in which state law creates the plaintiff’s cause of action. 133 S. Ct. 1059, 1065 (2013). Under the substantial federal question doctrine, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” Id. If the defendant fails to demonstrate all four of these elements, removal is improper under this doctrine. Id.

As stated above, removal must be based on the plaintiff’s complaint. “[R]emoval of a case to federal court may not be predicated on the presence of a federal defense.” Rivet, 522

#10
Cobb

U.S. at 471 (citing Franchise Tax Bd., 463 U.S. at 14); see also Pinney, 402 F.3d at 443 (stating “a case may not be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff’s complaint, and even if both parties admit that the defense is the only question truly at issue in the case”) (citation omitted); Grace Chapel Presbyterian Church (USA) v. Presbytery of Miss., No. 3:07-cv-552, 2007 WL 4557866, at *3 (S.D. Miss. Dec. 21, 2007) (stating the “[d]efendant’s reliance on First Amendment safeguards against state interference with religious doctrine or polity does not create a federal question”). Nor may a counterclaim establish federal question jurisdiction. Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 831 (2002) (citation omitted). Additionally, “[a] cause cannot be removed from a state court simply because, in the progress of the litigation, it may become necessary to give a construction to the constitution or laws of the United States.” Tennessee v. Union & Planters’ Bank, 152 U.S. 454, 460 (1894) (citation omitted). “[T]he question whether a party claims a right under the constitution or laws of the United States is to be ascertained by the legal construction of its own allegations, and not by the effect attributed to those allegations by the adverse party.” Id. (citation omitted). Further, “the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.” Merrell Dow Pharm., 478 U.S. at 813 (citing Gully v. First Nat’l Bank, 299 U.S. 109, 115 (1936) (“Not every question of federal law emerging in a suit is proof that a federal law is the basis of the suit”)). It is well-settled that federal-question jurisdiction is much more limited than allowing defendants to remove cases to federal court where a federal question is simply “an ingredient” in the plaintiff’s case. Id. at 807.

“On a motion to remand, the court must strictly construe the removal statute and resolve all doubts in favor of remanding the case to state court, indicative of the reluctance of federal

#11
Cecilia

courts to interfere with matters properly before a state court.” Gallagher v. Fed. Signal Corp., 524 F. Supp. 2d 724, 726 (D. Md. 2007) (internal quotation marks and citation omitted). If there is any doubt regarding the existence of federal jurisdiction, the case should be remanded. Md. Stadium Auth. v. Ellerbe Becket Inc., 407 F.3d 255, 260 (4th Cir. 2005) (citation omitted); see also Lever, 2013 WL 436210, at *1 (stating “[i]f federal jurisdiction is doubtful, a remand is necessary”) (quoting Mulcahey, 29 F.3d at 151).

III. DISCUSSION

The plaintiffs assert three causes of action—all of which are based on South Carolina statutes. The plaintiffs, exclusively relying on state law, though federal claims were available, chose to file their case in state court, a strategy recognized and accepted by federal courts. See, e.g., Carrollton Presbyterian Church, 2009 WL 1605005, at *3 (stating “[a] plaintiff with a choice between federal and state law claims may elect to proceed in state court on the exclusive basis of state law, thus defeating the defendant’s opportunity to remove . . .”) (quoting Carpenter v. Wichita Falls Ind. Sch. Dist., 44 F.3d 362, 366 (5th Cir. 1995)).

First, the Court considers the defendant’s Lanham Act argument. The plaintiffs elected to proceed on state law claims concerning service mark infringement and improper use of names, styles and emblems. (See Second Am. Compl. ¶¶ 495-505). It is well settled the plaintiffs may choose to assert only state law claims even when federal claims are available. Based on the well-pleaded complaint rule and the fact that the Lanham Act does not preempt South Carolina law, the defendant may not remove this action based on its argument that this matter raises federal questions under the Lanham Act. Thus, the remainder of this Order focuses on ECSC’s First Amendment argument.

#12
CCH

2:15-cv-00000-CWT Date Filed 09/10/15 Entry Number 10 Page 13 of 20

As stated above, federal courts may have jurisdiction even if the plaintiffs only assert state law claims. In determining whether to remand the action, this Court must first determine whether federal or state law creates the causes of action in the complaint. See Pigott, 2007 WL 1448718, at *2 (citation omitted).

A. THE FIRST AMENDMENT IS PROPERLY VIEWED AS A LIMITATION

ECSC claims this Court has jurisdiction over this matter because the central issue, “whether . . . the Diocese could and did sever its ties with [TEC] so that corporate control was vested in its current leadership,” implicates the First Amendment. (Def.’s Resp. to Pls.’ Mot. to Remand 6). The First Amendment, which is applicable to the states through the Fourteenth Amendment, provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]” U.S. Const. amend. I. Similarly, civil courts are restricted when they consider issues pertaining to religious organizations or doctrines. “[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes[.]” and “prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.” Jones v. Wolf, 443 U.S. 595, 602 (1979) (citations omitted). “Generally, courts may not interpret church laws, policies or practices in a manner that will limit the churches [sic] ability to fully practice its religion or be guided by its religious principles.” JC2 v. Grammond, 232 F. Supp. 2d 1166, 1168 (D. Or. 2002) (citing Cantwell v. Connecticut, 310 U.S. 296, 303 (1940)); see also Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 369 (1970) (per curiam) (stating “[t]o permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine”). However,

#18
CofG.

in Jones, the United States Supreme Court held that the First Amendment allows civil courts to adjudicate disputes within religious organizations so long as resolution refrains from determining matters of ecclesiastical doctrine or polity. 443 U.S. at 610; see also Serbian E. Orthodox Diocese for the United States & Canada v. Milivojevic, 426 U.S. 696, 710 (1976) (stating “[t]he First Amendment . . . commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine”) (quoting Presbyterian Church v. Hull Church, 393 U.S. 440, 449 (1969)); Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.), 291 P.3d 711, 720 (Or. 2012) (finding “[a]lthough courts must decide . . . property disputes . . . in which churches or other religious organizations are parties, First Amendment principles require that they do so without becoming involved in matters of church doctrine”); Pearson v. Church of God, 478 S.E.2d 849, 851 (S.C. 1996) (stating “where resolution of the [religious] disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity . . .”) (quoting Milivojevic, 426 U.S. at 709).

Courts facing similar facts and issues as those presented here have found First Amendment principles are properly viewed as limitations upon a civil court’s authority. See, e.g., Grace Chapel Presbyterian Church, 2007 WL 4557866, at *3 (stating the “[d]efendant’s reliance on First Amendment safeguards against state interference with religious doctrine or polity does not create a federal question”) (emphasis added). In First Presbyterian Church of Corinth, Miss. v. Presbytery of Saint Andrew, the plaintiff filed an action in state court seeking a determination of certain property rights held by the church. No. 1:07-cv-31, 2007 WL 571338, at *1 (N.D. Miss. Feb. 20, 2007). The defendant removed the case on the grounds of federal

#14
CBA.

question jurisdiction. Id. The court remanded the case to state court, finding “the First Amendment issues in this case are properly viewed as limitations upon the authority of the Circuit Court of Alcorn County, rather than as the basis for any private right of action such as might implicate the substantial federal question doctrine.” Id. at *1, *3. The court further stated that it “trusts that the Circuit Court of Alcorn County will heed the limitations upon its authority in deciding the instant property dispute . . . [;]” however, “if either party is of the view that the trial court has overstepped its Constitutional bounds in that regard, than [sic] it may appeal to the [state] Supreme Court, and, if necessary to the U.S. Supreme Court.” Id. at *2.

Here, the First Amendment is not alleged to have been violated. It appears that one of the underlying issues may be ecclesiastical; however, that alone does not necessitate inquiry into, or resolution under, the First Amendment. See e.g., All Saints Parish v. Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 685 S.E.2d 163, 171 (S.C. 2009) (holding the court could resolve church control issues solely “through the application of neutral principles of [state] property, trust, and corporate law[]” without implicating the First Amendment). In fact, South Carolina state courts employ a legal standard for resolving church disputes that abstains from inquiry into religious doctrine and, thus, comports with the limitations dictated by First Amendment principles. Id. The First Amendment issues attributed to the plaintiffs’ causes of action are properly viewed as a limitation upon the authority of the state court rather than as the basis for any private right of action such as might implicate the substantial federal question doctrine.⁵

⁵ It is important to note that there are no allegations that the defendants are state actors or that the defendants have engaged in any form of state action. See Goldstein v. Chestnut Ridge Volunteer Fire Co., 218 F.3d 337, 341 (4th Cir. 2000) (stating “[w]ith few exceptions, constitutional guarantees . . . do not apply to the actions of private entities”) (quoting Edmonson v. Leesville Concrete Co., 500 U.S. 614, 619 (1991) (internal quotation marks omitted)). In addition, none of

#15
COW.

2:15-cv-00000-UNA Document 1-1 Filed 03/20/15 Entry Number 10 Page 16 of 20

B. THE SUBSTANTIAL FEDERAL QUESTION DOCTRINE

Notwithstanding the discussion supra, the Court does not find it has jurisdiction under the substantial federal question doctrine. The doctrine applies where the federal issue is “(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” Gunn, 133 S. Ct. at 1065. As shown below, the requisite elements are not satisfied; thus, federal question jurisdiction does not lie over the state law claims under this doctrine.

1. The First Amendment Issue Is Not Necessarily Raised

ECSC argues that the First Amendment issue is “necessarily raised.” (Def.’s Resp. to Pls.’ Mot. to Remand 11-14). Specifically, ECSC states, “[b]ecause [p]laintiffs’ causes of action all are premised on their assertion that [p]laintiffs validly were withdrawn from [TEC], and because establishing that premise unavoidably requires the Court to resolve whether the First Amendment requires it to defer to [TEC’s] determination on the issue, each of the [p]laintiffs[’] causes of action ‘requires resolution of a federal issue.’” (Id. at 14 (quoting Dixon, 369 F.3d at 816).

In the present case, ECSC failed to show that the First Amendment is an essential element to the plaintiffs’ causes of action. See Gully, 299 U.S. at 112 (stating a defendant must show that a federal right is “an element, and an essential one, of the plaintiff’s cause of action”) (citations omitted). The United States Supreme Court has expressly approved two methods for these types of disputes, and has granted the states the power to choose the method it will apply. All Saints Parish, 685 S.E.2d at 171. The First Amendment provides guidance for methods of constitutionally consistent legal application, not a basis for a direct claim or a direct cause of

the relief sought by the plaintiffs requires a finding that the defendants violated the plaintiffs’ First or Fourteenth Amendment rights.

2:15-cv-00000-SWT Document 1-1 Filed 06/16/15 Entry Number 107 Page 17 of 20

action arising under federal law. The plaintiffs' state-based causes of action neither advance, nor require the resolution of an essential federal issue, thereby establishing that the First Amendment issue is not necessarily raised.

2. The First Amendment Issue Is Not Actually Disputed

The plaintiffs and ECSC make arguments as to which approach the Court should apply in settling this dispute. The First Amendment, however, is not a contested issue. Neither party argues that the First Amendment, in and of itself, defeats or vindicates a right to relief; the central dispute concerns the judicially adopted means of analyses that have been held to be in accordance with the First Amendment, and provide the framework for church property dispute resolution.⁶ Thus, the First Amendment is not actually disputed.

3. The First Amendment Issue Is Not Substantial

The substantiality inquiry "looks . . . to the importance of the issue to the federal system as a whole." Gunn, 133 S. Ct. at 1066. Specifically, the United States Supreme Court defined the substantiality standard as an issue "indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum." Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 313 (2005) (citations omitted).

ECSC argues that whether the First Amendment permits the plaintiffs "to employ the power of the judiciary to abnegate the determinations of Church authorities on matters of Church governance and doctrine" is "a matter of immeasurable importance [n]ot merely to millions of Episcopalians across the country but to the free exercise of religion in general." (Def.'s Resp. to Pls.' Mot. to Remand 16) (emphasis omitted).

⁶ The United States Supreme Court has expressly approved the deference approach and the neutral principles of law approach as methods for a civil court's resolution of church disputes. All Saints Parish, 685 S.E.2d at 171.

#17
COA-

2:13-cv-00000-DWM Document 10-1 Filed 06/10/13 Entry Number 10 Page 18 of 20

Again, “the mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.” Merrell Dow Pharm., 478 U.S. at 813. The United States Supreme Court in Jones, 443 U.S. 595, and Milivojeovich, 426 U.S. 696, has defined approaches that state courts may apply in determining religious disputes without violating the First Amendment. The argument that it is substantial to the federal system is undone by the United States Supreme Court yielding the right to choose an approved approach to church dispute resolution to the states. Courts have interpreted the First Amendment to serve as a safeguard or a limitation on a civil court’s authority to ensure the “free exercise of religion” is not violated by undue consideration of ecclesiastical matters. Therefore, the issue raised by ECSC is inapplicable as the “serious federal interests” have already been addressed by state and federal systems. Thus, the First Amendment issue does not meet the substantiality standard.

4. Removal Of This Case Would Disrupt The Federal-State Balance Approved By Congress

ECSC argues that a federal court’s exercise of jurisdiction in this case will not result in a substantial number of state trademark cases being removed to federal court because this case implicates a First Amendment issue that simply does not arise in the vast majority of cases presenting similar claims. (Def.’s Resp. to Pls.’ Mot. to Remand 19).

If this Court determined that a case may be removed based on federal question jurisdiction whenever a defendant attributed a federal constitutional issue not alleged or advanced in a well-pleaded complaint, federal question jurisdiction could potentially be expanded to all cases containing tacit First Amendment issues. Federal courts require strict construction against removal. Lever, 2013 WL 436210, at *1. Therefore, allowing ECSC to remove this case would seriously disrupt the federal-state balance.

7/18
CDS

2:15-cv-00033-DWM Document 1-1 Filed 06/16/15 Entry Number 107 Page 19 of 20

C. REMOVAL MAY NOT BE PREDICATED ON A DEFENSE

ECSC relies on the First Amendment as a basis of its defense. In essence, ECSC claims the First Amendment prohibits a civil court from considering the underlying issue because it is purely ecclesiastical in nature. Similarly, in Burcaw v. Allegheny Wesleyan Methodist Connection, the defendants removed an action seeking a declaratory judgment regarding the control and disposition of church property. No. 1:07-cv-1531, 2007 WL 2254722, at *1 (N.D. Ohio Aug. 3, 2007). The defendants claimed the complaint raised purely ecclesiastical issues and, pursuant to the First Amendment, the court could not interfere in the dispute. Id. at *2. Judge Gaughan of the Northern District of Ohio found the defendants' First Amendment argument "tantamount to a defense to the action." Id. The court held that it lacked jurisdiction because the "plaintiffs' complaint [did] not rest on any federal or constitutional claim" Id. Thus, the action was remanded. Id.

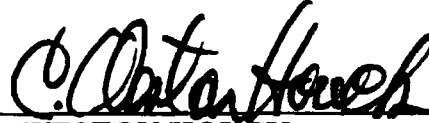
In the present action, the defendant's First Amendment argument is similarly "tantamount to a defense." The First Amendment was not pled in the complaint nor was it addressed in the answers or counterclaims. The First Amendment was initially raised in ECSC's notice of removal as an anticipatory dispute between the parties. As stated above, a defense cannot be used as a basis for federal question jurisdiction. Merrell Dow Pharm., 478 U.S. at 808 (citation omitted); see also Pinney, 402 F.3d at 443 (stating "a case may not be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case") (citation omitted). Thus, the Court lacks jurisdiction over this matter.

#19
CWA

IV. CONCLUSION

For the foregoing reasons, the plaintiffs' motion to remand (ECF No. 9) is granted.

AND IT IS SO ORDERED.



**C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE**

June 10, 2013
Charleston, South Carolina

#20
CWH

-STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

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

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

FILED
OCT - 1 AM 9: 09
CLERK OF COURT
DORCHESTER COUNTY

Case No. 2013-CP-18-00013

**ORDER DENYING DEFENDANTS'
MOTION TO JOIN ADDITIONAL
COUNTERCLAIM DEFENDANTS**

Exhibit G

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

PLAINTIFFS,)

v.)

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

DEFENDANT.)

This matter is before the Court on Defendants' Motion to Join Additional Counterclaim Defendants. For the reasons set forth in this Order, the Court denies the Defendants' Motion.

I. BACKGROUND

On April 3, 2013, The Episcopal Church in South Carolina ("ECSC") removed this action to federal court, and subsequently, Plaintiffs filed a Motion for Remand on April 10, 2013. On June 10, 2013, United States District Judge C. Weston Houck granted Plaintiffs' Motion to Remand this action to the Court of Common Pleas for the First Judicial Circuit. Before this case was removed to federal court, Defendants ECSC and The Episcopal Church ("TEC") filed their answers and counterclaims in this Court on March 28, 2013 and April 3, 2013, respectively. On July 19, 2013, this Court issued a scheduling order, indicating that the parties could submit

additional briefing on Defendants' Motion to Join Additional Counterclaim Defendants. After reviewing the Plaintiffs' Response and the Defendants' Reply, this Court DENIES Defendants' Motion to Join Additional Counterclaim Defendants.

II. JOINDER IS NOT APPROPRIATE BECAUSE COMPLETE RELIEF CAN BE HAD BETWEEN THE EXISTING PARTIES.

Rule 19(a), SCRPC, states in part that "[a] person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties.¹" Defendants TEC and ECSC seek declaratory and injunctive relief in their counterclaims, and they argue that they will be "unable to obtain full declaratory relief in this dispute over control of the Diocese" without the joinder of an additional 23 individuals. Defs. Reply to Pls. Add. Response to Mot. to Join Add. Counterclaim Defs., p. 3 (July 29, 2013). Defendants allege these individuals whom they seek to join improperly lay claim to control of the Diocese and its assets for themselves. *Id.*

Rule 19(a), SCRPC, provides that a person shall be joined if feasible where his or her absence precludes "complete relief ... among those already parties." When deciding whether joinder is required under Rule 19(a), the Court must determine if complete relief can be obtained between the persons or entities that are already parties in the action. "'Complete' relief refers to relief as between the persons already parties, not as between a party and the absent person whose joinder is sought ..." *United States v. Arlington Cnty., Va.*, 669 F.2d 925, 929 (4th Cir. 1982) quoting 3A Moore's Federal Practice P 19.07-1(1) at 19-128. Here, the question is whether Defendants TEC and ECSC can get complete relief as prayed for in their counterclaims against the existing parties without adding these 23 individuals. All of the South Carolina corporations

¹ The Note to Rule 19, SCRPC, states: "This Rule 19(a) is the same as the Federal Rule."

who own the property at issue are before the court. A declaration as to the proper use of that property and a determination as to which organization is entitled to use of that property does not require the presence of the individual trustees or board members of those entities. Thus, this Court finds that complete relief can be had between the existing parties, and joinder of the additional counterclaim individuals is not necessary under Rule 19, SCRCF.

III. JOINDER IS NOT APPROPRIATE BECAUSE ADDING THE ADDITIONAL DEFENDANTS WOULD BE FUTILE.

Rule 15(a), SCRCF², permits the amendment of a pleading "only by leave of court or by written consent of the adverse party." The Rule goes on to state that "leave shall be freely given when justice so requires and does not prejudice any other party." *Id.* When determining whether to grant a motion to join additional parties, a court must "consider both the general principles of amendment provided by Rule 15(a) and also the more specific joinder provisions of Rule 20(a)." *Pelczynski v. Orange Lake Country Club, Inc.*, 4:11-CV-01829-RBH, 2013 WL 504238 (D.S.C. Feb. 8, 2013) (quoting *Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 618 (4th Cir. 2001)). Rule 20(a), SCRCF, permits the joinder of parties when "there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." Although leave to amend should generally be "freely given," the South Carolina Court of Appeals has held that it may be denied where the proposed amendment would be futile. *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012) (citing *Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 604-05, 486 S.E.2d 269, 275 (Ct.App.1997)).

² The Notes to Rule 15 state: "This Rule 15(a) is substantially the same as the Federal Rule [...]."

Here, Defendants TEC and TECSC claim that joinder should be permitted under Rule 20, SCRCP, because the questions of fact and law relating to the counterclaims for declaratory judgment over control of the Diocese and its assets are the same as to the additional counterclaim Defendants as they are to the Plaintiffs. Answer and Counterclaims of TEC at pp. 39-51; Answer and Counterclaims of TECSC at pp. 56-83. However, the Court finds that joining the additional counterclaim individuals would be futile for the following reasons.

A. The Parties Whom Defendants Seek to Join Are Immune from Suit under South Carolina Law.

The parties whom the Defendants seek to join are immune from suit under South Carolina law; therefore, adding them as parties would be futile because liability would not attach to them in their capacity as directors, leaders and trustees of the two South Carolina non-profit corporations that are Plaintiffs.

Defendants allege that the individual counterclaim defendants whom they seek to join improperly lay claim to control of the Diocese and its assets for themselves. Defs. Reply to Pls. Add. Response to Mot. to Join Add. Counterclaim Defs., p. 3 (July 29, 2013). Defendants claim that the improper control exerted by these individuals arises from their status as either directors or trustees of the two South Carolina non-profit corporations that are Plaintiffs: The Protestant Episcopal Church in the Diocese of South Carolina and The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body. Def. TEC Answer and Counterclaims, p. 39-40 (April 3, 2013). The South Carolina Nonprofit Corporation Act, S.C. Code Ann. § 33-31-834 (hereinafter "The Act") provides:

- (a) All directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross

negligence. Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.

(b) Subsection (a) applies to the following:

[...] (2) not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12).

In essence, the South Carolina Nonprofit Corporation Act as cited above grants immunity to the "directors, trustees, or members" of "not-for-profit corporations, associations, and organizations" unless their conduct amounts to "willful, wanton, or gross negligence." *Id.* In their counterclaims, Defendants TEC and ECSC have made no factual allegations of conduct on the part of the individual leaders that amounts to willful, wanton, or gross negligence. Furthermore, Defendants made no factual allegations in their counterclaims that the actions of the leaders whom they seek to join were *ultra vires*. Based on the allegations in the pleadings currently before the Court, this Court finds that the individual leaders whom the Defendants seek to join as Counterclaim Plaintiffs are entitled to immunity from suit under The Act. Thus, joining these individual leaders in this suit would be futile.

Based upon the information before the Court at this time, joinder is improper.

IV. CONCLUSION

For the foregoing reasons, the Defendants' Motion to Join Additional Counterclaim Defendants is denied.

AND IT IS SO ORDERED.

September 27, 2013



Judge Diane S. Goodstein
First Judicial Circuit

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800013

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

2013 DEC 31 PM
CERTIFIED COPY
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: Both Motions to Reconsidered filed by Defendant TECSC's Motion to Reconsider on 10/11/2013 and 11/25/2013 are hereby denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

RECEIVED

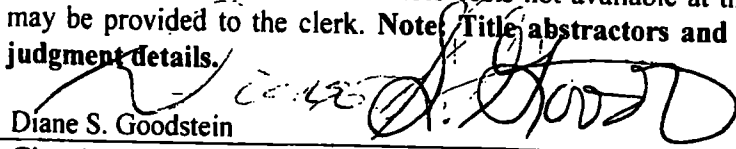
JAN 14 2014

SC Court of Appeals

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed

such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Diane S. Goodstein
Circuit Court Judge

2112

Judge Code

12/30/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on ³¹12/30/2013, and a copy mailed first class or placed in the appropriate attorney's box on ³¹12/30/2013, to attorneys of record or to parties (when appearing pro se) as follows:

SEE ATTACHED

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter: Melissa Singletary

Cheryl Graham - Clerk of Court

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

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

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800013**

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

2015 FEB -3 PM 5
 CLERK OF COURT
 DORCHESTER CO.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☒ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ **ends** ☐ **does not end the case.**

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

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

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

2/3/2015
Date

For Clerk of Court Office Use Only

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

SEE ATTACHED

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ruth Mott

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

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

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

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2015 FEB -3 PM 5:18

LEWIS &
DORCHESTER COUNTY

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

Case No. 2013-CP-18-00013

FINAL ORDER

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

PLAINTIFFS,)

v.)

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

DEFENDANT.)

I. Introduction

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

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

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

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

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

II. Procedural History

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

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

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

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

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

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

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

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

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

III. Findings of Fact

A. Plaintiff Diocese

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

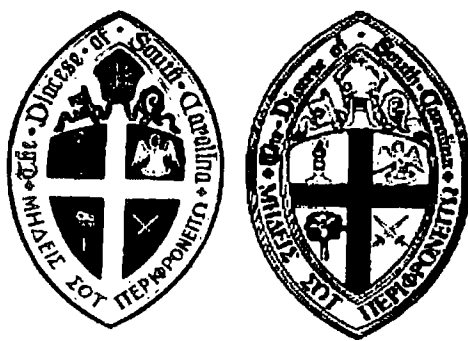
version. The Diocese contended that this new version was unconstitutional because the provisions in these new Canons conflicted with TEC's own Constitution.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Plaintiff Trustees

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

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

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

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

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

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

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

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

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

C. Plaintiff Churches

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Defendants TEC and TECSC

67. TEC is a New York unincorporated association.

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

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

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

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

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

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

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

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

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

76. TEC does not have an ultimate judicatory.

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

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

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

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

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

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

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

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

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

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

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

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

IV. Conclusions of Law

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

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

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

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

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

A. Corporate Control and Rightful Leadership

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

1. Diocese

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q: I am.

A: What is your question?

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

A: I don’t believe so.

Mr. Runyan: Thank you, sir.

The Witness: But I may be wrong.

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

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

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

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

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

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

2. Trustees

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

3. Parish Churches

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

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

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

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

B. Real and Personal Property Rights

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

1. Express and Constructive Trusts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Marks

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

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

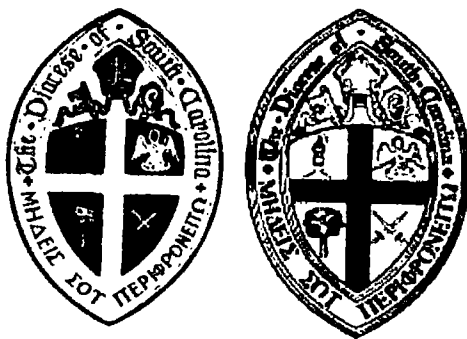
¹⁸ A person “includes a juristic person, as well as a natural person. The term “juristic person” includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.” S.C. Code Ann. § 39-15-1105(4).

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

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

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

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



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

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

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

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

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

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

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

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

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

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

bank account in the registered name of the Diocese.

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

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

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

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

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

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

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

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

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

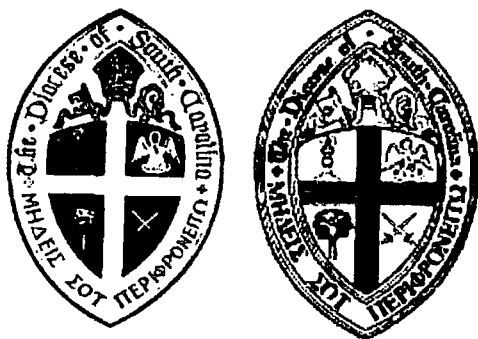
TEC's presiding bishop called a special convention using both the name and the seal of the Diocese. Even after the entry of the January 2013 orders, TECSC continued to use the name of the Diocese on its checking account, acted to make modifications to the Diocese's Constitution and Canons also using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

IT IS THEREFORE ORDERED,

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

Diocese:

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



St. Michael's Church:

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

St. Philip's Church:

- "St. Philip's Church"

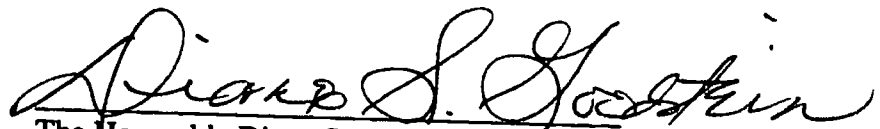
The Parish Church of St. Helena:

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

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

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

IT IS SO ORDERED!



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

February 3, 2015
Orangeburg, South Carolina

Plaintiffs' Second Amended Complaint (excerpts)

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

The Protestant Episcopal Church In The)

Diocese Of South Carolina; The Trustees of)

The Protestant Episcopal Church in South)

Carolina, a South Carolina Corporate Body;)

All Saints Protestant Episcopal Church, Inc.;)

Christ St. Paul's Episcopal Church; Christ)

The King, Waccamaw; Church Of The)

Cross, Inc. and Church Of The Cross)

Declaration Of Trust; Church Of The)

Holy Comforter; Church of the Redeemer;)

Holy Trinity Episcopal Church; Saint)

Luke's Church, Hilton Head; Saint)

Matthews Church; St. Andrews Church-Mt.)

Pleasant and The St. Andrews Church-Mt.)

Pleasant Land Trust; St. Bartholomews)

Episcopal Church; St. Davids Church;)

St. James' Church, James Island, S.C.; St.)

John's Episcopal Church of Florence, S.C.;)

St. Matthias Episcopal Church, Inc.; St.)

Paul's Episcopal Church of Bennettsville,)

Inc.; St. Paul's Episcopal Church of)

Conway; The Church Of St. Luke and St.)

Paul, Radcliffeboro; The Church Of Our)

Saviour Of The Diocese of South Carolina;)

The Church Of The Epiphany (Episcopal);)

The Church Of The Good Shepherd,)

Charleston, SC; The Church Of The Holy)

Cross; The Church Of The Resurrection,)

Surfside; The Protestant Episcopal Church,)

Of The Parish Of Saint Philip, In Charleston,))

In The State Of South Carolina; The)

Protestant Episcopal Church, The Parish Of)

Saint Michael, In Charleston, In The State)

Of South Carolina and St. Michael's Church)

Declaration Of Trust; The Vestry and)

Church Wardens Of St. Jude's Church Of)

Walterboro; The Vestry and Church)

Wardens Of The Episcopal Church Of The)

Parish Of Prince George Winyah; The)

Vestry And Church Wardens Of The)

Episcopal Church Of The Parish Of St.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-18-00013

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

CERTIFIED COPY
2013 MAR -5 AM 10:54
CLECK OF COURT
DORCHESTER COUNTY

name of the Diocese of South Carolina in an unauthorized web address called "www.episcopalchurchsc.org";

- ix. ECSC, through its agent Charles vonRosenberg, improperly used the name of the Diocese of South Carolina, or a name so similar in nature to the other service marks to cause confusion with the public, when the ECSC purportedly called a convention for March 9, 2013 and stated the intent to modify corporate decisions, continue to operate as the Plaintiff and take other unspecified actions.

**FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT**

(Interest in Real and Personal Property, South Carolina Code of Laws §§ 15-53-10, *et seq.*)

490. Plaintiffs incorporate by reference paragraphs 1-489.

491. The Defendant TEC contends the real and personal property of Plaintiffs belongs to the Defendant or to those under its control "to be used for the mission of the Episcopal Church."

492. The Defendant TEC contends that it, or those under its direction and control, have the right to the ownership and possession of Plaintiffs real and personal property even though there are no documents that have been signed by the Plaintiffs that expressly or impliedly create a property interest in favor of the Defendant TEC and even though the Defendant TEC has not taken any reasonable steps necessary to obtain and protect that alleged interest through any commonly recognized mechanism to record its alleged interest in any court in South Carolina.

493. There exists an actual, justiciable controversy between the Plaintiffs and the Defendant TEC.

494. As a result of the matters alleged above, the Plaintiffs seek a declaration, in accordance with the provisions of § 15-53-20 of the South Carolina Code of Laws (1976), that:

- a. The Defendant TEC has no legal, beneficial or equitable interest in any of the real and personal property of Plaintiffs;
- b. The Defendant TEC and anyone claiming under any alleged interest of the Defendant TEC has no right, title or interest, legal, beneficial or equitable, to the real and personal property of the Plaintiffs;
- c. The Plaintiffs are the lawful and rightful possessors of all of the real and personal property as alleged above.

SECOND CAUSE OF ACTION

(Service Mark Infringement, South Carolina Code of Laws §§ 39-15-1105, *et seq.*)

495. Plaintiffs incorporate by reference paragraphs 1-494.

496. Defendants, and those acting under its direction and control, without the consent of the Plaintiffs, have used and caused to be used the registered service marks of Plaintiffs in the connection with their services and have used reproductions, copies or imitations of Plaintiffs' registered service marks which is likely to, and has, caused confusion, mistake and deception in that it has done so falsely claiming to be, or have the consent of, Plaintiffs.

497. Defendants and those acting under their direction and control have committed the acts alleged with the intent to cause confusion, mistake or to deceive.

498. The registered service marks of the Plaintiffs are famous within the meaning of § 39-15-1165, South Carolina Code of Laws (1976).

499. The Plaintiffs are entitled to temporary and permanent injunctions prohibiting Defendants and those acting under their direction and control from using the registered service

marks, requiring the return of all the counterfeit or imitation service marks to an officer of the Court or to the Plaintiffs for their destruction, and for such reasonable attorney's fees as may be determined by the Court all as provided by § 39-15-1170 of the South Carolina Code of Laws (1976).

THIRD CAUSE OF ACTION
(Improper Use of Names, Styles and Emblems South Carolina Code of Laws §§ 16-17-310 and 320)

500. Plaintiffs incorporate by reference paragraphs 1-499.

501. Plaintiffs are charitable organizations in the State of South Carolina.

502. Defendants and persons under their direction and control have assumed, used, adopted and have continued to assume, use and adopt the names, styles and emblems of the Plaintiffs or those so nearly resembling such names, styles and emblems, to be colorable imitations, all in violation of § 16-17-310 of the South Carolina Code of Laws (1976).

503. Plaintiffs were organized prior to and first used the names, styles and emblems or those substantially similar to those assumed, used and adopted by the Defendants and persons or any entity under their direction or control before Defendants or any organization under their direction or control was organized and first used the names, styles or emblems.

504. Plaintiffs are entitled to a declaratory judgment that Plaintiffs have the exclusive use of such names, styles and emblems and to have the rights of the Defendants and those under its direction or control including their individual members fixed and determined all as provided in § 16-17-310, South Carolina Code of Laws (1976).

505. Plaintiffs are entitled to temporary and permanent injunctions against the Defendants and those under their direction or control for the actual, and threatened continued,

violation of the provisions of §16-17-310 all as provided by § 16-17-320, South Carolina Code of Laws (1976).

WHEREFORE, Plaintiffs pray that this Court declare the rights, status and other legal relations of the parties pursuant to §§ 15-53-10, *et seq* of the South Carolina Code of Laws and enjoin the Defendants and those acting under their direction and control, pursuant to §§ 39-15-1105, *et seq.*, 16-17-10 and 16-17-20 of the South Carolina Code of Laws, all as follows:

- a. That the Plaintiff, The Protestant Episcopal Church in the Diocese of South Carolina ("Diocese of South Carolina") is the only properly organized civil corporation and organization entitled to the use and control of the corporate entity, its names, emblems, styles and seal, its corporate assets, its real and personal property;
- b. That the Plaintiff, The Trustees of The Protestant Episcopal Church in South Carolina, a South Carolina Corporate Body ("Trustees") is the only properly organized civil corporation and organization entitled to the use and control of the corporate entity, its names, emblems, styles and seal, its corporate assets, its real and personal property;
- c. That the only proper and authorized representatives of the Diocese of South Carolina and of the Trustees are the respective members of their Board of Directors, and their duly elected or appointed successors, and employees and that they alone are authorized to update the signature cards on any account held by the Diocese of South Carolina or the Trustees and to file proper amendments to the articles of incorporation and any other necessary filing with the South Carolina Secretary of State;
- d. That the Diocese of South Carolina has withdrawn from the Defendant, TEC;

- e. That there is only one of each Plaintiff Parishes and that each Parish through its Board of Directors and its duly elected or appointed successors and employees are the only proper authorities of the Parish and are entitled to the exclusive use and control of the Parish corporation, its assets, its real and personal property;
- f. That the Defendants may not assume or hold out that any entities under their direction or control are the Diocese of South Carolina, the Trustees or are any of the Plaintiff Parishes;
- g. That the Defendants or anyone under their direction or control does not have legal capacity to act in the name of the Diocese of South Carolina, the Trustees or in the name of any of the Parishes;
- h. That the Defendant TEC does not have a legal, beneficial or equitable interest in the real and personal property owned by the Diocese of South Carolina, the Trustees or in that of any of the Plaintiff parishes;
- i. That the Defendant TEC has no rights to or authority over any Diocese of South Carolina, Trustees or Parish real and personal property, and that the Defendant TEC has no right or authority to possess, divert, encumber, alienate, transfer, or use any such property;
- j. That the Defendants and any entity or persons under their direction or control may not use in any way the registered service marks of the Diocese of South Carolina or of the Plaintiff parishes and that it be temporarily and permanently enjoined from such uses all as provided by Sections 39-15-1105 *et. seq.* South Carolina Code of Laws (1976);
- k. That the Defendants, their successors and assigns, and any person acting in concert with them, or under their direction or control be temporarily and permanently enjoined

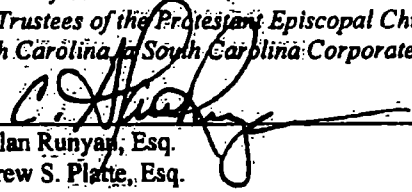
from operating or using under the Plaintiffs' names, filing unauthorized corporate documents under the Plaintiffs' names and using the names, seals, other service marks and intellectual property of the Plaintiffs without their express written authorization all as provided by Sections 16-17-310 and 320 of the South Carolina Code of Laws (1976);

- l. That the Defendants, its officers, agents, servants, employees, members, and attorneys, and any person in concert with or under their direction or control be temporarily and permanently enjoined from holding themselves out as the officers or other leaders of the Plaintiffs and/or any other constituent entities of the Plaintiffs all as provided by Sections 16-17-310 and 320 of the South Carolina Code of Laws (1976);
- m. That the Court grant such other, further or different relief as may be deemed just and proper including reasonable attorney's fees as provided by Sections 39-15-1105 *et. seq.* of the South Carolina Code of Laws (1976).

March 4 2013

Respectfully submitted,

*The Protestant Episcopal Church In The
Diocese of South Carolina; and
The Trustees of the Protestant Episcopal Church of
South Carolina, a South Carolina Corporate Body:*

By: 

C. Alan Runyan, Esq.

Andrew S. Platte, Esq.

SPEIGHTS & RUNYAN

2015 Boundary Street, Suite 239

Beaufort, SC 29902

(803) 943-4444

Henrietta U. Golding, Esq.

McNAIR LAW FIRM

P.O. Box 336

Myrtle Beach, SC 29578

(843) 444-1107

Charles H. Williams, Esq.

WILLIAMS & WILLIAMS

P.O. Box 1084

Orangeburg, SC 29116-1084

(803) 534-5218

David Cox, Esq.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP.

P.O. Box 999

Charleston, SC 29402

(843) 722-3400

Thomas C. Davis, Esq.

HARVEY & BATTEY, PA

1001 Craven Street

Beaufort, SC 29901

(843) 524-3109

Defendant's Motion to Reconsider (excerpts)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
THE PROTESTANT EPISCOPAL)
CHURCH IN THE DIOCESE OF)
SOUTH CAROLINA, ET AL.,)
Plaintiffs,)
v.)
THE EPISCOPAL CHURCH, ET AL.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2013-CP-18-00013

**DEFENDANTS' NOTICE AND
MOTION FOR RECONSIDERATION
OF FINAL ORDER**

CERTIFIED COPY
2015 FEB 13 PM 12:26
Clerk of Court
DORCHESTER COUNTY

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Defendants The Protestant Episcopal Church (also referred to herein as "TEC" or "National Church") and The Episcopal Church in South Carolina (also referred to herein as "TECSC") hereby submit this motion for reconsideration of the Court's Final Order dated and entered on February 3, 2015 (the "Order").

This motion for reconsideration is divided into several sections as set forth below. Each section provides multiple grounds for reconsideration of the Court's Order. Collectively, pursuant to these grounds for reconsideration, Defendants seek rulings on matters that the Court did not address in its Order; Defendants seek the Court's reasons for deciding certain matters where no reasons are given; and Defendants seek for the Court to reconsider its findings and correct its errors based on the record and the law.

Section I.	Grounds For Reconsideration Based On Exceptions To Particular Statements, Findings, And Conclusions In The Order.....	Page 2
Section II.	Grounds For Reconsideration Based On The Order's Failure To Address Defendants' Contentions Regarding The Identity Of The Parties, The Nature Of This Dispute, The Procedural History, The Evidence Presented, The Relevant And Determinative Facts, The Applicable Legal Analysis, And The Proper Relief.....	Page 55

In 1971, the Secretary of State issued a Certificate of Incorporation for "TRINITY EPISCOPAL CHURCH, PINOPOLIS" which described the corporation's purpose as "operating a Parish or Mission, organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina as now in force or as hereafter may be amended"

TP-1. In 1981, real property was conveyed to "Trinity Episcopal Church, Pinopolis, South Carolina." TP-3. In 1984, real property was conveyed to "TRINITY EPISCOPAL CHURCH." TP-4. In 1996, real property was conveyed to "Trinity Episcopal Church in Pinopolis, Berkeley County, South Carolina." TP-5. In 2000, real property was conveyed to "TRINITY EPISCOPAL CHURCH." D-TP-25. In 2009, real property was conveyed to "Trinity Episcopal Church." TP-6.

Between 1961 and 1996, Trinity, Pinopolis sought and received the consent of the Diocese to alienate or encumber real property at least three times, as required by National Canons. D-375A at 61; D-377A at 108; D-398A at 6.

Moreover, the evidence shows that:

Trinity, Pinopolis used the Vestry Handbook published by the Diocese. TP dep. at 14-15.

Trinity, Pinopolis made pension payments to the Church Pension Fund for its clergy as required by National Church canons. TP dep. at 36.

Trinity, Pinopolis availed itself of liability insurance provided by an affiliate of the Church Pension Fund. TP dep. at 37-40.

Trinity, Pinopolis regularly used the National Church's *Prayer Book* and Hymnal. TP dep. at 27.

Trinity, Pinopolis posted signs in the community that had the words "Trinity Episcopal Church." TP dep. at 25.

Trinity, Pinopolis sought the Bishop's approval for remarriage, as required by National Church canons. TP dep. at 29.

Trinity, Pinopolis sought and received licenses for its eucharistic ministers, as required by National Church canons. TP dep. at 28.

4. CONCLUSIONS

a. Express trust

1. Each of the following parishes holds "[a]ll [its] real and personal property ... in trust for [the National Church]" and its "Diocese thereof," D-193 at 31 (1979 National Church Canon I.6.4), TECSC, as the result of having executed one or more writings before January 1, 2006, described in full above and outlined briefly below, that expressly accepted the National Church's governance sometime after the National Church adopted the Dennis Canon in 1979, or that expressly accepted the Diocese's governance sometime after 1996, at which point the Diocese had adopted its version of the Dennis Canon, or both. As a result of these writings having been made before January 1, 2006, and because there has been no evidence showing that at the time the writings were made the parishes intended the trusts to be revocable, the trusts are irrevocable.

All Saints: 1985 bylaws stating "we are bound by the Constitution and Canons of the National Church" D-AS-24.

Christ Church: 1980 bylaws stating that the parish "does acknowledge and accede to ... the Constitution and Canons of the Protestant Episcopal Church in the United States of America," CC-25, and vestry statement "reaffirming our willingness to conform to the Constitutions and Canons of the [National Church]." D-CC-6.

Christ St. Paul's: 1980 bylaws providing that the parish was organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the National Church. Tr. at 337.

Church of the Cross: 2003 bylaws describing the purpose of the parish corporations as “the support and maintenance of a Church ... in accordance with the doctrine and practices of [the National Church] and of the Diocese of South Carolina.” TC-12 (art. II).

Epiphany: 2002 bylaws stating “[t]he object and purpose of the [parish] corporation is for the support and maintenance of a Church ... in accordance with the doctrine and practices of the [National Church] and the Diocese of South Carolina.” E-4B (art. II).

Good Shepherd: 2001 amended corporate articles describing the parish corporation as “organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina ...,” GS-7 at 4; and 2004 Articles of Merger describing St. Luke's and St. Paul's as “organized pursuant and subject to the Canons of the Protestant Episcopal Church in the Diocese of South Carolina (The “Diocese”). GS-8 at 3, 4-5.

Holy Comforter: 1985 Constitution and bylaws providing that the parish “acknowledge[s], accede[s] to and adopt[s] ... the Constitution and Canons of the [National Church]” D-HC-6 at 1 (Preamble); Tr. at 559.

Holy Cross (Stateburg): 1980 and 1981 bylaws stating that the parish, “having resolved to accept the rules and regulations of the [National] Church, in effect, accedes to ... the Constitution and Canons of the [National Church].” HCS-11 (art. I).

Holy Trinity: 1985, 1988, 1993, and 2001 bylaws stating that the parish “does acknowledge and accede to ... the Constitution and Canons of the [National Church] and the

Constitution and Canons of ... the Diocese of South Carolina.” D-HT-38 (1985 art. I); D-HT-35 (1988 art. I); D-HT-34 (1993 art. I); D-HT-33 (2001 art. I).

Our Saviour: 1980 “promise to conform to the Constitution [and] Canons ... of the [National Church],” D-OS-52; 1981 bylaws stating the parish was “organized for the purpose of operating an Episcopal Church (mission) pursuant to the Constitution and Canons of ... the [National Church],” D-OS-63 (art. I, sec. 1); 1984 letter stating, “[w]e agree to conform to the Constitution and Canons of the [National Church],” D-OS-51; and 1992 and 2003 bylaws stating that the parish “acknowledges the authority of the [National Church] in accordance with the Constitution and Canons thereof and the authority of the [Diocese of South Carolina] in accordance with the Constitution and Canons thereof.” D-OS-65 (1992 art I); D-OS-66 (2003 art. I).

Redeemer: 2000 bylaws stating that the parish “shall conform to the Constitution and Canons of the [National Church], and the Constitution and Canons of ... the Diocese of South Carolina.” R-24 (art. I).

Resurrection: 1983 bylaws stating that the “parish is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of ... the [National Church].” RS-11 (art. I).

St. Bartholomew’s: 2005 bylaws stating that the parish “accedes to and adopts the Constitution and Canons of the [National Church] and of the Diocese of South Carolina.” D-SB-D-SB-12 (art. I).

St. David’s: 1982 and 1992 parish Constitution and bylaws stating that the parish “accedes to and adopts the Constitution and Canons of the [National Church], and also the

Constitution and Canons of the Diocese of South Carolina ." D-SD-3 (1982 Const. sec. 1); D-SD-4 (1992 Const. sec. 1; sec. 2.A).

St. Helena's: 1987 bylaws stating that the parish "pledges to adhere to the doctrine, discipline, and worship of the [National Church]," D-PCSH-42 (art. I), and that any bylaws provision "which may be in conflict with the canons of the ... [National Church] shall be considered null and void." D-PCSH-42 (art. VI).

St. James': 1993, 1995 and 2001 parish Constitution stating that the parish "accedes to and adopts the Constitution and Canons of the [National Church] and to the Constitution and Canons of the Diocese of South Carolina." D-SJJI-36 (1993 art. I), D-SJJI-37 (1995 art. I); D-SJJI-38 (2001 art. I), and that "[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for the Church and the Diocese thereof" D-SJJI-36 (1993 art. VII, sec. V); D-SJJI-37 (1995 art. VII, sec. V); D-SJJI-38 (2001 art. VII, sec. V).

St. John's, John's Island (Charleston): 1996 amended corporate articles stating that the parish corporation "is subject to the Constitution and Canons of the [National Church] and ... the Diocese of South Carolina," D-SJC-25; and 2001 parish Constitution and by-laws stating that the parish "accedes to and adopts the Constitution and Canons of the Diocese of South Carolina and of the [National Church]." D-SJC-21 (art. I).

St. Jude's: 1990 parish Constitution stating that the parish "accedes to and adopts the Constitution and Canons of the [National Church] and also the Constitution and Cannons [sic] of ... the Diocese of South Carolina." D-SJ-37 at Bates SJ-313-00175 (art. II

St. Luke's: 2000 bylaws stating that the parish "accedes to and adopts the Constitution [and] canons ... of the [Diocese of South Carolina], and the [National Church]." SL-6 (2000 art. II).

St. Luke and St. Paul: 1995 bylaws stating that the parish is organized for the purpose of "operating an Episcopal church pursuant to the Constitution and Canons of ... the Diocese of South Carolina and of the [National Church]." D-SLP-13 (art. I, sec. 1).

St. Matthew's, Fort Motte: 1982 and 2004 parish Constitution and bylaws stating that the parish "accedes to the Constitution and Canons of the [National Church], and [of] the Diocese of South Carolina." D-SM-FM-3 (1982 art. I; art. XIII); SM-FM-2 (2004 art. I).

St. Michael's: 1989 bylaws stating that the parish "acknowledges the authority of ... the Diocese of South Carolina ... and of the [National Church]." D-SMI-23 (art. II, sec. 2.1).

St. Paul's, Bennettsville: 2002 corporate articles describing the purpose of the parish corporation as "operat[ing] a Parish organized under and subject to the Canons of ... the Diocese of South Carolina," SPB-1; and 2004 bylaws which authorized the vestry to "acquire and purchase" and to "sell, transfer mortgage or authorize disposition of" real property "so long as such acts are in accord with the Canons of the [National Church]." D-SPB-28 (art. III, sec. 6).

St. Paul's, Summerville: 1992 bylaws stating that the parish "is organized pursuant to the Constitution and Canons of [the National Church] and of ... the Diocese of South Carolina." SPS-26.

St. Philip's: 1987 Articles of Restatement describing the purpose of the parish corporation as "in accord with the Articles of Religion of the Protestant Episcopal Church in the United State of America" SPH-30.

Trinity, Edisto Island: 1980, 1988, 1991, 1992, and 1998 bylaws stating that the parish “is organized for the purpose of operating an Episcopal Church pursuant to the Constitution and Canons of the Diocese of South Carolina and of the [National Church].” D-TED-13 (art. I, sec. I).

Trinity, Myrtle Beach: 1993 bylaws stating that the congregants seeking parish status “do hereby acknowledge, accede to and adopt ... the Constitution and Canons of the [National Church] and the Constitution and Canons of the ... Diocese of South Carolina.” D-TMB-26 (preamble).

Trinity, Pinopolis: 1985 admission as a parish of the Diocese which required the parish to state its “willingness to conform to the Constitution and Canons of the [National Church].” D-TP-31; D-401A at 32-33.

2. In addition, St. Matthias holds all its real and personal property in trust for the National Church and its local Diocese, TECSC, as the result of having executed corporate articles in 1984 expressly describing the parish corporation’s purpose as “operating a Mission (Church), organized pursuant and subject to the Canons of ... the Diocese of South Carolina as now in force or as hereafter may be amended” STM-3. At that time, the Constitution of the Diocese of South Carolina “adopt[ed]” the National Church’s Constitution and Canons, D-398B at 2 (1983 Diocesan Const. art. I), and thereby incorporated the Dennis Canon into its governance, which accordingly was accepted by St. Matthias in its 1983 corporate articles. Moreover, because the parish’s 1984 corporate articles made the corporation “subject to” the Diocese’s canons “as hereafter may be amended,” when the Diocese adopted its version of the Dennis Canon in 1987 the parish corporation became “subject to” it. As above, the fact that the

Transcript of October 11, 2013 (excerpts)

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
 2 COUNTY OF DORCHESTER CASE NO. 2013-CP-18-00013

3 THE PROTESTANT EPISCOPAL CHURCH)
 4 IN THE DIOCESE OF SOUTH CAROLINA,)
 et al.,)
 5 Plaintiffs,)

6 vs.)

TRANSCRIPT OF RECORD

7 THE EPISCOPAL CHURCH, et al.,)
 Defendants.)

8 THE EPISCOPAL CHURCH,)
 9 Counterclaim Plaintiff,)

10 vs.)

11 THE PROTESTANT EPISCOPAL CHURCH)
 IN THE DIOCESE OF SOUTH CAROLINA,)
 12 et al.,)
 Counterclaim Defendants,)

13 and)

14 MARK J. LAWRENCE, et al.,)
 15 Additional Counterclaim)
 Defendants.)

17 OCTOBER 11, 2013
 18 ST. GEORGE, SC

19
 20 B E F O R E:

21 HONORABLE DIANE SCHAFER GOODSTEIN

22
 23 RUTH L. MOTT, RPR, CRR
 24 CIRCUIT COURT REPORTER

1 it with that. I must say that if I had to pick a case that
2 was closer, factually, to this, it would be very difficult to
3 do. We have the departure of an Episcopal Church from the
4 diocese. We have a bishop in The Episcopal Church saying
5 that the leadership has abandoned their offices because
6 they've departed. We have a meeting of the congregation
7 voting to change their corporate articles, voting to withdraw
8 from the diocese and from The Episcopal Church, and we have
9 the loyalists being installed as the recognized vestry of
10 that church. It sounds really familiar, only difference is
11 we're talking about a diocese and the national church. In
12 there, bluntly stated, the Supreme Court of South Carolina in
13 several places said, I don't care whether you're hierarchy or
14 not, doesn't really matter if you are or not. And on that
15 question, if it becomes an issue in this case, we highly
16 contest the existence of hierarchy between us, the diocese,
17 and the national church. There's several cases that have
18 just come down that raise the question about whether that's
19 even something they should still claim, and they do claim
20 that, but All Saints says you don't even need to go there.
21 And under the All Saints case what was determined, that
22 corporate decision, in spite of claims of abandonment or
23 alternative existence of some other ecclesiastical entity,
24 corporate control was resolved by those corporate decisions
25 and the parting of ways that were allowed under South

Transcript of
November 25, 2013
(excerpts)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

THE PROTESTANT EPISCOPAL CHURCH)
 IN THE DIOCESE OF SOUTH CAROLINA,)
 et al.,)
 Plaintiffs,)

vs.)

TRANSCRIPT OF RECORD

THE EPISCOPAL CHURCH, et al.,)
 Defendants.)

THE EPISCOPAL CHURCH,)
 Counterclaim Plaintiff,)

vs.)

THE PROTESTANT EPISCOPAL CHURCH)
 IN THE DIOCESE OF SOUTH CAROLINA,)
 et al.,)

Counterclaim Defendants,)

and)

MARK J. LAWRENCE, et al.,)
 Additional Counterclaim)
 Defendants.)

NOVEMBER 25, 2013
 CAMDEN, SC

B E F O R E:

HONORABLE DIANE SCHAFER GOODSTEIN

Ruth L. Mott, RPR, CRR
 Circuit Court Reporter

1 Episcopal Church made a statement, while they did not file
2 with us a representation that the Court had said both parties
3 needed to file -- the Episcopal Church in South Carolina did,
4 the Episcopal Church did not -- they did make this statement
5 in one of their responses which raises this issue: While the
6 First Amendment requires Courts to defer to the actions and
7 decisions made by the highest body in a church organization
8 and to enforce those actions and decisions when they impact
9 secular disputes over matters involving corporate control and
10 possession of property -- that's setting up the relevance of
11 their position.

12 THE COURT: That's in a hierarchical state.

13 MR. RUNYAN: That's right.

14 THE COURT: We are not a hierarchical state.

15 MR. RUNYAN: I agree with that.

16 THE COURT: Go ahead.

17 MR. RUNYAN: Then they say the First Amendment,
18 nevertheless, bars courts from requiring the process, so they
19 set up the idea of relevance to their position and you can't
20 get discovery. The Episcopal Church in South Carolina ends
21 up being not quite as clear, but it raised the whole issue
22 of, if any of that information might be relevant at a trial,
23 then we're entitled to discovery of it, and that's what this
24 whole process is about. I say that not because I want it to
25 be relevant because I don't think it is relevant, but I don't

1 THE COURT: Okay. That you needed these particular
2 documents and why?

3 MR. RUNYAN: We set out the objection in the motion. We
4 didn't set out the legal reasoning, but we did say that
5 here's the objection.

6 THE COURT: Right.

7 MR. TISDALE: Your Honor, in that September hearing the
8 phrase that I remember most, you said right off, I am not
9 going to dangle my feet in ecclesiastical waters, and that
10 was the tenor of the order that day.

11 THE COURT: Right.

12 MR. TISDALE: And so far as we know it carried forward
13 to this day. If that needs to be changed, we would like an
14 opportunity to address it in a proper way.

15 THE COURT: I understand. It's not whether or not I
16 choose to. It's whether or not the law allows it. South
17 Carolina's not a hierarchical enforcement state. We're just
18 not.

19 MR. TISDALE: You mean on neutral principles?

20 THE COURT: Exactly. We're just not. And there's some
21 states that are. We are not, and the All Saints case makes
22 that abundantly clear. And the reason that these documents I
23 think very well may be relevant or lead to relevant evidence,
24 I'm convinced, is that -- it would be the use of the marks,
25 and that's going to be, I think, central to -- a central

Transcript of
December 30, 2013
(excerpts)

STATE OF SOUTH CAROLINA))
COUNTY OF DORCHESTER) COURT OF COMMON PLEAS

THE PROTESTANT EPISCOPAL)
CHURCH IN THE DIOCESE OF)
SOUTH CAROLINA, ET AL.,)

PLAINTIFFS,)

v.)

TRANSCRIPT OF RECORD
13-CP-18-00013

THE EPISCOPAL CHURCH,)
ET. AL.)

DEFENDANTS.)

December 30, 2013
Saint George, South Carolina

B E F O R E :

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

C. ALAN RUNYAN, ESQ.
ANDREW S. PLATTE, ESQ.
HENRIETTA U. GOLDING, ESQ.
HARRY A. OXNER, ESQ.
WILLIAM A. BRYAN, ESQ.
Attorneys for the Plaintiffs

ALLAN R. HOLMES, ESQ.
THOMAS S. TISDALE, ESQ.
JASON S. SMITH, ESQ.
Attorneys for Defendants

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Melissa Singletary

1 that's subcontrary to the entire bylaws themselves.

2 THE COURT: Why?

3 MR. SMITH: So just because they're
4 applying a proce-- they can't apply a default
5 procedure to totally contradict the entire bylaws.

6 THE COURT: Why?

7 MR. SMITH: Because it's fundamentally
8 inconsistent.

9 THE COURT: Where?

10 MR. SMITH: Your Honor, I see your point
11 and I think you understand my position.

12 THE COURT: Exactly. In other words,
13 here -- here's where South Carolina law is. We are
14 not a hierarchal state. That is made clear by All
15 Saints and we keep running into this. And what I
16 want to be firm and what I want to be consistent
17 about, is that under South Carolina law, and we have
18 -- we clearly have statutory provisions which
19 contemplate charitable organizations which have a
20 religious nature. And what that provision is
21 talking about is that if the bylaws of the
22 organization say we do not want our bylaws changed
23 except by a vote of two thirds majority, and that is
24 bylaw, would the statute is contemplate is where we
25 yield to that because it's in the nature of any

Trial Transcript (excerpts)
July 8-25, 2014

1 Q. And how long have you attended Church at St. Michael's?

2 A. Well, I was baptized and confirmed there, so however
3 long that's been.

4 Q. Do you consider yourself to be a member of that parish?

5 A. Yes, ma'am.

6 Q. And with respect to being a member of the parish what's
7 the basic criteria for that?

8 A. I haven't looked at the bylaws in some time, but
9 basically you have to be a communicant -- excuse me, you
10 asked about a member?

11 Q. Yes.

12 A. Baptized member, I believe, in good standing.

13 Q. And as far as with St. Michael's, to your knowledge what
14 is that corporate status of St. Michael's?

15 A. I believe it was incorporated in 1751.

16 Q. Is it a profit or nonprofit corporation?

17 A. Nonprofit.

18 Q. Do you not have knowledge based upon your dealings with
19 the parish as to how long that parish has existed?

20 A. Yes, ma'am. I've been on the vestry and was also the
21 junior and senior warden, so based on my familiarity with
22 that history I can tell you it's been incorporated and going
23 since that time.

24 Q. Please tell the Court, what is the vestry?

25 A. The vestry is a group of lay people charged with the

1 governance of the civil affairs of the church as opposed to
 2 the spiritual affairs, which the rector would be in charge
 3 of. At St. Michael's I think there are three new members
 4 elected to three-year terms every year, so it rotates. I
 5 believe that the rector is a member of the vestry.

6 Q. When you say that a vestry member is elected, elected by
 7 whom?

8 A. By the parish at the annual parish meeting.

9 Q. By the members of the parish?

10 A. Yes, ma'am.

11 Q. And would you analogize the vestry to a body --

12 A. It's sort of like a board of directors.

13 Q. And are there members in the vestry that are officers,
 14 or how does that work?

15 A. Yes, ma'am, the senior warden more or less functions as
 16 a president, the junior warden would be the vice president,
 17 at St. Michael's he or she is primarily in charge of
 18 financial affairs, and they elect a secretary.

19 Q. With respect to St. Michaels, are there governing
 20 documents for that nonprofit corporation?

21 A. Yes. I believe there's a constitution and bylaws.

22 Q. What is the role -- you said the role of the senior
 23 warden was president?

24 A. More or less as the president. He functions as
 25 basically the head of the vestry.

1 is that I am a member of the committee and participate in
2 discussions but cannot vote.

3 Q. And with respect to your duties as a chancellor in your
4 ex officio position of the standing committee, can you
5 explain to the Court essentially what is the standing
6 committee?

7 A. Sure. That is actually in another article of the
8 constitution entitled Of the Standing Committee.

9 Q. That is Article 9, same page, A-5?

10 A. Yes, ma'am. I can read this if you want or I can
11 summarize.

12 Q. Summarize, please.

13 A. It's actually I believe, as I entertain it, a board of
14 directors of the diocese.

15 Q. Now, with respect to your position as the chancellor of
16 the diocese, is that a term position? How long will you
17 serve as a chancellor of the diocese?

18 A. I believe it's three years, and I have served
19 continuously since 2007, 2006.

20 Q. As a chancellor of the diocese do you have access to the
21 books and records of the diocese?

22 A. Yes, ma'am.

23 Q. And are you familiar with the corporate structure of the
24 diocese as a chancellor?

25 A. I am not a corporate lawyer, but I'm generally familiar

1 with it, yes, ma'am.

2 Q. Prior to you becoming the chancellor who was the
3 chancellor?

4 A. Nick Zeigler from Florence I believe was the chancellor
5 from 1986 until 2006, 2007.

6 Q. And who preceded Mr. Zeigler as chancellor of the
7 diocese?

8 A. Mr. Tisdale from 1975 to 1986, I believe it was.

9 Q. And to your knowledge does the national church, TEC,
10 have any choice or vote with respect to the election or
11 selection of the diocese chancellor?

12 A. They do not.

13 Q. And the individuals that you have named as chancellors
14 and yourself, are those all South Carolina lawyers?

15 A. Yes, ma'am.

16 Q. Does the position of a chancellor, is that essentially
17 an inhouse counsel of the diocese?

18 A. Well, I don't actually have an office at the diocese but
19 I function, yes, as inhouse legal adviser basically.

20 Q. Let's go to with respect to the diocese, where is the
21 office of the diocese located?

22 A. It's located, I believe, at 126 Coming Street.

23 Q. Is that in Charleston?

24 A. Yes, ma'am.

25 Q. Does the diocese employ any employees?

1 A. Yes, ma'am, there are a number of inhouse employees at
2 the diocese, and then there is a conference center known as
3 St. Christopher, and I believe that the employees of that
4 entity are also considered employees of the diocese.

5 Q. On a yearly basis what would be the average number of
6 employees at the diocese?

7 A. I would say more than 10, less than 50. I'm not really
8 sure exactly.

9 Q. Who is the head person in the diocese?

10 A. The bishop.

11 Q. And with respect to the bishop, is that an elected
12 position with the diocese?

13 A. Yes, ma'am.

14 Q. And who elects the bishop?

15 A. It's sort of complicated, but it starts with the
16 diocesan convention.

17 Q. And when you say convention, you're referring to the
18 annual convention?

19 A. Yes, well, it may be -- yes, ma'am, it may be a special
20 convention.

21 Q. And I guess for the edification of the Court, when you
22 talk about annual convention of the diocese, is that a
23 meeting?

24 A. Yes, ma'am.

25 Q. And what's the purpose of that annual convention?

1 A. Generally, to conduct the business of the diocese.

2 Q. And are there delegates to that annual convention?

3 A. Yes, ma'am, each parish is entitled to, I think it's up
4 to four delegates. As a practical matter, it's more or less
5 always four lay people. And then any members of the clergy
6 who are canonically resident basically are also members of
7 the convention.

8 Q. When you refer to the parishes that have delegates, how
9 many current parishes are within the plaintiff diocese?

10 A. I was afraid you were going to ask me that. I think
11 it's around 40, maybe 36.

12 Q. And with respect to those plaintiff parishes, are they
13 named plaintiffs in this lawsuit?

14 A. Yes, ma'am, most of them are.

15 Q. And what body selects the delegates from each parish to
16 the annual convention for the diocese?

17 A. Each parish would elect them at its parish annual
18 meeting.

19 Q. Does the diocese have a say-so as to what delegate from
20 each parish can attend the annual convention?

21 A. You have to be an elected delegate basically, but as
22 long as the parish has elected you, that's it.

23 Q. To your knowledge when did the diocese, the plaintiff
24 diocese come into existence?

25 A. I believe it was in 1785.

1 Q. Do you know how to your knowledge, based on your
2 knowledge, how it first came about to be formed?

3 A. Sure. The Revolution obviously led to a disassociation
4 of the American Church from the Church of England. After the
5 Revolution was over a group of churches in South Carolina got
6 together to form a diocese to in effect be the church in
7 South Carolina.

8 Q. At that point in time the existence of the diocese, was
9 it a corporation or what was the structure?

10 A. It was an unincorporated association from my
11 understanding.

12 Q. And when did the diocese become a corporation?

13 A. I believe that it was incorporated in 1973.

14 Q. Did it become a South Carolina nonprofit corporation in
15 1973?

16 A. Yes, ma'am.

17 Q. Thank you. Okay. And to your knowledge what is the
18 purpose of the diocese?

19 A. Well, that is referenced in some corporate documents,
20 the governing documents, but basically it's to operate the
21 Protestant Episcopal Church in South Carolina, the Protestant
22 Episcopal Diocese.

23 MS. GOLDING: Are there any objections to 2 through 5,
24 the journals of the annual conventions?

25 MR. TISDALE: No objection, Your Honor.

1 MS. KOSTEL: No objection.

2 THE COURT: Very well.

3 (Plaintiff Diocese Exhibits 2-5 admitted into evidence.)

4 MS. GOLDING: Your Honor, I have provided them a list of
5 the exhibits, and we have provided them the exhibits so, Your
6 Honor, it's my understanding Plaintiff's Exhibits 1 through 5
7 are admitted.

8 THE COURT: In evidence without objection.

9 Q. Mr. Logan, I would like for you to refer to the
10 plaintiff diocese exhibit, and we're going to go through 7,
11 8, 9, 10, 11 and 12?

12 A. Okay.

13 THE COURT: Are those pages or exhibits?

14 MS. GOLDING: Exhibit numbers, Your Honor.

15 MR. TISDALE: Ms. Golding, if you don't mind, could you
16 give us the date of the document as you come to it, tell us
17 what exhibit number it is?

18 MS. GOLDING: Exhibit No. 7 is a document entitled
19 Certificate of Incorporation. You have all those documents.

20 MR. TISDALE: I'm trying to find them. Is that in a
21 journal?

22 MS. GOLDING: No, it's the certificate of incorporation
23 of the diocese.

24 MR. TISDALE: Thank you.

25 MS. GOLDING: Exhibit No. 8 is application for amendment

1 of eleemosynary corporation. It is dated February 20, 1987.
2 Exhibit No. 9 is nonprofit corporation articles of amendment
3 dated October 19, 2010. Exhibit No. 10 is the notice of
4 change of principal office for nonprofit corporation dated
5 September 18, 2012. Exhibit No. 11 is nonprofit corporation
6 articles of amendment dated October 18, 2012 and Exhibit No.
7 12 is notice of change of registered agent dated October 18,
8 2012. Your Honor, I would like to ask if there are any
9 objections to Exhibits 7 through 12.

10 MR. TISDALE: No objections.

11 MS. KOSTEL: No objection.

12 THE COURT: Exhibits 7 through 12 are in evidence
13 without objection.

14 (Plaintiff Diocese Exhibits 7-12 admitted into
15 evidence.)

16 Q. Mr. Logan, I would like for you to go to Exhibit No. 7.

17 A. Yes, ma'am.

18 Q. Do you have that in front of you?

19 A. I do.

20 Q. And Exhibit 7, just identify that document, Mr. Logan.

21 A. This is entitled Certificate of Incorporation by the
22 Secretary of State.

23 Q. And what is the date?

24 A. The date is November 14, 1973.

25 Q. Is this the original certificate of incorporation for

1 the plaintiff diocese?

2 A. To my knowledge, yes, ma'am.

3 Q. Okay. And before November of 1973 what was the
4 organizational status of the plaintiff diocese?

5 A. I believe it was an unincorporated association.

6 Q. With respect to Exhibit No. 7, are there identified any
7 managers or directors of the plaintiff?

8 A. Yes, ma'am, paragraph fifth of the certificate of
9 incorporation says the names and residences of all managers,
10 trustees, directors or other officers are as follows, and it
11 lists the Right Reverend Gray Temple, address of 1020 King
12 Street, Charleston, as the bishop, the Reverend Canon George
13 I. Chassey, Jr., same address, as secretary, and Thomas E.
14 Myers, same address, as treasurer.

15 Q. Is there anywhere on Exhibit No. 7 that indicates
16 another organization such as the defendant the Episcopal
17 Church has to sign on this document?

18 A. No, ma'am.

19 Q. Is there any approval, any signatures or approval or
20 reference to any other entity such as the national church
21 approving this document?

22 A. No, ma'am.

23 Q. Next I ask you to go to Exhibit No. 8 and just identify
24 and tell the Court what is Exhibit 8 and who signed that and
25 in what capacity?

1 A. Sure. This document, Exhibit No. 8, is entitled
2 Application for Amendment of Eleemosynary Charter. It
3 appears to be dated February 20, 1987. And did you ask me
4 who signed it?

5 Q. Correct.

6 A. The directors or authorized managing board are
7 identified as C. FitzSimons Allison, who was the bishop, and
8 John Q. Beckwith, III, executive secretary.

9 Q. With respect to the role of the bishop in the diocese,
10 how would you classify that role with respect to the
11 corporate world?

12 A. Roughly analogous to a CEO, a chief operating officer.
13 I think the governing documents refer to him as the
14 administrative head of the diocese.

15 Q. Now, with respect to Exhibit No. 8, there's a second
16 page. Is that the certification of the amendment?

17 A. I think it's Exhibit 9.

18 Q. Excuse me.

19 A. No, I'm sorry, you're correct, Exhibit 8, yes, there is
20 a certification.

21 Q. On either page of Exhibit 8 is there anything in the
22 documents that reflect any signatures on behalf of the
23 defendant TEC?

24 A. No, ma'am.

25 Q. Let's go to Exhibit No. 9. Can you identify Exhibit No.

1 9?

2 A. Yes, ma'am, Exhibit No. 9 is entitled Nonprofit
3 Corporation Articles of Amendment. It is dated October 19,
4 2010, and it is signed by the Protestant Episcopal Church in
5 the Diocese of South Carolina by Mark J. Lawrence, President.

6 Q. And at that time on October 19, 2010 was Mr. Lawrence an
7 employee of the plaintiff diocese?

8 A. Yes, ma'am.

9 Q. And what was his position as an employee of the
10 plaintiff diocese?

11 A. He was the bishop.

12 Q. With respect to Exhibit 9, can you tell the Court what
13 was amended in the articles of incorporation for the
14 plaintiff diocese?

15 A. Sure. I believe that it amended the corporate purpose.
16 Do you want me to read it?

17 Q. Yes, sir.

18 A. To read fourth, the purpose of the said proposed
19 corporation is to continue operation under the constitution
20 and canons of the Protestant Episcopal Church in the Diocese
21 of South Carolina.

22 Q. With respect to the change of the purpose in the
23 plaintiff diocese articles of incorporation that are
24 reflected in October 2010, when to your knowledge did the
25 standing committee first discuss this possible amendment of

1 the articles of incorporation?

2 A. It would have been shortly before this, I'm not sure of
3 the exact date, and it actually I think then went to the
4 convention, which I believe was about four, five days before
5 this document was signed. They approved it, to my
6 recollection, and then the bishop signed, and the bishop as
7 president of the convention signed it and had it filed with
8 the Secretary of State.

9 Q. When you say the convention, you're referring to the
10 annual convention for the plaintiff diocese?

11 A. Of the diocese, yes, ma'am, may have been a special
12 convention, but it was a convention of the diocese. Probably
13 was a special convention, excuse me.

14 Q. But to your knowledge this proposed amendment in the
15 articles of incorporation that are Exhibit No. 9 was voted on
16 at the annual convention?

17 A. That is my recollection, yes, ma'am, at maybe a special
18 election, yes, ma'am, special convention, excuse me.

19 Q. Next I ask you to look at Exhibit No. 10 and identify
20 that, please.

21 A. This document is one of the Secretary of State's forms
22 and is entitled Notice of Change of Principal Office for a
23 Nonprofit Corporation. It is dated September 18, 2012, and
24 it is signed by Paul C. Fuener, President. My recollection
25 is that Reverend Fuener was the president of the standing

1 committee at that time.

2 Q. And with respect to Exhibit 10, would you refer to this
3 change as more of an administrative change?

4 A. Yes, I would call it ministerial, to use a lawyer's
5 language.

6 Q. Next I'll ask you to go to Plaintiff's Exhibit No. 11.

7 A. Yes, ma'am, I have it.

8 Q. And identify Plaintiff's Exhibit No. 11.

9 A. This is another Secretary of State form document. It is
10 entitled Nonprofit Corporation Articles of Amendment. It is
11 dated October 18, 2012, and again it is signed by Paul
12 Fuener, President, and it references an attachment which
13 basically incorporates certain provisions of the US Internal
14 Revenue Code.

15 Q. To your knowledge, prior to this amendment which is
16 Exhibit 11 being presented to the Secretary of State was the
17 plaintiff diocese a 501(c)(3) charitable corporation?

18 A. Yes, ma'am, I believe it was.

19 Q. What do you recall is the purpose of this amendment?

20 A. I think I sort of call this in my mind the tax
21 amendment. It was to add provisions of the Internal Revenue
22 Code, as I said.

23 Q. Was this again more of a ministerial type of amendment?

24 A. Yes, ma'am.

25 Q. Now, with respect to the Exhibits 9, 10 and 11 that you

1 have just discussed, and, I'm sorry, let's go to also No. 12.

2 A. Okay.

3 Q. What is Exhibit 12?

4 A. Exhibit 12 is yet another Secretary of State form. It
5 is entitled Notice of Change of Registered Office or
6 Registered Agent or Both of a Nonprofit Corporation. The
7 name of the corporation is the Protestant Episcopal Church in
8 the Diocese of South Carolina. It is dated October 18, 2012,
9 I believe, and it changes the registered agent of the
10 corporation to James B. Lewis, who happens to be what's
11 called the canon to the ordinary, the ordinary being the
12 bishop, and it is, likewise, a ministerial kind of change.

13 Q. Exhibits 9, 10, 11 and 12, with respect to these
14 documents is there anywhere on these forms of these documents
15 in which the defendant TEC is to sign any signature areas?

16 A. No, ma'am.

17 Q. What is the current status of the plaintiff diocese with
18 respect to the South Carolina Secretary of State?

19 A. To my knowledge it's a nonprofit corporation in good
20 standing.

21 Q. Let me next ask you to identify Exhibits 6 and 7. I
22 have on your list, on the list I have identified the
23 documents, what they are, but for edification, No. 6 is the
24 bylaws of the Protestant Episcopal Church in the Diocese of
25 South Carolina.

1 A. Yes, ma'am.

2 Q. And 7's already in evidence, excuse me. Your Honor, we
3 would offer Plaintiff's Exhibit 6 into evidence.

4 MR. TISDALE: No objection.

5 MS. KOSTEL: No objection.

6 THE COURT: Very well.

7 (Plaintiff Diocese Exhibit 6 admitted into evidence.)

8 Q. Mr. Logan do you have Plaintiff's Exhibit 6 in front of
9 you?

10 A. Yes, ma'am. I actually have two sets of bylaws in my
11 copy, one is 2010 and I think one is 2012, so I don't know
12 which one you're referring to first.

13 Q. Okay. Let's first go -- let me ask you a few questions.

14 THE COURT: Let me stop for a second. Are both dates
15 Exhibit 6, or is one of these dates Exhibit 6 and the other
16 date another exhibit?

17 MS. GOLDING: They're both in Exhibit 6 but both have
18 different dates, Your Honor.

19 THE COURT: That's fine.

20 MS. GOLDING: And I'll be glad to mark them 6A and 6B.

21 THE COURT: That might be helpful.

22 MS. GOLDING: Very good.

23 THE COURT: 6A would then be?

24 MS. GOLDING: The bylaws dated in December 2010.

25 THE WITNESS: All right.

1 MS. GOLDING: And 6B will be the bylaws dated in October
2 2012.

3 THE WITNESS: Okay.

4 Q. Mr. Logan, let's go back to the constitution and canons
5 of the diocese.

6 A. Okay.

7 Q. With respect to the constitution and canons of the
8 diocese, those have been introduced in the journals which are
9 Exhibits 1 through 5. Can you explain the different roles of
10 the constitution and canons and then the bylaws?

11 A. Sure. The constitution is what I would call the primary
12 governing document. It is relatively short compared to the
13 other documents. It is not totally analogous to but it is
14 not unlike the United States Constitution. The bylaws,
15 excuse me, the canons for a long time I believe kind of
16 operated or were treated as the bylaws of the corporation,
17 and the bylaws tend to be a more detailed elucidation of the
18 rules for the diocese.

19 Q. So with respect to Exhibits 6A and B that are identified
20 as bylaws, did the diocese, the plaintiff diocese have
21 documents under the name of bylaws prior to December 2010?

22 A. I do not believe so.

23 Q. What in actuality were the bylaws of the plaintiff
24 diocese prior to December 2010?

25 A. I believe that the canons were treated that way.

1 Q. Based upon your personal knowledge how long were the
2 plaintiff diocese canons treated as the bylaws for the
3 plaintiff diocese?

4 A. Certainly going back to its incorporation in '73.
5 That's before my time, but that's what I believe it was.

6 Q. With respect --

7 A. And maybe before that.

8 Q. With respect to the constitution of the plaintiff
9 diocese, does it have any provisions as to amendments?

10 A. Yes, ma'am. The last article of the constitution, I
11 believe it's entitled Of Altering the Constitution, I believe
12 it's Article 10.

13 Q. Is that article --

14 A. It may be another article but --

15 Q. What year?

16 A. I am looking at the 2013 journal.

17 Q. That would be Plaintiff's Exhibit 5.

18 A. All right.

19 Q. And let me hand you what is Plaintiff's Exhibit No. 1,
20 the journal that was in March 2009.

21 A. Okay.

22 Q. What is the article --

23 THE COURT: Let me stop you a second. You need to have
24 a seat, please, sir. Thank you kindly. And I need a bailiff
25 at the back door, and folks can come in when we have breaks,

1 but there's way too much coming in, it's distracting to me,
2 and I can't listen to and focus on the testimony while I'm
3 watching folks coming in and going out. Thank you, Mike.

4 You're going to have to go back, Ms. Golding, if you
5 don't mind.

6 Q. Certainly. Looking at Plaintiff's Exhibit No. 1, the
7 constitution as of 2007.

8 A. It was Article 12 entitled Of Altering the Constitution.

9 Q. And can you read that article to the Court, please?

10 A. Yes, ma'am. No alteration or amendment of or addition
11 to this constitution shall be made unless the same be
12 proposed in writing and in duplicate on the first day of an
13 annual convention and after reference to the committee on
14 constitution and canons is adopted by a majority vote of the
15 convention at which it is proposed and further adopted by a
16 two-thirds vote of both orders at the next annual convention.

17 Q. Article 12 in the constitution refers to both orders.
18 Can you just explain to us what it meant by both orders?

19 A. Yes, ma'am, the way the convention is set up, there are
20 two orders. There is the clerical order and the lay order.
21 The clerical order obviously would be the clergy. The lay
22 order would be the delegates elected by each parish.

23 Q. Very good. Is there anything in Article 12 or in any
24 article in the diocese constitution in 2007 that specifically
25 excludes any article as not being subject to amendment?

1 A. No, ma'am.

2 Q. Is that true up to today through the five annual
3 conventions and the constitution and canons through the five
4 has there ever been a provision in the diocese plaintiff's
5 constitution that prohibits amending any article?

6 A. There's no such provision in my knowledge.

7 Q. Now let's refer to the canons, and again going to
8 Exhibit No. 1.

9 A. All right.

10 Q. The 2007 canons. Is there a provision in the 2007
11 canons that addresses amendments to the canons?

12 A. I believe that it is 37, excuse me, yes, it is 37 on
13 page C-35.

14 Q. And does that provision permit amendments to the canons?

15 A. Yes, ma'am.

16 Q. In that provision with respect to amending the canons
17 does it state that there is any canon that cannot be amended?

18 A. No, ma'am.

19 Q. And this canon that permits the amendment, I believe you
20 said 37?

21 A. Yes, ma'am.

22 Q. Has that canon been in existence from 2007 to the
23 current?

24 A. To my knowledge, yes, maybe differently numbered but
25 it's the same provision.

1 Q. Thank you. Now, going to the bylaws, let's go to 6A,
2 which is the December 2010 bylaws.

3 A. Okay.

4 Q. Can you explain again the position or the purpose of
5 these bylaws 6A in conjunction with the governance of the
6 plaintiff diocese with respect to its constitution and its
7 canons?

8 A. Sure. These were actually bylaws by that name which
9 were adopted and signed by Jeffrey Miller who was president
10 of the standing committee in December 2010, I believe it was
11 December 16.

12 Q. Is there a provision in the bylaws, Exhibit 6A, that
13 permits amendments?

14 A. Yes, ma'am.

15 Q. Okay.

16 A. It's on page 9, I believe, of this Exhibit.

17 Q. Is that under article 7?

18 A. Yes, ma'am.

19 Q. And can you just summarize what entity or what board has
20 the ability to amend the bylaws?

21 A. In this it's referred to as the board of directors.

22 Q. And when you say board of directors in 6A, generally
23 what is that entity also known as?

24 A. The Protestant Episcopal Church in the Diocese of South
25 Carolina.

1 Q. And is there a body known as a standing committee?

2 A. Yes, ma'am.

3 Q. What is the standing committee?

4 A. Well, the standing committee is basically the board of
5 directors of the diocese. These bylaws are a corporate
6 document which, as we've just discussed, talk about a board
7 of directors among other things, and it governs the
8 corporation's operations.

9 Q. How are members of the standing committee, this board of
10 directors, how are they elected or selected?

11 A. I think that the election is changed every year.
12 They're basically, the members of the standing committee are
13 also members of the board of directors, and new members will
14 be elected each year, two clergy and two lay.

15 Q. Who elects the members of the standing committee?

16 A. The diocesan convention.

17 Q. At the annual convention?

18 A. Yes, ma'am.

19 Q. When I say who elects, are those the delegates to the
20 convention?

21 A. Yes, ma'am.

22 Q. With respect to Exhibit 6A, are you a member of the
23 board of directors, 6A and 6B, I believe?

24 A. I am a member of the standing committee, ex officio. I
25 do not believe I'm a member of the board of directors.

1 Q. With respect to Bishop Lawrence, what's his position
2 with the board of directors?

3 A. I believe that he is, I believe that he's president of
4 the board. Excuse me, no, he's not. No, he's not. If you
5 can refer me to an article or something, I'll tell you.

6 Q. Let's go to 6B, please.

7 A. Oh, sorry. All right. I'm sorry. I've got it on page
8 2, I believe. The bishop of the body now known as -- that's
9 what you're referring to?

10 Q. Yes, sir.

11 A. -- known as the Protestant Episcopal Church in the
12 Diocese of South Carolina, hereinafter the bishop, shall be
13 an ex officio member of the board with seat and voice but no
14 vote.

15 Q. In the paragraph right above in 6B in the last sentence
16 does it identify the selection of a president?

17 A. Yes, ma'am. It must be a clergy member, and a majority
18 of the board appoints the president.

19 Q. I noticed with respect to Exhibits 1 through 5 in each
20 of the journals there's also -- there's a section that
21 addresses standing resolutions.

22 A. Yes, ma'am.

23 Q. Can you tell us, what are standing resolutions?

24 A. Yes, ma'am. A resolution obviously is something passed
25 by the body. The standing resolution is one, at the risk of

1 being very obvious, is standing, it's continuing, and
 2 typically it is a resolution that governs the procedure under
 3 which the body operates. May be something else but that's
 4 primarily it.

5 Q. When are standing resolutions voted upon?

6 A. At the annual convention of the diocese.

7 Q. And are they voted upon by what bodies, delegates?

8 A. By the delegates at the convention, and I'd also say
 9 that the standing committee may also have standing
 10 resolutions which may also be published in the journals that
 11 you talked about.

12 Q. As chancellor what is your role at a plaintiff diocese
 13 annual convention?

14 A. I am usually the parliamentarian. I'm an ex officio
 15 member of the convention, I believe, with no vote.

16 Q. To your knowledge has the defendant TEC, the national
 17 church, ever had anyone attend plaintiff diocese annual
 18 convention as a delegate?

19 A. Not as a delegate, no.

20 Q. To your knowledge does the defendant TEC, the national
 21 church, have any type of veto right with respect to any
 22 business conducted at an annual convention of the plaintiff
 23 diocese?

24 A. No, ma'am.

25 Q. What is the diocesan council?

1 A. The diocesan council is a body that is described in the
2 canons, I don't believe it's in the -- I don't believe it's
3 in the constitution, but it is described -- I'm going to look
4 at Exhibit 1 which is the 2009 proceedings, and the council
5 obviously is something that -- not obviously, but it's
6 described as something that carries out the mission of the
7 diocese and handles the finances with the budget that's been
8 approved by the convention.

9 Q. How are the members selected to be on the diocesan
10 council?

11 A. Several ways. They are -- some of them are elected by
12 the convention, and some are appointed by others. I believe
13 that some members are elected by the deaneries, which is a
14 division of the diocese. I believe there are six of them.
15 And a number of positions, for example, the president of the
16 youth would be a member of the diocesan council.

17 Q. Going back now to the standing committee, what role does
18 the bishop have with respect to the standing committee?

19 A. One of the functions of the standing committee is to be
20 a council of advice to the bishop. The bishop is not a
21 member of the standing committee but because one of the
22 responsibilities is to advise him, he usually attends the
23 meetings to be advised.

24 Q. Does the bishop have a vote at the standing committee
25 meetings?

1 A. No, ma'am.

2 Q. Does the standing committee regularly meet or have
3 regular meetings?

4 A. Yes, ma'am. Recently it's been just about every month.
5 And while I'm thinking about it, in Exhibit 1 Canon 18 refers
6 to the diocesan council in some detail about the members and
7 its functions.

8 Q. Is there any provision in the constitution for the
9 diocesan council?

10 A. Not to my knowledge.

11 Q. If you have the two documents, the constitution and the
12 canons, which document trumps the other document?

13 A. The constitution would trump the canons.

14 Q. With respect to the bishop of the plaintiff diocese, we
15 discussed already the selection of a bishop, but what entity
16 employees the bishop?

17 A. The diocese.

18 Q. What entity pays the salary of the bishop?

19 A. The diocese.

20 Q. I'd like you to look at Plaintiff's Exhibits 29 and 28.

21 A. All right. I have 29.

22 MS. GOLDING: Exhibit 28 is the lease agreement dated
23 March 17, 2010, and 29 is an employment agreement dated
24 February 1, 2011. Any objection?

25 MR. TISDALE: No objection.

1 MS. KOSTEL: No objection.

2 THE COURT: Very well, 28 and 29 are in evidence without
3 objection.

4 (Plaintiff's Diocese Exhibits 28-29 admitted into
5 evidence.)

6 Q. With respect to Exhibit 28, what is that document?

7 A. It is a lease agreement between the diocese and Bishop
8 Lawrence.

9 Q. And the party, is it the diocese or the trustees?

10 A. Excuse me, it's the Trustees of the Protestant Episcopal
11 Church in South Carolina.

12 Q. The property that is identified in Plaintiff's Exhibit
13 28, is that property located in Charleston?

14 A. Yes, ma'am.

15 Q. And how is that property being utilized by the tenant,
16 Bishop Lawrence?

17 A. He is currently residing there with his wife.

18 Q. It's a personal residence?

19 A. Yes, ma'am.

20 Q. Exhibit 29, what is that document?

21 A. That is entitled Employment Agreement. It is dated the
22 1st day of February 2011 between the diocese this time and
23 Bishop Lawrence as employee. It's signed by Bishop Lawrence
24 and Jeffrey Miller on behalf of the diocese, and I witnessed
25 both of their signatures.

1 Q. Now, since you've referred to the trustees --

2 A. Yes, ma'am.

3 Q. -- can you tell us what is the Trustees of the
4 Protestant Episcopal Church, Diocese of South Carolina?

5 A. Well, we're getting into history.

6 THE COURT: I'll tell you what, hold on right there
7 before we get into the history, and we will take a 15-minute
8 break. I can see this clock, I can't see the one on the
9 other wall. This one says about four minutes until 11:00, so
10 we will take a break until about 11:15.

11 (Recess held.)

12 (Court's Exhibits 1 and 2 marked for identification.)

13 THE COURT: Ms. Golding, you may continue.

14 MS. GOLDING: Thank you, Your Honor. Your Honor, at the
15 break I realized I had an exhibit that was not numbered
16 properly, and now we've numbered it Exhibit 6C which are the
17 bylaws of the Protestant Episcopal Church in the Diocese of
18 South Carolina, and they are dated October of 2010. October
19 21, 2010.

20 THE COURT: Okay.

21 MS. GOLDING: I believe that's without objection the
22 defendants have advised.

23 MR. TISDALE: Correct.

24 MS. KOSTEL: Yes.

25 THE COURT: All right. Thank you.

1 Q. Mr. Logan, let me hand you what is Plaintiff's Exhibit
2 6C.

3 A. Yes, ma'am.

4 Q. With respect to Plaintiff's Exhibit 6C, can you identify
5 the document and the date?

6 A. Sure. This document is entitled The Bylaws of the
7 Protestant Episcopal Church in the Diocese of South Carolina.
8 It is dated October 22, 2010, and it is signed by Lydia Evans
9 as secretary of the board of directors.

10 Q. On the first page of these bylaws under Article 5 can I
11 ask you to direct your attention to that article?

12 A. Yes, ma'am.

13 Q. And in that article does it set forth the position of
14 the bishop?

15 A. Yes, ma'am. It says that he shall be the president of
16 the corporation.

17 Q. Thank you. Next I want to draw your attention to
18 Plaintiff's Exhibit 13, Diocese Plaintiff's 13 and Diocese
19 Plaintiff's 14.

20 A. Okay.

21 MS. GOLDING: Your Honor, Plaintiff's 13 is an act of
22 the South Carolina General Assembly in February 20, 1880, and
23 14 is an act of the South Carolina General Assembly in
24 February 20, 1902. We would offer these into evidence.

25 MR. TISDALE: No objection, Your Honor.

1 A. Yes. That reads, the said trust -- this is Section 2 --
 2 the said trustees are hereby incorporated as a body politic
 3 and corporate by the name of the Trustees of the Protestant
 4 Episcopal Church in South Carolina with all the powers of a
 5 corporate body and may from time to time make such rules and
 6 bylaws for their government and for the management of the
 7 property under their charge as shall be approved by majority
 8 of said trustees.

9 Q. In this act that was passed and approved in February 20,
 10 1880 is there any reference to the national Episcopal Church?

11 A. No, ma'am.

12 Q. The entity that was created by the 1880 act, the
 13 Trustees of the Protestant Episcopal Church in South
 14 Carolina, is that a corporate entity that's the plaintiff,
 15 that's a plaintiff in this lawsuit?

16 A. Yes, ma'am.

17 Q. Now let me ask you to look at Plaintiff's Exhibit 14
 18 which was an act passed by the South Carolina General
 19 Assembly on February 20, 1902.

20 A. Okay.

21 Q. And what was the purpose of that act?

22 A. That basically was to incorporate a board of trustees
 23 separate and apart from the bishop and the standing committee
 24 and to transfer the assets then held by the bishop and
 25 trustees, excuse me, standing committee, as board of

1 trustees, to the other board of trustees.

2 Q. With respect to Exhibit 14 then, as of February 1902 did
3 the plaintiff corporation, the Trustees of the Protestant
4 Episcopal Church in the State of South Carolina, become then
5 the owners of the property once owned by the bishop and the
6 standing committee?

7 A. Yes, ma'am.

8 Q. Where in Exhibit 14 is there any reference to the
9 national Episcopal Church?

10 A. There is none.

11 Q. To your knowledge with respect to Exhibits 13 and 14
12 have these two statutes been appealed, revised or amended at
13 any time from the time of their enactment to the present?

14 A. Not to my knowledge.

15 Q. What role do you play with respect to the Trustees of
16 the Protestant Episcopal Church of South Carolina?

17 A. I'm an ex officio member of the board of trustees as the
18 chancellor with seat and voice but again with no vote.

19 Q. Let me ask you to look at Exhibits 15, 16, and this will
20 be 17.

21 A. All right.

22 MS. GOLDING: These are the bylaws, 15, 16 and 17 of the
23 Trustees of the Protestant Episcopal Church. Your Honor, we
24 would offer these into evidence.

25 MR. TISDALE: No objection.

1 permission for the diocese to sell the Church of the Holy
2 Family, Moncks Corner, as requested.

3 MS. GOLDING: Your Honor, we would offer Plaintiff's
4 Exhibit 23 into evidence.

5 MR. TISDALE: No objection.

6 MS. KOSTEL: No objection.

7 THE COURT: Very well.

8 (Plaintiff Diocese Exhibit 23 admitted into evidence.)

9 Q. Mr. Logan, next I direct your attention to Plaintiff's
10 Exhibit 24.

11 A. Okay.

12 Q. Can you identify Plaintiff's Exhibit 24?

13 A. Yes, ma'am, this is a general warranty deed dated
14 September 4, 2008. It is from the Protestant Episcopal
15 Church in the Diocese of South Carolina transferring property
16 that formerly belonged to the Episcopal Church of the Holy
17 Family.

18 Q. Is this deed dated September 4, 2008?

19 A. Yes, ma'am.

20 Q. Who signed this deed for the plaintiff diocese?

21 A. It was signed by the Very Reverend John B. Burwell as
22 president of the standing committee for the diocese.

23 Q. And was this deed signed by members of the standing
24 committee in accordance with the powers of the standing
25 committee?

1 A. Yes, ma'am.

2 MS. GOLDING: Your Honor, we would offer Plaintiff's
3 Exhibit 24 into evidence.

4 MR. TISDALE: No objection.

5 MS. KOSTEL: No objection.

6 THE COURT: Very well.

7 (Plaintiff Diocese Exhibit 24 admitted into evidence.)

8 Q. Next I ask you to look at Exhibit 25.

9 A. Yes, ma'am.

10 Q. Can you identify Exhibit 25?

11 A. Exhibit 25 is a two-page document, the Minutes of the
12 Standing Committee, the Diocese of South Carolina, dated
13 February 9, 2010 and it is signed by Lydia Evans as
14 secretary.

15 Q. With respect to the second page, did the standing
16 committee take any action to appoint an officer of the
17 plaintiff diocese?

18 A. Yes, ma'am, Ed Holt, who is a communicant at St.
19 Philip's, had been a long time treasurer of the diocese, he
20 had stated that he would be resigning, and the standing
21 committee appointed Mr. John Wallace as treasurer in his
22 place.

23 Q. Was that all the action needed by the plaintiff diocese
24 to replace its treasurer?

25 A. Yes, ma'am.

1 MS. GOLDING: Your Honor, we would offer Plaintiff's
2 Exhibit 25 into evidence.

3 MR. TISDALE: No objection.

4 MS. KOSTEL: No objection.

5 THE COURT: Very well.

6 (Plaintiff Diocese Exhibit 25 admitted into evidence.)

7 Q. Did the standing committee in Exhibit No. 25 in February
8 9, 2010 also take other action with respect to hiring
9 counsel?

10 A. Yes, ma'am. Mr. Runyan had been attending meetings of
11 the standing committee, informally providing some legal
12 advice prior to that time. The minutes read, the Reverend
13 Miller read a letter of agreement and recommended that the
14 standing committee engage Mr. Runyan, Mr. Alan Runyan as
15 counsel. The Reverend Gaillard moved same. Mr. Drakeford
16 seconded the motion and it passed.

17 Q. Was it within the powers of the plaintiff diocese
18 standing committee to engage counsel?

19 A. Yes, ma'am.

20 Q. Let me next ask you to go to Plaintiff's 26, please.

21 A. Okay.

22 Q. What is Plaintiff's 26?

23 A. These are board meeting minutes of the Trustees of the
24 Protestant Episcopal Church dated January 4, 2013. They're
25 signed by Nancy J. Armstrong, again as staff liaison to the

1 to give its approval.

2 Q. And that's a diocesan canon?

3 A. Yes, ma'am.

4 MS. GOLDING: Your Honor, we would offer Plaintiff's
5 Exhibit 26 into evidence.

6 THE COURT: Any objection?

7 MR. TISDALE: No objection.

8 MS. KOSTEL: No objection.

9 THE COURT: Very well.

10 (Plaintiff Diocese Exhibit 26 admitted into evidence.)

11 Q. Mr. Logan, now I'll ask you to look at Plaintiff Diocese
12 Exhibit No. 18.

13 A. Okay.

14 Q. Can you identify Exhibit 18?

15 A. Yes, ma'am. This is a document which is on the
16 letterhead of the law firm, the Beaufort firm of Harvey &
17 Battey, PA. It's dated November 17, 2011, and it's addressed
18 to Rector Episcopal Parish Churches in South Carolina and
19 signed by Tom Davis, who is a lawyer with the Harvey & Battey
20 firm, and it's entitled Delivery of Quit Claim Deed.

21 Q. With respect to the second page of Exhibit 18, can you
22 identify that?

23 A. Yes, ma'am. The first page references a memorandum from
24 me as chancellor, and the second page is dated November 16,
25 2011 addressed to the parishes of the Diocese of South

1 Carolina from me as chancellor referencing property issues,
2 and it states that attached is a quit claim deed.

3 Q. And in fact attached to Exhibit 18 is a quit claim deed
4 to St. Luke's Church, Hilton Head; is that correct?

5 A. Yes, ma'am.

6 MS. GOLDING: Your Honor, we would offer Plaintiff's
7 Exhibit 18 into evidence.

8 MR. TISDALE: No objection.

9 MS. KOSTEL: No objection.

10 THE COURT: Very well.

11 (Plaintiff Diocese Exhibit 18 admitted into evidence.)

12 Q. With respect to Plaintiff's Exhibit No. 18, the first
13 page was prepared by Mr. Davis, what was Mr. Davis's role
14 with respect to the quitclaim deeds?

15 A. Mr. Davis had been in fact acting as an escrow agent,
16 holding a number of quitclaim deeds which had been delivered
17 by the diocese.

18 Q. And for what reason were these quitclaim deeds or some
19 of the quitclaim deeds delivered by the diocese to Mr. Davis?

20 A. Requires something of an explanation.

21 Q. Please do.

22 A. Back in 2009 there was a general convention of the
23 national Episcopal Church in which the national church had
24 taken certain actions which our diocese disagreed with on a
25 number of grounds, believing among others that they were in

1 violation of its own constitution and canons. After that
2 convention in Anaheim, California, which was in the summer of
3 2009, there was a great deal of restlessness and upset and
4 dissatisfaction among a number of our communicants and
5 parishes regarding actions of the national church. In
6 addition to that in September of 2009 the South Carolina
7 Court, Supreme Court, had decided what's known as the All
8 Saints case basically, and this is a rough summary, holding
9 that neither the diocese nor the national church held a trust
10 interest in property belonging to that parish. There was a
11 lot of concern back then because the actions of the national
12 church were going in a direction that we very much
13 disapproved of. The South Carolina Supreme Court had said
14 that neither the diocese nor the national church held any
15 interest in that property, and I believe in early 2010 we
16 started delivering some quitclaim deeds to a number of the
17 parishes. Basically, as you know, a quit claim deed in plain
18 English says, I don't know if I've got any interest in this
19 property, but if I do, here it is, and these deeds that this
20 November 2011 memorandum refers to are some of those
21 quitclaim deeds.

22 Q. For what reason was there a specific reason as to
23 providing quitclaim deeds to the parishes within the
24 plaintiff diocese?

25 A. Sure. As I said earlier, there was a great deal of

1 upset amongst a number of our communicants and parishes, and
2 there were what I will call rumblings that some of them were
3 either -- were even considering withdrawing from the diocese.
4 We felt that from a unity standpoint that would have been a
5 disaster. Some of them were some of the larger churches
6 which contributed a good bit to the budget of the diocese,
7 and we concluded that we had to do something symbolic, if you
8 will, to maintain the unity of the diocese. That was one of
9 the reasons, particularly since the All Saints case had said
10 that there was no trust interest, that the diocese felt that
11 it should basically quitclaim any interest it had to the
12 parishes involved. In addition to that, as chancellor I was
13 beginning to hear of problems from parishes who were
14 attempting to refinance their property, and a number of bank
15 lawyers were concerned about the existence of the trust, even
16 though the Supreme Court had said that it did not exist, and
17 again a purpose of these deeds was to avoid that problem.

18 Q. Within the first page Mr. Davis writes to different
19 parishes, and he states that he was holding them pending
20 further instruction from the diocese. Why did the diocese
21 request that the quitclaim deeds that had not been sent were
22 to be held?

23 A. Well, the first reason that occurs to me was that it was
24 becoming increasingly obvious that the national church had
25 some hostility to our diocese, shall we say. We were quite

1 concerned that Bishop Lawrence not be subject to some
2 attempted disciplinary action by the national church, and we
3 were afraid that if these were recorded and became public,
4 that that might precipitate some disciplinary action against
5 Bishop Lawrence. That was the primary reason, I believe.

6 Q. With respect to any of the quitclaim deeds that the
7 diocese presented to any of the parishes, was there ever any
8 intent to harm the national Episcopal Church, the defendant?

9 A. No, ma'am. The intent was what I just described to you.

10 Q. To your knowledge did any parish reject or send back any
11 quitclaim deed?

12 A. Not to my knowledge. There were some which did not
13 record the deeds ultimately, but I don't believe anyone sent
14 one back. I may be wrong, but I don't recall any.

15 Q. Look at the second page of Exhibit 18, and I want to ask
16 that you summarize -- not summarize, that you read into the
17 record your second full paragraph in Exhibit 18.

18 A. Okay. The one beginning, for 190 years --

19 Q. Yes.

20 A. -- (1789 to 1979) there had never been any idea that
21 somehow the parishes did not completely and fully own their
22 property. Our Supreme Court has now said that the attempt to
23 change that in 1979 by the general convention was not binding
24 on the parish of All Saints, Pawleys Island, SC. In
25 recognition of that ruling and in continued pursuit of our

1 historic unity based on common vision rather than legal
2 coercion the diocesan convention removed the relevant section
3 from our canons in October 2010. The issuance of these
4 quitclaim deeds lays to rest any lingering issue that may
5 exist for some parishes when they seek to obtain title
6 insurance or secure bank financing for parish projects.
7 Parishes may choose to file them or not based on their
8 individual needs. We trust this action will enable parishes
9 to freely exercise their rights and responsibility to see --
10 to oversee that which God through the faithfulness of prior
11 generations has bequeathed to them, and it closed with an
12 invitation to call the diocesan office if they had any
13 questions.

14 Q. This memo that's the second page of Exhibit 18, to your
15 knowledge was that sent to all the parishes in the diocese?

16 A. Yes, ma'am.

17 Q. In Exhibit 19 I believe there are two quitclaim deeds
18 attached to that; is that correct?

19 A. Yes, ma'am, I believe that's correct.

20 Q. And are these just sample copies of the two quitclaim
21 deeds?

22 A. Yes, ma'am, this is not all of them.

23 Q. And the first is a quitclaim deed from -- can you
24 identify Exhibit 19 as to what quitclaim deed that is?

25 A. Sure. The first one that is attached, which I will call

1 19A for ease of reference, is a quitclaim deed to Trinity
2 Church Myrtle Beach, and it is dated February 1, 2010, and
3 it's signed both by Bishop Lawrence as bishop and by Reverend
4 Miller as president of the standing committee. 19B is a
5 quitclaim deed from the diocese and the standing committee to
6 the parish of St. Philip, and it is dated the same date,
7 February 1, 2010.

8 Q. Signed by the same parties?

9 A. Yes, ma'am.

10 Q. Your Honor, we would introduce Plaintiff's Exhibit 19A
11 and B.

12 MR. TISDALE: No objection.

13 MS. KOSTEL: No objection.

14 THE COURT: Very well.

15 (Plaintiff Diocese Exhibits 19A and 19B admitted into
16 evidence.)

17 Q. Next I'll direct your attention to Plaintiff Diocese
18 Exhibit No. 20.

19 A. Yes, ma'am.

20 Q. And there are various letters in this Exhibit 20. Can
21 you just briefly identify who the letters are to and from and
22 the period of time they cover?

23 A. Sure. The first letter in point of time, well, first of
24 all all of the letters -- the first letters are addressed to
25 me as chancellor from Mr. Tisdale. The first letter is dated

1 this legal action as being in conflict with its position with
2 the All Saints case?

3 A. No, ma'am.

4 Q. And can you explain that to the Court?

5 A. Sure. The diocese had taken the position in that
6 litigation that in fact the -- there was a trust interest in
7 the parish property. My recollection is that Mr. Zeigler had
8 actually recorded the canons in the Clerk of Court's Office
9 or the RMC Office for Georgetown County. We lost. The
10 Supreme Court said that, no, there was no interest in the
11 parish property, and we accepted that.

12 Q. Now I'll ask you if you would go to Exhibit 32, please.

13 A. Ms. Golding, I'm not sure I've got an Exhibit 32.

14 Q. Excuse me, I apologize (indicating).

15 A. Okay.

16 Q. Can you identify Exhibit 32?

17 A. Yes, ma'am. This is entitled Minutes of the Meeting of
18 the Standing Committee of the Protestant Episcopal Church in
19 the Diocese of South Carolina. It is dated October 2, 2012.
20 It's signed by Ann Hester Willis as secretary. It's roughly
21 a three-page document.

22 Q. Can you please read a resolution that was passed or a
23 motion that was made with respect to the plaintiff diocese
24 association with the national church?

25 A. Sure. The minutes state the following motion was made

1 by Mrs. Willis and seconded by the Reverend Greg Snyder, and
2 I quote, the Protestant Episcopal Church in the Diocese of
3 South Carolina, through its board of directors and its
4 standing committee, hereby withdraws its accession to the
5 constitution of the Episcopal Church and disaffiliates with
6 the Episcopal Church by withdrawing its membership from the
7 Episcopal Church. This decision shall be effective
8 immediately upon the taking of any action of any kind by any
9 representative of the Episcopal Church against the Bishop,
10 the standing committee or any of its members or the
11 convention of this diocese or any of its members, including
12 purporting to discipline, impair, restrict, direct, place on
13 administrative leave, charge, de-recognize or any other
14 action asserting or claiming any supervisory, disciplinary or
15 other alleged hierarchical authority over this diocese, its
16 leaders or members. The chancellor shall certify to the
17 ecclesiastical authority and to the board of directors that
18 such condition has occurred which certification shall be
19 conclusive and says after thorough discussion the motion
20 passed unanimously.

21 Q. And what was the effect of this passage of this motion,
22 Mr. Logan?

23 A. Well, I think it sort of speaks for itself, but
24 basically what it says was that the minute that the national
25 church took any such action that triggered the operation of

1 this resolution, effective immediately upon the taking of
2 that action, in other words, it did not date back to the date
3 of the minutes of the meeting, it dated to the date that the
4 action was taken by the national church.

5 MS. GOLDING: Your Honor, we would offer Plaintiff's
6 Exhibit 32 into evidence?

7 MR. TISDALE: No objection.

8 MS. KOSTEL: No objection.

9 THE COURT: 32 in evidence without objection.

10 (Plaintiff Diocese Exhibit 32 admitted into evidence.)

11 Q. Mr. Logan, next I ask you to look at Exhibit 31.

12 A. Yes, ma'am.

13 Q. Can you please identify Exhibit 31?

14 A. This is a letter from me to Mr. Kurt Barnes, who is
15 treasurer and chief financial officer of the defendant
16 national church dated October 29, 2012. It was my
17 understanding that at that point there were -- the national
18 church had what's called a group exemption represented by the
19 acronym GEN, which stands for group exemption number, and
20 this letter of October 29, 2012 to Mr. Barnes stated that it
21 was -- I had been told that the Episcopal Church still listed
22 the Diocese of South Carolina under its group exemption, and
23 it was my understanding from tax experts that the church --
24 the Episcopal Church must obtain permission for that listing
25 on an annual basis. It stated that we have not had a recent

1 Q. As to whether or not the standing committee would be
2 ecclesiastical authority?

3 A. Well, that is actually in the constitution.

4 Q. It is?

5 A. I believe that there is a mention in a canon.

6 Q. Are you talking about the constitution or the canons?

7 A. I'm talking about both. The first time I said it's in
8 the constitution and the second I said I think there is
9 mention of the standing committee acting as the
10 ecclesiastical authority in the canons in the absence of a
11 bishop.

12 Q. Right.

13 A. I may be wrong about that.

14 Q. Okay. Well, where either in the constitution of the
15 diocese or in the canons of the diocese does it say that the
16 standing committee can act as a board of directors of a
17 corporation?

18 A. I don't think that there is any reference in either the
19 constitution or canon to the term board of directors.

20 Q. There's nothing in the constitution or canons of the
21 Diocese of South Carolina, when I say that, in history, as
22 far as you know that authorizes the standing committee to act
23 as a board of directors, is that your testimony?

24 A. There is nothing in the current constitution and canons.
25 I think that you would have to go back to history and custom

1 and usage and so on but no, there's nothing in the
2 constitution and canons.

3 Q. Well, in fact, based upon your knowledge as chancellor
4 of the diocese have you ever come across any such authority?

5 A. In the constitution and canons?

6 Q. Yes.

7 A. No.

8 Q. And in fact --

9 A. There may be some in way -- what I'll call the way, way
10 back, but not now.

11 Q. And there certainly weren't any when the board of
12 directors was created a couple years ago, was there?

13 A. Again, you're asking about specific references to a
14 board of directors --

15 Q. Yes.

16 A. -- in the constitution and canons, and I don't believe
17 so unless it's in one of these -- I think there's a later
18 canon which does refer to them as the board of directors.

19 Q. Well, I don't want to -- can you find that?

20 A. Not in the documents before me, no, sir.

21 Q. What do you need?

22 A. Well, I need the -- I may have it here, excuse me.
23 Sorry, that may be in a standing resolution.

24 Q. So that's not a basic governing document, is it?

25 A. No, it's not.

1 Q. It's not.

2 A. It is Standing Resolution No. 16 in the 2013
3 proceedings.

4 Q. All right. So we've talked about how there's nothing in
5 the constitution and canons, the basic governing documents,
6 that you know of that say the standing committee can be a
7 board of directors. That's just not in there.

8 A. Not the present ones, no, sir.

9 Q. Okay. Mr. Logan, with respect to let's call it the
10 alienation and encumbrance of property.

11 A. Yes, sir.

12 Q. I think you testified a while ago, and correct me if
13 this is wrong, that a parish or mission that wanted to
14 alienate its property by selling it or encumbering it had to
15 obtain permission from the standing committee to do that,
16 right?

17 A. I think the canon says that is without the previous
18 consent of the bishop acting with the advice and consent of
19 the standing committee, and if you're talking about a church
20 or chapel, it says without the previous consent of the bishop
21 and standing committee.

22 Q. Can do what?

23 A. To encumber it.

24 Q. Which canon is that?

25 A. Well, in this copy of the journal it is canon Roman

1 Q. Is there any reference in the canon with respect to the
2 vestries that it is a board of directors?

3 A. I don't recall that exact language, but I think it
4 functions that way.

5 Q. Okay. Do you have the 2013 constitution and canons,
6 Exhibit 5?

7 A. Yes, sir.

8 Q. Would you turn, please, to page A8 in the constitution
9 and canons?

10 A. Yes, sir.

11 Q. Is there at the top of that page a standing resolution
12 No. 16?

13 A. Yes, it is.

14 Q. Would you read that into it the record, please?

15 A. Yes, sir, 16, resolved, whereas the members of the
16 standing committee also serve as the board of directors of
17 the Protestant Episcopal Church in the Diocese of South
18 Carolina, a South Carolina nonprofit religious corporation,
19 that no member of the standing committee may be removed,
20 replaced or a vacancy filled except by compliance with the
21 South Carolina Nonprofit Corporation Act, the bylaws of the
22 Protestant Episcopal Church in the Diocese of South Carolina
23 and the constitution of the diocese.

24 Q. Mr. Logan, are standing resolutions in fact referred to
25 in the constitution of the diocese?

1 A. I believe they are. They're typically listed between
2 the constitution and the canons.

3 Q. In the article having to do with the standing committee
4 in the constitution, would you turn to that, please, sir?

5 A. Yes, sir. Okay.

6 Q. Would you look at the last paragraph?

7 A. Yes, sir.

8 Q. Is there a reference to standing resolutions that the
9 standing committee has the authority to enact?

10 A. Yes, sir.

11 Q. Does it indicate that they are placed in the journal?

12 A. Yes.

13 MR. RUNYAN: Your Honor, at this time I'd like to
14 publish two portions from the Defendant Episcopal Church in
15 South Carolina's counterclaim.

16 THE COURT: All right.

17 MR. RUNYAN: Their answering counterclaim.

18 THE COURT: Any objection to that? It's been filed with
19 the Court.

20 MR. RUNYAN: That's okay. I'll leave it there, I don't
21 need to publish it. It's in the record.

22 THE COURT: All right. Very well. All right.

23 MS. GOLDING: Limited redirect, Your Honor.

24 THE COURT: All right.

25 REDIRECT EXAMINATION BY MS. GOLDING:

1 committee. Of late the standing committee has been meeting
2 on almost a monthly basis.

3 Q. We had a question earlier that wasn't completely
4 answered about the number of people the diocese employs.
5 Would you just give us an understanding of the employment
6 picture of the diocese?

7 A. Yes. There are approximately eight employees downtown,
8 staff members with various responsibilities, administratively
9 and ministry-wise, and then the rest of the diocesan
10 employees are employees of the camp, Camp St. Christopher,
11 St. Christopher Camp and Conference Center, and employment
12 there varies considerably from 75 to 150, depending upon
13 whether camp is in session during the summer and whether or
14 not the barrier island program is at work.

15 Q. Mr. Lewis, does the Protestant Episcopal Church in the
16 Diocese of South Carolina, a South Carolina nonprofit
17 corporation own property?

18 A. Indeed it does.

19 Q. Does it have bank accounts?

20 A. It does.

21 Q. Does it lease cars?

22 A. It does.

23 Q. Does it lease or own equipment?

24 A. Yes, it does.

25 Q. Does it cut payroll checks?

1 MR. TISDALE: Your Honor, I'm going to object to leading
2 the witness. I think he can just ask him the question.

3 MR. RUNYAN: That's true.

4 THE COURT: Yes, sustained.

5 Q. Do you know if payroll checks are cut?

6 A. Yes, I do.

7 Q. Do you know if anything is withheld from them?

8 A. It is.

9 Q. What?

10 A. Pension for clergy, and laity now, health insurance,
11 optional life insurance if people have opted to receive that
12 benefit, income tax, all the usual things that would be part
13 of a payroll withholding.

14 Q. Do you know if the same corporate entity has borrowed
15 money?

16 A. Yes, it has.

17 Q. Do you know whether it leases property or not?

18 A. Property as in.

19 Q. Real property.

20 A. Real property, I believe it does.

21 Q. Does it have a lease at the present time?

22 A. I'm not sure.

23 Q. Okay. Has it sold property?

24 A. Yes, it has.

25 Q. How many parishes and missions are there currently in

1 the diocese?

2 A. There are currently 39 parishes and 12 missions.

3 MR. RUNYAN: Your Honor, I'd like to display a map of
4 the parishes and missions that's presently on the website.
5 Any objection?

6 MR. TISDALE: No objection.

7 MS. KOSTEL: No objection.

8 THE COURT: Very well, all right.

9 Q. Mr. Lewis, can you see that?

10 A. I can.

11 Q. Just tell us what this is.

12 A. It's a map of the eastern portion of South Carolina
13 showing the location of the various parishes and missions of
14 the diocese as they are located across the landscape.

15 Q. And the little cartouche that looks like a seal, is that
16 the location of the parishes?

17 A. That's correct.

18 Q. Are these the parishes and missions that are currently
19 in union with the diocese?

20 A. I'm looking to confirm. I believe so.

21 Q. Okay. Tell the Court what is the difference between a
22 parish and a mission.

23 A. A full parish has the financial ability to pay for a
24 full-time rector, full-time clergy member. A mission as a
25 general rule does not have that financial ability and often

1 is supported financially by the diocese.

2 Q. What is the oldest congregation that you're aware of in
3 the diocese?

4 A. St. Philip's.

5 Q. Can you tell us about how old it is?

6 A. Over 300 years.

7 Q. Can you tell us approximately how many parishioners it
8 has?

9 A. 2 to 3,000.

10 Q. What is the youngest congregation in the diocese?

11 A. That would be Grace Parish in North Myrtle Beach.

12 Q. And how long has it been in the diocese?

13 A. One year.

14 Q. And approximately how many parishioners does it have?

15 A. Two to three dozen.

16 Q. Today how many parishioners are there, Mr. Lewis, in the
17 parishes and missions that are in union with the diocese?

18 A. Approximately 25,000.

19 Q. How many active clergy are there in the diocese at
20 present?

21 A. I believe about 90.

22 Q. Does that include deacons and priests?

23 A. That would only -- that count would only include priests
24 who are active in ministry. That does not include retired
25 clergy or deacons. That would add another 20 or 30 easily.

1 Q. Are there bishops who have retired from the Episcopal
2 Church that are active in the diocese?

3 A. Yes, three that I'm aware of.

4 Q. I'd ask you some questions about diocesan statistics..
5 Does the diocese keep a record of its statistics?

6 A. Yes, it does.

7 Q. Are you familiar with some of these as they relate to
8 the diocese before it withdrew from the Episcopal Church?

9 A. Yes, I am.

10 Q. Between 2002 and 2012 of the 110 dioceses in union with
11 the Episcopal Church how many showed any growth in baptized
12 membership during that same period?

13 A. During that ten-year period?

14 Q. Yes.

15 A. Three.

16 Q. And where did the diocese fit in?

17 A. It had the greatest growth of those three.

18 Q. In the year before the diocese withdrew from the
19 Episcopal Church could you tell us the state of growth in its
20 communicants?

21 A. In the Episcopal Church?

22 Q. In the diocese.

23 A. Oh, in the diocese, during that ten years membership,
24 baptized membership grew by a bit over 6 percent.

25 Q. What communication methods did the diocese use?

1 Q. Mr. Lewis, we saw a number of photographs in there about
2 the diocesan convention. When did you first attend one of
3 these conventions?

4 A. My first diocesan convention would have been in 1995.

5 Q. In what capacity did you attend at that time?

6 A. As the rector of St. Jude's in Walterboro.

7 Q. When did you start attending conventions in the capacity
8 as canon to the ordinary?

9 A. That would have been the fall of 2009.

10 Q. And based on your experience, about how many people
11 attend the convention since you've been canon to the
12 ordinary?

13 A. Typically about 100 clergy and about 200 laity, give or
14 take a few.

15 Q. This is a convention of something. Who are the
16 participants at the convention?

17 A. Participants are the clergy of the diocese, who are
18 canonically resident with seat, voice and vote. That means,
19 among other things, that they must be active in ministry in
20 the diocese. The other participants, members, if you will,
21 of the convention are the parishes, who are represented by
22 their elected deputies.

23 Q. About how often are these held?

24 A. An annual convention is held each year, usually in
25 March.

1 Q. Are they sometimes held more frequently than once?

2 A. Canons allow for special conventions for other purposes,
3 including the election of a bishop or issues of moment to the
4 diocese.

5 Q. Have there been occasions in the history of the diocese
6 that you're aware of when they didn't meet in a particular
7 year?

8 A. I'm aware of one occasion, I believe, when that
9 happened.

10 Q. Mr. Lewis, did the diocese donate some of its historical
11 records to the South Carolina Historical Society?

12 A. That's correct.

13 Q. Who was the bishop when that happened?

14 A. Edward Salmon.

15 Q. Subsequent to that -- or can you tell the Court what was
16 donated, roughly what was donated?

17 A. The archival facilities of the diocese on the premises
18 are limited, and primarily what was conveyed at that time
19 were all the diocesan journals, convention journals of the
20 diocese.

21 Q. In the last couple of years did you enter into an
22 agreement with the South Carolina Historical Society about
23 providing some of these records so that they could be brought
24 to Court today?

25 A. That is correct.

1 Q. Would you take a look at the first document that you
2 have? I believe it's been premarked as Exhibit 40. Tell me
3 if this is a copy of that agreement.

4 A. It is.

5 MR. RUNYAN: Move it into evidence.

6 MR. TISDALE: No objection. What exhibit number will it
7 be?

8 MR. RUNYAN: 40.

9 MS. KOSTEL: Just one moment, please.

10 THE COURT: Certainly.

11 MS. KOSTEL: No objection.

12 THE COURT: Very well, 40 is in without objection.

13 (Plaintiff Diocese Exhibit 40 admitted into evidence.)

14 Q. Mr. Lewis, as a result of this agreement did the South
15 Carolina Historical Society bring some old documents here?

16 A. I believe they did.

17 Q. I want to exhibit to you and then to the Court the
18 earliest one that we have.

19 Let me show them to you first.

20 (Counsel confer.)

21 MR. TISDALE: Your Honor, we'll take a minute to look at
22 this.

23 THE COURT: Of course, absolutely. This is probably a
24 good time to take our afternoon break while you all do that.
25 We'll take 15 minutes and be at ease.

1 Q. Do you have another document that looks sort of like
2 this (indicating)?

3 A. Yes, I do.

4 Q. Does that have a number on it?

5 A. 41.

6 Q. Okay. I'd like to, before we get to that I would like
7 to do what I was going to do before and hand you these
8 original records from the 1780s, ask you to look at them and
9 verify that they did in fact come from the diocese, were
10 given to the historical society, and then if you would please
11 hand them to the Court.

12 A. These are embossed on the outside of the bound volume,
13 Minutes of Conventions, Protestant Episcopal Church, Diocese
14 of South Carolina, 1785 to 1799.

15 MR. RUNYAN: If you would hand that to the Court,
16 please, sir.

17 THE COURT: Are they unprotected?

18 MR. RUNYAN: Well, they don't have anything else on
19 them, no. That's why we gave them up.

20 THE COURT: I don't have gloves or anything.

21 Oh, let's hear it for criminal court. All right.

22 Okay. Are you going to ask a question because I don't
23 want to disturb it any more than I absolutely need to.

24 MR. RUNYAN: I will.

25 Q. Mr. Lewis, Exhibit 41 that you have in front of you,

1 what is that?

2 A. That is the 1786 constitution, first constitution of the
3 Diocese of South Carolina.

4 Q. And how many pages are in that exhibit?

5 A. Three.

6 MR. RUNYAN: Your Honor, on the screen is the first page
7 of that exhibit, and if the Court would look at the very back
8 of the old document that you have, and it's actually
9 upsidedown, I believe the original is at the very back
10 upsidedown.

11 THE COURT: It's like reading Hebrew.

12 Q. Mr. Lewis, the copy that is 41, was that made from the
13 original that the Court has?

14 A. Yes.

15 Q. When was that made?

16 A. The copy?

17 Q. Yes. During the course of this litigation?

18 A. Yes, during the course of this litigation, part of
19 discovery.

20 Q. Did the diocese request that from the historical society
21 to make a copy?

22 A. Yes, we did.

23 Q. Did we make a copy and return it to the historical
24 society?

25 A. Yes, we did.

1 complete this exercise at the end of the day if that's better
2 for the Court.

3 MR. RUNYAN: No problem with that. We'll mark it 41B
4 for identification and then we'll deal with this. Thank you.

5 MS. KOSTEL: Yes, thank you.

6 MR. TISDALE: And if it's corrected, we don't have any
7 objection to it.

8 Q. Mr. Lewis, what documents govern how the convention of
9 the Protestant Episcopal Church in the Diocese of South
10 Carolina operates when it meets?

11 A. The constitution and the canons of the Protestant
12 Episcopal Church in the Diocese of South Carolina.

13 Q. Do the constitution and canons of the national church
14 govern how the convention operates?

15 A. No, they do not.

16 Q. Do they provide for how the diocese elects a bishop?

17 A. The actual election process is described in Rule 21 of
18 our canons.

19 Q. Do they speak to the number of votes required to pass?

20 MR. TISDALE: Your Honor, I'm going to object to his
21 leading the witness on all of this.

22 MR. RUNYAN: I'm not sure that's leading.

23 MR. TISDALE: You could ask him what it does, not tell
24 him what it does and then ask him if that's right.

25 Q. Does the constitution and canons of the national church

1 have anything to say about how the Diocese of South Carolina
2 operates its convention?

3 A. I do not believe so.

4 Q. When the Diocese of South Carolina amends or changes its
5 constitution and canons, is there any provision or any
6 requirement of which you are aware that that change must be
7 reviewed first and approved by the national church?

8 A. None of which I'm aware.

9 Q. When the Episcopal Church changes its constitution, when
10 the national church changes its constitution, does this
11 diocese and others have to review and approve that change
12 before it is effective?

13 A. Every diocese in the national church is expected to vote
14 upon those proposed changes to the national constitution.

15 Q. Mr. Lewis, what's the process used to call a convention
16 of the Diocese of South Carolina?

17 A. Normally at the conclusion of any annual convention the
18 date and location for the next convention is published,
19 announced at that time at the conclusion of that convention.
20 For special conventions the requirement in the canons is for
21 30 days advanced notice for any convention, and normally even
22 for an annual convention, even though the day and location
23 has been pre-noticed 30 days in advance, there will be a
24 reminder from the diocesan office that goes out, along with
25 any pre-filed resolutions for that convention.

1 Q. Okay. And are notices of convention, in fact, packets
2 for the convention sent out in advance?

3 A. That is correct.

4 Q. You should have in front of you, Mr. Lewis, 42A through
5 E, I believe.

6 A. Yes.

7 Q. Could you tell us what these are?

8 A. These are the preconvention packets that are mailed to
9 all clergy and deputies who are expected to attend the
10 diocesan convention, annual diocesan convention.

11 Q. And for what years of convention gathering do they
12 cover?

13 A. I see March 2010, January 2011, March 2012, October,
14 it's a notice for November 2012 and March 2013.

15 Q. What kind of information is contained in these packets,
16 Mr. Lewis?

17 A. Normally they send an agenda for the meeting, the
18 business to be conducted, especially if it's at a special
19 convention. Also included would be any pre-filed resolutions
20 or other business to be conducted. If it's an annual
21 convention, there will be election of officers, and the
22 nominees for those positions, that slate will be provided
23 along with a brief biography of all the candidates. Normally
24 the diocesan budget is approved at annual convention, and
25 depending upon the timing of this mailing that would also be

1 mailed out in advance to the deputies for their review prior
2 to the gathering of the convention.

3 Q. You may have said this, but to whom are these sent?

4 A. These are sent to the clergy of the diocese as well as
5 the deputies who represent the parishes and missions of the
6 diocese.

7 Q. And how do you know who to send them to?

8 A. All clergy who are canonically resident are identified
9 as such in the diocesan mailing list. For the deputies
10 representing the parishes there is a requirement that the
11 deputation be certified in advance. The parishes supply us
12 with a list of who their deputies will be at least 30 days in
13 advance, that's the request, and most make that request for
14 us so that we know precisely who to mail these packets to.
15 They send us both the names and all the pertinent contact
16 information for who those individuals are, both deputies and
17 alternates.

18 MR. RUNYAN: Offer 42A through E.

19 MR. TISDALE: No objection.

20 MS. KOSTEL: No objection.

21 THE COURT: Very well.

22 (Plaintiff Diocese Exhibits 42A-E admitted into
23 evidence.)

24 Q. Mr. Lewis, when you go to a convention what do you do
25 since you became canon to the ordinary?

1 A. As canon my duties tend to vary at a diocesan
2 convention. Appointments to committees are at the bishop's
3 discretion, so I do from time to time serve on various
4 committees, convention committees, that's one of my areas of
5 responsibility. I also assist with the actual administrative
6 conduct of the meeting, helping with vote tallies, I'm
7 involved with the nominating process, help support the work
8 of the nominating committee in presenting those nominations,
9 have some involvement in that part of the process as well,
10 and then I'm simply available for whatever needs at the
11 moment might arise during the course of the convention, so if
12 you were studying the pictures that were shown earlier of
13 diocesan convention, you would have seen me seated behind the
14 bishop on the dais.

15 Q. Mr. Lewis, who serves as president of the convention?

16 A. That would be the bishop.

17 Q. If he is not there, who serves as president?

18 A. President of the standing committee.

19 Q. Is there a secretary?

20 A. There is.

21 Q. And is the chancellor there?

22 A. Chancellor's present under normal circumstances.

23 Q. What is the role of the chancellor?

24 A. He normally functions as the parliamentarian.

25 Q. Is there a process by which a quorum is determined?

1 A. There is. All the pre-filed registrations are organized
2 at the registration area, and then as each individual comes
3 in before they can receive a name tag and enter the actual
4 convention area, they have to check in, and we check off
5 registrations against those that we have preregistered for
6 the convention, and before convention actually begins
7 business there's report of the committee to inform us of the
8 number of clergy present with seat, voice and vote and the
9 number of parishes and missions registered with seat, voice
10 and vote.

11 Q. Since you've been attendings diocesan conventions have
12 you ever attended a convention where there was not a quorum?

13 A. No, never have.

14 Q. Does the staff at the convention prepare a convention
15 notebook?

16 A. That is correct, we do.

17 Q. What is that?

18 A. That is a working agenda for the convention to provide
19 in more detail what actually transpires during the course of
20 the diocesan convention. All the pieces of business that
21 need to be conducted from elections to resolutions to
22 reports, financial statements, appointments of officers and
23 convention committees, all of that's laid out in some detail
24 in that notebook. Also normally concluded in that notebook
25 are the materials needed to make records of the actual voting

1 process. For elections that's fairly simple. That's become
2 an electronic process that's been with an electronic voting
3 device. But for items such as alteration to the constitution
4 or the canons, parts of that process require a vote by
5 orders, so there is a tally sheet available so that if there
6 is a vote by orders, we have a way to record each individual
7 clergy vote and each individual parish and mission vote.

8 Q. Mr. Lewis, at the conclusion of a convention or sometime
9 after that is there a document prepared known as a journal?

10 A. That is correct.

11 Q. And from what is it prepared?

12 A. It is prepared in part using the minutes taken at the
13 course of that meeting, also makes use of the notes taken in
14 those convention journals about which we were just referring,
15 and on some occasions we have had a court reporter present in
16 order to transcribe the business of that convention.

17 Q. Mr. Lewis, you have in front of you what's been
18 premarked as Exhibit 43. Which convention does this relate
19 to?

20 A. October 2010.

21 Q. What would you call this document?

22 A. These are the working records of the reconvened 219th
23 convention, excuse me, this contains both the March session
24 and the October session from 2010.

25 MR. RUNYAN: Offer Exhibit 43.

1 MR. TISDALE: Bear with us just one second, Your Honor.

2 THE COURT: Certainly.

3 MR. TISDALE: Did you say what months in 2010?

4 MR. RUNYAN: The whole year.

5 MR. TISDALE: I know, but there were two, weren't there?

6 MR. RUNYAN: March and October.

7 MR. TISDALE: Okay. No objection.

8 MS. KOSTEL: No objection.

9 THE COURT: Very well.

10 (Plaintiff Diocese Exhibit 43 admitted into evidence.)

11 Q. Mr. Lewis, back to the convention, would you tell the
12 Court who has the right to vote?

13 A. All the clergy who are canonically resident of the
14 diocese and active in ministry have the right to vote as well
15 as retired clergy under a few specific canonically prescribed
16 circumstances, also the deputation from each parish and
17 mission has a right to vote. Parishes have a full vote, one
18 vote per parish, and missions have one half of a vote.

19 Q. So how many delegates are there per parish?

20 A. Normally four for each parish.

21 Q. And what happens if the four delegates don't agree?

22 A. If their vote is tied, it counts as an abstained, if it
23 is a majority in one direction or the other, the majority
24 rules.

25 Q. So when a parish votes in delegation, what is the number

1 of votes that it has?

2 A. One.

3 Q. And when a clergy votes, what is the number of votes
4 that he or she has?

5 A. One.

6 Q. And when a mission votes, what is the number of votes
7 that it has?

8 A. One half.

9 Q. Now, in addition to the number of votes are there
10 different manners of voting?

11 A. Yes, there are. The most common form of voting is a
12 simple voice vote, meaning the matters of convention
13 resolutions passed can be adopted by simple majority vote by
14 voice. That is normally determined by the chair if a motion
15 has prevailed. If there is some doubt on that matter, a
16 division can be called and a vote for orders requested in
17 order to get a more precise accounting of whether or not a
18 motion has indeed passed or not.

19 Q. What is a vote by orders?

20 A. Vote by orders is when the clergy vote is -- and lay
21 vote are taken separately. Vote by orders normally begins
22 with a roll call of all the clergy who are registered with
23 seat, voice and vote at that convention. After that roll
24 call has been taken and the number counted, we then proceed
25 with a roll call of the individual parishes and then the

1 individual missions, each being called one by one and being
2 asked for their vote, yay or nay.

3 Q. When there is a vote by orders, is it recorded by who
4 voted?

5 A. In the case of the individual clergy each individual
6 clergy vote is recorded so we know how each individual voted.
7 In the parish voting, the lay voting, all that we know is the
8 outcome of the deputation, whether their vote was yay, nay or
9 abstained.

10 Q. But is it recorded as a vote of the parish?

11 A. Yes, it is recorded as a vote of the parish.

12 Q. Or of the mission?

13 A. Or of the mission.

14 Q. What are the number of votes required to change a canon
15 in the Diocese of South Carolina?

16 A. Requires a two-thirds vote.

17 Q. In what way?

18 A. Both the clergy order must vote by two-thirds majority
19 for the change, and then the lay order of the parishes and
20 missions together collectively must vote by two-thirds in
21 order for the passage of a change.

22 Q. Now, to change a provision, add or change a provision in
23 the constitution, what is the process required to accomplish
24 that?

25 A. On first reading the proposed change must pass by simple

1 majority of the convention present, and then the second
2 reading requires a two-thirds vote by orders.

3 Q. So in order to change the constitution how many times
4 must it be voted on?

5 A. It must be voted upon at two successive diocesan
6 conventions.

7 Q. We've talked about changing the canons. We've talked
8 about changing the constitution. For the passage of any
9 other resolution how many votes are required?

10 A. A single vote.

11 Q. And to what amount must that equal?

12 A. By a simple majority.

13 Q. Okay. Thank you. If there is a majority vote, can
14 someone call for a roll call vote if they desire?

15 A. Yes, they can.

16 Q. You mentioned that resolutions got to the floor
17 typically by pre-filed resolutions that went out in these
18 notices and packets. Is there any other way that the
19 resolution can get to the floor?

20 A. The canons also allow for resolutions to be filed on the
21 floor on the day of convention. The primary requirement is
22 that whoever moves the motion must bring enough copies that
23 they are available for each individual clergy and deputy.

24 Q. Can anyone file a resolution?

25 A. Anyone may file a motion at convention who is a

1 A. I do.

2 Q. I'm not sure if you have a 43C. Do you have that?

3 A. I do not.

4 Q. Okay. I didn't think so. Are you familiar with these
5 two resolutions?

6 A. Yes, I am.

7 Q. Were you present when they were offered?

8 A. I was.

9 Q. Do these appear to be the resolutions marked as R-2 and
10 R-3 that were considered by the convention of the Diocese of
11 South Carolina in March of 2010?

12 A. Yes, they are.

13 Q. And were they voted upon?

14 A. They were.

15 MR. RUNYAN: I'd offer them in evidence.

16 MR. TISDALE: No objection.

17 MS. KOSTEL: No objection.

18 THE COURT: All right. In evidence without objection.

19 (Plaintiff Diocese Exhibits 43A and 43B admitted into
20 evidence.)

21 Q. Mr. Lewis, were these two resolutions R-2 and R-3
22 passed?

23 A. Yes, they did.

24 Q. Would you tell us what R-2 is, what it relates to?

25 A. R-2 related to an issue that was referred to earlier in

1 Chancellor Logan's testimony, the letters received from
2 Mr. Tisdale asking for various and sundry documents. The
3 resolution in question pointed out that the presiding bishop
4 has no authority to retain attorneys in this diocese to
5 present themselves as legal counsel of the Episcopal Church,
6 since the diocese at that time was the Episcopal Church in
7 South Carolina, and resolved that the presiding bishop,
8 excuse me, demanded the presiding bishop remove all such
9 retainer of legal counsel.

10 Q. All right. And what was R-3 about?

11 A. R-3 gave the bishop of the diocese -- let me rephrase
12 that. It clarified what we believed to be the case, that the
13 bishop was the ecclesiastical authority of the diocese, and
14 in his absence the standing committee, and that the
15 interpretation of our constitution and canons was ultimately
16 in the purview of the bishop and whatever interpretation he
17 provided was final and binding.

18 Q. Back to R-2 just a moment, there's a reference to
19 presiding bishop. Could you tell the Court who that person
20 was at that time?

21 A. That would be the Right Reverend Katharine Jefferts
22 Schori.

23 Q. And is the presiding bishop someone who is associated
24 with the national church?

25 A. That is correct.

1 Q. Are the results of these votes contained in the journals
2 of the convention?

3 A. That is correct.

4 Q. Could you tell the Court what the first resolution
5 passed by?

6 A. The first resolution R-2 was, because it was not a
7 canonical change, was a simple voice vote by majority.

8 Q. Was the second, R-3, was that a canonical change?

9 A. That was a canonical change, that was an addition to our
10 canons, and it passed in the clergy order 95 to 6 and the lay
11 order 47 to 7.

12 Q. There was a third one also that was considered that
13 involved the relationship, do you recall a resolution
14 involving a generous pastoral response?

15 A. Yes, that was resolution R-4.

16 Q. And what did that relate to?

17 A. At that point in time we had come to the conclusion or
18 near the conclusion of the All Saints litigation. The bishop
19 had made it very clear that it was his intention not to go
20 through that kind of litigation in the diocese again. It had
21 been tremendously expensive and divisive. St. Andrew's,
22 Mount Pleasant, had indicated that they were contemplating
23 disassociating from the diocese and the Episcopal Church, and
24 while we believed the bishop already had authority to deal
25 pastorally with such matters, this canon made it clear that

1 the diocese agreed with his assessment that that was not a
2 road we wished to travel again, and it gave the bishop
3 authority canonically for a generous pastoral response in how
4 it dealt with any congregation, mission or parish that was in
5 conflict with the diocese or the larger church.

6 Q. Did that pass?

7 A. It did pass.

8 Q. Was that a canonical change?

9 A. Yes, it was a canonical change.

10 Q. Did it pass by a vote by orders?

11 A. It did.

12 Q. Would you say what the percentage was of the passage in
13 the parishes and the missions and the clergy?

14 A. It was over 90 percent.

15 Q. Did you also attend the October 15 meeting of the 2010
16 convention?

17 A. Yes, I did.

18 Q. Prior to that meeting did you attend a standing
19 committee meeting where the resolutions that were going to be
20 offered were considered by the standing committee and voted
21 upon?

22 A. I was present at that meeting.

23 Q. Could you tell the Court what the vote was on those
24 resolutions?

25 A. The standing committee was unanimous in its support of

1 the resolutions put forward.

2 Q. And did some of those resolutions relate to the
3 diocese's relationship with the Episcopal Church?

4 A. Yes, they did.

5 Q. And were those resolutions sponsored by the standing
6 committee?

7 A. That is correct.

8 Q. You have in front of you a document marked 44 -- excuse
9 me, I'm sorry, 44D, E, F and G. Do you have those?

10 A. I do.

11 Q. Could you just broadly describe, without talking about
12 the topics yet, what these are?

13 A. One is a change to the constitution of the diocese. One
14 is a change to the canons of the diocese. That would be R-8.
15 R-10 is a change to the canons of the diocese and R-11 was an
16 approval for change in the corporate charter purpose
17 statement.

18 Q. Were these voted on by the convention?

19 A. They were.

20 Q. Were these the resolutions that the standing committee
21 voted on and approved?

22 A. Yes, that is correct.

23 MR. RUNYAN: I offer them into evidence, 44D through F
24 and G.

25 MR. TISDALE: No objection.

1 MS. KOSTEL: I don't have all of them, Alan. I don't
2 have anything from 2011, I mean R-11, I don't have R-11.

3 MR. RUNYAN: They're on one page, 10 and 11.

4 MS. KOSTEL: Oh, it's on one page. Could we go through
5 what the numbers of each of these is?

6 MR. RUNYAN: We're going to do that.

7 MS. KOSTEL: Thanks.

8 MR. RUNYAN: The exhibit numbers?

9 MS. KOSTEL: Yes.

10 MR. RUNYAN: Okay. R-6, Exhibit 44D; R-8, Exhibit 44E;
11 and R-10 and 11 is Exhibit 44F.

12 MS. KOSTEL: Thank you.

13 THE COURT: Any objection?

14 MR. TISDALE: No objection.

15 MS. KOSTEL: No objection.

16 THE COURT: Thank you. All right.

17 (Plaintiff's Diocese Exhibits 44D-F admitted into
18 evidence.)

19 Q. Mr. Lewis, let's start with the first one, 44D, would
20 you tell us what that concerns?

21 A. This was an amendment of the constitution of the Diocese
22 of South Carolina to limit its accession to the constitution
23 of that of the national church.

24 Q. And looking at this document, there are several things
25 that are struck through and a few things that were added.

1 Can you tell me what those are?

2 A. All reference to the canons of the national church have
3 been removed as well as references to the general convention
4 of the national church.

5 Q. Is there an addition to Article 1 of the constitution?

6 A. Yes. Under the first resolved the language was added
7 that in the case of a conflict between the constitution of
8 the general convention and that of this diocese the
9 constitution of the diocese would prevail.

10 Q. So we have a clear understanding, Mr. Lewis, prior to
11 the consideration and adoption of this constitutional change
12 and the canons did the constitution of the Diocese of South
13 Carolina provide that it acceded to both the constitution and
14 the canons of the Episcopal Church?

15 A. Prior to this change, that's correct.

16 Q. And after this change did it still provide accession to
17 something?

18 A. It still continued to provide accession to the
19 constitution of the national church.

20 Q. Let's look at R-8. Can you tell me what R-8 concerned?

21 A. R-8 was a removal of accession in the diocesan canons to
22 those canons of the national church.

23 Q. All right. And it's fairly lengthy. There are a number
24 of additions in there referencing 2006 and others. Can you
25 tell us what that concerns?

1 A. The primary reason behind this change was the
2 recognition and belief on our part that changes made to the
3 title for the disciplinary canons of the national church were
4 contrary to its own constitution and the only way to resolve
5 that conflict for us was to remove our accession to those
6 canons, so the reference here to 2006 was, in the
7 disciplinary canons of our diocese, reference back to the
8 canons of the national church as they existed in 2006, which
9 continued to be the template under which we chose to operate
10 for disciplinary purposes for clergy.

11 Q. All right. Would you look at the next resolution, R-10.
12 Could you tell us what that concerned?

13 A. That addressed the issue of property held in trust, the
14 question of whether or not the diocese had a trust interest
15 in the property of its parishes and missions. The language
16 in Section 5 of Canon 29 suggested that there was such a
17 trust interest. At the time this resolution was adopted by
18 convention it had been over a year since the All Saints
19 Pawleys ruling which had made it clear, to our understanding,
20 the diocese had no such trust interest, so there was no good
21 reason to maintain this language in our canons. It was no
22 longer applicable.

23 Q. All right. And then the last resolution, R-11, could
24 you tell us what that was about?

25 A. That was a resolution to revise the corporate purpose

1 statement of the diocese.

2 Q. And that revision, could you tell us how that, what that
3 revision did to the corporate purpose statement?

4 A. It removed reference to the national church and replaced
5 it with reference to the diocese itself.

6 Q. Were these voted on at convention?

7 A. They were.

8 Q. Did the first one, R-6, pass?

9 A. It passed by voice vote, simple majority.

10 Q. That was the first vote on amending the constitution?

11 A. Correct.

12 Q. How about the next one, R-8?

13 A. R-8 also passed by a vote by orders.

14 Q. And R-9?

15 A. R 9 --

16 Q. R-10, excuse me.

17 A. R-10 was also a canonical change that passed in a vote
18 by orders.

19 Q. All right. And R-10, would that have been removal of
20 the Dennis canon?

21 A. That is correct.

22 Q. Could you tell the Court what the vote was on that
23 percentage-wise?

24 A. 94 percent in favor in the clergy order and 91 percent
25 in favor in the lay order.

1 Q. And, finally, the amendment of the corporate charter,
2 did that pass as well?

3 A. That passed on a simple majority voice vote.

4 Q. Did you also attend the convention in 2011?

5 A. I did.

6 Q. Was there a resolution passed there that related to our
7 relationship with the national church?

8 A. In February of 2011 we had a second reading of the
9 constitutional changes approved prior in 2010.

10 Q. And was that done on a vote by orders?

11 A. That was.

12 Q. Did it pass?

13 A. It passed.

14 Q. Can you tell the Court what the number of votes were out
15 of the possible votes for the clergy who voted in favor?

16 A. Clergy in favor was 75 out of a possible 89 registered
17 for that convention.

18 Q. Parishes?

19 A. Parishes, it was a vote of 44 out of a possible 55
20 votes.

21 Q. Now, after the diocese disassociated, was there a
22 convention held in November of 2012?

23 A. That is correct, there was a special convention held.

24 Q. All right. Were resolutions passed there that related
25 to the diocese's relationship with the Episcopal Church?

1 A. Yes, that is correct.

2 Q. Do you recall how many?

3 A. In November, several. I'm refreshing my memory. Three
4 of significance.

5 Q. Do you have in front of you Exhibit 45A, B, C and D?

6 A. Correct.

7 Q. Again, Mr. Lewis, broadly speaking, could you describe
8 what R-1 is without getting into details?

9 A. R-1 was an affirmation by the diocesan convention of the
10 action taken by the standing committee, acting as board of
11 directors, to disassociate from the national church.

12 Q. And what was 45B, what is 45B?

13 A. 45B was an explanation of that withdrawal.

14 Q. And 45C?

15 A. 45C was an amendment of the constitution of the diocese
16 to remove accession and all reference to the national church.

17 Q. 45D?

18 A. 45D was a similar amendment to the canons of the diocese
19 to remove all references to the national church.

20 Q. I direct your attention for just a moment to 45B. Was
21 this handed out at the convention?

22 A. That is correct.

23 MR. RUNYAN: I'd offer 45A through D.

24 MR. TISDALE: No objection.

25 MS. KOSTEL: No objection.

- 1 Q. Was that voted on at convention?
- 2 A. It was.
- 3 Q. And did it pass?
- 4 A. It passed by a voice vote.
- 5 Q. A majority vote?
- 6 A. That's correct.
- 7 Q. And was the next resolution voted on?
- 8 A. It was, R-2.
- 9 Q. And was it the first vote to amend the constitution?
- 10 A. It was the first vote, first reading, and passed by a
- 11 simple majority vote.
- 12 Q. What was the effect of that amendment?
- 13 A. To remove all accession and reference to the Episcopal
- 14 Church, the national church and the constitution of the
- 15 diocese.
- 16 Q. And did R-3 pass as well?
- 17 A. It also passed.
- 18 Q. And was that an amendment of the canons?
- 19 A. That is correct.
- 20 Q. Did that require a second vote?
- 21 A. No, it did not.
- 22 Q. Was it a vote by orders?
- 23 A. A vote by orders, correct.
- 24 Q. By what percentage did that pass?
- 25 A. Nearly unanimous, 96 and 89 percent respectively.

1 A. That's correct.

2 Q. Did you gather this information from any other source?

3 A. I made use of several diocesan resources, particularly
4 for the history, the texts written by Mr. Dalcho and Mr.
5 Thomas that are the most comprehensive histories of the
6 Diocese of South Carolina.

7 Q. Now, Mr. Lewis, approximately when did the diocese leave
8 the Episcopal Church?

9 A. Sometime in October of 2012.

10 Q. And how was the public made aware of that?

11 A. There was a public statement released I believe on
12 October 17 announcing that the disassociation had taken
13 effect.

14 Q. At some time after that did you become aware that
15 someone was using the registered marks of the diocese?

16 A. I did.

17 Q. Could you tell us how that happened?

18 A. Certainly. Began receiving emails from a group
19 describing it as the steering committee of the diocese that
20 announced that there would be a clergy day for the clergy of
21 the Diocese of South Carolina to be held on November 15,
22 2012.

23 Q. Did you say you received an email?

24 A. That's correct.

25 Q. You have in front of you a document premarked as Exhibit

- 1 48, do you.
- 2 A. Yes.
- 3 Q. Is that the email you received?
- 4 A. That is correct.
- 5 Q. On the first page there's an email portion. What is on
- 6 the second -- well, let's stop right there.
- 7 I'm going to offer this into evidence.
- 8 THE COURT: Any objection?
- 9 MR. TISDALE: No objection.
- 10 MS. KOSTEL: No objection.
- 11 THE COURT: 48 in evidence without objection.
- 12 (Plaintiff Diocese Exhibit 48 admitted into evidence.)
- 13 Q. Take a look at the first page of this Exhibit, Mr.
- 14 Lewis.
- 15 A. Yes.
- 16 Q. Who is it from?
- 17 A. It says it is from Episcopal Diocese of South Carolina.
- 18 Q. Was it in fact from the Episcopal Diocese of South
- 19 Carolina?
- 20 A. It did not come from us.
- 21 Q. Did you get this by email?
- 22 A. That is correct.
- 23 Q. Were you the only clergy in the diocese to get this?
- 24 A. To my knowledge all the clergy of the diocese received
- 25 this.

1 Q. Does this reference a meeting to be held some days
2 later?

3 A. That is correct.

4 Q. Where was the meeting to be held?

5 A. Originally scheduled location was Holy Communion in
6 Charleston.

7 Q. If you'd look at the second page of this document, what
8 is that?

9 A. That is the PDF file that was the attachment to this
10 email, the formal invitation to that meeting.

11 Q. Did the Diocese of South Carolina, the Protestant
12 Episcopal Church in the Diocese of South Carolina by whom you
13 are employed, have anything to do with this invitation?

14 A. Nothing, it did not.

15 Q. Does it use the seal of the diocese?

16 A. It does.

17 Q. Is there also on there the seal of the Episcopal Church?

18 A. That is correct.

19 Q. What was your reaction when you received this?

20 A. Shock and disbelief.

21 Q. Did you do something about it?

22 A. Yes. We immediately sent a communication to the clergy
23 of the diocese, informing them that this communication did
24 not come from us and that it was not an official or approved
25 gathering of the clergy of the Protestant Episcopal Church in

1 the Diocese of South Carolina.

2 Q. Did you send this in any particular mode of
3 communication?

4 A. We sent it immediately by email so that it would reach
5 people as quickly as possible and minimize confusion.

6 Q. Do you have a document marked Exhibit 49?

7 A. I do.

8 Q. Is that what you sent?

9 A. That is correct.

10 MR. RUNYAN: Offer it in evidence.

11 MR. TISDALE: No objection.

12 MS. KOSTEL: No objection.

13 THE COURT: Very well.

14 (Plaintiff Diocese Exhibit 49 admitted into evidence.)

15 Q. Mr. Lewis, I'm going to direct your attention to Exhibit
16 49. Who prepared this document?

17 A. I believe diocesan staff, but I don't clearly remember
18 who actually prepared it.

19 Q. Did you participate in its mailing out?

20 A. Yes, I did.

21 Q. Direct your attention to the second paragraph, please,
22 sir, starting at the second paragraph. Would you just read
23 that second paragraph, please, sir, in the record?

24 A. Yes. So it was extremely disturbing to learn that on
25 Wednesday afternoon, November 7, 2012, a majority of the

1 clergy of the Diocese of South Carolina received an email
2 that pretended to be from the Diocese of South Carolina but
3 in fact was not. The sender of the email was not identified
4 beyond an email address registered to an organization in
5 Florida named Domain Discreet Privacy Service. The
6 corresponding web page is hosted by a San Francisco
7 organization stating, "this temporary landing page will be
8 replaced when you publish your site".

9 Q. Okay. Just skip down and just read the last two
10 paragraphs, if you would.

11 A. Yes. Whoever called such a meeting had no authority to
12 do so or to use the diocesan seal in any fashion. All of
13 this is further evidence of the necessity for the cautions
14 this diocese has taken during the past several years. It
15 seems TEC does not follow its own canons, while repeatedly
16 insisting in the past that the Diocese of South Carolina do
17 so. The next gathering of the Diocese of South Carolina will
18 be the special convention, Saturday, November 17 at St.
19 Philip's Church in Charleston.

20 Q. After this was sent out did you get another email from
21 the same entity that sent the first one?

22 A. That is correct.

23 Q. Is that Exhibit 50?

24 A. That is correct.

25 MR. RUNYAN: I'd offer it in evidence.

1 THE COURT: Any objection?

2 MR. TISDALE: No objection.

3 MS. KOSTEL: No objection.

4 THE COURT: Very well, 50 in evidence without objection.

5 (Plaintiff Diocese Exhibit 50 admitted into evidence.)

6 Q. Mr. Lewis, before we get there, do you have in front of
7 you a document that is the web page that you were referencing
8 in the previous document that you went to?

9 You obviously don't. We'll catch up to that later.

10 Let's go on to the exhibit that you have in front of you.

11 Who is this from?

12 A. Episcopal Diocese of South Carolina.

13 Q. Did this come from the Protestant Episcopal Church in
14 the Diocese of South Carolina?

15 A. It did not.

16 Q. Did it come from the Episcopal Diocese of South
17 Carolina?

18 A. It would appear so.

19 Q. Did you have anything to do with the mail out of this
20 email?

21 A. I had none.

22 Q. What is the subject matter of this email?

23 A. It was noticing a change in the location for the
24 previously announced clergy day from Holy Communion,
25 Charleston to St. Mark's Episcopal Church in Charleston.

1 Q. Did the email for clergy day, this email that we've been
2 talking about, did you -- create any confusion among diocese?

3 A. It did, heard from several clergy who, upon receiving
4 the November 8 notice that we sent out to our clergy that
5 they very much appreciated receiving that explanation because
6 they had already been changing schedules and making plans to
7 attend what they thought was a legitimate clergy day of the
8 Diocese of South Carolina.

9 Q. Let me hand you a document that I referenced but did not
10 have a copy of. Could you take a look at that document which
11 has been premarked Exhibit 51 and tell me what that is?

12 A. It is for the Weebly web host site, and it says
13 EpiscopalDioceseofSC.com.

14 Q. Did you go to a website such as that and see something
15 such as this on or about the time that we're talking about?

16 A. Yes, I did.

17 MR. RUNYAN: Offer 51 into evidence.

18 MR. TISDALE: No objection.

19 MS. KOSTEL: No objection.

20 THE COURT: Very well. 51 in evidence without
21 objection.

22 (Plaintiff Diocese Exhibit 51 admitted into evidence.)

23 Q. Now, Mr. Lewis, was there a meeting date referenced?

24 A. For that clergy gathering?

25 Q. Yes; sir.

- 1 A. Yes, November 15.
- 2 Q. Did you attend it?
- 3 A. I did.
- 4 Q. About how many people were present?
- 5 A. My estimate was about 40 people in total for the portion
- 6 that I attended. There was actually a Eucharist prior to the
- 7 meeting, and I was not present for that.
- 8 Q. Did there appear to be someone in charge?
- 9 A. Yes, there was.
- 10 Q. Who was that?
- 11 A. That would be Mr. Tisdale.
- 12 Q. Were there other people participating in the meeting?
- 13 A. There were other participants, Bishop VonRosenberg was
- 14 present, as were other clergy, active parish clergy of the
- 15 congregations that ultimately decided to remain with the
- 16 national church.
- 17 Q. Who spoke most of the time?
- 18 A. Mr. Tisdale.
- 19 Q. Were there questions?
- 20 A. There were.
- 21 Q. Did Mr. Tisdale indicate who he was representing?
- 22 A. He indicated explicitly that he was functioning as legal
- 23 counsel for the presiding bishop.
- 24 Q. Did he indicate anything about how long he'd been doing
- 25 that?

1 A. He said that he had been contacted by the presiding
2 bishop several months, quote, unquote, prior and asked to
3 begin organizing for the possible need of replacing the
4 diocese.

5 Q. Did he indicate anything with respect to the name and
6 seal of the Diocese of South Carolina?

7 A. He indicated that the belief on their part was that the
8 name and the seal belonged to them as the true diocese and
9 that they would be using it.

10 Q. Did he state anything about intended legal action?

11 A. Only that there would be some but that he was not in a
12 position to comment on that in any detail.

13 Q. After that meeting did you receive by email from the
14 same source a registration form for a convention?

15 A. I did.

16 Q. Is that Exhibit 52?

17 A. That is correct.

18 MR. RUNYAN: Offer it in evidence.

19 MR. TISDALE: No objection.

20 MS. KOSTEL: No objection.

21 THE COURT: 52 into evidence without objection.

22 (Plaintiff Diocese Exhibit 52 admitted into evidence.)

23 Q. Mr. Lewis, what is Exhibit 52?

24 A. It is a registration form for what is called special
25 meeting of the convention, January 26, 2013 at Grace

- 1 Episcopal Church, the Episcopal Diocese of South Carolina.
- 2 Q. Did you or anybody at the diocese that you're aware of
- 3 have anything to do with the preparation and transmittal of
- 4 this document?
- 5 A. No, we did not.
- 6 Q. Does it have the seal of the Diocese of South Carolina
- 7 on it?
- 8 A. Yes, it does.
- 9 Q. Does it have the shield of the Episcopal Church?
- 10 A. That is correct.
- 11 Q. Do you know approximately when you received this?
- 12 A. It would be in December of 2012.
- 13 Q. At the bottom does it indicate the name that checks are
- 14 to be made payable to?
- 15 A. It says checks should be payable to, "Episcopal Diocese
- 16 of South Carolina".
- 17 Q. After learning of the existence of the website using the
- 18 name Episcopal Diocese of SC did you look at that website
- 19 after it had substance to it, not just an under construction
- 20 sign?
- 21 A. Yes, I did.
- 22 Q. Do you have in front of you Exhibit 53?
- 23 A. Yes, I do.
- 24 Q. Could you tell us what that is?
- 25 A. That would appear to be the home page from that website

1 at that time.

2 MR. RUNYAN: Offer 53 in evidence.

3 MR. TISDALE: No objection, Your Honor.

4 MS. KOSTEL: No objection.

5 THE COURT: Very well, 53 in evidence without objection.

6 (Plaintiff Diocese Exhibit 53 admitted into evidence.)

7 Q. Mr. Lewis, if you'd take a look at Exhibit 53, at the
8 top, do you see the seal of the Diocese of South Carolina?

9 A. I do.

10 Q. Did you or anybody to your knowledge with the diocese
11 have anything to do with the preparation of this web page?

12 A. No, we did not.

13 Q. Is there a reference in the first sentence to the
14 Diocese of South Carolina?

15 A. It says, welcome, the Episcopal Church in the Diocese of
16 South Carolina is continuing.

17 Q. As a part of your review of this website did you find a
18 page where there was a description of a seal?

19 A. Yes, I did.

20 Q. Do you have in front of you Exhibit 54?

21 A. I do.

22 Q. What is that?

23 A. That is the image of the seal of the Protestant
24 Episcopal Church in the Diocese of South Carolina along with
25 the text that I prepared when we made the registration of the

1 service marks.

2 MR. RUNYAN: Offer 54 in evidence.

3 MR. TISDALE: No objection.

4 MS. KOSTEL: No objection.

5 THE COURT: Very well, 54 is in evidence without
6 objection.

7 (Plaintiff Diocese Exhibit 54 admitted into evidence.)

8 Q. Mr. Lewis, what appears in the upper right-hand corner
9 about midway down the page, looks like a seal, what is that?

10 A. Looking at Exhibit 54?

11 Q. Yes, sir.

12 A. The seal of the diocese.

13 Q. In the upper right-hand corner, do you see that as well?

14 A. That is also the seal of the diocese.

15 Q. I want you to take those two documents, the one you
16 prepared and this one. You have them both in front of you?

17 A. I do.

18 Q. Could you tell me, based on your review of them now or
19 in the past, whether they -- what relationship one bears to
20 the other?

21 A. The only regard at which these are not identical is that
22 in the document on the diocesan website beneath the seal
23 itself is, in the calligraphy script, the Diocese of South
24 Carolina. That particular description is absent from what
25 was placed on the Episcopal Church in South Carolina website.

1 Q. Did you actually at the time compare these two?

2 A. Yes, I did.

3 Q. What did you conclude based on that comparison?

4 A. That it had been lifted in whole from our diocesan
5 website.

6 Q. This is the writing that you prepared?

7 A. That is correct.

8 Q. The same writing that you submitted to the Secretary of
9 State?

10 A. Correct.

11 Q. Now, was there a convention held in January of 2013
12 which you attended?

13 A. Yes, at Grace Church in Charleston.

14 Q. And what was your understanding about what convention --
15 what entity it was that was holding the convention?

16 A. My impression upon attendance is that the intention was
17 to be a convention of the Diocese of South Carolina.

18 Q. You went to that convention?

19 A. I did attend.

20 Q. Why did you do that?

21 A. To be an observer.

22 Q. Why did you want to be an observer?

23 A. Given the prior use of our diocesan seal and the attempt
24 to call a gathering of the clergy of the Diocese of South
25 Carolina, there was good reason to believe that there would

1 be other attempts at this gathering to act as if it was
2 indeed a convention of the Diocese of South Carolina, and we
3 felt like it was important to have a firsthand witness to
4 whether or not that was indeed the case.

5 Q. When you got there, did you notice a large sign?

6 A. Yes, I did.

7 Q. Did you take a picture of the sign?

8 A. I did.

9 Q. Is Exhibit 55 that you have in front of you a picture of
10 that sign?

11 A. That is correct.

12 MR. RUNYAN: I'd offer it in evidence.

13 MR. TISDALE: No objection.

14 MS. KOSTEL: No objection.

15 THE COURT: Very well, 55 in evidence without objection.

16 (Plaintiff Diocese Exhibit 55 admitted into evidence.)

17 Q. Mr. Lewis, can you tell me what you observed about the
18 sign?

19 A. My observation was that, in the upper right-hand corner
20 of that sign, what had originally been the seal of the
21 Diocese of South Carolina had been removed and replaced with
22 a graphic that said, image currently unavailable, and that
23 what had originally been the Diocesan Convention of the
24 Episcopal Diocese, Diocese of South Carolina, had been
25 changed to read Episcopal Church in South Carolina.

1 Q. Did you, following this convention, actually prepare an
2 affidavit?

3 A. That is correct.

4 Q. Did you sign it?

5 A. I did.

6 Q. From your understanding and belief has it been filed in
7 this courthouse?

8 A. Yes, it has.

9 Q. Let's talk about the convention that you attended there.
10 What portion did you attend?

11 A. I arrived near the conclusion of the worship service for
12 that convention and was present for the entirety of the
13 business meeting that followed.

14 Q. About how long did it last?

15 A. Several hours. I don't recall precisely how long.

16 Q. You stayed there until it was over?

17 A. That is correct.

18 Q. Was there any indication by anyone in charge as to
19 whether there was or was not a quorum?

20 A. It was indicated that there was a quorum present.

21 Q. How many conventions of the Diocese of South Carolina
22 have you attended where part of what you did was to determine
23 if there was a quorum?

24 A. That has been a significant piece of my responsibility
25 for the last five years.

- 1 Q. If this had been a meeting of the Diocese of South
2 Carolina, would there have been a quorum?
- 3 A. No, there would not.
- 4 Q. Did you hear the speech of the presiding bishop?
- 5 A. I did.
- 6 Q. Was a chancellor appointed by the presiding bishop?
- 7 A. That is correct.
- 8 Q. Who was appointed?
- 9 A. Mr. Tisdale.
- 10 Q. What role did Mr. Tisdale play during the convention?
- 11 A. He initiated the meeting and explained some of the
12 ground rules of how business would be conducted, including
13 the explanation that they would not be referring to
14 themselves as the Diocese of South Carolina as there was at
15 that time an injunction in place to prevent that, but if they
16 were to inadvertently slip from time to time it should be
17 understood that that was not the intent.
- 18 Q. And did they proceed to vote on resolutions?
- 19 A. That is correct.
- 20 Q. Were there any resolutions that were directed to
21 altering resolutions that had been passed by the Diocese of
22 South Carolina?
- 23 A. Yes, several.
- 24 Q. Did any of the resolutions actually use a registered
25 name of the Diocese of South Carolina?

1 A. Incorporated in the resolution was canonical language
2 that was verbatim from our constitution and canons.

3 Q. As a part of the affidavit filed in this Court did you
4 make a comparison between the Diocese of South Carolina's
5 constitution and canons and those that were a part of the
6 resolutions that were passed?

7 A. Yes, I believe so.

8 Q. And what did that comparison reveal?

9 A. It revealed that it was clear that the changes being
10 proposed were in direct correspondence with what were our
11 governing documents as the Diocese of South Carolina.

12 Q. And that would have been on what day in January?

13 A. January 23rd, I believe.

14 Q. January 26 sound right?

15 A. January 26.

16 Q. At any time, Mr. Lewis, after the announcement of
17 disassociation by the diocese in October did the Protestant
18 Episcopal Church in the Diocese of South Carolina give
19 permission or did it consent to the use of its names and
20 seals in any of the manners that we've been describing in
21 Exhibits 47 through 54?

22 A. No, it did not.

23 Q. Now, after the convention ended did you have occasion to
24 go back to the website or to try to go back to the Diocese of
25 South Carolina website using a search device?

1 A. Yes.

2 Q. Can you tell the Court what happened when you did that?

3 A. It redirected me elsewhere but -- and gave evidence that
4 it was still trying to go to Episcopal Diocese of South
5 Carolina.

6 Q. So what did you type in and what did you get?

7 A. If you search for the Diocese of South Carolina where it
8 would still take you was to a website that said -- that was
9 not our website.

10 Q. Was it the website that you had seen before?

11 A. Yes.

12 MR. RUNYAN: Thank you, sir. Answer any questions the
13 other side has.

14 THE COURT: All right. Any other questions on behalf of
15 the plaintiffs?

16 MS. GOLDING: May I take one moment, Your Honor?

17 THE COURT: Yes, of course.

18 MS. GOLDING: Thank you.

19 DIRECT EXAMINATION BY MS. GOLDING:

20 Q. Mr. Lewis, with respect to the November 2012 convention,
21 I understand that there was a constitutional amendment at
22 that time, is that correct?

23 A. That's correct.

24 Q. And that amendment was what?

25 A. There were actually two constitutional amendments at

1 that November 2012 convention. The first removed accession
2 to the constitution of the national church, and the second
3 changed the process by which the, I believe -- no, I stand
4 corrected, it was just the former.

5 Q. With respect to that vote in November 2012, did that
6 pass and if so by how much?

7 A. At the November convention that change to the
8 constitution was a first vote, that accession language, and
9 was passed by a simple majority.

10 Q. And that essentially revised Article 1 of the plaintiff
11 diocese constitution.

12 A. Correct.

13 Q. And then was there a subsequent vote on that amendment
14 to Article 1 of the plaintiff's diocese?

15 A. Yes, that changed the constitution at a second reading
16 at the following convention in March of 2013.

17 Q. And in March of 2013 how was the vote on the change in
18 Article 1?

19 A. That was a vote by orders.

20 Q. And can you please describe the vote that occurred by
21 the orders?

22 A. It was unanimous in both the clergy and the lay orders
23 that was present.

24 Q. And as a result can you read the amended Article 1 to
25 the Court as a result of the two votes in November 2012 and

1 March, 2013?

2 A. I'm sure that's here somewhere in this pile, but I'm not
3 sure where, if you'll give me a moment.

4 Q. 45C and D.

5 A. Okay. My 45C and D have the text of the resolution but
6 not the text of the actual constitution and canons.

7 Q. Let me give you what's marked as Plaintiff Diocese trial
8 Exhibit No. 5.

9 A. All right. I have it open in front of me.

10 Q. Can you publish that to the Court?

11 A. Article 1, diocesan convention meetings, Section 1, a
12 diocesan convention shall be held annually in such time and
13 place as shall have been determined upon by the preceding
14 convention or on failure of the convention so determined at
15 such time and place as the ecclesiastical authority shall
16 appoint.

17 Q. And what was the amendment that occurred? Do you recall
18 what was deleted in Article 1 as a result of the two votes?

19 A. Yes. The entirety of what was previously Article 1 was
20 deleted by that amendment. It was the language that granted
21 accession to the constitution of the national church.

22 Q. And that provision was deleted?

23 A. That's correct.

24 MS. GOLDING: No more questions, Your Honor. Thank you.

25 THE COURT: All right. Any other questions for Mr.

1 without objection. You may proceed.

2 (Defendant's Exhibit 5 admitted into evidence.)

3 MR. TISDALE: Thank you.

4 Q. You're familiar with this document, Canon Lewis?

5 A. Yes, sir, I am.

6 Q. And just what is it?

7 A. An application for recognition of exemption under
8 Section 501(c) of the Internal Revenue Code.

9 Q. And who were you filing this -- on whose behalf were you
10 filing this? First of all, did you file this?

11 A. Yes, sir, that is correct.

12 Q. And on whose behalf did you file it?

13 A. The Protestant Episcopal Church in the Diocese of South
14 Carolina.

15 Q. The plaintiff corporation?

16 A. That's correct.

17 Q. And if you look at -- there are some numbers at the
18 bottom of the page on the right. If you look at the one that
19 has the last four numbers 6790.

20 A. Yes, sir.

21 Q. Did you sign this application?

22 A. That is correct.

23 Q. And on what date did you sign it?

24 A. October 21, 2011.

25 Q. And in what capacity did you sign it?

1 plaintiff corporation?

2 A. I was given to understand that such application had been
3 made, but that's the extent of my knowledge.

4 Q. Do you know whether or not those applications were
5 granted or withdrawn?

6 A. I do not know.

7 Q. Do not know.

8 MR. TISDALE: Excuse me, will Your Honor give us
9 30 seconds, please?

10 THE COURT: Certainly.

11 Q. Canon Lewis, when you became a priest -- a deacon and
12 priest in the Episcopal Church, the national church, did you
13 take an oath to --

14 MR. RUNYAN: Your Honor, we would object to this line of
15 questioning, and the basis for that is relevance. The issues
16 here are the right of the entity the Protestant Episcopal
17 Church in the Diocese of South Carolina to withdraw its
18 association from an unincorporated association and also the
19 interest, if any, that the Episcopal Church, the Episcopal
20 Church in South Carolina, might have in the real personal
21 property of the diocese and the parishes. Whether Mr. Lewis,
22 when he became a priest and was ordained, stated a
23 declaration or signed a declaration is completely irrelevant
24 to those issues.

25 MS. GOLDING: Your Honor, on behalf of all remaining

1 Q. Look at Defendant's Exhibit 6, Canon Lewis.

2 A. Yes, sir.

3 Q. And what is the first page?

4 A. First page of this Exhibit says the Book of Common
5 Prayer.

6 Q. Is that, to your knowledge, a copy of the title page of
7 the current Book of Common Prayer?

8 A. Yes, sir.

9 Q. Now, when did you become a deacon in the Episcopal
10 Church?

11 A. I was ordained in 1994.

12 Q. Where were you ordained?

13 A. That would be here in South Carolina by Bishop Salmon.

14 Q. Now, if you will look at the last page on this Exhibit 6
15 for identification, do you see the question that Bishop
16 Salmon asked you?

17 A. Yes, sir, I do.

18 Q. Which is the second paragraph from the bottom?

19 A. Yes, sir.

20 Q. Would you read what the Bishop said to you.

21 A. Will you be loyal to the doctrine, discipline and
22 worship of Christ as this church has received them, and will
23 you, in accordance with the canons of this church, obey your
24 bishop and other ministers who may have authority over you
25 and your work.

1 Q. On that occasion, did you answer the question?

2 A. I did, sir.

3 Q. And what was your answer?

4 A. I am willing and ready to do so, and I solemnly declare
5 that I do believe the holy scriptures of the Old and New
6 Testaments to be the word of God and contain all things
7 necessary to salvation, and I do solemnly engage to conform
8 to the doctrine, discipline and worship of the Episcopal
9 Church.

10 Q. All right. Now, let's turn to -- could you have been
11 ordained a deacon in the Episcopal Church without making that
12 vow or oath?

13 A. I do not believe so.

14 Q. All right. Now, let's turn to page 524 -- 525, which is
15 titled the ordination of a priest. When did you become a
16 priest in the Episcopal Church?

17 A. That would be later in 1994.

18 Q. And who ordained you a priest in the Episcopal Church?

19 A. That would be Bishop Salmon.

20 Q. Did Bishop Salmon on that occasion, looking at page 526,
21 ask you the same question that he asked of you when you were
22 ordained a deacon?

23 A. That is correct.

24 Q. And what was your response to Bishop Salmon?

25 A. The same as when I was ordained a deacon.

1 Q. Go ahead -- for the record, since we're proffering this,
2 go ahead and read it, if you will.

3 A. I am willing and ready to do so, and I solemnly declare
4 that I do believe the holy scriptures of the Old and New
5 Testaments to be the word of God and to contain all things
6 necessary to salvation, and I do solemnly engage to conform
7 to the doctrine, discipline and worship of the Episcopal
8 Church.

9 Q. Are you presently a priest of the Episcopal Church?

10 A. No, sir, I'm not.

11 Q. Have you been relieved of those duties and
12 responsibilities?

13 A. That is correct.

14 Q. All right. And when did that occur?

15 A. I believe that occurred in late summer of 2013.

16 MS. GOLDING: Your Honor, is that the conclusion of the
17 proffer?

18 THE COURT: I don't know.

19 MR. TISDALE: Hold on just one second, if you would.

20 Your Honor, the proffer should have ended right before I
21 asked him was he any longer a priest in the Episcopal Church.
22 That is not proffered because that is just asking what his
23 situation is right now. Doesn't have anything to do with the
24 oaths.

25 MR. RUNYAN: I think that's irrelevant. I don't think

1 may proffer the testimony if you wish.

2 Q. All right. What was your first job as an ordained
3 person?

4 A. I was called to be the rector of St. Jude's in
5 Walterboro, South Carolina.

6 Q. Just for fun, can you remember how much you were paid?

7 A. I have no recollection of how much I was paid at that
8 time.

9 Q. Did you remember whether you were paid something in cash
10 and then something for a housing allowance?

11 A. That is correct.

12 Q. And has that pattern continued throughout your ordained
13 ministry?

14 A. That pattern has continued.

15 Q. And so do you understand that you were given a certain
16 amount of compensation, a portion of which you were allowed
17 to deduct from your income tax?

18 A. Yes, sir.

19 Q. Now, your employer paid premiums to the church pension
20 fund based upon your total compensation; is that right?

21 A. Yes, sir, that is correct.

22 Q. And each of your employers was required to do that by
23 the canons of the church relating to the church pension fund;
24 is that correct?

25 A. That is correct.

1 A. This document was resolution R-1 passed at the special
2 convention of the Diocese of South Carolina in October of --
3 I mean, November of 2012.

4 Q. And it was passed?

5 A. And it was passed.

6 Q. Now, turn to the seventh whereas.

7 A. Yes, sir.

8 Q. Do you see where it says that repeated actions by the
9 leadership and the general convention of TEC, the national
10 church?

11 A. Yes, sir.

12 Q. Do you see where that is? And do you see that this
13 resolution says that those actions were -- violated the
14 church's own constitution and canons?

15 A. Yes, sir.

16 Q. And then you see where it says that those actions have
17 been repugnant to the plain teaching of scripture?

18 A. Yes, sir.

19 Q. Now, could you -- I know you've testified about some of
20 this before, but could you summarize for me what actions of
21 the general convention you believe or you understand or you
22 perceive that your convention believed were contrary to the
23 plain teachings of scripture?

24 A. Yes, sir. How long a list would you like?

25 Q. Well, give me whatever you want.

1 A. Very good. Yes, sir. To start --

2 Q. Are you referring to a piece of paper?

3 A. I have a timeline here to remind me of dates.

4 MR. RUNYAN: Judge, I don't even think it's relevant for
5 proffer. He's asking him about religious beliefs, which just
6 simply don't belong here.

7 MR. BEERS: They introduced this document in evidence,
8 Your Honor.

9 THE COURT: The document being the convention notice?

10 MR. BEERS: Resolution in which they state that there
11 were actions taken by the national church that were repugnant
12 to the plain teachings of scripture. I'd like to know what
13 those are. And he's already -- both the chancellor and
14 Canon Lewis have referred to some of these, and I'd just like
15 to sort of see if I can get Canon Lewis's understanding as to
16 what they were.

17 THE COURT: It's my understanding that the documents
18 that were introduced, such as you're mentioning this
19 particular document regarding that meeting, that they were
20 introduced for the purpose of talking about whether or not
21 the marks and the trademarks, the use was being violated in
22 some form or fashion, that's my understanding, and not with
23 regards to, if you will, the underlying ecclesiastic merit or
24 lack thereof of the meeting. I didn't take that evidence to
25 be evidence which was offered as a commentary on the

1 underlying religious ecclesiastic tenor or otherwise, so his
2 opinion about the relationship between that meeting and
3 scripture is really of no moment here. And I know this is a
4 proffer, but our law is so very clear that when I enter into
5 those discussions even it's very clear to me that our law
6 simply doesn't allow it, that you're now into the separation
7 of church and state.

8 MR. BEERS: But, Your Honor, we're going to contend in
9 this case that the very subject we're talking about does not
10 entered into any kind of first amendment thicket, that there
11 is a doctrinal dispute here, and there is a dispute over the
12 governance and polity of the Episcopal Church that the Court
13 is going to, in our view, will have to wrestle with, and
14 that's why we're trying to get the facts out. And both Mr.
15 Logan and Canon Lewis have said what some of the concerns
16 were that led to the decision to disaffiliate, and I just
17 want to ask him to fill in some blanks.

18 THE COURT: I think they didn't. I think they said that
19 there were decisions that were made with which there was a
20 group of individuals that they did not agree with, and that
21 was as far as they went, and as a result of that feeling then
22 certain other actions were taken. As I understand the
23 testimony, that was as far as the plaintiffs had gone, at
24 least to this point, with regards to, as you say, any
25 doctrinal concerns. So the law does not allow me, nor do I

1 believe that our courts under the All Saints decision and
2 Jones vs. Wolf, for example, allow this Court to get into the
3 doctrinal determinations. It is what it is. And whether or
4 not the courts like it, don't like it, agree or disagree,
5 truly is of no moment. The determinations that I will make
6 will not be on that basis. They will be on the basis of, as
7 you say, corporate governance, our corporate law, and not
8 with regards to the ecclesiastic or doctrinal beliefs,
9 whatever they may be. I'm not allowed that, and that wades
10 into, in my mind, the separation of church and state. That
11 was a lot of explanation to get back around to what this
12 witness may think of a meeting and how it relates to the holy
13 scripture is really of no moment and no moment with regards
14 to the proffer.

15 MR. BEERS: Well, if the Court please, please understand
16 that we have a profound disagreement, with all due respect to
17 you, and under Jones v. Wolf, the Supreme Court provides
18 certain safeguards under the first amendment. And we're not
19 here to ask Canon Lewis what he believes or what -- or ask
20 this Court to get into a discussion of who's right and who's
21 wrong, but we are here to discuss the nature of the dispute
22 between the Episcopal Church, the national church, and the
23 diocese and the parishes. And we have a view that the Court
24 must deal with our contention that in disputes of this kind
25 this Court is required by the First Amendment to defer to

1 decisions made by the national church, even as they affect
2 the property of the church.

3 The other side, obviously, disagrees and is trying to
4 confine this case to one of completely secular terms, and we
5 don't agree. And I take it -- I mean, I understand where
6 you're coming from, but I must say once more, this is a
7 profound breach, a profound moment in the course of this
8 litigation, and we respectfully believe that proper would
9 be -- given the importance of this issue and the difficulty
10 of having to get back and do this all over again, if you
11 conclude or anybody else concludes that your perception is
12 wrong, we think that it would be appropriate to continue with
13 this under a proffer, if nothing else.

14 THE COURT: And the proffer that you -- the question, as
15 I understand the question that you've asked him, is tell me
16 how you believe a particular meeting was in violation of the
17 holy scripture. Isn't that the question?

18 MR. BEERS: I'm asking -- just taking the words from
19 their own convention, what acts of the Episcopal Church does
20 he understand the diocese, diocese, believed were so in
21 violation of scripture that it warranted them to
22 disaffiliate? Just what identification of them, not a
23 discussion about what they're about, not a discussion whether
24 he personally believes that, but what is the basis of this
25 decision?

1 THE COURT: Yes, sir, that's not relevant. Thank you.

2 MR. BEERS: Thank you. That's all I have.

3 THE COURT: It's not relevant in regards to a proffer,
4 in my mind. Thank you. All right.

5 Any further questions, Mr. Beers?

6 MR. BEERS: I apologize.

7 THE COURT: That concludes all of your questions?

8 MR. BEERS: Absolutely. I thought I made that clear. I
9 apologize. I'm done.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION BY MR. RUNYAN:

12 Q. Mr. Lewis, could you get Defendant's Exhibit 5, which is
13 the application for recognition of exemption to the IRS, in
14 front of you, please, sir.

15 A. Yes, sir.

16 Q. You were asked some questions about a statement made
17 with respect to the absence of trademarks. Do you recall
18 that?

19 A. Yes, sir.

20 Q. Could you turn to page 06811?

21 A. Yes, sir.

22 Q. Was that document attachment to the application?

23 A. Yes, sir, it was.

24 Q. What is that document?

25 A. That is the service mark registration for the name the

1 MR. TISDALE: Just one second, please, Your Honor.

2 THE COURT: Sure.

3 MR. TISDALE: One quick question, Your Honor.

4 RECROSS-EXAMINATION BY MR. TISDALE:

5 Q. With respect to Plaintiff's Exhibit 58 which was just
6 put into evidence about the cathedral, lease with the
7 cathedral, do you see that, Canon Lewis?

8 A. Yes, sir.

9 Q. Look at page 4 of that lease.

10 A. Yes, sir.

11 Q. Who signed this lease on behalf of the diocese?

12 A. It appears to be C. FitzSimons Allison.

13 Q. And below the signature line, does it have the capacity
14 listed in which he signed?

15 A. It says bishop.

16 MR. TISDALE: All right. Nothing further, Your Honor.

17 THE COURT: Mr. Beers.

18 MR. BEERS: Well, I don't have any cross because I'm not
19 allowed to, but -- by your ruling. So I'm not here for
20 cross. I'm here to ask you a question.

21 THE COURT: Of course you can cross.

22 MR. BEERS: I'm sorry, on the issue that I care about
23 that we've talked about. But Ms. Kostel reminds me that
24 there are two things I should have said on the question of
25 whether we should be entitled to a proffer.

1 THE COURT: You had a proffer.

2 MR. BEERS: No, you think that -- the questions that --
3 the issues I want to raise you have said are not even
4 relevant to a proffer, and I accept that.

5 THE COURT: Right, the ones when you asked about, tell
6 me how you believe the meeting violated the holy scriptures.

7 MR. BEERS: Correct.

8 THE COURT: Yes, sir, that's correct.

9 MR. BEERS: Ms. Kostel reminds me that there are two
10 passages from the Supreme Court's decision in All Saints,
11 Waccamaw that she thinks that I should bring to your
12 attention, at least for the record.

13 THE COURT: Thank you.

14 MR. BEERS: The Court first discussed an earlier
15 decision by the Supreme Court of South Carolina, Church of
16 God versus Pearson -- sorry, other way around, Pearson versus
17 Church of God, where the Supreme Court explained that courts
18 may not engage in resolving disputes as to religious law,
19 principle, doctrine, discipline, custom or administration.
20 Courts cannot avoid adjudicating rights growing out of civil
21 law. And in resolving such civil law disputes, courts must
22 accept as final and binding the decision of the highest
23 religious judicatories as to religious law, principle,
24 doctrine, discipline, custom and administration.

25 Then the Supreme Court went on to say that under

1 Pearson, where a civil court is presented an issue which is a
2 question of religious law or doctrine masquerading as a
3 dispute over church property or corporate control, the court
4 must defer to the decisions of the proper church judicatories
5 insofar as it concerns religious or doctrinal issues.

6 We believe that this is a question of religious law,
7 doctrine, polity and so forth, all of which we would like to
8 present evidence about masquerading as a dispute over church
9 property. Thank you.

10 THE COURT: Thank you very much. That was great for the
11 record, but I'm not prepared to change my ruling on that
12 basis.

13 Very well. And no other recross.

14 MR. BEERS: No, Your Honor.

15 THE COURT: You may step down.

16 Good time for a break. Let's say a 20-minute break. I
17 will see you all back about 25 till 12:00.

18 (Recess held.)

19 THE COURT: All right.

20 MS. GOLDING: I can go ahead and call the next witness,
21 Your Honor. I'll call Mr. Kunes, please, Mr. Bob Kunes.

22 ROBERT M. KUNES,
23 being first duly sworn, testified as follows:

24 THE COURT: If you could just state your name for the
25 record again for us, please.

1 THE WITNESS: Surely. My name is Robert M. Kunes.

2 THE COURT: And can you spell your last name.

3 THE WITNESS: K-U-N-E-S.

4 THE COURT: Thank you.

5 Your witness.

6 MS. GOLDING: Thank you.

7 DIRECT EXAMINATION BY MS. GOLDING:

8 Q. Mr. Kunes, can you please tell us where you reside?

9 A. I reside at 1573 Fairway Drive in Charleston.

10 Q. And how long have you been a resident of Charleston?

11 A. Since 1985.

12 Q. And can you give us the benefit of your educational
13 background?

14 A. I have an undergraduate degree in English from the
15 University of South Carolina, 1970; juris doctorate in law,
16 1973; master's in tax law, 1975.

17 Q. And are you licensed to practice by the South Carolina
18 Supreme Court?

19 A. I am.

20 Q. And how long have you been licensed to practice law?

21 A. Since 1973.

22 Q. And what is your specialty or the type of law you
23 primarily practice?

24 A. I do a fair amount of trust and estate work and some
25 corporate work.

1 Q. Are you associated or affiliated with a law firm?

2 A. I am. The firm is called Evans, Carter, Kunes &
3 Bennett.

4 Q. Where's that law firm located?

5 A. 115 Church Street in Charleston.

6 Q. Are you associated or do you attend a church?

7 A. I do. I attend St. Michael's.

8 Q. Where is St. Michael's?

9 A. St. Michael's office location is 71 Broad. It's the
10 corner of Broad and Meeting Street.

11 Q. And how long have you been in attendance at
12 St. Michael's?

13 A. I've been a member there since 1986.

14 Q. And have you been in any type of positions in
15 St. Michael's, any type of leadership roles in that parish?

16 A. I've served on the vestry, both as junior and senior
17 warden.

18 Q. Currently are you a member of the governance in
19 St. Michael's?

20 A. I'm not now.

21 Q. Currently are you associated with the corporation, the
22 Trustees of the Protestant Episcopal Church in South
23 Carolina?

24 A. I am.

25 Q. And what is your position with that corporation?

1 the plaintiff trustees what are your responsibilities?

2 A. The bylaws define the responsibilities of the treasurer,
3 which include overseeing funds received and things of that
4 nature.

5 Q. Let me hand you exhibits -- Plaintiff Diocese
6 Exhibits 15, 16 and 17. And can you identify those
7 documents, please?

8 A. Exhibit 15 is labeled, Bylaws, Trustees of the
9 Protestant Episcopal Church in South Carolina, a Corporation.
10 Exhibit 16 is identified as bylaws of the Trustees of the
11 Protestant Episcopal Church in South Carolina, a corporation.
12 Exhibit 17 is bylaws of the Trustees of the Protestant
13 Episcopal Church in South Carolina, a corporation.

14 Q. With respect to Exhibit 17, what is the date of that?

15 A. This is dated January 4th, 2013.

16 Q. In those bylaws dated January 2013 who was the president
17 of the plaintiff trustees?

18 A. Article 2 says, under the section captioned officers,
19 Mark J. Lawrence shall be president of the corporation.

20 Q. Do you have knowledge of any other governing documents
21 of the plaintiff trustee other than the two statutes and the
22 three sets of bylaws?

23 A. I do not.

24 Q. And today does your plaintiff trustees, is it governed
25 outside by any documents other than the statutes and the

1 bylaws?

2 A. No. The corporation is governed by state law chartered
3 in these three sets of bylaws.

4 Q. Thank you. Can you identify essentially some of the
5 properties that the plaintiff trustees owns or operates or
6 has dealings with?

7 A. There are two basic classes of resources that the
8 corporation owns. One is real estate. The second is
9 marketable securities.

10 Q. Let me give you what's marked as Plaintiff's Exhibit
11 No. 30. Plaintiff's Diocese Exhibit No. 30 is a deed dated
12 1951. Do you know the property that's referenced in the deed
13 which is Plaintiff's Diocese Exhibit 31?

14 A. In scanning this exhibit, it appears to be a deed
15 related to the property on Seabrook Island commonly known as
16 Camp St. Christopher.

17 Q. What entity owns that property that is known as Camp
18 St. Christopher?

19 A. The corporation, the Trustees of the Protestant
20 Episcopal Church of South Carolina.

21 Q. To your knowledge does the national church, does it have
22 any type of rights, to your knowledge, as to that property?

23 A. To my knowledge it does not.

24 Q. With respect to the governance of the plaintiff
25 corporation, does the national church have any type of voice

1 with respect to the governance of that plaintiff corporation?

2 A. It does not.

3 Q. With respect to the governance, does the national church
4 have any type of veto power with respect to the plaintiff
5 corporation?

6 A. It does not.

7 Q. Do you know if any outside entity has any type of veto
8 power over the plaintiff trustees?

9 A. Any outside entity? No, I'm not aware that there is
10 any.

11 MS. GOLDING: Indulge the Court for just a moment.

12 THE COURT: All right.

13 Q. Please tell us the difference between restricted and
14 unrestricted assets of the plaintiff corporation.

15 A. There's some assets that were given with restrictions as
16 to usage. Those obviously are segregated and used only for
17 the purposes for which given. Restricted assets would be
18 available for any use by the corporation consistent with its
19 purpose.

20 Q. Is there a percentage of the amount of assets of the
21 plaintiff trustees as to restricted versus unrestricted?

22 A. I don't recall off the top of my head. I'd have to look
23 at a financial statement.

24 Q. With respect to restricted assets, can you provide us a
25 few examples?

1 will be most relevant to, or do you believe that her
2 testimony will be relevant to all of these matters?

3 MR. CAMPBELL: No, Your Honor, she's a member of
4 All Saints Parish, one of the plaintiffs that I represent.

5 THE COURT: So you believe that her testimony will be
6 most relevant to All Saints?

7 MR. CAMPBELL: I believe so, Your Honor. I don't think
8 there's any -- perhaps it might be relevant to the diocese or
9 trustees in some way, but it would not relate to other
10 parishes.

11 THE COURT: I hope that's helpful.

12 MR. HOLMES: For clarification, she's being called on
13 behalf of All Saints, that party?

14 THE COURT: That is my understanding.

15 MR. HOLMES: Thank you.

16 (Plaintiff's Exhibits AS-1 through AS-9 premarked for
17 identification.)

18 IRIS LANGSTON HODGE,
19 being first duly sworn, testified as follows:

20 MR. TISDALE: Your Honor, just for clarification only,
21 are we moving now to the parish plaintiffs for testimony as
22 opposed to the corporation, diocese corporation?

23 THE COURT: I don't know the answer to that, but we are
24 there at the moment for sure, I think.

25 You may proceed.

1 MR. CAMPBELL: Thank you, Your Honor. May it please the
2 Court?

3 THE COURT: Yes.

4 DIRECT EXAMINATION BY MR. CAMPBELL:

5 Q. Would you state your name, please, for the record.

6 A. My name is Iris Langston Hodge.

7 Q. Ms. Hodge, where do you live?

8 A. I live in Florence, South Carolina.

9 Q. If you don't mind me asking for the record, how old are
10 you?

11 A. I'm 72 years old.

12 Q. What do you do for a living, Ms. Hodge?

13 A. I'm a retired insurance agent. I owned my own agency in
14 Florence, South Carolina.

15 Q. What kind of agency was that?

16 A. It's a Nationwide Insurance Agency.

17 Q. And how long did you have that agency?

18 A. 34 years.

19 Q. Before that did you have another job or career?

20 A. Yes, I did. I lived in Durham, North Carolina, and I
21 worked for Duke Medical School. I was director of their
22 grants and contracts program.

23 Q. And are you a member of a parish?

24 A. Yes, I am.

25 Q. What parish?

1 A. All Saints, Florence.

2 Q. And how long have you been a member at All Saints,
3 Florence?

4 A. About 30 years.

5 Q. And while you've been a member of the parish All Saints,
6 Florence, have you held any positions of leadership or
7 authority?

8 A. Yes, I have.

9 Q. What are those positions?

10 A. I've been a member of the vestry. I've been a senior
11 warden, and I've been a junior warden.

12 Q. And what does the vestry do?

13 A. The vestry is the board of directors of the corporation.

14 Q. Generally what does the vestry do in that function?

15 A. Well, we have meetings monthly to take care of the
16 business of the corporation. We review financial reports and
17 so forth.

18 Q. Thank you. And I believe you said that you were the
19 senior warden; is that correct?

20 A. I have been the senior warden.

21 Q. And when were you last senior warden?

22 A. When was I last? Last year.

23 Q. What does the senior warden do?

24 A. The senior warden is considered to be the rector's
25 warden.

- 1 Q. And who is the rector?
- 2 A. Father Karl Burns.
- 3 Q. Is he the clergy for the parish?
- 4 A. Yes.
- 5 Q. And you said you've been the junior warden as well; is
- 6 that correct?
- 7 A. I am the junior warden now.
- 8 Q. Now?
- 9 A. Mm-hmm.
- 10 Q. What does the junior warden do?
- 11 A. The junior warden is considered to be the peoples'
- 12 warden, and in some instances we handle the buildings and
- 13 grounds.
- 14 Q. Okay. And where is All Saints Parish located?
- 15 A. It's on Cherokee Road in Florence, South Carolina.
- 16 Q. Is that the same location that it's always been?
- 17 A. Yes, it is.
- 18 Q. I'm going to show you a photograph, if we could. Can
- 19 you see that photograph in front of you?
- 20 A. Yes, I can.
- 21 Q. Is that a picture of the property belonging to
- 22 All Saints Parish?
- 23 A. Yes, that's our church and our parishioners.
- 24 Q. Is that an accurate representation of what your parish
- 25 property looks like?

1 A. Yes, it is. It's Palm Sunday of this year.

2 Q. Approximately how many members does your parish have?

3 A. Approximately 125 to 130.

4 Q. And when was All Saints started?

5 A. All Saints was started back in 1958.

6 Q. And how did it come to begin?

7 A. Florence had begun to grow. St. John's in Florence had
8 some parishioners who thought it was time to plant another
9 church in Florence, and there were about 20 couples who got
10 together to start this church and met for that reason.

11 Q. And you should have some documents there before you. Do
12 you see a document marked as Plaintiff's AS-1? For the
13 record, this is All Saints 1.

14 A. Yes, I do.

15 Q. Are you familiar with that document?

16 A. Yes, I am.

17 Q. What is that?

18 A. It's a certificate of incorporation by the Secretary of
19 the State of South Carolina.

20 MR. CAMPBELL: I move to admit All Saints 1 into
21 evidence.

22 THE COURT: Have you shared that document with the
23 defendants?

24 MR. CAMPBELL: I have, Your Honor.

25 MR. TISDALE: No objection.

1 MS. KOSTEL: No objection.

2 THE COURT: Very well.

3 (Plaintiff's Exhibit AS-1 admitted into evidence.)

4 Q. Ms. Hodge, has All Saints existed as a South Carolina
5 corporation since 1958?

6 A. Yes, they have.

7 Q. And what is the purpose of that corporation?

8 A. It's stated, the purpose of the said proposed
9 corporation is to do all and any -- to do any and all things
10 required to further the work of our Lord Jesus Christ, the
11 Diocese of South Carolina and the service to the individual
12 communities making up the corporate body (as read).

13 Q. Has that purpose ever changed?

14 A. No, it has never changed.

15 Q. And does your corporation have a board of directors?

16 A. Yes, we do.

17 Q. Who is it?

18 A. The vestry.

19 Q. And where are the board of directors' responsibilities
20 set out?

21 A. They're set out in the bylaws of our parish.

22 Q. Does your corporation have any officers?

23 A. Yes, we do.

24 Q. What are they?

25 A. The rector is the president. The senior warden is the

1 vice president, and we have a treasurer and a secretary.

2 Q. And where are those offices set out?

3 A. In the bylaws.

4 Q. Does All Saints Protestant Episcopal Church, Inc. own
5 any real estate?

6 A. Yes, we do.

7 Q. Do you see a document before you marked as All Saints 2?

8 A. I do.

9 Q. Do you know what that document is?

10 A. This is the deed for the property we're located on for
11 Cherokee Road.

12 Q. Approximately how much land is it there on Cherokee?

13 A. It's five, five and a half acres.

14 MR. CAMPBELL: I move to put this deed into evidence as
15 All Saints 2.

16 MR. TISDALE: No objection.

17 MS. KOSTEL: No objection.

18 THE COURT: Very well.

19 (Plaintiff's Exhibit AS-2 admitted into evidence.)

20 Q. Is that the same property that All Saints has operated
21 on since the time it received this deed?

22 A. Yes, it is.

23 Q. What's the date of this deed, for the record?

24 A. November 1958.

25 Q. Does All Saints own any other real estate?

- 1 A. No, we do not.
- 2 Q. Over the years has it owned other real estate?
- 3 A. Yes, we have.
- 4 Q. Like what type of real estate has it owned?
- 5 A. We've owned a lot that was given to us, and we have
- 6 owned a house for the rector.
- 7 Q. But you don't own those anymore?
- 8 A. No, we do not.
- 9 Q. What happened to them?
- 10 A. We've had the lot for sale for some time and it finally
- 11 sold. And it was not located conveniently to our property,
- 12 and so we've had it on the market for a while. The rector's
- 13 home we sold. Financially, it was not a good situation for
- 14 our church.
- 15 Q. There's a document before you marked as AS-3. Do you
- 16 see that document?
- 17 A. Yes, I do.
- 18 Q. Can you identify that document?
- 19 A. This is a quitclaim deed we received.
- 20 Q. Who received?
- 21 A. The rector of our church received this.
- 22 Q. Who did the rector receive it from?
- 23 A. It came from our diocese. I don't know what individual
- 24 mailed it to him.
- 25 MR. CAMPBELL: I would move to admit All Saints 3 into

1 evidence.

2 THE COURT: Any objection?

3 MR. TISDALE: No objection.

4 MS. KOSTEL: No objection.

5 THE COURT: Very well.

6 (Plaintiff's Exhibit AS-3 admitted into evidence.)

7 Q. Ms. Hodge, do you know what the purpose of this
8 quitclaim deed was?

9 A. If I understand it correctly, the purpose of a quitclaim
10 deed is to show that the person presenting it to the other
11 person is stating if they have any rights to that, that they
12 are giving those rights to someone else, but to my knowledge
13 the diocese has no rights to All Saints Church.

14 Q. And did All Saints Church record this deed?

15 A. Yes, we did.

16 Q. Did there come a time in 2012 where you were aware of a
17 dispute between the Diocese of South Carolina and the
18 national church?

19 A. Yes.

20 Q. And what did you understand that the diocese had done?

21 A. The diocese had disassociated from the national church.

22 Q. And how did you come to learn that?

23 A. Through correspondence from our rector and from the
24 actions at the convention.

25 Q. And did the leadership of All Saints at the time discuss

- 1 those issues?
- 2 A. Yes, we did.
- 3 Q. And did the vestry decide to do anything?
- 4 A. Yes, we did.
- 5 Q. What did the vestry decide to do?
- 6 A. We had a called meeting of the vestry in December and --
- 7 Q. December of what year?
- 8 A. December of 2012.
- 9 Q. Do you see a document before you marked as All Saints 4?
- 10 A. I do.
- 11 Q. Can you identify that document?
- 12 A. This is the email that went out to all the vestry
- 13 members alerting them of a meeting that would take place on
- 14 December 6th of 2012.
- 15 Q. Who's the email from?
- 16 A. Father Karl Burns.
- 17 Q. Is that your rector?
- 18 A. Yes, it is.
- 19 Q. Who did it go to?
- 20 A. It went to all members of the vestry, including our -- I
- 21 believe our treasurer and our secretary as well.
- 22 Q. Did you receive that email?
- 23 A. I did.
- 24 MR. TISDALE: Can she identify her name on this just for
- 25 record purposes.

1 Q. Ms. Hodge, do you see your name on the address line of
2 this email?

3 A. Yes. It's hodge1941@gmail.

4 MR. TISDALE: Thank you.

5 Q. And there are some documents stapled to this email.
6 What are those documents?

7 A. Yes. I beg your pardon?

8 Q. Do you know why those documents were attached to this
9 email?

10 A. This was the resolution that we were going to consider
11 at our meeting, and Father Karl wanted us to have this to
12 review before the meeting.

13 Q. And does the email on the heading note that there were
14 two attachments to it? Is there a line that says
15 attachments?

16 A. Oh, I'm sorry. Yes, it says attachments.

17 Q. What does that line note?

18 A. It says, All Saints' commitment to continue diocese
19 relationship document and motion of declaratory suit.

20 Q. And are those the two documents that are attached?

21 A. Yes, they are.

22 MR. CAMPBELL: I move to admit All Saints 4 into
23 evidence, please.

24 THE COURT: Any objection?

25 MR. TISDALE: No objection.

1 MS. KOSTEL: No objection.

2 THE COURT: Very well.

3 (Plaintiff's Exhibit AS-4 admitted into evidence.)

4 Q. Ms. Hodge, the meeting that was noticed for December 9,
5 2012, did that meeting actually occur?

6 A. Yes, it did.

7 Q. And were you present at that meeting?

8 A. I was present at that meeting.

9 Q. And what happened at that meeting?

10 A. We discussed the attached form, and the vestry voted to
11 sign this form and make it a part of our records.

12 Q. For the record, if you could clarify, what form did you
13 mean?

14 A. The commitment to continue diocesan relationship.

15 Q. Do you see a document marked AS-5?

16 A. Yes.

17 Q. Can you identify that document?

18 A. That is the document I'm talking about, the commitment
19 to continue diocesan relationship.

20 Q. And did the vestry take action on that document at the
21 December 9, 2012 meeting?

22 A. Yes, we did.

23 Q. In summary, what was the purpose of that resolution?

24 A. The purpose of that resolution was to show our support
25 to Bishop Lawrence and to the Diocese of South Carolina and

1 their decision to disassociate with the national church.

2 Q. Did it have any other purposes?

3 A. It also -- excuse me a minute. It also declared that we
4 would be a part of the declaratory suit.

5 Q. Do you see a document before you marked as AS-5?

6 A. I do.

7 Q. And could you read the last paragraph on the first page
8 that begins with, resolved that we. Do you see that
9 paragraph?

10 A. Yes, I do.

11 Q. Could you read the first four lines of that.

12 A. Okay. Resolved that we, the undersigned vestry and
13 clergy of All Saints Episcopal Church, hereby declare that we
14 no longer are in any relationship with the Episcopal Church,
15 nor are we in union with the Episcopal Church, but the
16 remaining affiliation with the -- remain affiliated with the
17 Protestant Episcopal Church of the Diocese of South Carolina.

18 MR. CAMPBELL: I would move to admit All Saints 5 into
19 evidence.

20 THE COURT: Any objection?

21 MR. TISDALE: No objection.

22 MS. KOSTEL: No objection.

23 THE COURT: Very well.

24 (Plaintiff's Exhibit AS-5 admitted into evidence.)

25 Q. Ms. Hodge, did the vestry sign the document marked as

- 1 All Saints 5?
- 2 A. Yes, we did.
- 3 Q. Did everybody agree with this resolution?
- 4 A. Yes, we did.
- 5 Q. Was there any dissent?
- 6 A. No.
- 7 Q. Did All Saints Parish decide to take any additional
- 8 action regarding the diocese's disaffiliation with the
- 9 national church?
- 10 A. Yes, we did. After passing this resolution it became
- 11 evident that we needed to make some changes in our bylaws.
- 12 Q. And do you see a document marked as AS-6 before you?
- 13 A. Yes, I do.
- 14 Q. Were these the bylaws that were in effect at that time?
- 15 A. Yes, these were.
- 16 MR. CAMPBELL: I move to admit All Saints 6 into
- 17 evidence.
- 18 THE COURT: Any objection?
- 19 MR. TISDALE: No objection, except they're not signed.
- 20 I guess she could verify.
- 21 Q. Ms. Hodge, does All Saints have a practice of signing
- 22 its bylaws?
- 23 A. No, unfortunately, we don't.
- 24 Q. Have you reviewed most of All Saints' corporate
- 25 documents?

1 A. I have.

2 Q. Are there other significant documents that are unsigned?

3 A. Yes, there are.

4 Q. And are these an accurate depiction of what the bylaws
5 were at the time that the resolution was passed?

6 A. Yes, these came from our official records.

7 MR. CAMPBELL: Thank you. I move to admit All Saints 6
8 into evidence.

9 THE COURT: Does that remove any concerns on behalf of
10 the defendants?

11 MR. TISDALE: No objection.

12 MS. KOSTEL: No objection.

13 THE COURT: Very well.

14 (Plaintiff's Exhibit AS-6 admitted into evidence.)

15 Q. Ms. Hodge, in the bylaws that were then in effect,
16 All Saints 6, is there a section about amendments?

17 A. Yes, there is.

18 Q. What do the bylaws require to be amended?

19 A. Under article 8, is that what you're referring to?

20 Q. If that's the article in amendments, yes, ma'am.

21 A. It says, no alteration or repeal of these bylaws shall
22 be made unless upon motion for that purpose is made at one
23 and referred to in consideration of the subsequent meetings
24 of the congregation (as read).

25 Q. So does that require two meetings of the congregation to

1 change the bylaws?

2 A. Yes, it does.

3 Q. And did the parish have meetings to change the bylaws?

4 A. Yes, we did.

5 Q. And how were those meetings of the congregation noticed?

6 A. The rector of our congregation gave an announcement of
7 these meetings one week prior to the meetings from the
8 chancel.

9 Q. From the where, I'm sorry?

10 A. From the pulpit.

11 Q. Did you use a different word the first time? I just
12 didn't hear you.

13 A. From the chancel.

14 Q. What is the chancel, for the record?

15 A. It's where he speaks and normally delivers his messages.

16 Q. Basically the front of the church?

17 A. Right.

18 Q. And is that what the bylaws require for notice of
19 congregational meetings?

20 A. Yes, that is written in the bylaws.

21 Q. And were you present when he made that announcement?

22 A. Yes, I was.

23 Q. When did he make the announcement?

24 A. He made it one week prior to our first meeting, which
25 was January the 13th.

1 Q. One week before that would have been January 6th?

2 A. Right.

3 Q. What year is this?

4 A. In 2013.

5 Q. And you were present when he made that announcement?

6 A. I was.

7 Q. Did he describe what the purpose of the specially called
8 congregational meeting would be?

9 A. Yes. He described it, and he also indicated that the
10 bylaws would be available if anyone wanted to take them as we
11 left church or if they had any questions.

12 Q. How did he describe what the changes would be?

13 A. He described that the Diocese of South Carolina had --
14 was no longer affiliated with the national church and we were
15 changing our bylaws to take any affiliation from the national
16 church out of it.

17 Q. And copies were provided to people who wanted them?

18 A. They were. Copies were available to people who wanted
19 them. We did not pass them out.

20 Q. But they were available in the church?

21 A. They were.

22 Q. And did the special meetings occur?

23 A. Yes, they did.

24 Q. When was the first meeting?

25 A. The first meeting was January the 13th, 2013.

- 1 Q. And were you present at that meeting?
- 2 A. I was.
- 3 Q. And was a quorum present for that meeting?
- 4 A. Yes, it was.
- 5 Q. What do your bylaws require for a quorum?
- 6 A. 25 people.
- 7 Q. What happened at the January 13th, 2013 special meeting?
- 8 A. Father Karl explained all the changes that were to be
- 9 made in the bylaws. We passed the bylaws out to parishioners
- 10 to have copies of, and those changes were highlighted so that
- 11 they could follow as he was explaining them.
- 12 Q. And was there discussion about the issues, the
- 13 proposals?
- 14 A. There was minimum discussion with the parishioners, but
- 15 we didn't have many questions.
- 16 Q. Did the people who had questions have the opportunity to
- 17 voice?
- 18 A. Yes.
- 19 Q. Do you see a document before you marked as All Saints 7?
- 20 A. I do.
- 21 Q. Can you identify that document?
- 22 A. This is the minutes from that called meeting that I was
- 23 referring to.
- 24 Q. On what date?
- 25 A. January the 13th, 2013.

1 Q. And are these minutes an accurate representation of what
2 occurred at that meeting?

3 A. Yes, they are.

4 Q. These minutes are unsigned, aren't they?

5 A. Yes, they are.

6 Q. Are most of All Saints' minutes unsigned?

7 A. Yes, they are. It is official. We got it out of our
8 official records, but they were unsigned.

9 MR. CAMPBELL: I move to admit All Saints 7 into
10 evidence.

11 THE COURT: Any objection?

12 MR. TISDALE: No objection.

13 MS. KOSTEL: No objection.

14 THE COURT: Very well. All Saints now 1 through 7 are
15 in evidence without objection.

16 (Plaintiff's Exhibit AS-7 admitted into evidence.)

17 Q. How did the vote at the first meeting on January 13th
18 turn out?

19 A. It was a unanimous vote to accept the changes that were
20 presented.

21 Q. All changes to the bylaws?

22 A. All changes to the bylaws.

23 Q. And were you present at the second meeting?

24 A. I was.

25 Q. When was that?

- 1 A. The second meeting took place on January the 14th.
- 2 Q. And has it been noticed also?
- 3 A. Yes, it has. It was noticed the Sunday before, and it
- 4 was announced at the -- when he made the first announcement
- 5 that we would have two meetings.
- 6 Q. He announced both meetings at the same time?
- 7 A. He did.
- 8 Q. And was a quorum present at the January 14th, 2013
- 9 meeting?
- 10 A. Yes, a quorum was present at that time.
- 11 Q. Okay. And what happened at that meeting?
- 12 A. At that meeting Father Karl asked if there were any
- 13 other questions and discussions, and to my knowledge there
- 14 were not, and so we started reconfirming each section that
- 15 was being changed and for an agreement on the past vote that
- 16 we had made.
- 17 Q. For the bylaw amendments?
- 18 A. Yes.
- 19 Q. And was there any objection raised by any member of the
- 20 parish at that meeting?
- 21 A. No, there was not.
- 22 Q. Do you see a document marked as All Saints 8?
- 23 A. I do.
- 24 Q. And is that -- what is that document?
- 25 A. This is the minutes of -- official minutes for the

1 called parish meeting on January 14th, 2013.

2 Q. And are those minutes an accurate representation of what
3 occurred at that meeting?

4 A. Yes, it is.

5 Q. And they are unsigned as well, are they not?

6 A. Yes.

7 Q. But are these the official minutes from that meeting?

8 A. These are the official minutes, yes.

9 Q. Kept in All Saints' corporate records?

10 A. Right.

11 MR. CAMPBELL: I move to admit All Saints 8 into
12 evidence.

13 MR. TISDALE: No objection.

14 MS. KOSTEL: No objection.

15 THE COURT: Very well.

16 (Plaintiff's Exhibit AS-8 admitted into evidence.)

17 Q. Ms. Hodge, do you see a document marked as All Saints 9
18 in front of you?

19 A. Yes, I do.

20 Q. What is that document?

21 A. This is the bylaws of All Saints Episcopal Church as
22 they were revised in 2013.

23 Q. At those two meetings you just described?

24 A. Yes.

25 Q. Are these the bylaws that are still in effect today?

1 A. Yes, it is.

2 MR. CAMPBELL: I move to admit All Saints 9 into
3 evidence.

4 THE COURT: Any objection?

5 MR. TISDALE: No objection.

6 MS. KOSTEL: No objection.

7 THE COURT: All Saints 9 is in evidence without
8 objection.

9 (Plaintiff's Exhibit AS-9 admitted into evidence.)

10 Q. Ms. Hodge, does the national church have any right to
11 control the activities of All Saints Parish?

12 A. Not to my knowledge.

13 Q. Has All Saints Parish ever sought permission from the
14 national church to do anything?

15 A. Not to my knowledge.

16 Q. Has the national church ever indicated to All Saints
17 Parish that it needs their consent to do anything?

18 A. Not to my knowledge.

19 Q. Does All Saints have any ongoing relationship with the
20 national church?

21 A. No.

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

24 A. Yes.

25 Q. And do you understand that to be a diocesan organization

1 of some kind?

2 A. The Episcopal Church of South Carolina?

3 Q: The Episcopal Church in South Carolina.

4 A. In South Carolina. It's my understanding they are not a
5 member of the South Carolina diocese.

6 Q. Do you understand that's an organization led by
7 Bishop VonRosenberg?

8 A. I do.

9 Q. And does All Saints Protestant Episcopal Church,
10 Incorporated have any relationship with that organization
11 known as the Episcopal Church in South Carolina?

12 A. No, we do not.

13 Q. Have you ever had any relationship with them?

14 A. No, we have not.

15 Q. Have you ever participated with them in any fashion?

16 A. No, we have not.

17 Q. Has All Saints used the name All Saints Protestant
18 Episcopal Church, Incorporated or All Saints Parish since its
19 inception?

20 A. We've used our corporate name and we've used the parish
21 name as well.

22 Q. And have you ever given anyone else permission to use
23 that name?

24 A. No, we have not.

25 Q. Have you ever authorized the Episcopal Church in South

- 1 Carolina to use your name?
- 2 A. No, we have not.
- 3 Q. Have you ever authorized the Episcopal Church in South
4 Carolina to list your parish on their website?
- 5 A. No, we have not.
- 6 Q. Is All Saints Protestant Episcopal Church, Incorporated
7 a parish of the Episcopal Church in South Carolina?
- 8 A. No, we are not.
- 9 Q. Have you ever been?
- 10 A. No, we have not.
- 11 Q. Has All Saints Protestant Episcopal Church, Incorporated
12 ever participated in any convention or other meeting called
13 by the Episcopal Church in South Carolina?
- 14 A. No, we have not.
- 15 Q. Have you ever sent delegates to any meeting of that
16 organization?
- 17 A. No, we have not.
- 18 Q. Did the vestry become concerned about delegates
19 attending meetings of the Episcopal Church in South Carolina?
- 20 A. Yes, there was some concern about that.
- 21 Q. What was the concern?
- 22 A. We didn't have delegates going there and we didn't want
23 any confusion about that.
- 24 Q. Did you have reason to believe there might be confusion?
- 25 A. If I remember correctly, we might have been listed.

1 somewhere as a church under that, and we have never given
2 permission to have that done.

3 Q. And you were not a church under that organization?

4 A. No, we were not.

5 Q. Did you or did you not want to send delegates to their
6 meeting?

7 A. No, we did not.

8 Q. Did the vestry take official action stating that?

9 A. I'm not sure.

10 Q. Do you recall any resolutions the vestry may have made?

11 A. Yes, we had a resolution. That was at the called vestry
12 meeting.

13 MR. CAMPBELL: I have no further questions, Ms. Hodge.
14 Thank you. If you would answer any questions they may have.

15 THE COURT: First of all, any questions by any of the
16 plaintiffs?

17 MR. RUNYAN: None from the diocese.

18 THE COURT: Very well. All right. And I'm looking
19 for --

20 MS. GOLDING: No questions, Your Honor. Thank you.

21 THE COURT: Very well. Mr. Tisdale.

22 MR. TISDALE: Any chance of taking our lunch break at
23 this time? It would help us with examination, I think.

24 MR. CAMPBELL: Your Honor, Ms. Hodge has to be on the
25 road. She has other responsibilities.

1 for you right now, Mr. Campbell?

2 MR. CAMPBELL: It does, Your Honor. That's all I have
3 right this minute.

4 THE COURT: Very well. Thank you.

5 MR. MCCARTY: I'm Keith McCarty, Your Honor. I
6 represent Christ St. Paul's Episcopal Church.

7 THE COURT: All right, sir, if you'd please call your
8 witness.

9 MR. MCCARTY: I call Reverend Craige Borrett.

10 (Plaintiff's Exhibits CSP-1 through CSP-16 premarked for
11 identification.)

12 CRAIGE NORTON BORRETT,
13 being first duly sworn, testified as follows:

14 THE COURT: If you'd please state your full name for our
15 record again, and spell your last name.

16 THE WITNESS: Craige Norton Borrett, B-O-R-R-E-T-T.

17 THE COURT: Thank you.

18 Your witness.

19 THE WITNESS: Your Honor, if it matters, my first name
20 is a unique spelling. It's C-R-A-I-G-E.

21 THE COURT: Thank you.

22 DIRECT EXAMINATION BY MR. MCCARTY:

23 Q. Reverend Borrett, would you please tell the Court where
24 you live.

25 A. I live at 5005 Chapel Road, Yonges Island, South

1 Carolina.

2 Q. And obviously you have a position with this church, so
3 why don't you go ahead and tell us what your position is with
4 Christ St. Paul's.

5 A. I'm the rector of Christ St. Paul's.

6 Q. And how long have you had that position?

7 A. Roughly 22 years.

8 Q. What are your job duties in that position?

9 A. It's a small parish. I am pretty much the chief bottle
10 washer and cook. I do a lot of -- tons of things. As a part
11 of my responsibilities, I take spiritual responsibility for
12 the members of the parish, I open and close the parish
13 frequently, I do all -- I do -- I lead and run vestry
14 meetings, I do all the administrative tasks of the church, I
15 just do a lot of stuff.

16 Q. All right. As a rector did you come to learn about the
17 history of Christ St. Paul's?

18 A. I have.

19 Q. Would you tell us a little bit about it.

20 A. We were -- as a parish, we were founded as a part of the
21 church act, and we were one of the -- those parishes that
22 were founded -- I believe it's in the 1700s that we were
23 founded, and we have had a long history, about 300 years
24 since then.

25 Q. You have in front of you a set of documents. The first

1 document which is CSP Exhibit 1, would you please take a look
2 at that?

3 A. Okay.

4 Q. Do you recognize what that document is?

5 A. I believe I do.

6 Q. Can you tell us what that is?

7 A. I believe it's the statutes of the church act itself.

8 Q. And what date is that statute?

9 A. 18th day of December 1708.

10 Q. Is our parish -- Christ St. Paul's Parish mentioned in
11 that statute?

12 A. We were founded at that time as St. Paul's Stono, and
13 yes, we're there.

14 Q. Could you tell the Court what paragraph that is?

15 A. It's a legal document that I'm not positive how to
16 describe it. It appears in paragraph 3 on the third page --
17 or second page.

18 MR. MCCARTY: That's sufficient.

19 Move to admit Exhibit 1 into evidence, Your Honor.

20 THE COURT: Any objection?

21 MR. TISDALE: None, Your Honor.

22 MS. KOSTEL: No. -

23 THE COURT: Very well.

24 (Plaintiff's Exhibit CSP-1 admitted into evidence.)

25 Q. Where's the church located?

1 A. Currently we're at 4981 Chapel Road.

2 Q. How many members do we have?

3 A. Our average Sunday attendance, which is how we keep
4 track of it -- because of being a parish for so long, we have
5 lots of members, but our average Sunday attendance is roughly
6 212.

7 Q. Would you tell us a little bit about how the history
8 evolved from 1708 up to the present.

9 A. The church was founded on the water at that time as a --
10 one of the colonial parishes, and with the growth and
11 development and the change of the community, it has had
12 movements throughout those various years in different
13 locations, moving around and having a diverse and rich
14 history throughout the community with different locations.
15 At one point the parish also -- where the Christ Church came
16 was in the 1800's a different part of the geographical parish
17 bounds had Christ Church established, and so it continued to
18 minister and flourish, and at one point they then
19 re-established over in the geographic area where we currently
20 are in the same parish bounds. The chapel of ease had
21 developed and grew as well as its own parish, which would
22 have been St. Paul's, and they merged together about 50 -- 40
23 or 50 years ago.

24 Q. Basically, has this parish continuously existed since
25 1708 in one form or fashion?

1 A. Yes, it has.

2 Q. Has it continuously carried out its religious purposes
3 since then?

4 A. Yes, it has.

5 Q. Would you please look at CSP Exhibit 2 for me, please.
6 Can you identify that document?

7 A. The Articles of Incorporation of a nonprofit corporation
8 in the State of South Carolina.

9 Q. And is this the Articles of Incorporation of Christ
10 St. Paul's?

11 A. Yes, it is.

12 Q. And how did this document come into being in 1997?

13 A. At the request of our treasurer that we should have
14 incorporation within the state, so it was done following his
15 request.

16 Q. And has Christ St. Paul's been continuously incorporated
17 since 1997?

18 A. Yes, we have.

19 MR. MCCARTY: Move to admit Exhibit No. 2 into evidence,
20 Your Honor.

21 THE COURT: All right. Any objection?

22 MR. TISDALE: None, Your Honor.

23 MS. KOSTEL: No objection.

24 THE COURT: Very well. Christ St. Paul's No. 2 is in
25 evidence without objection.

1 (Plaintiff's Exhibit CSP-2 admitted into evidence.)

2 Q. Reverend, does the church have officers?

3 A. Yes, it does.

4 Q. Would you please describe for the Court what those are.

5 A. We have me as the rector. I have a senior warden. I
6 have a junior warden, clerk and a treasurer.

7 Q. And I assume all those officers have duties; is that
8 correct?

9 A. They do.

10 Q. And are the positions and the duties set out in the
11 bylaws?

12 A. Yes, they are.

13 Q. Does the church own any property?

14 A. Yes, we do.

15 Q. Can you tell me basically how many pieces of property
16 the church owns at this time?

17 A. I believe that we currently own five pieces of property.

18 MR. MCCARTY: Your Honor, can I confer with my counsel
19 just for a moment?

20 THE COURT: Sure.

21 (Counsel confer.)

22 MR. MCCARTY: Exhibits 3, 4, 5, 6 and 7, Your Honor,
23 represent deeds to pieces of property owned by the church.

24 MR. TISDALE: And we have no objection.

25 THE COURT: Very well.

1 MS. KOSTEL: No objection.

2 THE COURT: Very well. In other words, you're going to
3 mark each of the deeds numbers 3, 4, 5, 6 and 7?

4 MR. MCCARTY: They're previously marked as that,
5 Your Honor, for the Court, and I didn't know, I just wanted
6 him to testify.

7 (Plaintiff's Exhibits CSP-3 through CSP-7 admitted into
8 evidence.)

9 Q. Is this the property owned by the church?

10 A. Yes, it is.

11 Q. Does the church own any other property?

12 A. Not that I'm aware of.

13 Q. In each of those exhibits -- would you please take a
14 look at the front of each of those exhibits. On each of
15 those you'll find a quitclaim deed; is that correct?

16 A. Correct.

17 Q. Could you please tell us how those quitclaim deeds came
18 into being, to your knowledge?

19 A. To my knowledge the diocese prepared these quitclaim
20 deeds and offered them to us and we accepted them.

21 Q. Did the diocese have any interest in the property owned
22 by Christ St. Paul's?

23 A. We believe not.

24 Q. Did Christ St. Paul's request these deeds?

25 A. We did not.

1 Q. Is there any reason -- when these deeds were received,
2 did you question the diocese or anything?

3 A. We did not.

4 Q. Thank you. Did there come a time when you knew the
5 diocese had a dispute with the national church?

6 A. Yes, there was.

7 Q. Was this issue discussed amongst the church leadership?

8 A. Yes, it was.

9 Q. Church leadership, would you describe who the church
10 leadership was who discussed it?

11 A. Well, it was specifically discussed by the leadership of
12 the parish, the vestry in particular, but it was discussed
13 amongst the greater part of the congregation as well.

14 Q. All right. And did the vestry decide to take action
15 regarding this matter?

16 A. The vestry did.

17 Q. And would you please look at what's been marked as CSP
18 Exhibit No. 8 for me, please.

19 A. Yes.

20 Q. And would you please read the second sentence on the
21 sixth paragraph.

22 A. Beginning with Keith McCarty?

23 Q. Beginning with the word Terry. Want me to show you?

24 A. I think I might not have the right document.

25 Q. Terry (indicating).

1 A. Okay. I have it.

2 Q. Could you read that for the Court?

3 A. Terry made a motion for Keith to write a resolution from
4 the vestry of Christ St. Paul's showing our support to
5 Bishop Lawrence and our intent on staying with the Diocese of
6 South Carolina. The motion was seconded by Francis Toby, and
7 all agreed. Members of the vestry are to sign this
8 resolution.

9 Q. Now, let me back up a little bit.

10 What is the document from which you're reading?

11 A. This is the minutes of the vestry meeting of
12 November 11th, 2012.

13 Q. Was this a regularly called vestry meeting?

14 A. I believe it was.

15 Q. Would you please tell the Court how vestry meetings are
16 regularly called in the church?

17 A. Vestry meetings are held monthly on a regular basis on,
18 I believe it's the second Monday of the month.

19 Q. Is that on a regular basis?

20 A. On a regular basis.

21 Q. All right.

22 MR. MCCARTY: Your Honor, I move to admit Exhibit 8 into
23 evidence.

24 MR. TISDALE: No objection.

25 MS. KOSTEL: No objection.

1 THE COURT: Very well.

2 (Plaintiff's Exhibit CSP-8 admitted into evidence.)

3 Q. Reverend, would you please turn to CSP Exhibit No. 9 for
4 me.

5 A. Yes, sir.

6 Q. Have you got that?

7 A. I do.

8 Q. Have you seen that before?

9 A. Yes, I have.

10 Q. And what is it?

11 A. It's a certificate of corporate resolution authorizing
12 commitment to continue the diocesan relationship.

13 Q. Is this the resolution that grew out of the meeting on
14 the previous exhibit?

15 A. I believe it is.

16 Q. Was this document signed?

17 A. Yes, it is.

18 Q. Would you please turn to page 2 and 3 and take a look at
19 the signatures.

20 A. Yes, sir.

21 Q. And who are the members -- or are you familiar with the
22 members who signed it?

23 A. Yes, I am.

24 Q. Who are they?

25 A. They're the wardens and the members of the vestry and

1 myself.

2 Q. And what's the date that they signed?

3 A. There's some various dates that they actually signed.

4 Most are signed on December 2nd. One vestry member failed to
5 sign and came back on December 27th and signed.

6 Q. What was the purpose of the resolution?

7 A. The purpose of the resolution was for the vestry to
8 declare our commitment to remain with the Diocese of South
9 Carolina, I believe.

10 Q. Any other purpose?

11 A. To declare that we are no longer in any way affiliated
12 with or in union with the Episcopal Church, but to remain
13 affiliated with the Protestant Episcopal Church in the
14 Diocese of South Carolina, not in union with the national
15 church.

16 Q. All right. Did you make the congregation aware of the
17 vestry's actions?

18 A. Yes, I did.

19 Q. How did you do it?

20 A. In various formats. We notified them by newsletter. We
21 told them on Sunday morning and other informal ways as well.

22 Q. Would you please take a look at CSP Exhibit No. 10,
23 please.

24 A. I have it.

25 Q. Do you recognize that document?

1 A. I do.

2 Q. What is it?

3 A. This is the copy of our weekly newsletter, and it's
4 January 6th through the 12th edition in which it is a
5 letter from -- on the cover page is a letter from me
6 explaining the actions of the vestry and to begin to give
7 notice for a special called meeting of the vestry of the
8 congregation.

9 Q. Okay. Who gets this document?

10 A. All members of the parish and lots of other people
11 throughout the community and probably the country.

12 MR. MCCARTY: Move to admit CSP Exhibit No. 10 into
13 evidence.

14 THE COURT: Any objection?

15 MR. TISDALE: What is it?

16 MR. MCCARTY: It's the bulletin.

17 MR. TISDALE: No objection.

18 MS. KOSTEL: No objection.

19 THE COURT: Very well.

20 (Plaintiff's Exhibit CSP-10 admitted into evidence.)

21 Q. Did the parish take any other actions regarding the
22 diocese disassociating with the national church?

23 A. As a result of that, in that same document I just was
24 referring to, we announced the actions as a result of that
25 that would require some changes to our bylaws so that they

1 would be in conformity with where we were, and so we made
2 notice of those at our upcoming congregational meeting.

3 Q. Look back at Exhibit No. 10, the second page -- I'm
4 sorry, to the first page.

5 A. Yes, sir.

6 Q. Read the paragraph midway down the thing. It's marked
7 with an asterisk.

8 A. Mm-hmm.

9 Q. Would you please read that for the Court.

10 A. As a result of the vestry's action, we will need to make
11 a couple of changes to our bylaws so that they will be in
12 conformity with our new status. These two changes will be
13 presented at our upcoming annual congregational meeting
14 Sunday, January 13th.

15 Q. Would you flip to the second page of that document, and
16 on the second box down there, would you please identify that
17 for the Court.

18 A. This is from our Sunday morning bulletin, and it is also
19 giving notice of the annual congregational meeting Sunday,
20 January 13th.

21 Q. Would you please look at what's been previously provided
22 to you as CSP Exhibit No. 11. Can you please identify that
23 document.

24 A. These are the bylaws of Christ St. Paul's Church.

25 Q. Were those the bylaws that were in effect at the time

1 that you noticed the meeting mentioned in the previous
2 exhibit?

3 A. I believe they are.

4 Q. Okay. Now, it's been brought up before, so let's clear
5 it up. These bylaws aren't signed at the end, are they?

6 A. No, they are not.

7 Q. Are there other documents that have been put forward in
8 the corporation that are submitted without signature?

9 A. That is correct.

10 Q. Thank you. Would you please turn to Article No. 9.
11 It's on the last page.

12 A. Yes, sir.

13 Q. And read Section 2.

14 A. Section 2 of Article 9, it says, no alteration,
15 amendment, addition or repeal of these bylaws shall be made
16 unless the same be proposed in writing at a congregational
17 meeting and adopted by a majority vote at the meeting in
18 which it is proposed and further adopted by a two-thirds vote
19 at the next congregational meeting to be held no sooner than
20 30 days following the first meeting.

21 Q. You may have already mentioned, but were these the
22 bylaws that were in effect at the time that you noticed them
23 for the congregational meeting regarding the changes to these
24 bylaws?

25 A. I believe they were.

1 MR. MCCARTY: I move to admit Exhibit No. 11 into
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. TISDALE: No objection.

5 MS. KOSTEL: No objection.

6 THE COURT: Very well.

7 (Plaintiff's Exhibit CSP-11 admitted into evidence.)

8 Q. We've already talked about notice. Would you please
9 look at Exhibit No. 12 for me, please. I'm sorry, look back
10 at Exhibit No. 10 and ignore No. 12.

11 A. 10, you say?

12 Q. Yes.

13 A. Yes, sir.

14 MR. MCCARTY: For the record, it's the same exhibit,
15 Your Honor. I don't know how it got in there twice, but it's
16 there. So there's going to be a hole in my exhibits.

17 Q. That exhibit's already been admitted and we've already
18 talked about it. On the second page, is that the notice of
19 the congregational meeting?

20 A. Yes, sir.

21 Q. Was it stated that the bylaws in these two documents --
22 was it stated that a change in the bylaws was going to be
23 contemplated?

24 A. Yes.

25 Q. Did the annual meeting occur?

1 A. Yes, it did.

2 Q. Was a quorum present?

3 A. It was.

4 Q. What is a quorum in the Church of Christ St. Paul's,
5 according to the bylaws?

6 A. I believe according to the bylaws it's either 12 members
7 or 50 percent.

8 Q. Did the congregation vote to change the bylaws?

9 A. They did.

10 Q. What was the vote?

11 A. Unanimously.

12 Q. Would you please look at CSP Exhibit No. 13.

13 A. I have it.

14 Q. Can you identify that document for me?

15 A. The annual parish meeting minutes, I believe, is what
16 these are.

17 Q. What's the date on those?

18 A. January 13th of 2013.

19 Q. Would you please read paragraph No. 2 for me out of
20 that, the second paragraph.

21 A. I see. Bill Kirby made a motion to approve the two
22 bylaw changes to Article 1 and Article 9. The motion was
23 seconded by Terry Jenkins, and the congregation approved.

24 Q. Was there any objection to the proposed changes?

25 A. There was none.

1 Q. Did the parish schedule another vote on the proposed
2 changes?

3 A. We did.

4 Q. Would you please look at CSP Exhibit No. 14 for me,
5 please. What is that document that you're looking at?

6 A. This is another weekly newsletter of the parish.

7 Q. What's the date on that?

8 A. February 3rd through the 9th of 2013.

9 Q. And would you please turn to the second page of that
10 document? And in the box on the left, can you read that.
11 Tell us what that is.

12 A. It's an announcement announcing a special congregational
13 meeting. It reads, there is a special congregational meeting
14 scheduled for Sunday, February 17th at 9:15 a.m. This
15 meeting is for the second vote on the bylaw changes approved
16 at our annual meeting.

17 Q. Was the date of this proposed meeting outside the 30-day
18 window required by the bylaws?

19 A. It was greater than. Just to make sure I understand
20 your question, yes, it was more than 30 days.

21 MR. MCCARTY: Your Honor, I move to admit Exhibit No. 14
22 into evidence.

23 MR. TISDALE: No objection.

24 MS. KOSTEL: No objection.

25 THE COURT: Very well.

1 (Plaintiff's Exhibit CSP-14 admitted into evidence.)

2 Q. All right. Would you please look at -- first off, was
3 the meeting held?

4 A. Yes, it was.

5 Q. And please tell us what happened at the meeting with
6 regard to the change to the -- with regard to the proposed
7 change to the bylaws.

8 A. They were presented to the congregation and voted and
9 unanimously approved.

10 Q. Would you please look at CSP Exhibit No. 15 for me.
11 Could you tell us what that document is?

12 A. These are the minutes from that meeting.

13 Q. And, please, if you can summarize for the Court what
14 those minutes say.

15 A. It was -- the congregation met for the purpose of a
16 second vote on those proposed bylaw changes, and they were
17 made -- a motion was made and they were changed.

18 Q. Was there a quorum present?

19 A. There was.

20 Q. And what was the vote?

21 A. Unanimously again.

22 MR. MCCARTY: Thank you. Move to admit Exhibit No. 15
23 into evidence, Your Honor.

24 THE COURT: Any objection?

25 MR. TISDALE: No.

1 MS. KOSTEL: No objection.

2 THE COURT: Very well. Exhibit 15 in evidence without
3 objection.

4 (Plaintiff's Exhibit CSP-15 admitted into evidence.)

5 Q. Please look at CSP Exhibit No. 16 for me, would you,
6 Reverend?

7 A. Yes, sir.

8 Q. And can you identify for us what that document is?

9 A. I believe these are the current bylaws of the parish as
10 approved at that February 17th, 2013 meeting.

11 Q. Do they reflect the changes that were voted upon at the
12 two meetings by the congregation?

13 A. I believe I do. I believe we changed -- made a change
14 in Article 1 and a change in Article 9.

15 Q. That's correct.

16 Now, this document isn't signed either. Is that in
17 comport with the practices of the corporation Christ
18 St. Paul's?

19 A. It is.

20 Q. Does Christ St. Paul's have any relationship with the
21 national church as it's been described here in the last
22 couple of days?

23 A. We do not.

24 Q. Are you aware of any funds that Christ St. Paul's has
25 received from the national church?

1 A. I'm not aware of any.

2 Q. Does Christ St. Paul's use any of the marks of the
3 national church?

4 A. Do not.

5 Q. Is there any relationship at all between Christ
6 St. Paul's and the national church?

7 A. None that I'm aware of.

8 Q. Do you or any member of the vestry or the officers of
9 Christ St. Paul's attend conventions of the national church?

10 A. No, we do not.

11 Q. Have any members of your congregation been authorized --
12 not in the vestry, not in the leadership -- to attend
13 conventions of the national church?

14 A. I believe one of my assistants was elected and attended
15 a national convention many years -- several years ago.

16 Q. Was it before he was admitted, before he was a member of
17 Christ St. Paul's?

18 A. I believe it was while he -- well, he was just a
19 part-time assistant.

20 Q. All right. Have you ever authorized the use of the
21 parish name by the national church?

22 A. No, we have not.

23 Q. Have you ever authorized the national church to include
24 your name on its website?

25 A. No, we have not.

1 MR. MCCARTY: If you'll please give me about 30 seconds,
2 Your Honor?

3 THE COURT: Yes, sir.

4 Q. You mentioned one of your assistants was elected to go
5 to the national convention. Did Christ St. Paul's elect him?

6 A. No, we did not.

7 Q. Who did?

8 A. The Diocese of South Carolina.

9 MR. MCCARTY: Thank you. I don't have any further
10 questions. Please answer any questions for the other side.

11 THE COURT: Very well. Any questions, Mr. Tisdale?

12 MR. TISDALE: I think I'll defer to Ms. Kostel for the
13 time being.

14 THE COURT: Ms. Kostel.

15 CROSS-EXAMINATION BY MS. KOSTEL:

16 Q. Good afternoon, Father Borrett.

17 A. Good afternoon.

18 Q. Mary Kostel for the Episcopal Church. I think you've
19 figured that out by now.

20 A. Yes, ma'am.

21 Q. For the national church.

22 MS. KOSTEL: I'm sorry, Your Honor.

23 Q. You testified about parish bylaws?

24 A. Yes, ma'am.

25 Q. And you were on the vestry?

1 MS. KOSTEL: Okay. So I'll try again?

2 THE COURT: Go for it.

3 Q. I'm not going to restate what you testified to earlier,
4 that's in the record, but is it your understanding that your
5 parish -- your parish's decision to remain with the diocese
6 in its withdrawal from the national church was a result of a
7 doctrinal dispute with the Episcopal Church?

8 A. In thinking about the question and thinking back on when
9 this all took place, I might -- well, no, I would say that
10 for Christ St. Paul's the issue was the treatment of our
11 bishop and the actions that were taken against the bishop
12 that led us to take the actions that we did, ultimately took.

13 Q. And was Christ St. Paul's ever forced by the Episcopal
14 Church to do anything that it disagreed with doctrinally?

15 A. Can you give me some parameters what you mean by forced?

16 Q. Required.

17 A. None that I can think of off the top of my head.

18 Q. Okay. Thank you.

19 A. You're welcome.

20 Q. Sorry for the painful questioning.

21 A. No problem.

22 THE COURT: Mr. Tisdale.

23 MR. TISDALE: Just a few questions, Your Honor.

24 THE COURT: All right.

25 CROSS-EXAMINATION BY MR. TISDALE:

1 A. When you say and, I didn't serve on them at the same
2 time.

3 Q. No, I understand that.

4 A. Okay. I never spent a lot of time studying them, no,
5 sir.

6 Q. You have not?

7 A. No, sir.

8 Q. But you are familiar with the fact that you just
9 testified to, that whatever authority it has it gets from the
10 constitution and canons, the standing committee.

11 A. That's what I believe, yes.

12 MR. TISDALE: Thank you very much, Your Honor.

13 Thank you, Father.

14 THE COURT: Redirect.

15 MS. GOLDING: Well, this is not redirect.

16 THE COURT: That's right. Exactly. That's right.

17 MS. GOLDING: I'm asking a question on behalf of
18 St. Luke's.

19 EXAMINATION BY MS. GOLDING:

20 Q. Reverend Borrett, isn't it a fact that any and all
21 disputes that your parish had with either the national church
22 or the defendant association was because your parish did not
23 believe that these defendants had any property rights in your
24 parish's property? Isn't that not correct?

25 A. That is correct.

1 Q. And is it a fact the major factor is the property issue?

2 MS. KOSTEL: Objection, leading. She's leading the
3 witness.

4 THE COURT: Yes.

5 MS. GOLDING: Well, this is not my witness. I assume
6 that I can cross-examine anyone that's not my witness,
7 Your Honor. I believe that's appropriate.

8 MR. MCCARTY: Your Honor, I think the objection to
9 leading was mine, and I didn't make it. He's my witness.

10 THE COURT: Well, here's where I am. Under the rules,
11 the rule with regards to cross-examination is are your
12 interests aligned. And --

13 MS. GOLDING: I'll withdraw, Your Honor.

14 THE COURT: All right. I'm not absolutely positively
15 certain, having heard their testimony, that they're on
16 absolutely all fours with your client.

17 MS. GOLDING: I agree.

18 THE COURT: Having said that, they are a whole lot
19 closer to you than they are them.

20 MS. GOLDING: I agree. Thank you, Your Honor.

21 THE COURT: Yes.

22 Q. With respect to any disputes that your parish had with
23 the defendants in this case, what was the primary dispute?

24 A. The primary dispute, the ownership of our property.

25 Q. Was there ever any time the position of your parish that

1 the national Episcopal Church had any ownership interest in
2 your parish's property?

3 A. None that I'm aware of.

4 MS. GOLDING: Thank you.

5 THE COURT: Anybody else have questions?

6 MR. MCCARTY: Nothing from me, Your Honor.

7 THE COURT: Very well. Do we have another parish?

8 MR. OXNER: Your Honor, we call Richard Bruce.

9 MR. TISDALE: Which parish?

10 MR. OXNER: Christ the King, Waccamaw.

11 (Plaintiff's Exhibits CTK-1 through CTK-19 premarked for
12 identification.)

13 RICHARD PATTEN BRUCE, III,
14 being first duly sworn, testified as follows:

15 THE COURT: Your witness, Mr. Oxner.

16 MR. OXNER: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. OXNER: For the court reporter's benefit,
19 Harry Oxner of Oxner & Stacy for Christ the King, Waccamaw.

20 DIRECT EXAMINATION BY MR. OXNER:

21 Q. Mr. Bruce, where do you live?

22 A. I live in Pawleys Island, South Carolina.

23 Q. How long have you lived there?

24 A. For 12 years.

25 Q. And how old are you?

- 1 A. I am 60.
- 2 Q. Are you married?
- 3 A. I am.
- 4 Q. How long have you been married?
- 5 A. 31 years.
- 6 Q. And can you give us your education, please, sir.
- 7 A. I have a bachelor of industrial management from
- 8 Georgia Tech.
- 9 Q. And where do you currently work?
- 10 A. I work for The Litchfield Company.
- 11 Q. What do you do for The Litchfield Company?
- 12 A. I am a real estate broker.
- 13 Q. And how long have you been employed as a real estate
- 14 broker?
- 15 A. Nine years.
- 16 Q. Do you attend a church in Pawleys Island?
- 17 A. I do.
- 18 Q. What church do you attend?
- 19 A. Christ the King, Waccamaw.
- 20 Q. How long have you been attending Christ the King,
- 21 Waccamaw?
- 22 A. Since it was incorporated in June of 2010.
- 23 Q. Were you one of the original incorporators?
- 24 A. Yes, I was.
- 25 Q. I'm going to ask you to look at Exhibit 1. That's

1 Christ the King Exhibit 1.

2 MR. TISDALE: Do you have another copy?

3 Thank you.

4 Q. Is this the original Articles of Incorporation, a copy
5 of it?

6 A. Yes, it is.

7 Q. Does it have your signature on it?

8 A. It does.

9 Q. And does it list you as senior warden?

10 A. It does.

11 Q. And what is the name that this corporation was
12 incorporated under?

13 A. Christ the King, Waccamaw.

14 Q. Does it anywhere in this document refer to TEC or TECSC?

15 A. No.

16 Q. Does it refer to the Diocese of South Carolina?

17 A. No.

18 MR. OXNER: Your Honor, at this time we'd like to
19 introduce CTK No. 1 into evidence.

20 MR. TISDALE: No objection.

21 MS. KOSTEL: No objection.

22 THE COURT: All right. Very well. CTK Exhibit 1 is in
23 evidence without objection.

24 (Plaintiff's Exhibit CTK-1 admitted into evidence.)

25 THE COURT: And just with regards to plaintiffs, I just

1 anticipate that you all know these documents, and if you all
2 have any objection you all -- I'm not looking to you, and I'm
3 uncomfortable not doing that, but I figure you all know them.
4 So if I need to, you all need to speak up.

5 MR. RUNYAN: Understood, Your Honor.

6 Q. Did Christ the King, Waccamaw get its own EIN number
7 when it incorporated?

8 A. We did.

9 Q. Since the original incorporation in 2010 were the
10 Articles of Incorporation by Christ the King, Waccamaw ever
11 amended?

12 A. No.

13 Q. And that's until today, still have not been amended?

14 A. No.

15 Q. Does the corporation of Christ the King, Waccamaw have a
16 board of directors?

17 A. Yes.

18 Q. And who would that be?

19 A. The vestry.

20 Q. Did it have any corporate officers?

21 A. Yes.

22 Q. What type of corporate officers did it have?

23 A. The senior warden, junior warden, secretary, I mean
24 clerk and treasurer.

25 Q. And did the vestry ever adopt any bylaws?

1 A. Yes, we did.

2 Q. When did the bylaws get adopted? September 13, 2010?

3 A. Yes.

4 Q. Okay. I'd ask you to refer to Exhibit No. 6. Is that
5 the original bylaws that was executed by the vestry and you
6 as senior warden?

7 A. Yes, it was. Yes, it is.

8 MR. OXNER: At this time, Your Honor, we'd like to enter
9 into evidence CTK No. 6.

10 THE COURT: Any objection?

11 MR. TISDALE: None, Your Honor.

12 MS. KOSTEL: No objection.

13 THE COURT: Very well.

14 (Plaintiff's Exhibit CTK-6 admitted into evidence.)

15 MR. TISDALE: Can we see a copy of the bylaws?

16 MR. OXNER: Yes. You all were given all of these, but
17 here you go.

18 MR. TISDALE: Thank you very much.

19 Q. When you adopted these bylaws, this was done by the
20 vestry?

21 A. Yes.

22 Q. And at that time you all adopted the proper procedures
23 for future changes to the bylaws?

24 A. We did.

25 Q. And that's under, it appears to be, Section 15.1 and

1 Section 15.2 of the original bylaws?

2 A. I believe that is right. Yes.

3 Q. And what was the procedure for changing the bylaws in
4 the future if you ever wanted to change them?

5 A. They could be changed by a two-thirds vote of the vestry
6 or majority vote of the congregation with proper notice to
7 both.

8 Q. And did you, in fact, ever change the bylaws since 2010?

9 A. Yes, we did.

10 Q. And how many times did you change it?

11 A. Four.

12 Q. I'd ask you to look at CTK No. 7, and if you could tell
13 us what that is?

14 A. It is the Christ the King, Waccamaw vestry minutes dated
15 April 21st, 2012.

16 Q. And what did the vestry do at that time?

17 A. Well, as it relates to the bylaws?

18 Q. Yes, sir.

19 A. The rector brought up that the previous bylaws needed to
20 be amended and reflect some changes, and copies of those
21 changes were passed out, notice given to the vestry for a
22 vote at the next vestry meeting.

23 Q. And what was the major change in that set of bylaws?

24 A. To remove references to the national church from our
25 bylaws.

1 MR. OXNER: At this time I'd like to enter into evidence
2 Exhibit No. 7.

3 THE COURT: Any objection?

4 MR. TISDALE: No objection.

5 MS. KOSTEL: No objection.

6 THE COURT: Very well.

7 (Plaintiff's Exhibit CTK-7 admitted into evidence.)

8 Q. Did the vestry have a subsequent meeting to adopt those
9 bylaws?

10 A. Yes, we did.

11 Q. And is that contained in CTK No. 8?

12 A. Yes.

13 Q. And was a proper notice given of the change to the
14 bylaws?

15 A. Yes, both to the vestry and to the parish.

16 Q. And was the bylaws approved by the vestry at that time?

17 A. Yes.

18 Q. And how did that vote go?

19 A. Unanimous.

20 MR. OXNER: At this time we'd like to enter into
21 evidence Exhibit 8.

22 MR. TISDALE: No objection.

23 MS. KOSTEL: No objection.

24 (Plaintiff's Exhibit CTK-8 admitted into evidence.)

25 Q. At that time when you changed the bylaws, why did you

1 take out any reference to TEC?

2 A. Well, we had never paid any money to the national church
3 nor received any, and we've -- I, quite frankly, don't know
4 why we had it in there. It was an oversight when we did the
5 original bylaws.

6 Q. And did the original bylaws require you to conform to
7 any canons or constitution of TEC?

8 A. No.

9 Q. Did it require you to accede to the constitution and
10 canons of the Diocese of South Carolina?

11 A. Yes.

12 MR. OXNER: In just an abundance of caution, I believe
13 we've already entered the bylaws of Exhibit No. 9 into
14 evidence, but I want to make sure we have.

15 THE COURT: I was up to 8.

16 MR. OXNER: Up to 8?

17 THE COURT: Yes, sir.

18 MR. OXNER: Now we're at 9.

19 THE COURT: Any objection to No. 9?

20 MR. TISDALE: No objection.

21 MS. KOSTEL: No objection.

22 THE COURT: Very well.

23 (Plaintiff's Exhibit CTK-9 admitted into evidence.)

24 Q. All right. I now ask you to look at Exhibit No. 10.

25 Appears to be vestry minutes held on October 25th, 2012?

1 A. Yes.

2 Q. All right. And can you tell us, in regards to the
3 bylaws, what the vestry was attempting to do?

4 A. Our rector proposed that we make changes to the church's
5 bylaws and they were attached and are to be voted upon at the
6 next meeting on November 15th.

7 Q. And what were those changes? Were they more
8 housekeeping changes?

9 A. Yes, they were housekeeping, vestry, tenure, things like
10 that.

11 MR. OXNER: At this time we'd like to enter into
12 evidence Exhibit No. 10.

13 MR. TISDALE: No objection, Your Honor.

14 MS. KOSTEL: No objection.

15 THE COURT: Very well.

16 (Plaintiff's Exhibit CTK-10 admitted into evidence.)

17 Q. I want to ask you to look at CTK No. 11. Is this where
18 the vestry met on November 15, 2012, and did they approve the
19 bylaw changes that were discussed the month prior?

20 A. They did unanimously, yes.

21 MR. OXNER: Now we'd ask that CTK No. 11 be entered into
22 evidence.

23 MR. TISDALE: No objection, Your Honor.

24 MS. KOSTEL: No objection.

25 THE COURT: Very well.

1 (Plaintiff's Exhibit CTK-11 admitted into evidence.)

2 Q. Now I ask you to look at Exhibit No. 12, bylaws adopted
3 November 15th, 2012. Are you familiar with that document?

4 A. Yes.

5 Q. Can you tell us what occurred in that bylaw change?

6 A. These are where the housekeeping items were taken care
7 of, the vestry and some proxies in terms of annual meeting
8 and voting, et cetera.

9 Q. So those are the actual bylaws that were adopted?

10 A. Yes.

11 Q. After the notices we've already talked about in
12 Exhibit No. 10 and 11?

13 A. Yes.

14 MR. OXNER: We'd ask that Exhibit No. 12 be entered into
15 evidence.

16 THE COURT: Any objection?

17 MR. TISDALE: No objection.

18 MS. KOSTEL: No objection.

19 THE COURT: Very well.

20 (Plaintiff's Exhibit CTK-12 admitted into evidence.)

21 Q. If you'll please look at Exhibit No. 13.

22 Is that minutes of the vestry meeting held on
23 January 14, 2013?

24 A. Yes, it is.

25 Q. And are those minutes discussing further changes to the

1 bylaws?

2 A. Yes.

3 Q. And what type of changes were being done for this
4 change?

5 A. We were looking to remove references to the diocese from
6 our bylaws.

7 Q. And did the vestry meet again on January 27, 2013?

8 A. Well -- yes. Yes, they did.

9 Q. And at that time, did they approve the changes to the
10 bylaws?

11 A. Yes.

12 MR. OXNER: Your Honor, we'd like to enter into evidence
13 Exhibits No. 13 and 14.

14 THE COURT: 13 and 14.

15 MR. TISDALE: No objection.

16 MS. KOSTEL: No objection.

17 THE COURT: Very well.

18 (Plaintiff's Exhibits CTK-13 and CTK-14 admitted into
19 evidence.)

20 Q. If you'll look at Exhibit No. 15, which are the actual
21 bylaws that were changed, is that right?

22 A. Yes.

23 Q. And now we see that there is no accession clause in
24 these bylaws at all; is that right?

25 A. That's correct.

1 Q. And that's what the major change was there?

2 A. Yes.

3 MR. OXNER: Your Honor, we'd like to introduce into
4 evidence CTK No. 15.

5 MR. TISDALE: No objection.

6 MS. KOSTEL: No objection.

7 THE COURT: Very well.

8 (Plaintiff's Exhibit CTK-15 admitted into evidence.)

9 Q. If you'll look at Exhibit No. 16, we've got a series of
10 meetings that occurred and they're discussing, once again,
11 some bylaw changes; is that right?

12 A. Yes.

13 Q. And are they more housekeeping changes?

14 A. Yes.

15 MR. OXNER: Your Honor, we'd ask that CTK No. 16 be
16 entered into evidence.

17 THE COURT: Any objection?

18 MR. TISDALE: None, Your Honor.

19 MS. KOSTEL: No objection.

20 THE COURT: Very well.

21 (Plaintiff's Exhibit CTK-16 admitted into evidence.)

22 Q. And if you'll look at No. 17, CTK No. 17, is this where
23 the vestry approved those changes to the bylaws?

24 A. Yes, unanimously.

25 MR. OXNER: Your Honor, we'd enter into evidence Exhibit

1 No. 17.

2 THE COURT: Any objection?

3 MR. TISDALE: None, Your Honor.

4 MS. KOSTEL: No objection.

5 THE COURT: Very well.

6 (Plaintiff's Exhibit CTK-17 admitted into evidence.)

7 Q. If you'll please look at Exhibit No. 18, is that the
8 actual changes that were completed that we just discussed?

9 A. Yes.

10 Q. And they were adopted on January 20, 2014?

11 A. That is correct.

12 Q. Is that the last time that the bylaws have been changed
13 for Christ the King?

14 A. Yes.

15 Q. And have all these changes to the bylaws been done in
16 accordance with your governing documents?

17 A. Yes, they have.

18 Q. Has the procedure for the changes in the bylaws ever
19 been changed themselves, meaning the two-thirds vestry
20 approval and the notice provisions?

21 A. No.

22 Q. Has Christ the King, Waccamaw ever asked TEC or TECSC
23 for permission to change its bylaws?

24 A. No.

25 Q. Did it ever ask permission to incorporate Christ the

1 King, Waccamaw?

2 A. No.

3 Q. Is there any provision in the bylaws or articles that
4 prohibits any particular changes to the articles or bylaws?

5 A. No.

6 Q. Or ask anybody for -- do they need to have permission to
7 change those articles or bylaws?

8 A. No.

9 Q. Does Christ the King, Waccamaw own any property?

10 A. Yes.

11 Q. What type of property does it own?

12 A. We own just under seven acres with a 4,000 square foot
13 building on it on Highway 17 in Pawleys Island.

14 Q. And when did they purchase that property?

15 A. We purchased that in September of 2011.

16 Q. If you'll look at Exhibit No. 2, is that the deed --

17 A. I'm sorry, 2010. Excuse me.

18 Q. -- is that the deed that you all received when buying
19 that piece of property?

20 A. Yes.

21 Q. Does it in any way reference TEC or TECSC in that deed?

22 A. No.

23 Q. Or the diocese, for that matter?

24 A. No.

25 Q. And what name is the titled real estate in?

1 A. Christ the King, Waccamaw.

2 Q. And nowhere in this deed does it even say the word
3 Episcopal?

4 A. No.

5 MR. OXNER: At this time we'd like to enter into
6 evidence CTK No. 2.

7 MR. TISDALE: Without objection, Your Honor.

8 MS. KOSTEL: No objection.

9 THE COURT: Very well.

10 (Plaintiff's Exhibit CTK-2 admitted into evidence.)

11 Q. Does the Christ the King, Waccamaw have a mortgage?

12 A. We do.

13 Q. How much is that mortgage?

14 A. That mortgage currently is, I believe, \$550,000.

15 Q. Has TEC or TECSC ever helped pay the mortgage?

16 A. No.

17 Q. For that matter, has Christ the King, Waccamaw ever
18 received any money from TEC or TECSC for anything?

19 A. No.

20 Q. Did Christ the King, Waccamaw ever request permission
21 from TEC or TECSC to mortgage their property?

22 A. No.

23 Q. Talking about the money to and from TEC and TECSC, has
24 Christ the King, Waccamaw ever given or caused to give any
25 money to TEC or TECSC?

1 A. No.

2 Q. Has Christ the King, Waccamaw ever instructed the
3 Diocese of South Carolina not to give money to TEC or TECSC?

4 A. Yes.

5 Q. When did it do that?

6 A. On an annual basis.

7 Q. Since when?

8 A. Since June 7th of 2010.

9 Q. That was when you incorporated?

10 A. Yes.

11 Q. Has Christ the King, Waccamaw ever given or caused to be
12 given any money to TEC's charities such as the World Relief
13 Fund or United Thank Offering?

14 A. No.

15 Q. If you'll please look at Exhibit No. 3, is that a
16 quitclaim deed in to Christ the King, Waccamaw from the
17 Protestant Episcopal Diocese of South Carolina?

18 A. Yes.

19 Q. Did you all receive that quitclaim deed from the
20 Protestant Diocese of South Carolina?

21 A. We did.

22 Q. Did you record that quitclaim deed?

23 A. We did.

24 Q. What was your understanding as to what you were getting
25 in that quitclaim deed from the Protestant Diocese of South

1 Carolina?

2 A. Well, we felt, obviously, from the titled property, that
3 the diocese did not have any authority over that property,
4 but their rights were given to us, if those existed, in this
5 document.

6 MR. OXNER: Your Honor, at this time we would like to
7 introduce CTK Exhibit No. 3.

8 THE COURT: Any objection?

9 MR. TISDALE: We don't have any objection to that.

10 MS. KOSTEL: No objection.

11 THE COURT: Very well, it's in.

12 (Plaintiff's Exhibit CTK-3 admitted into evidence.)

13 Q. Thank you. If you'll now look at CTK Exhibit No. 19,
14 can you identify that document for us?

15 A. That is minutes from our vestry meeting on January 27th,
16 2013.

17 Q. And did it have a resolution in it?

18 A. It did. It had two resolutions.

19 Q. And what were you resolving in that resolution?

20 A. We were resolving our allegiance and support to the
21 bishop and the diocese, and our clear understanding, we were
22 not aligned with the national Episcopal Church.

23 MR. OXNER: We'd like to enter into evidence CTK No. 19.

24 MR. TISDALE: No objection.

25 MS. KOSTEL: No objection.

1 THE COURT: Very well.

2 (Plaintiff's Exhibit CTK-19 admitted into evidence.)

3 Q. Did Christ the King, Waccamaw ever have a sign saying
4 the Episcopal Church welcomes you?

5 A. No.

6 Q. Have you ever had any relationship with -- you, I mean
7 Christ the King, Waccamaw, ever had any relationship with
8 TECSC?

9 A. No.

10 Q. Did your parish or anyone from your parish go to TECSC's
11 convention?

12 A. No.

13 Q. Have you ever considered your parish to be a member of
14 TECSC?

15 A. No.

16 MS. KOSTEL: Excuse me, could we clarify what's meant by
17 TECSC? Thank you.

18 MR. OXNER: In most of the documents it's been referred
19 to as TECSC, which is the Episcopal Church, South Carolina.

20 MS. KOSTEL: You're not referring to the plaintiff
21 diocese?

22 MR. OXNER: No.

23 MS. KOSTEL: Okay. Thank you.

24 THE COURT: Unincorporated --

25 MR. OXNER: Unincorporated association of the Episcopal

1 Church, South Carolina.

2 THE COURT: Got it.

3 MR. TISDALE: In South Carolina.

4 MR. OXNER: In South Carolina.

5 Q. Has Christ the King, Waccamaw ever given any authority
6 to use its name to TECSC?

7 A. No.

8 Q. Has it ever given any authority to use its name or post
9 any materials on TECSC's website?

10 A. No.

11 Q. Does Christ the King have any relationship with TEC at
12 this moment?

13 A. No.

14 Q. Has it ever had a relationship with TEC since it was
15 formed in 2010?

16 A. No.

17 MR. OXNER: Madam Court Reporter, just for abundance of
18 safety, do you have 19 exhibits recorded?

19 THE REPORTER: There's 4 and 5 we don't have.

20 THE COURT: Have you all seen 4 and 5?

21 MR. TISDALE: What are they?

22 MR. OXNER: Minutes of the meeting and then the approval
23 of one of the bylaws.

24 MS. KOSTEL: No objection.

25 MR. TISDALE: We don't have any objection to 4 and 5.

1 MS. KOSTEL: No objection.

2 THE COURT: Very well.

3 (Plaintiff's Exhibits CTK-4 and CTK-5 admitted into
4 evidence.)

5 THE COURT: The intention is that Exhibits 1 through 19
6 are in evidence; is that correct?

7 MR. OXNER: That's correct.

8 MR. TISDALE: We agree.

9 THE COURT: Very well. All right. Now, I'm going to
10 begin on this side. Any questions from any of the other
11 plaintiffs? Yes.

12 MS. GOLDING: Thank you, Your Honor.

13 DIRECT EXAMINATION BY MS. GOLDING:

14 Q. With respect to your parish, what was your parish's
15 position as to the national church's claim that it had an
16 interest in your parish property or that it has an interest
17 in your parish property?

18 A. We felt like that was not true.

19 Q. And to your knowledge what interest, if any, does the
20 national church have in any of your parish property, whether
21 real or personal?

22 A. None.

23 Q. Is that dispute over the property a major factor with
24 respect to your parish's position?

25 A. Yes.

1 MS. GOLDING: No further questions, Your Honor.

2 THE COURT: All right. Now, cross-examination.

3 Did you have something?

4 MR. RUNYAN: I just have a quick clarification. The
5 relevance of the inquiry into the shield has to do with the
6 defense of the Episcopal Church in South Carolina. That's
7 what I understand the ruling to have been.

8 THE COURT: That's correct.

9 CROSS-EXAMINATION BY MS. KOSTEL:

10 Q. Okay. Good afternoon, Mr. Bruce.

11 A. Good afternoon.

12 Q. A couple of questions to follow up on your testimony.

13 You testified that Christ the King got its own EIN,
14 employer identification number, correct?

15 A. Yes.

16 Q. What did it do to ascertain its tax exempt status, do
17 you know?

18 A. Well, our understanding was that, as a church in South
19 Carolina, we are automatically tax exempt.

20 Q. Right. Did you ever issue a letter, for example, to a
21 parishioner or anyone else reflecting that their donation was
22 tax exempt, as often happens with tax exempt organizations?

23 A. I don't know.

24 Q. I believe that you testified that Christ the King never
25 had a relationship with the Episcopal Church, with the

1 national church, since the parish was formed in 2010; is that
2 correct?

3 A. Right.

4 Q. Okay. Are you aware that Christ the King is listed as a
5 parish in union with the diocese in the 2010 journal of the
6 diocesan convention? In union with the diocese.

7 A. Could you repeat that again to make sure?

8 Q. Sure. Are you aware that Christ the King was listed as
9 a parish in union with the Diocese of South Carolina?

10 A. I wasn't aware of that, no.

11 Q. And were you aware that Christ the King is listed in the
12 2010 Journal of the Diocese of South Carolina as having sent
13 deputies to that meeting of that convention, the diocesan
14 convention?

15 A. I'm not aware of that, but we did.

16 Q. Oh, you did?

17 A. Yes, I mean, we sent --

18 Q. You're aware of the fact, not that it's in the journal?

19 A. That's right.

20 Q. Fair enough. Then will you concede that Christ the King
21 was in union with the Diocese of South Carolina in 2010?

22 A. Yes.

23 Q. And are you aware that in 2010 the constitution of the
24 Diocese of South Carolina required a parish to, before it was
25 admitted into union with the convention, to provide evidence

1 of its willingness to conform to the constitution of the
2 Protestant Episcopal Church in the United States?

3 A. I was not aware of that.

4 Q. Do you know if Christ Church made that evidence?

5 A. I'm sorry?

6 Q. Do you know if Christ Church provided that evidence that
7 it was required to provide?

8 A. I don't know. I was not at that convention.

9 Q. Mr. Bruce, you testified about a vestry resolution in
10 January 2013 to withdraw or to, I guess, nullify its union
11 with the Episcopal Church, correct?

12 A. We didn't have a relationship with the Episcopal Church.

13 Q. Well --

14 A. It was to clarify -- I'm sorry, finish your question.

15 Q. Well, if I represented to you, and I think I can find
16 them, that vestry minutes indicate that -- of January 27,
17 2013 indicate that there was a resolution passed that the
18 parish was, quote, no longer in the Episcopal Church, nor are
19 we in union with the Episcopal Church.

20 A. Okay.

21 Q. And that was, in fact, adopted in January of 2013?

22 A. Yes.

23 Q. Okay. Was the reason that the vestry decided to adopt
24 that resolution because of doctrinal differences with the
25 Episcopal Church?

1 A. It was in support of our bishop and our diocese, and the
2 way that our bishop had been treated was the major basis for
3 that.

4 Q. The way the --

5 A. And our show of support.

6 Q. The way the bishop had been treated by?

7 A. By the national church.

8 MS. KOSTEL: Nothing further. Thank you.

9 THE COURT: All right. Now Mr. Tisdale.

10 MR. TISDALE: Just one second, please, Your Honor.

11 THE COURT: All right.

12 MR. TISDALE: Your Honor, we don't have any questions of
13 this witness.

14 THE COURT: All right. Very well. Redirect.

15 MR. OXNER: None, Your Honor.

16 THE COURT: Any other questions from the plaintiffs?

17 All right. You may come down. All right. Next.

18 (Plaintiff's Exhibits SAMP-1 through SAMP-29 premarked
19 for identification.)

20 LEWIS BLAKE MIDDLETON, JR.,
21 being first duly sworn, testified as follows:

22 THE COURT: Would you state your name again, please, for
23 us for the record.

24 THE WITNESS: Yes, ma'am, Lewis Blake Middleton, Jr.

25 THE COURT: All right. Your witness.

1 MS. JOHNSON: Your Honor, for the benefit of the Court
2 and court reporter, my name is Oana Johnson, and I represent
3 St. Andrew's, Mount Pleasant and St. Andrew's, Mount Pleasant
4 Land Trust, and I am with George Kefalos.

5 DIRECT EXAMINATION BY MS. JOHNSON:

6 Q. Mr. Middleton, you already stated your name for the
7 record, so that's not necessary anymore. Tell me, would you
8 be able to give us a brief history of St. Andrew's, Mount
9 Pleasant?

10 A. Yes.

11 Q. And before we go with that, where do you live?

12 A. I live at 171 Oak Point Landing Drive, Mount Pleasant,
13 South Carolina.

14 Q. How long have you lived there?

15 A. Since 1999.

16 Q. And you work for St. Andrew's, Mount Pleasant, correct?

17 A. That's correct.

18 Q. And you are the church administrator?

19 A. That's correct.

20 Q. How long have you been the church administrator?

21 A. Since 1999.

22 Q. How long have you been a member of St. Andrew's, Mount
23 Pleasant?

24 A. Since 1983.

25 Q. As a member of the church and before you became the

1 administrator have you held any leadership positions?

2 A. Yes.

3 Q. What were those?

4 A. I served on vestry two different terms.

5 Q. Can you tell us a little bit about your duties as the
6 church administrator?

7 A. I don't preach or teach, but everything else I manage to
8 have my hands on.

9 Q. Very well. Tell me how St. Andrew's, Mount Pleasant was
10 started.

11 A. It was -- the congregation was part of the Christ Church
12 Mount Pleasant that met in the old village of Mount Pleasant,
13 and they grew to the size where they wanted to build a
14 building and have their own clergy person.

15 Q. Where's the church located?

16 A. 440 Whilden Street.

17 Q. I'm going to show you a couple of pictures of the
18 church. That, can you see it?

19 A. That's the historic church on our property.

20 Q. Do you know how many -- about how many members the
21 church has?

22 A. Around 3200.

23 Q. You have a book of exhibits, I believe?

24 A. I don't.

25 MS. JOHNSON: May I approach the witness, Your Honor?

1 THE COURT: Of course, certainly.

2 Q. I'm going to ask you to refer your attention to Exhibit
3 No. 1. Can you identify that document?

4 A. That's the original certificate of incorporation from
5 1954.

6 Q. Is that when St. Andrew's, Mount Pleasant was first
7 incorporated?

8 A. Correct.

9 Q. And is that when it separated from Christ Church?

10 A. Correct.

11 MS. JOHNSON: I'm going to move to admit Exhibit 1 into
12 evidence.

13 MR. TISDALE: We have no objection.

14 MS. KOSTEL: No objection.

15 THE COURT: Got it. No objection. 1 is in.

16 (Plaintiff's Exhibit SAMP-1 admitted into evidence.)

17 Q. Can you tell us what the purpose of that document was?

18 A. The purpose of that document was to transact all
19 business and handle all matters connected with the Episcopal
20 Church of the parish of St. Andrew's Church, Mount Pleasant.

21 Q. Has St. Andrew's existed as a corporation since 1954?

22 A. Yes.

23 Q. Has it continued carrying its business since 1954?

24 A. That's correct.

25 Q. Tell me, does this corporation have a board of

1 directors?

2 A. It does.

3 Q. And who is it?

4 A. The vestry of the church.

5 Q. And how is that -- where is that set out?

6 A. That's in the bylaws and the corporate charter.

7 Q. Does the corporation have officers?

8 A. Yes.

9 Q. And where is that set out?

10 A. In the same documents.

11 Q. Who are the corporate officers?

12 A. The chairman, the senior warden, the junior warden,
13 secretary and treasurer.

14 Q. Who has the power to hold property and conduct business
15 on behalf of the corporation?

16 A. The vestry.

17 Q. What gives the vestry that power?

18 A. The same bylaws and corporate charter.

19 Q. To your knowledge, has St. Andrew's, Mount Pleasant
20 always followed its bylaws with regard to conducting its
21 business?

22 A. Yes.

23 Q. Does St. Andrew's Church own any property, any real
24 estate?

25 A. No.

1 Q. Who owns property, the property where the church
2 conducts its business?

3 A. St. Andrew's Church, Mount Pleasant Land Trust.

4 Q. Can you tell me when that trust was created?

5 A. June of 2009.

6 Q. Can you explain how the property was transferred to the
7 trust?

8 A. By deed.

9 Q. Who uses the property?

10 A. The church does.

11 Q. And does the church compensate the trust for the use of
12 the property?

13 A. Yes, it does.

14 Q. Can you direct your attention to Exhibit No. 8.

15 A. That's the trust document for St. Andrew's Church, Mount
16 Pleasant Land Trust.

17 Q. Tell me a little bit about the purpose of creating this
18 trust.

19 A. The purpose was to begin to prepare for campus planning
20 and expansion and our concerns with having -- being adjacent
21 to the historic district in Mount Pleasant, which was across
22 the street, and the historic church was the only piece on our
23 side of the street. And so we were trying to separate the
24 historic church from the rest of the church so we would not
25 necessarily have to deal with all the historic district

1 restrictions and also to put the property in a position that
2 the banks would be satisfied with to be able to lend us money
3 for future construction.

4 MS. JOHNSON: I move to introduce Exhibit 8 into
5 evidence.

6 THE COURT: Exhibit 8?

7 MS. JOHNSON: Yes.

8 THE COURT: Any objection?

9 MR. TISDALE: No, Your Honor.

10 MS. KOSTEL: No objection.

11 THE COURT: Exhibit 8 is in evidence without objection.

12 (Plaintiff's Exhibit SAMP-8 admitted into evidence.)

13 Q. Could you direct your attention to Exhibit 9.

14 A. Okay.

15 Q. Can you identify that document?

16 A. This is a mortgage the church holds from the trust.

17 Q. And that was entered into when?

18 A. June of 2009.

19 Q. It was at the time that the property was transferred to
20 the land trust, correct?

21 A. That's correct.

22 MS. JOHNSON: I move to admit Exhibit No. 9 into
23 evidence, Your Honor.

24 MR. TISDALE: No objection.

25 MS. KOSTEL: No objection.

1 (Plaintiff's Exhibit SAMP-9 admitted into evidence.)

2 THE COURT: Why don't you just stop for just a moment.

3 This might be a good time to take a very short break to just
4 let you show all the documents and then let you all read all
5 of the documents with regards to this witness, and then we'll
6 just put them all in at the same time. Looks like there's
7 not any objection, so maybe we can just do that.

8 MS. JOHNSON: Thank you, Your Honor.

9 THE COURT: Very well. And I tell you what, it's about
10 4:00 and I want to get as much in as we can, so let's see if
11 we can take 15 minutes.

12 (Recess held.)

13 THE COURT: Have you had an opportunity to show the
14 documents?

15 MS. JOHNSON: Yes, ma'am.

16 THE COURT: What numbers are they that you showed to
17 counsel?

18 MS. JOHNSON: I showed them 1 through 29.

19 THE COURT: And were there any objections?

20 MR. TISDALE: Your Honor, I'm happy to report there's no
21 objection.

22 THE COURT: 1 through 29.

23 MS. KOSTEL: No objection, Your Honor.

24 THE COURT: Thank you so much. We will go much faster
25 then. Thank you.

1 MS. JOHNSON: Thank you.

2 THE COURT: Yes, thank you.

3 (Plaintiff's Exhibits SAMP-1 through SAMP-29 admitted
4 into evidence.)

5 Q. Mr. Middleton, did the trust obtain a 501(c)(3) status?

6 A. Yes, it did.

7 Q. And that is identified in Exhibit 11, which is in
8 evidence?

9 A. That's correct.

10 Q. Can you direct your attention to Exhibits 28 and 29.

11 A. 28 and 29?

12 Q. Yes.

13 A. Okay. These are deeds for the property in Goose Creek
14 on our Goose Creek campus.

15 Q. And that is Exhibit 28?

16 A. Yes.

17 Q. And Exhibit 29?

18 A. These are the deeds for our property in Mount Pleasant.

19 Q. And St. Andrew's, Mount Pleasant Land Trust owns all
20 that property?

21 A. Correct.

22 Q. Can you describe the property at St. Andrew's, Mount
23 Pleasant?

24 A. We -- on the corner of Whilden and Venning Street, on
25 one side of Venning Street is our historic church.

- 1 Q. The one we just showed?
- 2 A. That's correct. Then behind it is a larger ministry
3 center building with two other buildings attached to it, and
4 then behind that is a day school. Then across the street
5 from Venning is our parking lot.
- 6 Q. Very well. What about the property in Goose Creek,
7 describe that a little bit.
- 8 A. There's a church there, there's a converted house that
9 acts as parish hall, and a parking area.
- 10 Q. Can you tell me, did St. Andrew's at any time request
11 permission from the diocese to buy, sell or mortgage its
12 property?
- 13 A. St. Andrew's Church?
- 14 Q. Yes.
- 15 A. Yes.
- 16 Q. When was that?
- 17 A. In March/April of 2009.
- 18 Q. Okay. And was that the only time that St. Andrew's --
- 19 A. The only one that I'm aware of.
- 20 Q. What did St. Andrew's Church request permission from the
21 diocese to do?
- 22 A. To alienate our property.
- 23 Q. Can you direct your attention to Exhibit 14, please.
- 24 A. Okay.
- 25 Q. Is that the consent from the diocese for St. Andrew's,

1 Mount Pleasant Church to alienate its property?

2 A. That's correct.

3 Q. Did St. Andrew's believe that it needed the diocese's
4 consent to alienate its property?

5 A. No.

6 Q. What was the purpose of the request, where was the
7 property going?

8 A. The property was going into the trust, and we just
9 wanted to cross our T's and dot our I's just to make sure.

10 Q. Can you take a look at Exhibit 27.

11 A. That's the quitclaim deed we received from the diocese.

12 Q. Do you know what the purpose of this deed was?

13 A. I assume that, if they thought they had any interest in
14 our property, they were relinquishing any interest in our
15 property.

16 Q. When did you receive this deed?

17 A. We got this -- this was in December of the year after
18 this was done, which was -- we got it in 2012.

19 Q. Okay. So you received this deed in December of 2012?

20 A. Correct.

21 Q. Did you know that a deed was being sent to you?

22 A. No, we were unaware of it being done.

23 Q. You didn't -- did you ask for it?

24 A. No.

25 Q. What did you do with it once you received it?

1 A. We recorded it.

2 Q. Now, at some point St. Andrew's, Mount Pleasant decided
3 that it was going to disassociate itself from the Diocese of
4 South Carolina; is that correct?

5 A. Correct.

6 Q. Can you tell me a little bit about the reasons for
7 disassociating without going into any religious --

8 A. Well, we were looking at what was going on in the
9 national scene of the church and decided we wanted to part
10 from that.

11 Q. Okay. Were you -- did it have anything to do with your
12 property?

13 A. It did.

14 Q. What was your concern about your property?

15 A. We were concerned that they may try to claim that the
16 property was theirs.

17 Q. And was that one of the main reasons for seeking
18 disassociation from the diocese?

19 A. Yes.

20 Q. Did the vestry decide to take action regarding this?

21 A. It did.

22 Q. And what did it do?

23 A. March 10th, 2010, at a vestry meeting three resolutions
24 were passed.

25 Q. Will you direct your attention to Exhibit 15.

1 A. Which one?

2 Q. 15.

3 A. 15?

4 Q. Yes, sir.

5 A. This is the vestry meeting minutes of the meeting on
6 March 10, 2010.

7 Q. And can you tell me what the resolutions were in that?

8 A. One was to approve a plan of merger with St. Mary's
9 Church in Goose Creek to send the amended and restated
10 corporation bylaws to the congregation to approve and to
11 change the certificate of incorporation, changing the name
12 and changing the purpose.

13 Q. Can you tell me a little bit about why you were looking
14 to change the name?

15 A. Well, the original name was the Vestry and Church
16 Wardens of the Episcopal Church in the Parish of St. Andrew's
17 Church, Mount Pleasant. We just changed it simply St.
18 Andrew's Church, Mount Pleasant.

19 Q. Were you known as St. Andrew's Church, Mount Pleasant?

20 A. Yes.

21 Q. Okay. These minutes, the Exhibit 15 we were just
22 looking at, are not signed. Do you know if they came from
23 your archives?

24 A. Yes.

25 Q. They did. Okay.

1 Was this -- was the vestry meeting on March 10, 2010 the
2 only meeting where the change of the bylaws and the change in
3 the name of the corporation were discussed?

4 A. No, there were other meetings subsequent to that.

5 Q. Would you please take a look at Exhibit 17.

6 A. These are the minutes from the first reading of the
7 proposed changes to the bylaws and the corporate charter
8 changes.

9 Q. And were these voted upon by the vestry?

10 A. No. Our bylaws only state that they would be read at
11 one meeting and discussed and read and voted on at the second
12 meeting.

13 Q. Very well. Can you take a look at Exhibit 18.

14 A. These are the vestry minutes from March 28th, 2010.

15 Q. And, again, those come from your archives?

16 A. Yes.

17 Q. And can you tell me what resolutions were discussed at
18 that meeting?

19 A. Resolutions that were discussed and passed were to
20 withdraw from the Episcopal Church and to affiliate with the
21 Anglican Church of North America and to change our vestry
22 meeting times.

23 Q. Do you know if notice was sent -- first of all, let me
24 ask you this: Did you have a special corporate meeting to
25 vote on the changes to the bylaw and the name change?

- 1 A. We did.
- 2 Q. And was notice sent to anyone?
- 3 A. It was sent to the members of the congregation by mail
- 4 on March 12th.
- 5 Q. And were you the person that mailed the notices?
- 6 A. I physically dropped them in the mailbox.
- 7 Q. And will you look at Exhibit 16.
- 8 A. 16? This is a notice that was mailed on March 10th.
- 9 Q. Okay. And the notice identifies the resolutions that
- 10 were to be voted on, correct?
- 11 A. It does.
- 12 Q. Did the meeting occur?
- 13 A. Yes, it did.
- 14 Q. Was it recorded?
- 15 A. It was.
- 16 Q. Will you look at Exhibit 19.
- 17 A. This is a record of the minutes of that meeting that
- 18 day.
- 19 Q. Did the congregation vote on the amendments to the
- 20 bylaw?
- 21 A. Yes, they did.
- 22 Q. Did the congregation vote on the name change?
- 23 A. They did.
- 24 Q. Will you take a look at Exhibit 22.
- 25 A. This is a report from our certified public accountants

1 reporting the voting of the congregation at that meeting on
2 March 28th.

3 Q. What was the first resolution that they were voting on?

4 A. First resolution was to accept the proposed amended and
5 restated bylaws.

6 Q. How did the -- can you tell us how the congregation
7 voted?

8 A. They voted 669 in favor and 13 opposed.

9 Q. What was the second resolution?

10 A. The second resolution was to approve the changes to the
11 corporate charter.

12 Q. And how did the congregation vote?

13 A. Same votes, 669 to 13.

14 Q. And what was the third resolution?

15 A. Third resolution, to ratify the vestry's decision to
16 affiliate with the Anglican Church of North America.

17 Q. And how did they --

18 A. They voted 663, opposed 18.

19 Q. Subsequent to that meeting did you make any changes to
20 your corporate documents?

21 A. Well, we -- once we approved the bylaws, we were done
22 with that, we filed those with the Secretary of State.

23 Q. Okay. Let me ask you to look at Exhibit 21.

24 A. 21?

25 Q. Yes.

1 A. This is the Articles of Amendment to our corporate
2 charter.

3 Q. Okay. And how -- what was the purpose of that, of
4 those?

5 A. This is where we officially filed to make the changes in
6 name and purpose.

7 Q. Okay. Can you take a look at Exhibit 23.

8 A. This is a copy of the bylaws that we passed at that
9 March 28th corporate meeting.

10 Q. Can you point me to the changes in those bylaws?

11 A. Section 1 shows the corporate name St. Andrew's Church,
12 Mount Pleasant, definition of membership, an article about
13 the meetings and elections.

14 Q. Now, can you take a look at Exhibit 6.

15 A. This is the amended bylaws that were amended on
16 December 5th, 2004.

17 Q. And will you look at the last page of that exhibit,
18 Article 8.

19 A. Okay.

20 Q. Can you read that?

21 A. No alterations shall take place in these bylaws or any
22 rule adopted unless the same be read and debated at one
23 meeting of the congregation and debated and accepted at
24 another by a majority of the members present at each of such
25 meetings respectively.

- 1 Q. Is that why you called the congregational meeting, to
2 adopt the changes to the bylaws?
- 3 A. Yes.
- 4 Q. I'm going to -- I want you to look at Exhibit No. 2.
- 5 A. This is a copy of the original bylaws from 1954.
- 6 Q. Can you tell me if these bylaws contain an accession
7 clause?
- 8 A. They do not.
- 9 Q. To the Diocese of South Carolina?
- 10 A. They do not.
- 11 Q. To the national church?
- 12 A. They do not.
- 13 Q. How about Exhibit 4?
- 14 A. These are the amended bylaws from 1996.
- 15 Q. Can you tell me if there's an accession clause in those
16 to the diocese?
- 17 A. There is not.
- 18 Q. To the national church?
- 19 A. There is not.
- 20 Q. How about in Exhibit No. 6?
- 21 A. Number?
- 22 Q. 6.
- 23 A. There is not.
- 24 Q. There is no accession clause to the diocese, correct?
- 25 A. Never have been in any of our documents.

1 Q. Are you aware of any funds received by St. Andrew's from
2 the national church?

3 A. I am not.

4 Q. Has SAMP given to the national church any funds?

5 A. No.

6 Q. Has SAMP ever instructed the diocese not to give their
7 funds to the national church?

8 A. Yes.

9 Q. Do you know about when that occurred?

10 A. That was in October of 1997.

11 Q. Does St. Andrew's, Mount Pleasant have any ongoing
12 relationship with the national church?

13 A. No.

14 Q. Is St. Andrew's, Mount Pleasant a member of the
15 plaintiff Diocese of South Carolina?

16 A. No.

17 Q. Is St. Andrew's, Mount Pleasant a member of the
18 defendant unincorporated --

19 MR. TISDALE: Association.

20 Q. -- association in South Carolina?

21 A. No.

22 Q. Is St. Andrew's, Mount Pleasant a member of the national
23 church?

24 A. No.

25 Q. Does the national church have any power over how

1 St. Andrew's conducts its business?

2 A. No.

3 Q. Has the national -- does the national church have any
4 rights over St. Andrew's, Mount Pleasant or St. Andrew's
5 Mount Pleasant Land?

6 MS. KOSTEL: Objection, Your Honor. These are questions
7 of law.

8 THE COURT: Sustained.

9 MS. JOHNSON: All right. I think that's all the
10 questions I have.

11 THE COURT: All right.

12 MS. JOHNSON: If you'd give me just one minute.

13 THE COURT: Certainly, certainly.

14 MS. JOHNSON: Okay.

15 THE COURT: Anyone else on behalf of the plaintiffs have
16 any questions?

17 All right. Ms. Kostel.

18 CROSS-EXAMINATION BY MS. KOSTEL:

19 Q. Good afternoon, Mr. Middleton.

20 A. Good afternoon.

21 Q. Just a couple of questions about your testimony.

22 I believe that you testified that the parish -- the St.
23 Andrew's, Mount Pleasant never made any kind of accession to
24 the Episcopal Church; is that correct?

25 A. That's correct.

1 A. Yes.

2 Q. And you testified that the reason for that decision --
3 you gave two reasons. One was that the parish was -- I'm
4 quoting, I believe -- was disturbed about what was going on
5 in the national church; and secondly, that the parish was
6 worried about its property.

7 A. That's correct.

8 Q. Now, let's take those each at a time. What was the
9 parish disturbed about what was going on in the national
10 church?

11 MS. GOLDING: I'm going to object to this line of
12 questioning, Your Honor. I think this is going outside of
13 the parameters of this civil action.

14 MS. KOSTEL: Your Honor.

15 THE COURT: Yes.

16 MS. KOSTEL: As Your Honor knows, we believe it's
17 important to establish whether these decisions were based on
18 doctrinal disputes, and we don't need to get into the
19 doctrinal disputes, nor will we ask the Court to resolve the
20 doctrinal disputes, but we believe we're allowed to have
21 evidence elicited to show whether a doctrinal dispute rests
22 at the heart of the dispute that the Court is entertaining.

23 THE COURT: Very well. I think I've already ruled on
24 that, and I think you've elicited from him that there was
25 concerns about -- that they had concerns about what was

1 happening with the national church. You know, if you want to
2 ask him that in general terms, like are you sure or is that
3 really what's going on, but we're not going to get into what
4 it was.

5 MS. KOSTEL: That's fine. I'm just trying to establish
6 what they're concerned about was a doctrinal issue.

7 THE COURT: Just ask him that in general. I think he's
8 already testified to it, but certainly you can ask him.

9 MS. KOSTEL: Well, if he had, I had missed that.

10 THE WITNESS: That would be correct.

11 Q. That it was a doctrinal issue?

12 A. Yes.

13 Q. And you also testified that another reason was that the
14 parish wanted to withdraw because it was worried about what
15 might happen with its property; is that correct?

16 A. Primarily for the doctrinal dispute but also concern for
17 the property as well.

18 Q. Well, let me ask you about the property concern.

19 Now, was the parish -- did the parish have any reason to
20 believe that if it remained in the Episcopal Church, that its
21 property was at risk in any way?

22 A. Well, there's no -- nothing in our documents that gives
23 the national church or the diocese any interest in our
24 property.

25 Q. I understand, but you testified that one of the reasons

1 THOMAS J. HENDRICKSON,

2 being first duly sworn, testified as follows:

3 THE COURT: And would you please state your full name
4 for the record, sir.

5 THE WITNESS: Thomas J. Hendrickson.

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

8 THE WITNESS: H-E-N-D-R-I-C-K-S-O-N.

9 THE COURT: Your witness, Mr. Platte.

10 MR. PLATTE: Thank you, Your Honor.

11 (Plaintiff's Exhibits E-1 through E-9 premarked for
12 identification.)

13 DIRECT EXAMINATION BY MR. PLATTE:

14 Q. Mr. Hendrickson, where do you live?

15 A. Hilton Head Island.

16 Q. How long have you lived in South Carolina?

17 A. Eight years.

18 Q. What do you do for a living?

19 A. I'm a rector.

20 Q. Where are you a rector at?

21 A. At Historic Epiphany Church in Eutawville, South
22 Carolina.

23 Q. How long have you been a rector at Church of the
24 Epiphany?

25 A. Three years.

1 Q. Were you at any other church before?

2 A. Yes. I was a priest at St. Luke's Church on Hilton Head
3 Island.

4 Q. What are your roles as a rector at Church of the
5 Epiphany?

6 A. I lead the worship and I act as president of the board
7 for the vestry.

8 Q. In this role have you come to learn the history of the
9 Historical Church of the Epiphany, St. John's, Berkeley?

10 A. Yes.

11 Q. How large is Church of the Epiphany?

12 A. Our average Sunday attendance last year was 62 people.

13 Q. Do you know when Church of the Epiphany started?

14 A. 1804 is our earliest date that we have.

15 Q. I direct your attention to what's been labeled as
16 Exhibit E-1. Are you familiar with this document?

17 A. Yes, sir.

18 Q. What is the purpose of this document?

19 A. This is a certificate of incorporation to incorporate
20 the church.

21 Q. And when was the certificate of incorporation -- since
22 when has the Church of the Epiphany existed as a corporation?

23 A. This is dated 1911.

24 MR. PLATTE: At this time, Your Honor, I move
25 Exhibit E-1 into evidence.

1 THE COURT: Any objection?

2 MR. TISDALE: No objection.

3 MS. KOSTEL: No objection.

4 MR. TISDALE: Can't read it, but other than that.

5 THE COURT: E-1 in evidence without objection.

6 (Plaintiff's Exhibit E-1 admitted into evidence.)

7 Q. Since 1911 has Church of the Epiphany carried on its
8 religious purposes?

9 A. Yes.

10 Q. And as you mentioned before, does this corporation have
11 a board of directors?

12 A. Yes, sir.

13 Q. And what is that board of directors called?

14 A. It's called the vestry.

15 Q. Does the corporation have officers?

16 A. Yes, sir.

17 Q. And what are those officers?

18 A. That would be the president of the board or the rector,
19 the priest in charge, it would be the senior warden, the
20 junior warden and treasurer.

21 Q. Does Church of the Epiphany own any real estate?

22 A. Yes, sir.

23 Q. Can you describe the property that Church of the
24 Epiphany owns?

25 A. Yes, sir. We have approximately nine acres, six acres

1 on the north side of Highway 45 and three acres on the south
2 side.

3 Q. I direct your attention to what's been premarked as
4 Exhibit E-9. Is that an accurate representation of the real
5 property that Church of the Epiphany owns?

6 A. Yes, sir.

7 MR. PLATTE: At this time I move Exhibit E-9 into
8 evidence.

9 THE COURT: Any objection?

10 MR. TISDALE: So long as he testifies to it, it says a
11 summary of real estate, we don't have any objection to it.

12 MR. PLATTE: I represent that in the summary of real
13 estate there's a number of deeds and other public records of
14 ownership of property by Church of the Epiphany.

15 THE COURT: As backup information with regards to the
16 summary?

17 MR. PLATTE: Yes.

18 THE COURT: All right. Very well.

19 MR. TISDALE: Thank you.

20 THE COURT: It's admitted.

21 (Plaintiff's Exhibit E-9 admitted into evidence.)

22 Q. And this exhibit, E-9, it is a summary but also includes
23 real property deeds that accurately describe the real
24 property the Church of the Epiphany owns?

25 A. Yes, sir.

1 Q. I'm going to ask you to turn to Exhibit E-2. Are you
2 familiar with this document?

3 A. Yes, sir.

4 Q. Can you describe what this document is?

5 A. This is a quitclaim deed.

6 Q. And what is the purpose of the quitclaim deed?

7 A. To affirm our understanding that the Diocese of South
8 Carolina did not have interest in our property and that the
9 wardens and vestry of Church of the Epiphany hold the
10 property in trust for the church.

11 Q. Did you ask for it?

12 A. No, sir.

13 MR. PLATTE: At this time I move Exhibit E-2 into
14 evidence.

15 THE COURT: Any objection?

16 MR. TISDALE: Just one second, Your Honor.

17 THE COURT: All right.

18 MR. TISDALE: No objection, Your Honor.

19 MS. KOSTEL: No objection.

20 THE COURT: Very well. E-2 is in evidence without
21 objection. You may proceed.

22 (Plaintiff's Exhibit E-2 admitted into evidence.)

23 Q. Does Church of the Epiphany have bylaws?

24 A. Yes, sir.

25 Q. What is required to amend those bylaws?

- 1 A. A two-thirds vote of the vestry, and they have to be
- 2 read at a prior meeting.
- 3 Q. When did Epiphany change its bylaws in 2012?
- 4 A. It was in -- I believe we changed them twice, once in
- 5 March and once in June.
- 6 Q. Let's talk about the March meeting. What's your normal
- 7 course of business in terms of announcing vestry meetings?
- 8 A. Our vestry meeting is normally the second Thursday of
- 9 the month, and it's published in our calendar on our website
- 10 and in the handout materials that we -- our bulletin, our
- 11 Sunday morning bulletin, and I make announcements from the
- 12 front of the church before the church service begins.
- 13 Q. At the March 8th, 2012 meeting, were you present at that
- 14 vestry meeting?
- 15 A. Yes, sir.
- 16 Q. Was a quorum present?
- 17 A. Yes, sir.
- 18 Q. What happened at the March 8, 2012 meeting regarding the
- 19 bylaws?
- 20 A. We amended our bylaws.
- 21 Q. And there was a vote to amend those?
- 22 A. Yes, sir.
- 23 Q. And what was the result of that vote?
- 24 A. Unanimous.
- 25 Q. At that time did the bylaws have any provision that

1 required an approval of the bishop of the Diocese of South
2 Carolina?

3 A. Yes, sir.

4 Q. Was that provision removed at the March 8th meeting?
5 And I direct your attention to what has been premarked as
6 Exhibit E-4B.

7 MR. TISDALE: E what?

8 MR. PLATTE: 4B.

9 MR. TISDALE: E-4B.

10 Q. Specifically Article 7.

11 A. Article 7?

12 Q. It would have been the last page in --

13 A. I see Article 12.

14 Q. Oh, Article 12, yes. That would be an X not a V.

15 A. Yes, sir, there does -- any amendments, yes, we changed
16 that. We removed it then.

17 Q. So during the March 8 meeting part of the bylaw changes
18 was to remove the need for approval?

19 A. Yes, sir.

20 Q. And in making this vote did you request approval from
21 the bishop of the Diocese of South Carolina pursuant to the
22 prior bylaws that were in effect at the time?

23 A. Spoke to Canon Jim Lewis in the bishop's office and
24 discussed it with him.

25 Q. I'd ask that you take another look at Exhibit 4B and ask

1 if you recognize that document?

2 A. 4B, yes, sir.

3 Q. Is this an accurate representation of the bylaws that
4 were amended at that meeting?

5 A. Yes, sir.

6 Q. And were the bylaws passed by the required two-thirds
7 majority vote at the March 8th meeting?

8 A. Yes, sir.

9 Q. And obviously you did seek permission from the bishop of
10 the diocese to amend those bylaws, correct?

11 A. As I said, through the canon.

12 MR. PLATTE: At this time I move to admit Exhibit 4B
13 into evidence.

14 THE COURT: Any objection?

15 MR. TISDALE: No objection.

16 MS. KOSTEL: No objection, Your Honor.

17 THE COURT: Very well. 4B is in evidence without
18 objection.

19 (Plaintiff's Exhibit 4B admitted into evidence.)

20 Q. The next meeting where bylaws were changed were in June,
21 June 14th; is that correct?

22 A. Yes, sir.

23 Q. Did you announce the June vestry meeting and give proper
24 notice?

25 A. Yes, sir.

1 Q. And was there a quorum present at the June 14th meeting?

2 A. Yes, sir.

3 Q. What happened at the June 14th meeting, 2012 meeting?

4 A. The June meeting, we approved our -- the changes to the
5 bylaws.

6 Q. I direct your attention to Exhibit E-4A and ask if you
7 recognize this document.

8 A. Yes, sir.

9 Q. Is this an accurate representation of what happened at
10 the June 14th, 2012 meeting?

11 A. Yes, sir.

12 Q. And did these bylaws pass by the required two-thirds
13 majority vote?

14 A. Yes, sir.

15 Q. And did you have to seek approval of the bishop of the
16 diocese for the amendments for June 14 of 2012?

17 A. Not at this point, no, sir.

18 MR. PLATTE: At this time I move Exhibit E-4A into
19 evidence.

20 THE COURT: E-4, what, A?

21 MR. PLATTE: E-4A, yes, Your Honor.

22 THE COURT: Any objection?

23 MR. TISDALE: Your Honor, while he's pausing a minute,
24 the last page of Article 12 in this document is unreadable.
25 It's been, looks like, redacted but not really, and we'd like

1 a clean copy at his convenience, please.

2 THE COURT: All right.

3 MR. TISDALE: Do you agree to that, Mr. Platte?

4 MR. PLATTE: I will see what we can do.

5 THE COURT: Meanwhile back at the ranch, what's your
6 feeling about E-4A, objection or not?

7 MR. TISDALE: We don't object to it as long as we can
8 get a clean copy of the last page.

9 THE COURT: Okay.

10 MS. KOSTEL: Same conditional non-objection, Your Honor.

11 THE COURT: All right. Yours is obliterated also?

12 MS. KOSTEL: Yes.

13 THE COURT: Let's just pause a minute and have you get
14 another last page, Mr. Platte, if you can pass it along and
15 let them see it. Let's grab the copy.

16 MR. TISDALE: While we're at it, there's another one,
17 Andrew.

18 THE COURT: Mr. Platte, right now just show it to them,
19 the one you have, and then we'll get it for you. But just in
20 terms of whether it's admissible or not, we'll let you look
21 at it and we'll copy it in a few moments. But right now, I
22 want you to see it and see if you have an objection to it.

23 (Attorneys confer.)

24 THE COURT: Did you all have an opportunity at least to
25 look at the last page?

1 MR. TISDALE: No, Your Honor. So what we've agreed to,
2 if you agree, is to let him go ahead. We'll admit it
3 conditionally upon his giving us a clean copy in the
4 morning --

5 THE COURT: That'll be fine.

6 MR. TISDALE: -- and if we have any questions about it,
7 we'll deal with it at that point.

8 THE COURT: It will be conditionally admitted.

9 MR. TISDALE: And we'll deal with it if we somehow need
10 to ask questions about it.

11 THE COURT: Very well. If I don't hear from you all, it
12 will stay admitted. Okay. Great. You may proceed.

13 (Plaintiff's Exhibit E-4A admitted into evidence.)

14 MR. PLATTE: Thank you, Your Honor.

15 Q. Father Hendrickson, I would ask you to turn your
16 attention to what's been premarked as Exhibit E-3. Do you
17 recognize that document?

18 A. Yes, sir.

19 Q. Is this an accurate -- can you describe what that
20 document is?

21 A. The vestry minutes from June 14, 2012.

22 Q. Is that an accurate representation of what happened at
23 that meeting?

24 A. Yes, sir.

25 Q. And at that meeting the bylaws in Exhibit E-4A were

1 passed?

2 A. Yes, sir.

3 MR. PLATTE: At this time I move Exhibit E-3 into
4 evidence.

5 THE COURT: Any objection to E-3?

6 MR. TISDALE: No objection, Your Honor.

7 MS. KOSTEL: No objection.

8 THE COURT: Very well. E-3 is in without objection.

9 (Plaintiff's Exhibit E-3 admitted into evidence.)

10 Q. Did there come a time when you knew that Epiphany and
11 the Diocese of South Carolina had a dispute with the national
12 church?

13 A. Yes, sir.

14 Q. Do you know what that was regarding?

15 A. Property.

16 Q. Did the leadership of the Church of the Epiphany discuss
17 these issues?

18 A. Yes, sir.

19 Q. Did the vestry decide to take any action regarding this
20 matter?

21 A. Decided to reaffirm our affiliation with the Diocese of
22 South Carolina.

23 Q. Was that through a resolution?

24 A. Yes, sir.

25 Q. Do you recall when that resolution was passed?

1 A. It was December of 2012, I believe.

2 Q. Was that at a regularly scheduled vestry meeting?

3 A. Yes.

4 Q. And did you give notice of that regularly scheduled
5 vestry meeting as you do in your normal course?

6 A. Yes, sir.

7 Q. I ask you to turn to what's been premarked as
8 Exhibit E-5. Do you recognize this document?

9 A. Yes, sir.

10 Q. Is this an accurate representation of what happened at
11 the December 13, 2012 vestry meeting?

12 A. Yes, sir.

13 Q. And how did the resolution pass at this vestry meeting?

14 A. Unanimously.

15 Q. And is a copy of the resolution attached to Exhibit E-5?

16 A. Yes, sir.

17 MR. PLATTE: And at this time I move to admit
18 Exhibit E-5 into evidence.

19 THE COURT: Any objection?

20 MR. TISDALE: Your Honor, only conditioned on what we
21 said before because two pages -- let's see. One page in this
22 document, the last four numbers at the bottom of it, 7342, is
23 obliterated, so we'll put it in the same category as the
24 other ones.

25 THE COURT: Very well. Conditionally admitted --

1 MR. TISDALE: Yes.

2 THE COURT: -- with you all having an opportunity to see
3 a clean sheet, and then you'll let me know if there's a
4 concern.

5 MR. TISDALE: And ask questions about it if we need to.

6 THE COURT: Absolutely. Same is true for the national
7 church?

8 MS. KOSTEL: Yes, Your Honor.

9 THE COURT: Very well. E-5 is conditionally admitted.
10 One page with 7342 counsel will take a look at and get you
11 all of the document.

12 (Plaintiff's Exhibit E-5 admitted into evidence.)

13 Q. During that December 2012 meeting did the vestry vote on
14 that resolution?

15 A. Yes, sir.

16 Q. And what was that vote?

17 A. That vote was unanimous.

18 Q. Was there a parish meeting -- when was the next parish
19 meeting scheduled in relation to that December 13th vestry
20 meeting?

21 A. That would have been the following -- it was the
22 following Sunday.

23 Q. And was that a regularly scheduled parish meeting?

24 A. Yes, sir.

25 Q. Did you give notice of that parish meeting in your

1 normal course of business?

2 A. Yes, sir, we published it on our calendar and put it on
3 our bulletin, and I announced it from the front of the
4 building.

5 Q. At the parish meeting were there any resolutions
6 considered?

7 A. This resolution of support for bishop, yes, sir.

8 Q. And I direct your attention to Exhibit E-6. Is this an
9 accurate copy of the resolution that was considered?

10 A. Yes, sir.

11 Q. And were you present at the parish meeting that
12 considered this resolution?

13 A. Yes, sir.

14 Q. And did this resolution pass?

15 A. Yes, sir.

16 Q. And how did it -- what was the vote?

17 A. Unanimous by acclamation.

18 MR. PLATTE: And at this time I move Exhibit E-6 into
19 evidence.

20 MR. TISDALE: Another conditional agreement, Your Honor.
21 There's a last paragraph of this document that's unreadable.

22 THE COURT: Thank you. All right. Conditionally
23 admitted with counsel replacing the last page with one that's
24 clear.

25 MR. TISDALE: And get a chance to ask about it only if

1 necessary.

2 THE COURT: Very well. Same is true for the national
3 church as well?

4 MR. BEERS: Yes, Your Honor.

5 (Plaintiff's Exhibit E-6 admitted into evidence.)

6 MR. PLATTE: I'd be happy to provide him my copy which
7 is legible and they can read it if they would like to use it
8 on cross-examination.

9 THE COURT: That would be great, because they may or may
10 not get there today. Very well.

11 Q. Did Church of the Epiphany take any other actions
12 regarding its -- reaffirming its affiliation with the Diocese
13 of South Carolina after that December parish meeting?

14 A. Nothing, no, sir.

15 Q. Was there a January 2013 vestry meeting to consider
16 changes to the Articles of Incorporation?

17 A. Yes, sir.

18 Q. I direct your attention to Exhibit E-7.

19 A. Yes, sir.

20 Q. Do you recognize this document?

21 A. Yes, sir.

22 Q. Can you describe the document for me, please?

23 A. It's our vestry minutes.

24 Q. And from -- what's the date on those?

25 A. It says January 9th, but that's the wrong date.

1 Q. What is the right date?

2 A. January 10th. It was a Thursday night.

3 Q. Do you normally hold your vestry meetings on Thursday
4 nights?

5 A. Yes, sir.

6 Q. Did you give notice in your normal course of business
7 for the January 10, 2013 vestry meeting?

8 A. Yes, sir.

9 Q. And that was through bulletins and by announcing it at
10 the front of the church?

11 A. Yes, and also, I -- for vestry meetings I email the
12 agenda to the vestry members.

13 Q. Is Exhibit E-7 an accurate representation of what
14 happened at the January 10, 2013 vestry meeting?

15 A. Yes, sir.

16 MR. PLATTE: At this time I move Exhibit E-7 into
17 evidence.

18 THE COURT: Any objection?

19 MR. TISDALE: No objection, Your Honor.

20 MS. KOSTEL: No objection.

21 THE COURT: Very well. E-7 in evidence without
22 objection.

23 (Plaintiff's Exhibit E-7 admitted into evidence.)

24 Q. I direct your attention to what has been premarked as
25 Exhibit E-8. Do you recognize this document?

1 A. Yes, sir.

2 Q. What is this document?

3 A. This is a nonprofit corporation Articles of Amendment.

4 Q. And what does this Articles of Amendment, what did it
5 revise?

6 A. We changed our name to the historic Church of the
7 Epiphany, and we then stated that we were -- the purpose for
8 which we exist was to operate a Christian church.

9 Q. And just turning your attention back to Exhibit E-7, a
10 discussion of E-8 took place at that January 10, 2013 vestry
11 meeting?

12 A. Yes, sir.

13 Q. And was there a vote taken on whether to make this
14 amendment or not?

15 A. Yes, sir.

16 Q. And how did the -- did the vote pass?

17 A. Yes, sir, it approved unanimously.

18 MR. PLATTE: At this time I move Exhibit E-8 into
19 evidence.

20 THE COURT: Any objection?

21 MR. TISDALE: No objection, Your Honor.

22 MS. KOSTEL: No objection.

23 THE COURT: Very well.

24 (Plaintiff's Exhibit E-8 admitted into evidence.)

25 Q. Are you aware of any funds received by Church of the

1 Epiphany from the Episcopal Church?

2 A. No, sir.

3 Q. Any funds received from the Episcopal Church in South
4 Carolina?

5 A. No, sir.

6 Q. Are you aware of any funds that were given by Epiphany
7 to the Episcopal Church?

8 A. No, sir.

9 Q. Any funds given to any related organization of the
10 Episcopal Church as in the United Thank Offering?

11 A. Yes, sir. The United Thank Offering, I recall we
12 supported that.

13 Q. Do you still support the United Thank Offering?

14 A. No, sir.

15 Q. When did you cease your support?

16 A. I think it was 2011, but I'm not sure.

17 Q. Are you aware of any funds given by Church of the
18 Epiphany to the Episcopal Church in South Carolina?

19 A. No, sir.

20 Q. Does the Church of the Epiphany have any ongoing
21 relationships with either the Episcopal Church or the
22 Episcopal Church in South Carolina?

23 A. No, sir.

24 Q. Has Church of the Epiphany sought any approval from the
25 Episcopal Church or the Episcopal Church in South Carolina to

- 1 amend bylaws?
- 2 A. No, sir.
- 3 Q. Do you know if the Church of the Epiphany participated
- 4 in any fashion with -- in any convention with the Episcopal
- 5 Church in South Carolina?
- 6 A. We did not.
- 7 Q. Has the Church of the Epiphany used the Church of the
- 8 Epiphany and the Historical Church of the Epiphany, St.
- 9 John's, Berkeley since its inception?
- 10 A. Yes, those are the names we use.
- 11 Q. Has Church of the Epiphany given any permission to
- 12 either the Episcopal Church or the Episcopal Church in South
- 13 Carolina to use those names?
- 14 A. No, sir.
- 15 Q. Has Church of the Epiphany authorized the Episcopal
- 16 Church in South Carolina to list it as the parish on the
- 17 Episcopal Church in South Carolina's website?
- 18 A. No, sir.
- 19 Q. Is the Church of the Epiphany a parish in the Episcopal
- 20 Church in South Carolina?
- 21 A. No, sir.
- 22 Q. Has the Church of the Epiphany ever participated in any
- 23 meeting called by the Episcopal Church in South Carolina?
- 24 A. No, sir.
- 25 Q. Has the Church of the Epiphany ever sent delegates to a

1 meeting of the Episcopal Church in South Carolina?

2 A. No, sir.

3 MR. PLATTE: I don't have any more questions. Please
4 answer the questions of other counsel.

5 THE COURT: All right. Counsel, are you able to begin
6 your cross-examination without benefit of the documents that
7 are conditionally admitted? And I guess, Ms. Kostel, I'm
8 looking to you.

9 MS. KOSTEL: I think so, Your Honor.

10 CROSS-EXAMINATION BY MS. KOSTEL:

11 Q. Father Hendrickson, I believe you testified that
12 Epiphany was incorporated in 1911; is that correct?

13 A. Yes, ma'am.

14 Q. But Epiphany was part -- was a parish of the Diocese of
15 South Carolina before that, was it not?

16 A. I'm not sure if it was a parish. It might have been
17 just a mission.

18 Q. Well, if I represent to you that in the diocesan journal
19 it's reflected as a parish since 1864, would you accept that?

20 A. Yes, ma'am.

21 Q. And if I also represented to you that in 1864 Article 12
22 of the Constitution of the Diocese of South Carolina required
23 a parish to prove their willingness, and I'm quoting now,
24 their "willingness to conform to the constitution and canons
25 of the general council" would you have any reason to dispute

1 that?

2 A. No, ma'am.

3 Q. Now, you stated in your testimony a moment ago that the
4 reason that Epiphany decided to withdraw from the Episcopal
5 Church was concern about property?

6 A. Yes, ma'am.

7 Q. What was that concern?

8 A. That someone might bring us into an action like this and
9 we might be involved in a litigation about property.

10 Q. And did you have any reason to believe that if Epiphany
11 had not left the Episcopal Church that there would be such an
12 action?

13 A. I believe so, yes, ma'am.

14 Q. Based on what?

15 A. Action that -- public record of news items from other
16 dioceses.

17 Q. Can you point to any instance where the Episcopal Church
18 has been in litigation over property with a parish that has
19 not left the Episcopal Church?

20 A. No, ma'am, I can't.

21 Q. So you're not aware of anything like that?

22 A. Well, I'm aware of lawsuits in places like Pittsburgh
23 and San Joaquin Diocese and Fort Worth and Quincy, but after
24 that, no, ma'am.

25 Q. Those lawsuits all involved instances where parishes

1 were withdrawing from the Episcopal Church, correct?

2 A. I believe so.

3 Q. So can you think of any other reason why Epiphany might
4 have desired to withdraw from the Episcopal Church?

5 A. The theological concerns that we had.

6 Q. Theological concerns with the Episcopal Church?

7 A. Yes, ma'am.

8 Q. Father Hendrickson, you also spoke about the bylaws of
9 the parish and you stated that -- you talked about
10 amendments, I believe in 2012, to the bylaws. Were you
11 familiar with the bylaws before they were amended?

12 A. Yes, ma'am.

13 Q. And so you were aware that, before they were amended,
14 they stated that the purpose of the parish corporation was to
15 maintain a church -- now I'm quoting -- in the Protestant
16 Episcopal Diocese of South Carolina for the public worship of
17 almighty God in accordance with the doctrine and practices of
18 the Protestant Episcopal Church in the United States of
19 America and the Diocese of South Carolina, unquote, correct?

20 A. That's what they say, yes.

21 Q. And you're aware that those were adopted in 2002,
22 correct?

23 A. Yes, ma'am.

24 Q. Now, I believe you also testified that you were not --
25 you're not aware of any financial assistance that Epiphany

1 ever received from the Episcopal Church; is that correct?

2 A. That's correct.

3 Q. And so you're not aware that in 1866 and in 1868 the
4 parish received assistance to its clergy during -- to help
5 the clergy during difficult times from the national church,
6 are you?

7 A. No, I am not.

8 Q. But you have no reason to believe that's not true, do
9 you?

10 A. You tell me. I have no way of checking that, no, ma'am.

11 Q. And Epiphany has held itself out as an Episcopal Church
12 to the local community since as recently as 2005, hasn't it?

13 A. Yes, ma'am.

14 Q. And it used the Episcopal Church shield on its sign and
15 print materials as recently as 2005, did it not?

16 A. Yes, ma'am.

17 Q. Has that completely ceased since 2012?

18 A. Yes, ma'am.

19 MS. KOSTEL: I have no further questions.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Mr. Tisdale.

22 CROSS-EXAMINATION BY MR. TISDALE:

23 Q. Father Hendrickson, just a few questions.

24 Does the Church of the Epiphany have any signs on its
25 property now that identify -- that use the word Episcopal?

1 A. Not that I'm aware of, sir, no, sir.

2 Q. Not that you're aware of.

3 And are you a priest in the Episcopal Church currently?

4 A. I'm a priest in the Diocese of South Carolina.

5 Q. But not in the Episcopal Church.

6 A. That's correct.

7 Q. Were you a priest in the Episcopal Church?

8 A. I was a -- prior to being in South Carolina I was a
9 priest in the Diocese of Pittsburgh.

10 Q. Is that the Episcopal Church?

11 A. I'm not sure legally if it was or not. I'd have to --
12 yes, sir.

13 Q. Well, aside from Pittsburgh, have you been a priest in
14 an Episcopal Church?

15 A. No, sir.

16 Q. You have not.

17 So you became a priest in the Diocese of Pittsburgh
18 when?

19 A. 2005.

20 Q. And can you tell me whether that diocese, Pittsburgh,
21 was in union with the Episcopal Church?

22 A. In 2005 it was.

23 Q. When did it cease, if it did?

24 A. I'm not sure.

25 Q. Now, when did you become something other than a priest

1 in the Episcopal Church? When did you depart the Episcopal
2 Church?

3 A. When I retired in 2012.

4 Q. And you left the Episcopal Church voluntarily on your
5 own free will, did you not?

6 A. Yes, sir. Yes.

7 Q. Nothing to stop you from doing that if you wanted to,
8 right?

9 A. I understand that, yes, sir.

10 Q. And you did that?

11 A. Yes, sir.

12 Q. Now, Father Hendrickson, would the same be true of lay
13 people who are members in the Episcopal Church or parishes in
14 the Episcopal Church, can they leave and stop being
15 Episcopalians any time they wish to, individually?

16 A. I believe so.

17 Q. Have you ever heard otherwise?

18 A. No, sir.

19 Q. Are you currently receiving pension payments from the
20 church pension fund of the Episcopal Church?

21 A. Yes, sir.

22 Q. And when did you begin receiving those pension payments?

23 A. January of 2013.

24 Q. And you receive them now today?

25 A. Yes, sir.

1 MR. TISDALE: No further questions, Your Honor.

2 THE COURT: All right. Redirect or other plaintiff
3 examination?

4 MR. PLATTE: Beg your indulgence, Your Honor.

5 THE COURT: Sure.

6 MR. RUNYAN: Father Hendrickson, just a couple of
7 questions.

8 EXAMINATION BY MR. RUNYAN:

9 Q. Ms. Kostel asked you a question about the general
10 council in 1864 and the joining of the parish at that time.
11 Do you recall those questions?

12 A. Yes, sir.

13 Q. Do you know if the Diocese of South Carolina was even in
14 union with the Episcopal Church of the United States of
15 America in 1864?

16 A. No, sir, I don't.

17 MR. RUNYAN: Thank you, sir.

18 THE COURT: Anything further? Any redirect, anything
19 further?

20 MR. PLATTE: No, Your Honor.

21 THE COURT: All right. Recross.

22 MR. TISDALE: None, Your Honor.

23 MS. KOSTEL: Nothing. Thank you.

24 THE COURT: Very well. You may come down.

25 It's four minutes till 5:00. That's going to conclude

1 MR. PLATTE: Correct, and also with E-1, the document
2 that was provided was small, we're going to work to get a
3 readable copy and swap that out as well.

4 THE COURT: Very well. Thank you so much.

5 And as I recall, the next parish is?

6 MS. GOLDING: Parish of St. Luke's, Your Honor.

7 THE COURT: Thank you very much.

8 MS. GOLDING: And we will call Ms. Conner to the stand.

9 THE COURT: Very well.

10 MS. GOLDING: And this is St. Luke's in Hilton Head,
11 Your Honor.

12 THE COURT: Yes.

13 (Plaintiff's Exhibits SL-1 through SL-15 premarked for
14 identification.)

15 BEVERLY CARLSON CONNER,
16 being first duly sworn, testified as follows:

17 THE COURT: Your witness.

18 MS. GOLDING: Thank you, Your Honor.

19 Your Honor, it's my understanding that St. Luke's,
20 Hilton Head's exhibits marked 1 through 15 have no objection
21 -- none of the defendants object to these, so we would like
22 to move to introduce St. Luke's Exhibits 1 through 15.

23 THE COURT: Very well. Is that correct?

24 MR. TISDALE: That is correct.

25 MS. KOSTEL: Yes, Your Honor.

1 (Plaintiff's Exhibits SL-1 through SL-15 admitted into
2 evidence.)

3 DIRECT EXAMINATION BY MS. GOLDING:

4 Q. For the record, please state your full name.

5 A. Beverly Carlson Conner.

6 Q. And, Ms. Conner, where do you live?

7 A. In Hilton Head.

8 Q. Okay. And how long have you lived in Hilton Head?

9 A. Hilton Head, about two years.

10 Q. Okay. And how long have you lived in the state of South
11 Carolina?

12 A. 12 years.

13 Q. With respect to St. Luke's, Hilton Head, can you tell us
14 your association with that church?

15 A. I've been a member since September of 2002, and I have
16 been secretary to the finance committee, secretary to the
17 vestry and corporate secretary.

18 Q. And just for our purposes, with respect to St. Luke's
19 Church in Hilton Head, how many members does it currently
20 have?

21 A. At the last meeting I'd say 600-and-some people.

22 Q. And to your knowledge, when was St. Luke's incorporated?

23 A. In 1969.

24 Q. And at that time, did it become a South Carolina
25 nonprofit corporation?

1 A. Yes, it did.

2 Q. Did it exist prior to 1969?

3 A. Yes.

4 Q. Okay. And with respect to the property owned by
5 St. Luke's, can you tell us the property -- describe it just
6 in general, the property, the four pieces of property that's
7 owned by St. Luke's, Hilton Head?

8 A. Three pieces were given to us in '77, I can't remember
9 the date.

10 Q. September 9, 1970?

11 A. Yes, September 9, 1970; June 11, 1993; and June 6th of
12 1996.

13 Q. And look at Exhibit 15, is that also a fourth piece of
14 property?

15 A. Yes, it is.

16 Q. And Exhibits, then, 2, 3, 4, and 15 represent the real
17 property owned by St. Luke's, Hilton Head?

18 A. Yes.

19 Q. Thank you. Now, with respect to St. Luke's bylaws,
20 Exhibit No. 5, are those the bylaws that were existing as of
21 September 7 -- excuse me -- December 7, 1973?

22 A. Yes.

23 Q. Okay. And were those bylaws, then, amended in the
24 calendar year 2000?

25 A. Yes, they were.

1 Q. And the amended are Exhibit No. 6; is that correct?

2 A. Yes.

3 Q. Okay. And then there was another amendment shown on
4 Exhibit 7, and what year was that amendment?

5 A. That was January 2009.

6 Q. Now, at some point in time did St. Luke's, Hilton Head
7 make a decision to further amend its bylaws?

8 A. Yes, it did.

9 Q. Okay. And when did that occur?

10 A. That was in 2009, the end of the year, December.

11 Q. Okay. And did the vestry meet in November of 2009 with
12 respect to amending its bylaws?

13 A. Yes, it did.

14 Q. And can you tell us what the vestry did in November of
15 2009 with respect to amending its bylaws?

16 A. There were resolutions brought up before the vestry and
17 voted on unanimously.

18 Q. Okay. And was there notice of the vestry meeting in
19 November of 2009 with respect to that meeting and the
20 amending of bylaws?

21 A. Yes, there was.

22 Q. And the minutes of the vestry meeting in November 7 --
23 17, reflect the proceedings that occurred with respect to the
24 vestry?

25 A. That's correct.

1 Q. And those minutes are set forth as St. Luke's, Hilton
2 Head Exhibit No. 8; is that correct?

3 A. Yes.

4 Q. Okay. As a result of the vestry unanimously voting to
5 amend its bylaws and amend its articles of incorporation, was
6 there a special congregational meeting held?

7 A. Yes, there was.

8 Q. And when was that special meeting?

9 A. On December 1st, 2009.

10 Q. And tell the Court how the congregants or members of
11 St. Luke's, Hilton Head were notified of that meeting.

12 A. There was a mailing -- and I believe that was part of
13 discovery -- there was a mailing and also our rector talked
14 about it from the pulpit.

15 Q. Okay. And do you recall the date of the mailing that
16 was sent to all the parishioners?

17 A. November 19.

18 Q. And that's 2009?

19 A. Correct.

20 Q. With respect to the special meeting that occurred on
21 December 1, 2009, did you attend that meeting?

22 A. I did.

23 Q. And are the minutes set forth of that meeting, is that
24 Exhibit 11?

25 A. Yes.

1 Q. And can you tell us, what was the vote with respect to
2 the resolutions to amend the bylaws and the -- amend the
3 articles of incorporation?

4 A. On Resolution 1, there were 310 that voted yes and 22
5 no; and Resolution 2, 309 yes and 22 no.

6 Q. And the resolutions, are they set forth as St. Luke's,
7 Hilton Head Exhibit No. 9?

8 A. Yes.

9 Q. As a result of the vote and the resolutions that were
10 passed on December 1, 2009, did St. Luke's, Hilton Head amend
11 its articles of incorporation?

12 A. Yes, it did.

13 Q. Okay. And can you look to Exhibit No. 12, please?

14 A. Yes.

15 Q. Does Exhibit No. 12 reflect the amendments that were
16 made to the articles of incorporation?

17 A. Yes, it does.

18 Q. Okay. And look at the third page of Exhibit 12.
19 Amendment 1, what was the first amendment to the articles of
20 incorporation?

21 A. The name of the corporation has been changed to
22 St. Luke's Church, Hilton Head.

23 Q. And Amendment 2, what was the amendment to the fourth
24 articles of incorporation?

25 A. The fourth article of the certificate of incorporation

1 is deleted in its entirety, and the following new article
2 fourth is inserted in its stead. The purpose of the
3 corporation is to operate as a religious nonprofit
4 corporation or church.

5 Q. And this amendment occurred when?

6 A. In 2010, I believe, beginning of the year.

7 Q. And the second page of Exhibit 12 has the date of what?

8 A. January 7, 2010.

9 Q. And did you sign as the corporate secretary?

10 A. I did.

11 Q. And for what reason did St. Luke's, Hilton Head take
12 these steps to amend its bylaw and its articles of
13 incorporation?

14 A. It was purely a real estate decision. We wanted to
15 protect our property from any outside entity taking claim to
16 any of our real estate.

17 MS. GOLDING: No further questions, Your Honor.

18 THE COURT: All right. Any other questions from
19 plaintiffs? No?

20 Then Ms. Kostel, are you going to begin or Mr. Tisdale.

21 MR. TISDALE: May I go?

22 MS. KOSTEL: Mr. Tisdale's going to go first today, Your
23 Honor.

24 MR. TISDALE: First on this one.

25 THE COURT: That's fine.

1 Q. Now, if it were true that St. Luke's is currently using
2 a flag or a shield or a name that is clearly owned by and
3 under the control of the Episcopal Church currently, do you
4 have any knowledge that St. Luke's has gotten permission from
5 the Episcopal Church to do that?

6 A. No.

7 MS. KOSTEL: Thank you.

8 THE COURT: All right. Yes, redirect.

9 MS. GOLDING: Just a little bit of redirect. Thank you.

10 THE COURT: Sure.

11 REDIRECT EXAMINATION BY MS. GOLDING:

12 Q. Ms. Conner, to your knowledge has the national church
13 made any contribution to St. Luke's for the property that's
14 set forth in the deeds that are exhibits?

15 A. No.

16 Q. Has the defendant, the association defendant, did
17 they -- did it make any contribution to the properties owned
18 by St. Philip's -- excuse me -- St. Luke's?

19 A. No.

20 Q. Well, were you familiar with the All Saints controversy
21 that was brewing in the early 2000s?

22 A. I was.

23 Q. And were you familiar that there was a notice of claim
24 that was filed with respect to All Saints that asserted that
25 the national church had an interest in property?

1 A. I was.

2 Q. And were you -- and when did you become familiar with
3 that?

4 A. Back in 2009.

5 MS. GOLDING: No further questions.

6 THE COURT: Any other questions, redirect from any of
7 the other plaintiffs? All right. Yes, sir, Mr. Tisdale,
8 recross?

9 MR. TISDALE: Very, very brief, Your Honor.

10 THE COURT: Sure.

11 RECROSS-EXAMINATION BY MR. TISDALE:

12 Q. Ms. Conner, so far as you know, did St. Luke's,
13 Hilton Head send delegates to the convention of the
14 diocese -- first, let me retract that.

15 Does St. Luke's send delegates to the convention of the
16 diocese each year?

17 A. It does.

18 Q. All right. And do you know of any year that it has not
19 sent delegates?

20 A. No, I do not.

21 Q. Okay. Are you aware that the Diocese of South Carolina
22 in 1987 adopted a canon that said the Episcopal Church and
23 the diocese has a trust interest in the property of
24 St. Luke's, Hilton Head and every other parish if it's not an
25 Episcopal church?

1 would have been made on terms more favorable than St. Luke's
2 might have received from a regular commercial bank?

3 A. I have no knowledge of that.

4 MS. KOSTEL: Okay. Nothing further. Thank you.

5 THE COURT: All right. You may come down.

6 Call your next witness, please.

7 MR. MARVEL: Your Honor, David Marvel for The Church of
8 St. Luke and St. Paul Radcliffeborough, we call
9 Alonso Galvan.

10 (Plaintiff's Exhibits SLP-1 through SLP-17 premarked for
11 identification.)

12 ALONSO MENDIETA GALVAN,
13 being first duly sworn, testified as follows:

14 THE COURT: Your witness, Mr. Marvel.

15 MR. MARVEL: Your Honor, we have exhibits that are
16 marked SLP-1 through 17 that I believe are admissible by
17 agreement, with the exception that we are going to replace
18 SLP-2 at some point following today with a more legible copy.

19 THE COURT: All right. Is that correct?

20 MR. TISDALE: That is correct.

21 MS. KOSTEL: Yes.

22 (Plaintiff's Exhibits SLP-1 through SLP-17 admitted into
23 evidence.)

24 MR. MARVEL: May I approach the witness, Your Honor?

25 THE COURT: Yes.

1 DIRECT EXAMINATION BY MR. MARVEL:

2 Q. Mr. Galvan, where do you live?

3 A. I live in Charleston, South Carolina.

4 Q. How long have you lived in Charleston, South Carolina?

5 A. About ten years.

6 Q. And how did you come to live in Charleston,
7 South Carolina?

8 A. My wife and I, we were not married at the time, I moved
9 here, and after being married in 2005, she moved here, been
10 here ever since.

11 Q. Okay. And what is your educational background?

12 A. I graduated from Wheaton College, studied economics and
13 then got a master's in business administration from Yale and
14 took a first job in New York and then from there moved here.

15 Q. Okay. Where do you go to church?

16 A. Go to The Cathedral Church of St. Luke and St. Paul,
17 technically The Church of St. Luke and St. Paul
18 Radcliffeborough.

19 Q. Okay. What is your understanding of what it means to be
20 The Cathedral of St. Luke and St. Paul?

21 A. We were designated The Cathedral as far as I understand
22 it, in 1963 by virtue of the fact that the diocese bestowed
23 that upon us and also made it the seat of the bishop.

24 MR. MARVEL: And we've got some photographs for the
25 Court's edification if --

1 THE COURT: All right.

2 MR. MARVEL: -- it should come up.

3 Q. And if you could describe what we're looking at in this
4 photograph.

5 A. The tall building with the truncated steeple that was
6 never completed is the main worship center for The Cathedral.

7 Q. Okay. And the next photograph, please?

8 A. That is the front of The Cathedral, the portico visible
9 from Coming Street.

10 Q. Okay. And this is the corner of Coming and Vanderhorst,
11 correct?

12 A. Correct.

13 Q. And next photo, please.

14 A. It's the inside of the worship hall of The Cathedral
15 itself.

16 Q. Okay. The next photograph?

17 A. That is the view from the front of the worship hall to
18 the back. The large brown structure is the organ.

19 Q. Okay. And the last photograph, please?

20 A. That's the view from the entrance on Coming Street down
21 the main center aisle.

22 Q. Now, in the course of being a member of the church of --
23 The Cathedral Church of St. Luke and St. Paul have you held
24 any leadership positions?

25 A. Yes, I have.

1 Q. Could you tell the Court about those, please?

2 A. In 2007 I was elected to the vestry and served three
3 years, 2007, 2008, and 2009; and then I was the treasurer
4 subsequently in 2011. In 2012 and terminating February 2nd
5 of this year I was the senior warden.

6 Q. Okay. And in the course of your service on the vestry
7 and generally to St. Luke and St. Paul have you come to have
8 a general knowledge of the history of the parish?

9 A. Somewhat, yes.

10 Q. Okay. And have you come to be familiar with the
11 corporate structure of The Church of St. Luke and St. Paul,
12 Radcliffeborough?

13 A. Yes, I have.

14 Q. Okay. So what -- and, again, you said this, but what is
15 the official corporate name of the church?

16 A. The Church of St. Luke and St. Paul, Radcliffeborough.

17 Q. And it goes by in common parlance?

18 A. The Cathedral Church of St. Luke and St. Paul.

19 Q. Okay. And in the course of that, has the word Episcopal
20 ever been used in the name of The Church of St. Luke and
21 St. Paul?

22 A. Not as it currently exists. In the origination back in
23 the 1800s of St. Paul's, they did use the Protestant
24 Episcopal Church of St. Paul, Radcliffeborough.

25 Q. Okay. Give us a general overview of how the parish got

1 started.

2 A. In 1809 some families, as I understand it, from
3 St. Philip's and potentially from St. Michael's got together
4 and formed what would become later the parish of St. Paul's.
5 Some land was donated on the corner of Vanderhorst and
6 Coming, and in 1814 the corporation the Protestant Episcopal
7 Church of St. Paul was recognized by the State of South
8 Carolina.

9 St. Luke's was a separate church and it started, I
10 believe, in the 1850s as St. Luke's Episcopal Church. We
11 have it in here, the official name. Those two entities --
12 that entity did not survive. It ceased being a parish and
13 then was resurrected in the early 1900s. And in 1849 the two
14 congregations got together and decided to merge, that was
15 culminated in 1951.

16 Q. You said 1849?

17 A. Sorry, 1949. And that was culminated in a certificate
18 of incorporation in 1951. And since then it has been known
19 as The Church of St. Luke and St. Paul, Radcliffeborough.

20 Q. Okay. If you could look at what's been marked as SLP-1,
21 plaintiffs' exhibit.

22 A. Yes.

23 Q. And if you could tell us what that document is, please.

24 A. This is the registry of corporation, as I understand it,
25 from South Carolina at the time in 1814. And on my last page

1 of that it declares that the Protestant Episcopal Church of
2 St. Paul in Radcliffeborough to be recognized as a body
3 politic, presumably a corporation.

4 Q. Okay. And if you could turn to SLP-2 and tell me what
5 that document is.

6 A. This is a similar registry of corporations that are
7 recognized by the state in which St. Luke's is recognized. I
8 believe on the second page in the middle it says, St. Luke's
9 Church in the City of Charleston, again, recognized by the
10 state as a corporation in 1858.

11 Q. Okay. If you could turn to SLP-3 and describe for us
12 what that document is.

13 A. SLP-3 and then a subsequent document, this is the --
14 essentially the articles of incorporation of the documents, a
15 merger agreement between the two signed April 7, 1951, at
16 which point the two become St. Luke and St. Paul -- or The
17 Church of St. Luke and St. Paul, Radcliffeborough.

18 Q. Okay. This is the petition for merger that was filed
19 with the Secretary of State?

20 A. Yes.

21 Q. And what is your understanding of the current
22 significance of that document?

23 A. This begins, really, the joint life and the entity as we
24 know it now, the corporate entity, it serves as its founding
25 document.

1 Q. Okay. And if you could turn to page 2 of SLP-3.

2 A. Yes.

3 Q. And if you could review that and tell me if you find the
4 word Episcopal anywhere in that document.

5 A. No, I do not.

6 Q. And I believe you stated that you referred to it as a
7 subsequent document, but Plaintiffs' Exhibit SLP-4, can you
8 tell the Court what that document is?

9 A. SLP-4 is the certificate of incorporation provided by
10 the Secretary of State of South Carolina recognizing The
11 Church of St. Luke and St. Paul, Radcliffeborough as a
12 corporation.

13 Q. Okay. And what is the purpose of the organization as
14 stated in that document?

15 A. In the fourth clause it says it's formed by a merger
16 agreement between St. Luke's Church Charleston and the
17 Protestant Episcopal Church of St. Paul in Radcliffeborough.
18 The purpose is to merge those two entities.

19 Q. Okay. It refers you back to the merger agreement that's
20 marked as Exhibit 3, correct?

21 A. Yes, see original merger agreement file 3685, which is
22 Exhibit SLP-3.

23 Q. Okay. If you could turn to SLP-5 and explain to the
24 Court what that document is.

25 A. SLP-5 is the original deed we termed the Radcliffe deed

1 that provided the first parcel of land on which the -- I
2 believe The Cathedral church now stands. This was in 18 -- I
3 believe it was between 1809 and 1814 offered to the group
4 that would become the corporation in 1814.

5 Q. If you could tell the Court what SLP-6 is, please.

6 A. SLP-6 is the Whiteman deed. This gave the land adjacent
7 to The Cathedral, which is where the graveyard now is, also
8 offered around in similar time, I believe. And, again,
9 that -- those two parcels of land together is what we
10 understand -- or what we occupy now between Vanderhorst and
11 Warren Street.

12 Q. And SLP-7 is another public document, if you could tell
13 the Court what that document represents.

14 A. Make sure I'm looking at the right one. Just a second.
15 These, I believe, are the original bylaws of the church.

16 Q. Are you looking at SLP-7?

17 A. I'm sorry. I'm sorry, this is the deed transferring the
18 land. Those two previous deeds, this transfers it to the
19 corporation which is the Protestant Episcopal Church of St.
20 Paul in Radcliffeborough. It happened immediately prior to
21 that land being then transferred because of the merger into
22 The Church of St. Luke and St. Paul, Radcliffeborough.

23 Q. Okay. But this deed conveys the property to the
24 Protestant Episcopal Church of St. Paul in Radcliffeborough,
25 correct?

1 A. Yes.

2 Q. If you could tell the Court what SLP-8 is.

3 A. SLP-8 is the acquisition in August of 1972 of what is
4 now the parking -- excuse me -- the parking lot from J C Long
5 that was acquired for the sum of \$22,500.

6 Q. And, again, that deed reflects that the property is
7 titled in the name of The Church of St. Luke and St. Paul,
8 Radcliffeborough, correct?

9 A. Correct.

10 Q. All right. To your knowledge did the national church,
11 which is how we've been referring to the Episcopal Church in
12 the United States of America throughout this litigation, to
13 your knowledge did the national church contribute any funds
14 to the acquisition of any of these parcels of property?

15 A. Not to my knowledge.

16 Q. If you could review SLP-9 and SLP-10 and explain to the
17 Court what those documents represent, please.

18 A. SLP-9 is a quitclaim deed that we received in July of
19 2011 and we recorded in November of 2011. This was offered
20 by the Protestant Episcopal Church in the Diocese of South
21 Carolina to The Cathedral Church of St. Luke and St. Paul,
22 effectively our d/b/a, our doing business as name. It was
23 provided by Paul C. Fuener and recognized that on the parcel
24 of lands described the diocese had no claim whatsoever to
25 that property.

1 Q. Okay. How about SLP-10?

2 A. SLP-10 is a quitclaim deed substantially the same form
3 but signed instead by Bishop Mark Lawrence certifying the
4 same, that the diocese had no claim to the property. This
5 was received, again, in 2010.

6 Q. Do you know how it came about that The Church of
7 St. Luke and St. Paul, Radcliffeborough came into possession
8 of those deeds?

9 MR. TISDALE: Excuse me, Dave, could you say that again?

10 Q. Do you know how it came about that The Church of
11 St. Luke and St. Paul came into possession of those deeds?

12 A. My understanding is these deeds were offered to us by
13 the diocese. The first deed, again, my understanding is that
14 we were in communication with them and it was produced by
15 them to our benefit.

16 The second one was produced and offered to us, not
17 unilaterally, but they offered it to us for no consideration.

18 Q. Now, the deeds that we have marked as exhibits, which
19 are the public record of the ownership of the property owned
20 by The Church of St. Luke and St. Paul, Radcliffeborough,
21 reflect The Church of St. Luke and St. Paul, Radcliffeborough
22 as the titled owner of the property, correct?

23 A. Correct.

24 Q. All right. Did The Church of St. Luke and St. Paul,
25 Radcliffeborough believe the diocese had any property

1 interest in that property?

2 A. No, not at all.

3 Q. Okay. Other than -- the diocese to some extent occupies
4 some portion of the property, correct?

5 A. Yes, it does.

6 Q. And how is it that the diocese occupies a portion of the
7 property owned by The Church of St. Luke and St. Paul?

8 A. By virtue of a lease agreement that we signed, which I
9 believe is an exhibit as well, the diocese negotiated and we
10 granted them permission to build a structure on the land and
11 occupy it and we would maintain the rest of the land and work
12 very closely to use the other elements that are particular to
13 The Church of St. Luke and St. Paul, Radcliffeborough, such
14 as the parish hall and The Cathedral building, the worship
15 hall itself, and parking lot, etc.

16 But it was a lease that was executed and, I think,
17 expires in 99 years from its execution.

18 Q. Okay. And might be jumping around a little bit, but
19 that is -- is that document what is marked as SLP-16?

20 A. It is.

21 Q. And to your knowledge are the terms of that, the lease
22 as stated in SLP-16, is that what is currently transpiring
23 between the church and --

24 A. The practice has changed. The diocese pays us \$1,000 a
25 month now, and that's not reflected in the lease, and we have

1 a very tight relationship on how to resolve any mutual needs
2 that might come up.

3 Q. Okay. Turn to what has been marked as SLP-11, please.

4 A. The bylaws of The Cathedral Church of St. Luke and
5 St. Paul amended March 6, 2011.

6 Q. Is that a copy of the bylaws as they existed March 6th,
7 2011?

8 A. Yes, it is.

9 Q. Okay. At the time these bylaws were enacted what is
10 your understanding of the relationship between St. Luke and
11 St. Paul, Radcliffeborough and the national church?

12 A. My understanding is that we had no direct relationship
13 ever with the national church. Only by a function of being
14 part of the diocese and the diocese being affiliated with the
15 national church did we have any relationship whatsoever.

16 Q. Okay. Did The Church of St. Luke and St. Paul,
17 Radcliffeborough have any direct input into the constitution
18 and canons of the Protestant Episcopal Church in the United
19 States?

20 A. Not that I know of.

21 Q. Please turn to SLP-12 and explain for the Court what
22 that document is.

23 A. SLP-12 are the bylaws of the church as amended on
24 September 9th, 2012.

25 Q. Okay. How did it come to be that these particular

1 bylaws were amended to the document that is here exhibited as
2 SLP-12?

3 A. We had at our annual meeting -- I'm sorry, yes, at our
4 annual meeting in January of 2012 we had an initial reading
5 of proposed amendments to the bylaws; that reading culminated
6 in a special annual meeting that occurred in September of
7 2012 to vote on and ratify the proposed changes; that was
8 attended by a quorum of the members of the corporation which
9 was sufficient to duly enact the bylaws. And in that session
10 we approved, by a large majority, the amendments.

11 Q. How is notice of an annual meeting published generally
12 by The Cathedral?

13 A. It's published in a number of ways now. Certainly
14 described or notified in services well in advance, at least
15 one month, if not more, as well as in parish newsletters and
16 e-mails that go out. And in the past I know there were
17 physical letters that went out notifying of those meetings.

18 Q. Okay. And to your recollection were those procedures
19 generally followed as to the January meeting in 2012?

20 A. All of those except for physical letters. At this point
21 we began to use all e-mail and notices on websites and
22 notices from the pulpit.

23 Q. Okay. And the annual meeting occurs after what service
24 on Sunday?

25 A. It occurs after -- anytime after a specific feast day, I

1 think the Feast of St. Paul in January, so there's some
2 flexibility. But there is typically a joint service,
3 normally we have three services, but we'll have one service,
4 and after that we'll have the annual meeting with the members
5 that are present and stay.

6 Q. Okay. So there's some endeavor that goes into bringing
7 these three services into one service?

8 A. Yes, it's not a small meeting.

9 Q. And then any -- is that the case with any congregational
10 meeting?

11 A. Yes. They're not necessarily always held after one
12 joint service, but they're always publicized. And I think
13 many in the last few years have been combined into one
14 service and then a meeting directly following.

15 Q. Okay. Now, explain to me what the amendments were that
16 appear in what's been marked as SLP-12 as of September 9th,
17 2012.

18 A. The substance of these amendments was to remove
19 references to the Episcopal Church, national, from the bylaws
20 and clarify that we were part of the Protestant Episcopal
21 Church in the Diocese of South Carolina. In our discussion
22 in the vestry, as well as discussion in the meeting with the
23 congregation, we wanted to make very clear that this is an
24 understanding we have always had, and these changes simply
25 clarified that for the record. We're a member of the diocese

1 and we don't have any direct relationship, never did, with
2 the national church apart from our membership through the
3 diocese.

4 Q. Can you turn to SLP-13, please --

5 A. Yes.

6 Q. -- and explain to the Court what this document is.

7 A. SLP-13, this is the minutes from that annual meeting in
8 January of 2012, part of which, amongst other things, the
9 general business of the church to elect folks on the vestry
10 and the general convention -- or national -- I'm sorry, the
11 diocesan convention, and many other things.

12 Part of that was the first reading of the bylaw changes
13 that culminated in the September 9, 2012, meeting. But these
14 are the minutes from that meeting.

15 Q. And if you could tell the Court what SLP-14 is.

16 A. These are the minutes from the special annual meeting of
17 the church held on September 9, 2012, where we effected the
18 changes to the bylaws.

19 Q. And this meeting was held for what specific purpose?

20 A. This was specifically for the purpose of voting on and
21 approving the changes to the bylaws.

22 Q. Were these the same changes that had been discussed in
23 January of 2012?

24 A. Correct. We tried to follow -- we're not bound to them,
25 but we try to follow some rules of order where we have

1 multiple readings, especially to changes to the bylaws, to
2 give ample notice when anything might be changed, for
3 discussion, for any questions that come from parishioners,
4 for revisions to those, and then a final approval sometime
5 after.

6 Q. The document that's been marked as SLP-15 is stated as
7 to the commitment to continued diocesan relationship.

8 A. Yes.

9 Q. Can you tell the Court what this document is.

10 A. This document was produced by the vestry around November
11 of 2012. It was in response to the national church taking
12 action against our bishop, Mark Lawrence. We produced this
13 resolution, again, voted on and approved by the vestry,
14 asserting that we would -- or declaring that we were
15 committed to remaining within the diocese and expressing
16 clearly our support for Mark Lawrence during the accusations
17 that were coming against him and the movement that the
18 presiding bishop took to restrict his ministry.

19 Q. Okay. And how did this come to be a resolution of the
20 vestry?

21 A. The resolution with respect to the deliberation within
22 the vestry or...

23 Q. How exactly was it enacted and ratified?

24 A. Oh, we had a special conference call that was called to
25 order, and we couldn't all be together, but we had an

1 official meeting of the vestry. We voted unanimously to
2 approve this resolution, and then subsequently we presented
3 it to the congregation for their affirmation and also to
4 explain the actions of the vestry and to allow them a chance
5 to ask questions and understand better what was going on.

6 Q. What response did you get from the congregation in that?

7 A. We took a voice vote and there was unanimous voice
8 acclamation at the time in support of the resolution.

9 Q. If you could turn to what has been marked as SLP-17 and
10 explain to the Court what that document is.

11 A. SLP-17 are the bylaws as amended February 2nd, 2014.

12 These are the most current bylaws that we have at
13 The Cathedral.

14 Q. Okay. And, generally, what was the purpose of the
15 amendment that was in place as of February 2nd, 2014?

16 A. There were two amendments -- there were two substantial
17 changes. One reduced the vestry from 12 to 9 members. It
18 had originated with the merger with 25 members, unwieldy
19 group, that got reduced down to 15. In 2011 we reduced from
20 15 to 12, and then this reduced it from 12 to 9. That was
21 one part.

22 The second substantial change were administrative
23 changes to the endowment, how it was run, how people were
24 elected to it, and how, effectively, money managers were
25 selected. It was all fairly administrative stuff.

1 Q. But these are the current bylaws as they exist for The
2 Church of St. Luke and St. Paul, Radcliffeborough?

3 A. Correct.

4 Q. And in your recollection, was there any way in which the
5 word Episcopal was displayed in advertisements for The
6 Cathedral Church of St. Luke and St. Paul?

7 A. At what time?

8 Q. In your recent memory.

9 A. In my recent memory, we had a sign in the front of the
10 building that said The Cathedral Church of St. Luke and
11 St. Paul, and underneath it had in parenthesis, Episcopal,
12 which our understanding is that simply meant we had a bishop
13 and happened to be his seat in our cathedral. When I
14 originally got to the church around 2005, I believe we had an
15 Episcopal flag in the building, but that is no longer there.
16 And other than that, I don't believe we used the seal of the
17 Episcopal Church national in other literature, not that I
18 recall.

19 Q. Okay. Has that flag been in use since 2012?

20 A. No.

21 Q. Is the word Episcopal currently displayed on the outside
22 of The Cathedral anywhere?

23 A. No.

24 Q. Okay. To your recollection was there ever a sign that
25 said, The Episcopal Church welcomes you or anything along

1 those lines pointing to The Cathedral?

2 A. No.

3 MR. MARVEL: Thank you very much. Those are all the
4 questions I have.

5 THE COURT: All right. Yes, ma'am.

6 MR. HOLMES: Your Honor, may I leave the courtroom for a
7 moment for a logistical matter?

8 THE COURT: Sure.

9 MR. HOLMES: Thank you.

10 MS. KOSTEL: Your Honor?

11 THE COURT: Yes.

12 MS. KOSTEL: There are documents that I would like to
13 show the witness and, potentially, they're in our exhibits.
14 I only have them electronically today. Mr. Holmes is trying
15 to go get copies of them now. I'd like to go over to that
16 podium and show them to him, but if -- I'd like your guidance
17 on whether I can move them in if I don't have a hard copy.
18 I'm willing to wait to move them in. We'll provide everyone
19 with either a hard copy or an electronic --

20 THE COURT: Have these documents been provided in
21 discovery, I would ask.

22 MS. KOSTEL: Yes, they were provided by the plaintiffs,
23 actually, to us.

24 THE COURT: Oh, okay, okay.

25 MS. KOSTEL: Yes.

1 Q. Is there no sign there now?

2 A. I believe there's a new sign, but it does not have the
3 word Episcopal in it.

4 Q. And is it my understanding of your testimony that the
5 reason the word Episcopal appeared in parentheses there was
6 to communicate that you had a bishop?

7 A. Correct.

8 Q. You still have a bishop, don't you?

9 A. Correct.

10 Q. So why was that name removed?

11 A. In the current environment we thought it created
12 confusion because the Episcopal Church is commonly understood
13 as the national church. While Episcopal, being a term
14 referring to a bishop, indeed refers to our bishop, we didn't
15 want to create any confusion whatsoever.

16 Q. So you wanted to avoid confusion between your parish, or
17 Cathedral, and the Episcopal Church?

18 A. Yes.

19 Q. Okay. Has that been successful?

20 A. I wouldn't necessarily be the judge of that, but I think
21 it's on its way.

22 Q. Okay. Does your parish or Cathedral send delegates to
23 the annual convention of the diocese generally throughout
24 history of which you are aware?

25 A. I believe so, yes.

1 have had any interest before, but they wanted to be quite
2 certain on our behalf, I think also coming out of the All
3 Saints case, that they had no interest whatsoever in the
4 property.

5 Q. Okay. Do you have any recollection of that actually
6 being tied to any charges being brought directly towards the
7 bishop?

8 A. No, not directly, no.

9 MR. MARVEL: Thank you. Your Honor, that's all I have.

10 THE COURT: All right. Any other plaintiffs? All
11 right. Very well.

12 Recross as to that issue? None? Very well.

13 You may come down. We're going to take our break.

14 We're going to reconvene about five minutes after 12:00.

15 (Recess held.)

16 THE COURT: All right. On behalf of the plaintiffs,
17 call your next witness.

18 MS. DURANT: May it please the Court, Your Honor,
19 Bess Durant with Sowell Gray, and I am with Thornwell F.
20 Sowell, also known as Biff Sowell, the titular head, the
21 spiritual head, the leader head of the law firm of Sowell
22 Gray. And our witness is John Acken, Your Honor.

23 JOHN ACKEN,
24 being first duly sworn, testified as follows:

25 THE COURT: Your witness.

1 MS. DURANT: Thank you, Your Honor, and just as a
2 housekeeping matter, both Ms. St. Amand and Ms. Kostel have
3 agreed -- have stipulated to all of our exhibits being
4 admitted.

5 THE COURT: And they're exhibits numbered?

6 MS. DURANT: They are Exhibits No. 1, 2, 3, 3A, 3B, 3C,
7 4, 5, 5A, 6, 6A, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
8 19, 20, 24, 25, 26, and 27.

9 (Plaintiff's Exhibits HC-1 through HC-27 premarked for
10 identification.)

11 THE COURT: Is that correct?

12 MS. ST. AMAND: That's correct.

13 MR. TISDALE: As far as we know. We don't have any
14 dispute on it.

15 THE COURT: Thank you kindly.

16 MS. KOSTEL: That's fine, Your Honor.

17 THE COURT: Thank you. Exhibits are admitted without
18 objection. You may proceed.

19 (Plaintiff's Exhibits HC-1 through HC-27 admitted into
20 evidence.)

21 MS. DURANT: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MS. DURANT:

23 Q. Mr. Acken, can you give me a brief description of your
24 educational background?

25 A. Yes, I have an undergraduate degree at Hampden-Sydney

1 College in Virginia and a graduate degree at
2 Vanderbilt University.

3 Q. Any other graduate work?

4 A. I'm sorry?

5 Q. Any other graduate work?

6 A. University of Virginia, they decided I couldn't read and
7 write, so they sent me back for a math course.

8 Q. I know that feeling all too well.

9 Are you presently employed, Mr. Acken?

10 A. No, I'm not.

11 Q. So you're retired?

12 A. Yes, I am.

13 Q. What was your previous life in the working world?

14 A. I was general manager of transload services for
15 CSX Corporation in Jacksonville, Florida. We managed
16 rail-to-truck barge transfer facilities, eastern United
17 States, southern Canada.

18 Q. Are you a member of any church?

19 A. Yes, I am.

20 Q. What church is that?

21 A. Holy Comforter.

22 Q. How long have you been a member of Church of the
23 Holy Comforter?

24 A. Since I retired in '97, that's 17 years.

25 Q. Where is the Church of the Holy Comforter located?

- 1 A. In Sumter, South Carolina.
- 2 Q. Have you held any leadership positions in the
- 3 Holy Comforter?
- 4 A. Yes, I have.
- 5 Q. Tell me about those, please.
- 6 A. I was on the vestry and I was also senior warden.
- 7 Q. Let's talk about the vestry first. How long have you
- 8 served in the vestry?
- 9 A. I was on the vestry in 2008 through '10 and then again
- 10 in 2012 and then 2013 through the present time.
- 11 Q. Did you serve in the vestry anytime prior to 2008?
- 12 A. Yes, in the early 2000s.
- 13 Q. So you're presently in the vestry today?
- 14 A. Yes, I am.
- 15 Q. What role does the vestry play of Holy Comforter?
- 16 A. It functions as the board of directors.
- 17 Q. And I believe your earlier testimony was that you served
- 18 as the senior warden; is that correct?
- 19 A. Yes, I did.
- 20 Q. When did you serve as the senior warden?
- 21 A. 2009, 2010.
- 22 Q. What role does the senior warden serve?
- 23 A. Basically chairman of the board. I think John Barr
- 24 would say the temporal chairman of the board.
- 25 Q. Who is John Barr?

1 A. He's our rector.

2 Q. Does Holy Comforter have any officers?

3 A. Yes.

4 Q. Who are they?

5 A. They would be the wardens, the clerk, and the treasurer.

6 Q. Are their roles described in the constitution or the
7 bylaws that we call the constitution of Holy Comforter?

8 A. They are.

9 Q. Let's talk about the history of Holy Comforter, if you
10 don't mind, sir.

11 A. All right.

12 Q. When did Holy Comforter first start holding its
13 services?

14 A. We know they were holding services in 1854, but maybe
15 even before that.

16 Q. Does 1844 sound correct?

17 A. '44, that's correct.

18 Q. When was Holy Comforter incorporated?

19 A. In 1857.

20 Q. How was Holy Comforter incorporated?

21 A. By a legislative charter.

22 Q. Mr. Acken, I'm going to direct you to Holy Comforter's
23 Exhibit 1.

24 MS. DURANT: And for the record, Your Honor, our prefix
25 is HC.

1 THE COURT: Thank you.

2 Q. Mr. Acken, do you have a copy of HC-1?

3 A. Yes, I do.

4 Q. What is that?

5 A. It's the legislative charter for the church
6 incorporating the corporate entity of the Church of the
7 Holy Comforter.

8 Q. So the state of South Carolina incorporated
9 Holy Comforter?

10 A. Yes.

11 Q. What powers does the legislative charter give
12 Holy Comforter?

13 A. The power to incorporate, have wardens, officers,
14 vestry, bylaws, buy and sell property, real and personal,
15 have a common seal, hold property.

16 Q. Sounds like a good description to me.

17 What kind of corporation is Holy Comforter; profit or
18 nonprofit?

19 A. Nonprofit.

20 Q. What services does the corporation of Holy Comforter
21 provide?

22 A. Religious.

23 Q. Has Holy Comforter always and continually provided
24 religious services since it was legislatively chartered?

25 A. It has.

1 Q. And it was legislatively chartered in 1857, correct?

2 A. That's correct.

3 Q. Is there any reference to the national church in the
4 charter?

5 A. No. In fact, in the charter it was chartered as a
6 nondenominational church.

7 Q. Is there any reference to the Diocese of South Carolina
8 in the charter?

9 A. No.

10 Q. Is there any reference to the Episcopal Church of South
11 Carolina in the charter?

12 A. No.

13 Q. Has the charter ever been amended?

14 A. Yes, it has -- oh, not the charter, I'm sorry, no.

15 Q. Let me ask that question again, if you don't mind.

16 Has the charter ever been amended?

17 A. The charter has not been amended.

18 Q. Has it ever been repealed?

19 A. I'm sorry?

20 Q. Has it ever been repealed?

21 A. No.

22 Q. Are you familiar with what property is owned by
23 Holy Comforter?

24 A. Yes, I am.

25 Q. How are you familiar with what property is owned?

- 1 A. As a member of the vestry.
- 2 Q. How many tracts of land does Holy Comforter own?
- 3 A. Five.
- 4 Q. Can you give us a brief description of those five
- 5 tracts?
- 6 A. Yes, we have a -- we have an administrative building we
- 7 call the parish hall, we have a church, we have a parking
- 8 lot, we have a rectory, and we have a group of lots referred
- 9 to as the White Oak Properties.
- 10 Q. Does Church of the Holy Comforter have deeds for all of
- 11 these properties?
- 12 A. Yes, it does.
- 13 Q. Mr. Acken, I'm going to ask you to refer to several of
- 14 the exhibits that you have in front of you. Those exhibits
- 15 are Exhibits 2, 3, 3A, 3B, 3C, 4, 5, 5A, 6, and 6A.
- 16 A. Yes.
- 17 Q. Do you have those in front of you, Mr. Acken?
- 18 A. Yes, I do.
- 19 Q. Do these deeds, which are certified copies of deeds, are
- 20 these the deeds that reflect Holy Comforter's ownership of
- 21 all its real property?
- 22 A. Yes.
- 23 Q. Actually, let me clean something up, Mr. Acken. Do you
- 24 mind specifically referring to Exhibit 6?
- 25 A. 6, okay.

1 Q. What is this property?

2 A. It is White Oak lot, the lot is No. 16.

3 Q. Actually, Mr. Acken, I'm asking you to look at
4 Exhibit 6, please.

5 A. Exhibit 6, all right. Okay.

6 Q. And what is the property that's contained in the deed
7 that's labeled Holy Comforter's Exhibit 6?

8 A. This is titled Properties, White Oak lots 13, 14, 15,
9 16, 17, and 18.

10 Q. Has Holy Comforter sold part of this land?

11 A. Yes, we have.

12 Q. Do you mind referring to Exhibit 6A, please, Mr. Acken?

13 A. All right.

14 Q. What does this deed show?

15 A. 6A?

16 Q. Yes, sir.

17 A. 6A is Lot No. 16.

18 Q. Is this conveying out a parcel from Holy Comforter?

19 A. Yes, it conveys a property to David and
20 Cynthia Caldwell.

21 Q. So does Holy Comforter claim any interest in the
22 property represented by Exhibit 6A?

23 A. No, it does not.

24 Q. So the deeds that we have discussed today with the
25 exception of C -- let me rephrase that question.

1 Do the deeds that we have discussed today with the
2 exception of 6A represent all the property owned by
3 Holy Comforter?

4 A. Yes.

5 Q. All the real property owned by Holy Comforter?

6 A. Yes.

7 Q. Does Holy Comforter have fee simple title to all of this
8 property?

9 A. Yes, it does.

10 Q. Mr. Acken, does the Diocese of South Carolina claim any
11 interest, legal or equitable, in Holy Comforter's property?

12 A. No, it does not.

13 Q. Mr. Acken, please refer to Holy Comforter's Exhibit 25.

14 A. 25, yes.

15 Q. What is this document?

16 A. It's a quitclaim deed.

17 Q. Okay. It's a quitclaim deed from whom?

18 A. From the Diocese of South Carolina to Church of the
19 Holy Comforter.

20 Q. What does this deed state?

21 A. Says that they have no title to any of our property, no
22 right to any of our property.

23 Q. Did they ever have any title to our property?

24 A. No, they did not.

25 Q. Did the Diocese of South Carolina ever have any interest

1 in our property?

2 A. No, it does not.

3 Q. Mr. Acken, we've talked about the deeds to our property,
4 I'd like to now show you some photos of our property.

5 Do you see what's in front of you, Mr. Acken?

6 A. Yes, I can.

7 Q. Can you briefly explain for Her Honor the people in the
8 buildings that comprise Church of the Holy Comforter?

9 A. These are the parishioners in a service in the
10 Holy Comforter and looks like just about to start services.
11 I sees Charles Walton sitting there on the right.

12 This, the top photograph is the original Church of the
13 Holy Comforter, the bottom is the present Church of the
14 Holy Comforter, and I think they were Easter services.

15 Q. Now, will you please explain for Judge Goodstein, when
16 you say the original Holy Comforter versus the present
17 Holy Comforter --

18 A. Yes, the original Holy Comforter was built in 1858-59,
19 and then it was replaced in 1909 with the current church.

20 Q. Is it located in the same property?

21 A. No, they were located in different properties.

22 Q. Close to each other?

23 A. I'm sorry?

24 Q. Close to each other?

25 A. Yes, one was at South Main Street in Sumter, one's at

1 his son was part of the naval service, sort of moving up in
2 the world.

3 That is the choir from the 19 -- or children's choir
4 from the 1950s.

5 Q. Next picture please.

6 A. And getting ready to process in for service.

7 Q. I think that's all the pictures we have, Mr. Acken.

8 Thank you for taking us through that exercise.

9 Back to the matter at hand, Mr. Acken. Earlier we had
10 talked about the legislative charter that incorporated
11 Holy Comforter, correct, Mr. Acken?

12 A. Yes.

13 Q. And the legislature bestowed certain powers upon
14 Holy Comforter, correct?

15 A. That's correct.

16 Q. One of those powers was to make bylaws?

17 A. That's correct.

18 Q. Does Holy Comforter have bylaws?

19 A. Yes, it does.

20 Q. What does the Church of the Holy Comforter call its
21 bylaws?

22 A. The constitution.

23 Q. Has Holy Comforter ever amended its constitution?

24 A. Yes, it has.

25 Q. Will you please explain the process to amend the

1 constitution.

2 A. Well, we have two ways of amending the constitution.

3 One is to have two meetings, one to discuss the constitution
4 and consider it, and the second meeting would be to actually
5 have a vote and commit to the constitution.

6 The second method is for the rector to announce the
7 proposed constitutional meeting on two Sundays prior to that
8 and to -- for us to send out letters two weeks prior to the
9 meeting to all of the parishioners.

10 Q. And what do those letters need to include?

11 A. The letters need to include the changes to the
12 constitution.

13 Q. The proposed amendments?

14 A. Proposed, yes.

15 Q. And what kind of vote do you need from the parish to
16 amend the constitution?

17 A. Originally it had to be a quorum of 20 percent.

18 Q. Right, I'm not asking about a quorum. I'll ask you more
19 directly. Do you need a two-thirds vote to pass the
20 constitution?

21 A. Yes, yes.

22 Q. Has the constitution been amended over the past five
23 years?

24 A. Yes, it has.

25 Q. Please explain how it was amended.

1 A. On two occasions. First it was amended to delete any
2 reference to the Episcopal -- to the national church; to
3 change the quorum from 20 to 25 percent; to take out any
4 canons, any reference to canons that were not accepted by the
5 Diocese of South Carolina; to free us from any requirement to
6 be part of the Episcopal Church; to exempt us from being in
7 any way required to be part of -- accede to the doctrine,
8 discipline and worship of the Episcopal Church.

9 Q. Do you know when the parish of the Church of the
10 Holy Comforter made that amendment?

11 A. That amendment was made in 2010.

12 Q. Would that be November of 2010?

13 A. November of 2010, yes.

14 Q. Has the constitution been amended since November of
15 2010?

16 A. Yes, it has.

17 Q. When?

18 A. In 2013 we had a second amendment, which was
19 indemnification for the officers, vestry, employees --

20 Q. Was that the --

21 A. -- clergy of the church.

22 Q. I'm sorry, was that the sole amendment to the
23 constitution in 2013?

24 A. Yes.

25 Q. What role did you have within Holy Comforter at the time

1 the constitution was amended in 2010?

2 A. I was senior warden.

3 Q. What version of the constitution were you amending in
4 2010?

5 A. 1989.

6 Q. Are you familiar with the contents of the 1989
7 constitution, Mr. Acken?

8 A. Yes.

9 Q. Will you please refer to Holy Comforter's Exhibit 26.
10 Do you recognize this document, Mr. Acken?

11 A. Yes, I do.

12 Q. Is this the constitution that Holy Comforter was
13 amending in 2010?

14 A. Yes.

15 Q. When did the process of amending the constitution to
16 include these amendments begin?

17 A. It began with the vestry meeting in January of 2010.

18 Q. At the January 2010 vestry meeting did the vestry
19 discuss a proposed amendment to the constitution?

20 A. Yes, we did.

21 Q. Mr. Acken, will you please refer to Holy Comforter's
22 Exhibit 7.

23 A. Yes.

24 Q. What is this?

25 A. It's a special session of the vestry dated January 13,

1 2010.

2 Q. Is it an accurate representation of what occurred at the
3 meeting?

4 A. Yes, it is.

5 Q. Were you present for this vestry meeting?

6 A. Yes, I was.

7 Q. Was a quorum present?

8 A. Yes, it was.

9 Q. Did the vestry authorize the proposed amendment to the
10 constitution and its submission to the parish for adoption?

11 A. Yes.

12 Q. Did the vestry agree to send the amendment to the
13 congregation?

14 A. Yes, it did.

15 Q. Did the vestry --

16 A. It was a unanimous recommendation, if I remember right.

17 Q. Did the vestry adopt a resolution at this meeting?

18 A. Yes, it did.

19 Q. What did the resolution state?

20 A. The resolution was to define the doctrine, discipline,
21 and worship of the Episcopal Church.

22 Q. Did you end up sending the proposed amendment to the
23 members of Holy Comforter?

24 A. Yes, we did.

25 Q. Why did you send the proposed amendment to the members

1 of Holy Comforter?

2 A. So that they could review the proposed amendments and
3 resolution prior to the vestry meeting -- or the parish
4 meeting.

5 Q. Do you remember when the -- was this an annual parish
6 meeting?

7 A. Yes, it was the annual parish meeting, January 31st, I
8 believe.

9 Q. Mr. Acken, will you please refer to Holy Comforter's
10 Exhibit 9.

11 A. Yes.

12 Q. Do you recognize Exhibit 9?

13 A. Yes, I do.

14 Q. Is this your letter?

15 A. Yes, it is.

16 Q. Who did you send this letter to?

17 A. This letter went to the parish, members of the parish.

18 Q. What did you inform the parishioners of in this letter?

19 A. We were proposing an amendment and a resolution,
20 amendment to the constitution and a resolution.

21 Q. Did you also inform the parishioners of when the annual
22 parish meeting would occur?

23 A. Yes, we did, January 31st.

24 Q. Mr. Acken, according to the '89 constitution what notice
25 is required for annual parish meetings?

1 A. Annual parish meeting notice was the rector had to give
2 a notice on two successive Sundays prior to the meeting and a
3 one-week written notice.

4 Q. Mr. Acken, did Holy Comforter's Exhibit 9 serve as
5 notice to the parishioners of the annual meeting?

6 A. Yes, the notice was in excess of one week.

7 Q. And you also informed them of when the meeting would
8 occur, correct?

9 A. That's right.

10 Q. To your knowledge did the rector provide notice to the
11 parishioners of the meeting on two consecutive Sundays?

12 A. Yes, he did.

13 Q. Immediately prior to the parish meeting on January 31st,
14 2010?

15 A. Yes.

16 Q. Therefore, proper -- was notice properly given in
17 accordance with the constitution for the parish meeting on
18 January 31st, 2010?

19 A. Yes, it was.

20 Q. Did your letter, which is Holy Comforter's Exhibit 9,
21 also serve as notice for the proposed constitution on the
22 amendment?

23 A. Yes, it did because it was given two weeks prior to the
24 meeting.

25 Q. And it included -- at the bottom of that letter it

1 references enclosures, correct?

2 A. Yes, it enclosed a proposed amendment and a proposed
3 resolution.

4 Q. So you gave the parishioners a copy of the proposed
5 amendment to the constitution, correct?

6 A. That is correct.

7 Q. Did this letter serve as notice to the parishioners of
8 the proposed constitutional amendment?

9 A. Yes, it did.

10 Q. Did you send it two weeks before the meeting?

11 A. Yes, I did.

12 Q. Was notice properly given in accordance with the
13 constitution for consideration of the proposed constitutional
14 amendment?

15 A. Yes, it was.

16 Q. Did the parish meeting occur on January 31st, 2010?

17 A. It did.

18 Q. Mr. Acken, will you please refer to Holy Comforter's
19 Exhibit 10.

20 A. Yes.

21 Q. What is Holy Comforter's Exhibit 10?

22 A. Minutes of an annual meeting 2010, January 31st, 2010.

23 Q. And it's an accurate representation of what happened at
24 the meeting?

25 A. Yes, it is.

1 Q. Mr. Acken, did you attend the parish meeting on January
2 31st, 2010?

3 A. I did.

4 Q. Was a quorum present?

5 A. Yes.

6 Q. Regarding the resolution that you sent to the parish,
7 which I believe was Exhibit 9, what did the parish decide?

8 A. They approved the resolution.

9 Q. Did they approve it unanimously?

10 A. Yes, they did.

11 Q. Mr. Acken, will you please refer to Holy Comforter's
12 Exhibit 8.

13 A. Yes.

14 Q. Do you recognize Exhibit 8?

15 A. Yes, I do. It's the resolution that we passed at the
16 meeting on January 31st, 2010.

17 Q. Mr. Acken, regarding the proposed constitutional
18 amendment, what did the congregation decide to do?

19 A. They tabled the amendment and to readdress it in a
20 future meeting of November of 2010.

21 Q. So the parish had actually recessed it?

22 A. Yes, the parish recessed the meeting and we reconvened
23 in November.

24 Q. November of 2010?

25 A. That's right.

1 Q. Now, prior to the reconvened annual meeting in November
2 of 2010 did the vestry meet to discuss the proposed
3 constitutional amendments?

4 A. Yes, we did.

5 Q. Was this at a vestry meeting?

6 A. That was at a vestry meeting, yes.

7 Q. At this vestry meeting did the vestry authorize the
8 proposed amendments to the constitution and its submission to
9 the parish for adoption?

10 A. Yes, we did.

11 Q. Mr. Acken, will you please refer to Holy Comforter's
12 Exhibit 12.

13 A. 12, yes.

14 Q. What is Exhibit 12?

15 A. It's a minutes of a vestry meeting on October 26th,
16 2010.

17 Q. And is it an accurate representation of what happened at
18 the October 26, 2010, meeting?

19 A. Yes, it is.

20 Q. Mr. Acken, were you present for this vestry meeting?

21 A. I was.

22 Q. Was a quorum present at the vestry meeting?

23 A. Yes, it was.

24 Q. Did the vestry agree to send the amended constitution to
25 the -- or the proposed amended constitution to the

1 congregation?

2 A. Yes, we did.

3 Q. Was this a unanimous vote?

4 A. It was a unanimous vote, that's correct.

5 Q. Did you end up sending the proposed amended constitution
6 to the members of Holy Comforter?

7 A. We did.

8 Q. Why?

9 A. In order that they could review the proposed amendment,
10 be prepared to vote on it.

11 Q. Giving them notice?

12 A. And giving them the two weeks' notice required by the
13 constitution.

14 Q. Mr. Acken, will you please refer to Holy Comforter's
15 Exhibit 14.

16 A. Yes.

17 Q. Will you please describe for the Court what Exhibit 14
18 is.

19 A. Exhibit 14 shows that there were 175 letters mailed out
20 on November the 4th, 2010, to the parish. It was also a
21 letter signed by myself and John Barr to the parish, giving
22 them notice of the meeting, and there was a resolution -- a
23 new constitution, Church of the Holy Comforter, a resolution
24 for the commitment to the diocesan relationship, and a copy
25 of the new constitution that was proposed to be voted on.

1 Q. So your letter, the two resolutions and the proposed
2 amended constitution were mailed to the parishioners,
3 correct?

4 A. That's correct.

5 Q. What did you inform the parishioners of in this letter?

6 A. In the cover letter, that we were proposing a new parish
7 constitution and giving them notice to attend the meeting on
8 the -- November 21st and we would provide them with pizza and
9 beverages.

10 Q. Got to get them there somehow, right?

11 A. That's right.

12 Q. Did this -- earlier you testified about the notice
13 requirements for the parish meetings and constitutional
14 amendments, correct?

15 A. Yes.

16 Q. Did this letter comply with the constitutional
17 requirements for notice of the reconvened parish meeting?

18 A. Yes, it did.

19 Q. Why?

20 A. Well, it gave at least a one-week notice and it was --
21 the rector got up two weeks prior to the meeting on the
22 Sunday service and announced it in the Sunday service.

23 Q. Did the rector get up two consecutive Sundays
24 immediately prior --

25 A. Yes, yes, he did.

1 Q. If you'll just let me finish out my question for madam
2 court reporter, if you don't mind. So let me ask again.

3 Did the rector provide notice to the parishioners of the
4 meeting in two consecutive Sundays immediately prior to the
5 reconvened parish meeting on November 21st, 2010?

6 A. Yes, he did.

7 Q. Was notice properly given for the reconvened parish
8 meeting on November 21st, 2010?

9 A. Yes, it was.

10 Q. In addition, does your letter also serve as notice for
11 the proposed constitutional amendments?

12 A. Yes, it did because it was provided two weeks ahead of
13 the meeting.

14 Q. And you also included the proposed constitutional
15 amendments in this letter, correct?

16 A. Yes, we did.

17 Q. Was notice properly given for the consideration and vote
18 of the proposed constitutional amendments at the reconvened
19 parish meeting on November 21st, 2010?

20 A. Yes.

21 Q. Did the reconvened meeting occur on November 21st, 2010?

22 A. It did.

23 Q. Mr. Acken, will you please refer to Holy Comforter's
24 Exhibit 15.

25 A. This is the minutes of the 2010 annual meeting, November

1 21, 2010.

2 Q. Is this an accurate representation of what happened at
3 the November 21st, 2010, reconvened meeting?

4 A. Yes, it is.

5 Q. Did you attend the reconvened parish meeting on November
6 21st, 2010?

7 A. I did.

8 Q. Was a quorum present at the meeting?

9 A. It was.

10 Q. Regarding the resolution that amended the constitution,
11 did the parish consider and vote on the resolution?

12 A. Yes.

13 Q. Mr. Acken, will you please look at Holy Comforter's
14 Exhibit 11.

15 A. Exhibit which?

16 Q. 11.

17 A. 11, yes.

18 Q. Do you recognize Exhibit 11?

19 A. Yes, it's the new constitution for the Church of the
20 Holy Comforter.

21 Q. Regarding the resolution that it would amend the
22 constitution, how did the parish vote?

23 A. The vote was 94 in favor, one opposed, two abstained.

24 Q. Do you mind reading that a little bit closer, Mr. Acken?

25 A. 94 total votes, 91 in favor, one opposed, and two

- 1 abstaining.
- 2 Q. Was this more than a two-thirds vote in favor?
- 3 A. Yes.
- 4 Q. What adjective would you use to describe how the parish
- 5 voted?
- 6 A. It was overwhelmingly approved.
- 7 Q. Did the parish also vote on the other resolution?
- 8 A. Yes.
- 9 Q. Do you mind looking -- will you please look at Holy
- 10 Comforter's Exhibit 13.
- 11 A. Okay.
- 12 Q. Do you recognize Holy Comforter's Exhibit 13?
- 13 A. Yes, I do.
- 14 Q. What is it?
- 15 A. It's a commitment to the diocesan relationship.
- 16 Q. Regarding this resolution, how did the parish vote?
- 17 A. Unanimously.
- 18 Q. Back to the resolution to amend the constitution, was
- 19 the constitution amended in accordance with the parish's
- 20 vote?
- 21 A. Yes, it was.
- 22 Q. Mr. Acken, will you please refer to Exhibit 27.
- 23 A. Okay.
- 24 Q. Do you recognize Exhibit 27?
- 25 A. Yes, I do.

1 Q. What is it?

2 A. It's the constitution of the Church of the
3 Holy Comforter.

4 Q. Is this the amended constitution that came out of the
5 reconvened meeting?

6 A. Yes, it did.

7 Q. Is Exhibit 27 the most current version of the
8 constitution?

9 A. No, it's not.

10 Q. What is the most current version of the constitution?

11 A. It's a 2013.

12 Q. How does the 2013 constitution differ from the 2010
13 constitution?

14 A. Because we added an indemnification agreement for the
15 wardens, vestry, clergy, members, and employees.

16 Q. Did the amendment process to add the indemnification
17 provision comply with the requirements in the 2010
18 constitution?

19 A. Yes.

20 Q. Mr. Acken, will you please refer to Holy Comforter's
21 Exhibit 24.

22 A. All right.

23 Q. Do you recognize Holy Comforter's Exhibit 24?

24 A. I do.

25 Q. Just for the record, will you explain that first page.

1 A. I'm sorry?

2 Q. Just for the record, will you explain the first page.

3 A. First page is a constitutional attestation by the then
4 senior warden, Rick Shaw.

5 Q. What does he say?

6 A. Says that the undersigned, Rick Shaw, senior warden of
7 the vestry of the Church of the Holy Comforter does hereby
8 attest to the attached constitution as a true and correct
9 constitution of the Church of the Holy Comforter duly amended
10 and adopted by the congregation on January 29, 2013.

11 Q. So, Mr. Acken, is this the most current version of the
12 constitution that governs Holy Comforter?

13 A. Yes, it is.

14 Q. Mr. Acken, does Holy Comforter have to seek permission
15 from the national church to change its constitution?

16 A. No.

17 Q. To your knowledge, has Holy Comforter ever sought
18 permission from the national church to change its
19 constitution?

20 A. No.

21 Q. To your knowledge, has Holy Comforter ever sought
22 permission from the Diocese of South Carolina to change its
23 constitution?

24 A. No.

25 Q. Does Holy Comforter have to seek permission from the

1 Diocese of South Carolina to change its constitution?

2 A. No.

3 Q. Does Holy Comforter's constitution require it to seek
4 permission from any third party?

5 A. No.

6 Q. Mr. Acken, switching gears a little bit. At some point
7 in time the vestry and the parishioners of Holy Comforter
8 concluded they no longer wanted to be in communion with the
9 national church, correct?

10 A. That's correct.

11 Q. When was that?

12 A. It was in the late fall of 2012.

13 Q. Did the vestry vote to declare that it was no longer in
14 union with the national church?

15 A. It did.

16 Q. Mr. Acken, will you please refer to Holy Comforter's
17 Exhibit 17.

18 A. Yes.

19 Q. Do you recognize Exhibit 17?

20 A. I do.

21 Q. What is it?

22 A. Vestry minutes for Tuesday, October 23rd of 2012.

23 Q. Were you present for this vestry meeting?

24 A. I was.

25 Q. Was a quorum present at the vestry meeting?

- 1 A. Yes.
- 2 Q. Did the vestry pass a resolution at this meeting?
- 3 A. They did.
- 4 Q. Mr. Acken, will you please refer to Holy Comforter's
- 5 Exhibit 16.
- 6 A. Yes.
- 7 Q. Do you recognize Holy Comforter's Exhibit 16?
- 8 A. Yes, I do.
- 9 Q. Will you please explain to me what it is.
- 10 A. We were no longer with the Episcopal Church, we stayed
- 11 in fellowship with the diocese, and that the Episcopal Church
- 12 has no authority over our property, either real or personal.
- 13 Q. Will you please flip to the second page of this
- 14 document, Mr. Acken.
- 15 A. Okay.
- 16 Q. Is that your signature at the bottom of the right
- 17 column?
- 18 A. It is.
- 19 Q. Was the parish vote on this resolution unanimous?
- 20 A. Unanimous, absolutely.
- 21 Q. Mr. Acken, did the parish also vote on the decision to
- 22 declare the Holy Comforter is no longer in union with the
- 23 national church?
- 24 A. It did.
- 25 Q. When did that vote occur?

1 A. November the 4th, 2012.

2 Q. Did you hold a special meeting regarding this issue for
3 the parish?

4 A. We did.

5 Q. Who called the special meeting?

6 A. The senior warden.

7 Q. Mr. Acken, will you please refer to Exhibit 20. Do you
8 recognize Exhibit 20?

9 A. Yes, that's the Church of the Holy Comforter 2012
10 special parish meeting Sunday, November the 4th --

11 Q. Is this --

12 A. -- 2012.

13 Q. I'm sorry. Is this an accurate representation of what
14 happened at the November 4th, 2012, special meeting?

15 A. It is.

16 Q. Did you attend this meeting on November 4th, 2012?

17 A. I did.

18 Q. Was a quorum present?

19 A. Yes.

20 Q. Was notice properly given to the congregation for this
21 meeting?

22 A. It was.

23 Q. How?

24 A. It was two consecutive Sundays prior to the meeting, the
25 rector announced it in church, and it was given a one-week

1 letter in writing.

2 Q. In Holy Comforter's Exhibit 20 -- let me flip to it
3 because my eyes aren't good enough to read that screen -- do
4 the minutes reflect -- oh, thank you -- that notice was sent
5 to the parishioners?

6 A. Yes.

7 Q. When does it say notice was sent to the parishioners?

8 A. October 24th, 2012.

9 Q. Mr. Acken, will you please refer to Holy Comforter's
10 Exhibit 19.

11 A. Okay.

12 Q. Do you recognize Holy Comforter's Exhibit 19?

13 A. Yes, it's a letter to the parish from the senior warden.

14 Q. And who was the senior warden at this time?

15 A. Sue McDuffy.

16 Q. And you were at the vestry at this time, correct?

17 A. That's correct.

18 Q. And this letter was sent a week prior to the special
19 meeting, correct?

20 A. Yes, it was.

21 Q. Notice was properly and duly given to the parishioners
22 of the special meeting?

23 A. That's correct.

24 Q. Was a quorum present at the special meeting?

25 A. Yes, it was.

1 Q. How did the parish vote on November 4th, 2012?

2 A. The parish voted, there were 114 qualified votes, 109
3 voted in favor, 5 voted against.

4 Q. Did the parishioners have an opportunity to ask any and
5 all questions they wanted to ask?

6 A. They did.

7 Q. Mr. Acken, will you please refer to Holy Comforter's
8 Exhibit 18. Do you recognize Holy Comforter's Exhibit 18?

9 A. Yes.

10 Q. What is Holy Comforter's Exhibit 18?

11 A. The title is commitment to continue a diocesan
12 relationship, but the exhibit states that we are no longer an
13 Episcopal Church, we fully support the diocese, and the
14 Episcopal Church has no claim to any of our property,
15 personal or real, of the Church of the Holy Comforter.

16 Q. And Holy Comforter's Exhibit 18 is the resolution that
17 was passed by the parish at the special meeting, correct?

18 A. That's correct.

19 Q. Mr. Acken, is Holy Comforter affiliated with the
20 national church?

21 A. No.

22 Q. Does it have any ongoing relationship with the national
23 church?

24 A. No.

25 Q. Is it in any fiduciary relationship with the national

1 church?

2 A. No.

3 Q. Has it ever been in a fiduciary relationship with the
4 national church?

5 A. No.

6 MS. KOSTEL: Objection, Your Honor, these are legal
7 questions.

8 THE COURT: Sustained.

9 MS. DURANT: Fair enough. Well, let me ask, what was
10 the legal question, if I need to go back and rephrase, the
11 fiduciary questions?

12 MS. KOSTEL: Yes.

13 MS. DURANT: Let me take one step back.

14 Q. Mr. Acken, does Holy Comforter have any relationship
15 with the national church?

16 A. No.

17 Q. Does the national church have a vote as to the members
18 of Holy Comforter's vestry?

19 A. No.

20 Q. Does the national church have any veto power as to the
21 members of Holy Comforter's vestry?

22 A. No.

23 Q. Does the national church have any veto power with
24 respect to the corporation of Holy Comforter?

25 A. No.

1 Q. Does the Diocese of South Carolina have a vote as to the
2 members of Holy Comforter's vestry?

3 A. No.

4 Q. Does the Diocese of South Carolina have any veto power
5 as to the members of Holy Comforter's vestry?

6 A. No.

7 Q. Does the Diocese of South Carolina have any veto power
8 with respect to the corporation of Holy Comforter?

9 A. No.

10 Q. Does Holy Comforter have any relationship with an
11 organization known as the Episcopal Church in South Carolina?

12 A. No.

13 Q. Has Holy Comforter ever had any relationship with the
14 Episcopal Church in South Carolina?

15 A. No.

16 Q. And just for clarification, the Episcopal Church in
17 South Carolina is the unincorporated association that
18 Mr. Tisdale represents.

19 A. Yes, I gathered that.

20 Q. Has Holy Comforter participated with Episcopal Church in
21 South Carolina in any fashion?

22 A. No.

23 Q. To your knowledge, did Holy Comforter have any legal
24 counsel about the Dennis canon prior to its passage by the
25 national church?

- 1 A. No.
- 2 Q. Has Holy Comforter used the name Church of the
3 Holy Comforter since its inception?
- 4 A. Yes, in all respects, yes.
- 5 Q. Has Holy Comforter given anyone else permission to use
6 that name?
- 7 A. No.
- 8 Q. Has Holy Comforter given the national church any
9 permission to use its name?
- 10 A. No.
- 11 Q. Has Holy Comforter given the Episcopal Church in South
12 Carolina any permission to use its name?
- 13 A. No.
- 14 Q. Any permission to post its name in the website of the
15 Episcopal Church in South Carolina?
- 16 A. No.
- 17 Q. Are you aware of any money that Holy Comforter has given
18 to the national church?
- 19 A. I am not aware of any money that the Holy Comforter has
20 given to the Episcopal Church.
- 21 Q. Are you aware of any money that Holy Comforter has given
22 to the national church related entities such as the World
23 Relief fund or United Thank Offering?
- 24 A. Not that I'm aware of, no.
- 25 Q. Has Holy Comforter ever instructed the Diocese of South

1 Carolina not to give any money from Holy Comforter to the
2 national church?

3 A. Repeat that question.

4 Q. Has Holy Comforter ever instructed the diocese not to
5 give any money from Holy Comforter to the national church?

6 A. Yes, we have.

7 Q. Are you aware of any money given to Holy Comforter from
8 the national church?

9 A. I'm not aware of any money given to Holy Comforter, and
10 I'm certain that the rector in 1909 would have agreed with
11 me.

12 Q. To your knowledge, has the national church -- you know
13 much more about history than I do, I'll profess to that.

14 To your knowledge, has the national church ever
15 contributed any funds to purchase any of the real or personal
16 property of Holy Comforter?

17 A. No.

18 Q. Has the national church ever contributed any funds to
19 maintain, repair or renovate any of the real property of
20 Holy Comforter?

21 A. No.

22 Q. Who contributed funds to purchase the real property of
23 Holy Comforter?

24 A. The parishioners of the Church of the Holy Comforter or
25 those on behalf of the parishioners of the Church of the

1 Holy Comforter.

2 Q. People donating on behalf of the parishioners?

3 A. Yes.

4 Q. Who contributed funds to maintain, repair or renovate
5 Holy Comforter?

6 A. The parishioners of Holy Comforter or people donating on
7 behalf of the parishioners of the Church of the
8 Holy Comforter.

9 Q. Who has any interest or rights in the property that
10 we've discussed today?

11 A. Church of the Holy Comforter only.

12 Q. Holy Comforter and Holy Comforter alone?

13 A. Absolutely.

14 MS. DURANT: Please answer any questions the Court or
15 other counsel may have for you, Mr. Acken, thank you.

16 THE COURT: We're going to take lunch. Ladies and
17 gentlemen, it's 1:00, and we will reconvene at 2:15.

18 (Lunch recess held.)

19 THE COURT: All right. Cross-examination?

20 MS. DURANT: Your Honor, if I may interrupt just a bit,
21 I've got two housekeeping matters to clean up, if you don't
22 mind.

23 THE COURT: I don't mind.

24 MS. DURANT: And if defense counsel doesn't mind.

25 If I could just affirm or actually confirm the exhibits

1 that have been admitted. So far -- or the exhibits that I
2 have admitted on behalf of Holy Comforter are 1, 2, 3, 3A,
3 3B, 3C, 4, 5, 5A, 6, 6A, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,
4 17, 18, 19, 20, 24, 25, 26, and 27.

5 MR. TISDALE: Correct.

6 MS. KOSTEL: Yes.

7 MS. DURANT: And then one other quick matter, Mr. Sowell
8 pointed this out to me, about our Exhibit 13. I asked
9 Mr. Acken how the parish voted, he said they voted but didn't
10 say how they voted, so if I may ask him that now, Your Honor.

11 Q. Mr. Acken, if you'll please refer to Holy Comforter's
12 Exhibit 13, how did the parish vote with respect to this
13 resolution?

14 A. The resolution, we voted in favor of it.

15 MS. DURANT: That's all I have, Your Honor, thank you
16 very much.

17 THE COURT: Thank you. All right. Now
18 cross-examination.

19 CROSS-EXAMINATION BY MS. KOSTEL:

20 Q. Good afternoon, Mr. Acken.

21 A. Good afternoon.

22 Q. You testified about Holy Comforter's constitution,
23 correct?

24 A. That's correct.

25 Q. Okay. Now, could I ask you to turn to that document

1 Q. Yes, and if you look at page 56.

2 A. Okay. It says I --

3 Q. At the bottom of that page, Q -- in the boldface in the
4 Q is the questioner, and the A's are the responses, so why
5 don't we go through that. I'll ask you the questions, and
6 you can read the responses.

7 A. Sure.

8 Q. Okay. So the question was, and the major reasons that
9 the parish wanted no longer to be in the communion with
10 the -- to be in communion with the national Episcopal Church
11 are what?

12 MR. RUNYAN: Your Honor, I'm interposing an objection
13 here. The nonprofit act does not require that a corporation
14 have a reason to do what it does in amending its bylaws.
15 There's no requirement they list the reason they amend the
16 bylaws. This question is deliberately designed to cross the
17 line into a reason that the Court's previously ruled on, and
18 I don't see the relevance of it.

19 THE COURT: Well, first of all, you are correct, it
20 doesn't require a reason. You don't have to justify a reason
21 for the determination to change the governance under the act
22 that you've just mentioned, that I am aware of, and we'll
23 talk about that, but I tend to agree with what you say. The
24 problem is, though, as I sit here and I try to reflect on the
25 testimony that I have already heard and whether or not

1 impeachment is appropriate in terms of the validity with
2 which this witness testifies, if I'm anywhere, that's where I
3 am. And that would be the sole reason that I would hear it.
4 The problem, though, is that I don't think he's done anything
5 other than refer to documents, which is a little bit unique,
6 if that makes sense what I'm saying. In other words, he
7 hasn't really testified anything other than here's a
8 document, here's a document, here's a document, here's a
9 document, this is what it says, this is what it says, so the
10 impeachment value is even marginal, if that makes sense, but
11 that's where we are. And the only reason this would have any
12 relevance at this point would be as to impeachment with
13 regards to just plain old garden variety impeachment, and you
14 may proceed.

15 MS. KOSTEL: Should I reread the question?

16 THE COURT: No, he's got it.

17 Q. Okay. So I've read that question, Mr. Acken, at the
18 bottom of 56, so now if you could read the answer.

19 A. You want me to read the answer?

20 Q. The answer that you gave on Monday, yes.

21 A. We felt they had left us. Well, primarily, they seemed
22 to be moving away from the idea that Jesus Christ is the only
23 path to salvation, which we believe, number one. And that
24 that was the major issue among the parishioners. The
25 Episcopal Church was moving away from that doctrine, which we

1 felt was -- that's the major reason, major (as read).

2 Q. Well, let me just interrupt you. Then the question was,
3 that's the major reason.

4 A. That's the major reason that the parishioners, the
5 parishioners were pushing the vestry.

6 Q. Right. I'm just trying to --

7 A. I understand.

8 Q. -- read the transcript correctly.

9 A. Certainly, certainly.

10 Q. And that's the major reason came from the questioner.

11 A. Okay.

12 Q. And then your answer to the question, that's the major
13 reason, and then go ahead, please.

14 A. And there was also the parishioners and I'm just
15 saying -- I'm just telling you that the parishioners were
16 telling us on the vestry that they were also concerned that
17 the Episcopal Church seemed to be moving away from the Christ
18 teaching that marriage is between a man and a woman. These
19 are the two key drivers behind the parish dissatisfaction (as
20 read).

21 MS. KOSTEL: Okay. Thank you. I don't have anything
22 further.

23 THE COURT: All right. Now, yes, sir, Mr. Tisdale.

24 MR. TISDALE: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 Call your next witness, please.

2 (Plaintiff's Exhibits RS-1, RS-6 through 11 and RS-13
3 through RS-20 premarked for identification.)

4 MR. BRYAN: Judy Casper McMeekin.

5 JUDY CASPER McMEEKIN,
6 being first duly sworn, testified as follows:

7 THE COURT: And would you state your full name for the
8 record and spell your last name.

9 THE WITNESS: Judy Casper McMeekin, M-C-M-E-E-K-I-N.

10 THE COURT: Your witness.

11 MR. BRYAN: Thank you, Your Honor. For the record, I'm
12 William A. Bryan, and I represent the Church of the
13 Resurrection, Surfside.

14 Your Honor, Church of the Resurrection moves for the
15 admission without objection of Exhibits marked RS-1, RS-6
16 through 11 inclusive; RS-13 through 20 inclusive.

17 THE COURT: Any objection?

18 MR. TISDALE: No objection, Your Honor..

19 MS. KOSTEL: No objection.

20 THE COURT: Very well, so admitted.

21 MR. BRYAN: Thank you.

22 (Plaintiff's Exhibits RS-1, RS-6 through 11 and RS-13
23 through RS-20 admitted into evidence.)

24 DIRECT EXAMINATION BY MR. BRYAN:

25 Q. Ms. McMeekin, where do you live?

1 A. Surfside Beach.

2 Q. Are you employed?

3 A. Yes, I am.

4 Q. Doing what?

5 A. I'm the controller for a strategic marketing firm in
6 Durham, North Carolina.

7 Q. Okay. Are you a member of a church?

8 A. I am a member of the Church of the Resurrection.

9 Q. How long have you been a member?

10 A. Since 1983.

11 Q. Have you held since that time any positions of
12 leadership in the Church of the Resurrection, Surfside?

13 A. Yes, sir.

14 Q. Would you tell the Court what roles and, either as a
15 director or vestry person or otherwise, what you've done at
16 the Church of the Resurrection.

17 A. I've served on the vestry beginning in 1999 for several
18 years; I've also served as treasurer, which was an officer
19 position, for an additional five or six years; I served a
20 second term as vestry beginning in 2010 through 2013 as a
21 vestry member. In that role I served as junior warden and
22 senior warden.

23 Q. And can you remember the date or the year or years you
24 served as junior warden?

25 A. I served as junior warden in 2011.

1 Q. And the year or years you served as senior warden?

2 A. I served as senior warden in 2012 and 2013.

3 Q. And, Ms. McMeekin, we're going to talk about some
4 documents that have been already admitted into evidence
5 having to do with the corporate structure and the
6 organization of the Church of the Resurrection, Surfside.
7 Okay?

8 A. Okay.

9 Q. And were you either the junior warden or the senior
10 warden during the period of time that the documents were
11 revised?

12 A. Yes, sir, I was.

13 Q. We're going to get into the details in a minute. Is the
14 Church of the Resurrection incorporated, Ms. McMeekin?

15 A. The Church of the Resurrection is incorporated.

16 Q. Now, you've got with you up there a duplicate set of the
17 exhibits, I believe, do you not?

18 A. I do.

19 Q. I want you to take a look -- sometimes I may say RS-1 or
20 I may just say a number, but all these exhibits we're going
21 to be looking at will have the letter prefix RS and then a
22 number. So if I refer to -- the number's the key thing.

23 So I want you to look at RS-1.

24 A. Okay.

25 Q. You got it?

- 1 A. I do.
- 2 Q. What is that?
- 3 A. That is our articles of incorporation.
- 4 Q. When was the Church of the Resurrection, Surfside
- 5 incorporated?
- 6 A. July the 12th, 1971.
- 7 Q. Do you know if the church had been in operation as an
- 8 unincorporated association prior to that?
- 9 A. Yes, it had been.
- 10 Q. Since when?
- 11 A. Since 1958.
- 12 Q. All right. Has the Church of the Resurrection,
- 13 Surfside, now known as Surfside, operated continuously as a
- 14 corporate entity, a nonprofit corporate entity, in the state
- 15 of South Carolina since the date of this incorporation shown
- 16 on Exhibit 1?
- 17 A. Yes, sir.
- 18 Q. Up until the present time?
- 19 A. Yes.
- 20 Q. And continuing?
- 21 A. Yes.
- 22 Q. All right. Take a look, if you would, and tell me if
- 23 from the articles you can discern who the directors of the
- 24 corporation were and the officers of the corporation were.
- 25 And you don't need to give names, I want titles.

1 A. In the fifth section it states managers, trustees,
2 directors, and other officers as the senior warden, junior
3 warden, treasurer, secretary, and priest in charge.

4 Q. Okay. And of those designations, which ones are
5 officers?

6 A. All four -- all the first four are the officers, junior
7 warden, senior warden, treasurer, and secretary.

8 Q. All right. And is that true today?

9 A. It is true today.

10 Q. And to the best of your knowledge, has that been true
11 since the first institution of this church as a corporation
12 in 1971?

13 A. Yes, sir.

14 Q. And I'll ask you again, referring to Exhibit 1, if you
15 can tell me what the purpose -- you can summarize if you
16 would like -- the purpose of the corporation was when it was
17 first started.

18 A. The purpose of the corporation was the operation as a
19 mission organized and subject to the canons of the Protestant
20 Episcopal Church in the Diocese of South Carolina.

21 Q. All right. And is there any reference in the articles
22 of incorporation of the Church of the Resurrection, Surfside
23 to what's been called in this Court the national church?

24 A. No, sir, there is not.

25 Q. All right. Is there any requirement in these articles

1 of incorporation to seek approval of either the Diocese of
2 South Carolina or the national church to amend the articles
3 of incorporation?

4 A. No, sir.

5 Q. Any restriction at all in amendment of these articles of
6 incorporation shown on these articles of incorporation?

7 A. No, sir.

8 Q. Was there a time that the Church of the Resurrection,
9 that you know of, determined to amend the articles of
10 incorporation?

11 A. Yes, sir.

12 Q. If you would now, I want you to turn to
13 Resurrection Exhibit, I think it would be 8, Ms. McMeekin.
14 Have you got it?

15 A. Yes.

16 Q. And what is Exhibit 8, Ms. McMeekin?

17 A. These are minutes of the regular vestry meeting held on
18 November the 21st, 2011.

19 Q. And with regard-- well, first of all, did you attend
20 that meeting?

21 A. Yes, sir.

22 Q. And during that time in 2011, I believe from your
23 testimony, you would have been the junior warden?

24 A. Yes, sir.

25 Q. All right. While I'm thinking about it, Ms. McMeekin,

1 with regard to all the minutes in these exhibits that have
2 been offered into evidence, were you in attendance at all of
3 them --

4 A. Yes, sir.

5 Q. -- all those meetings --

6 A. Yes, sir.

7 Q. -- whether they were parish meetings or vestry meetings?

8 A. Yes, I was.

9 Q. Personally present?

10 A. Yes.

11 Q. Now, with regard to this set of minutes for this
12 meeting, was a quorum present? And I know that may be a
13 little silly to ask, but was a quorum present?

14 A. Yes, it was.

15 Q. And was notice sent or was notice necessary?

16 A. Notice was not necessary. It was a scheduled meeting.

17 Q. And when's a regular scheduled meeting set for in 2011
18 for the vestry?

19 A. It was on November the 21st, the third Monday of the
20 month.

21 Q. All right. Did all of the vestry members participate in
22 this meeting either in person or subsequently by signing a
23 document?

24 A. Yes, sir.

25 Q. And is -- I refer to the last two pages of that exhibit

1 entitled Ratification Consent; do you see that?

2 A. Yes, sir.

3 Q. And there are two there, are there not?

4 A. Yes.

5 Q. All right. Were those the two members of the vestry
6 that did not attend?

7 A. They were -- one of them participated by telephone, but
8 she was not in attendance.

9 Q. When you say she, that would be Ms. Rinken?

10 A. Ms. Rinken.

11 Q. So Mr. Antonucci signed and agreed to the meeting of
12 what took place?

13 A. Yes, sir.

14 Q. Now, let's talk about what did take place. What, with
15 regards to the amendment of the articles of incorporation,
16 took place at that meeting?

17 A. We proposed a resolution to amend the articles of
18 incorporation in three places, first to change our name, to
19 change our address, and to change our purpose statement.

20 Q. All right. And what was the name going to go from and
21 to?

22 A. The name was being changed from the Episcopal Church of
23 the Resurrection to the Church of the Resurrection.

24 Q. And the headquarters, can you just tell why that was
25 being changed, the headquarters was being changed?

1 A. We had moved into a new building. We had left our first
2 building on Pine Street in Surfside Beach and moved to
3 Highway 17 bypass.

4 Q. How long had it been since the church moved its building
5 from -- approximately, you don't need to look it up -- from
6 the Pine Drive church over to the one on Highway 17 bypass?

7 A. It had been about 11 years.

8 Q. Oh, but the articles never had been changed?

9 A. No, they had not.

10 Q. And with regard to the purpose, the purpose was in
11 Article 4th you said of the articles of incorporation?

12 A. Yes, sir, yes.

13 Q. And was that completely replaced with this language?

14 A. It was.

15 Q. And what was the language put in place of the new
16 purpose for the Church of the Resurrection?

17 A. The purpose of the said corporation is to transform
18 lives by the resurrected power of Jesus Christ.

19 Q. All right. What was the vote of the vestry on the
20 resolution, that resolution containing those three items?

21 A. It was unanimous.

22 Q. Did the vestry or the officers then put these same
23 resolutions before the membership of the parish?

24 A. Yes, they did.

25 Q. We'll talk about that. I'm going to call your attention

- 1 and ask you to look at RS-9, that exhibit, please.
- 2 A. Okay.
- 3 Q. Do you see it?
- 4 A. Yes, sir.
- 5 Q. You can either look on that screen or look at your
- 6 paper, whatever's easier. Have you got it?
- 7 A. Yes, sir.
- 8 Q. Ms. McMeekin, was proper notice given of this meeting?
- 9 A. Yes, it was.
- 10 Q. How was notice given; do you remember that?
- 11 A. It was given by mail with ten days' notice.
- 12 Q. And were the resolutions also provided with the notice?
- 13 A. Yes, they were.
- 14 Q. Was a quorum present at this meeting of the
- 15 congregation?
- 16 A. A quorum was present.
- 17 Q. Do you know off the top of your head what the quorum
- 18 requirement was at that time?
- 19 A. 25 percent of communicants.
- 20 Q. And were the three resolutions as proposed by the
- 21 vestry, were they exactly the same that came before the
- 22 entire parish?
- 23 A. Yes, they were.
- 24 Q. And what was the result of the vote on the adoption of
- 25 that resolution of those three items that you've described

1 earlier?

2 A. The motion passed.

3 Q. And can you tell me what the vote was?

4 A. I can. 176 in favor and 3 opposed.

5 Q. All right. Was there a document filed with the
6 Secretary of State to memorialize those changes or at least
7 some of those changes, Ms. McMeekin?

8 A. Yes, there was.

9 Q. Are you looking at RS-10, Ms. McMeekin?

10 A. Yes, sir.

11 Q. Exhibit RS-10, my copy is missing a second page, I
12 think, Ms. McMeekin, but is it a three-page document?

13 A. Yes, it is.

14 Q. And who is it signed by? That's what I'm missing is the
15 signature page.

16 A. Angelo Antonucci.

17 Q. And what was his...

18 A. Senior warden.

19 Q. And the other person that signed? No other person
20 signed. I can see it.

21 A. No, sir.

22 Q. Okay. Thank you.

23 And what amendments were filed with the Secretary of
24 State at that time? Were all three filed?

25 A. No, sir, only two of the three were filed.

1 Q. And which two?

2 A. The address change and the purpose change.

3 Q. All right. And could you tell us just briefly, why
4 didn't the name change get filed?

5 A. When we attempted to file the name change, we discovered
6 that another church in the state already has the name Church
7 of the Resurrection.

8 Q. All right. So we'll get to that in a minute.

9 Now, Ms. McMeekin, so we can kind of get a frame of
10 reference, I want you to look at RS-11 -- and I guess before,
11 this may be somewhat redundant, but I'm going to back up to
12 that articles of amendment we just looked at, which was
13 Exhibit 10. Okay?

14 Is the purpose clause that's filed with the Secretary of
15 State exactly as it was adopted at the vestry meeting you
16 testified to and the congregational meeting you just
17 testified to?

18 A. Yes, sir.

19 Q. And the same with the headquarters, that's the correct
20 address?

21 A. That's the correct address.

22 Q. Now, is there any reference in that amendment to
23 anything to do with the Diocese of South Carolina?

24 A. No, sir.

25 Q. Or the national church?

1 A. No, sir.

2 Q. Now let's go to Exhibit 11 and tell me what that is,
3 Ms. McMeekin.

4 A. That is a copy of the bylaws for the Church of the
5 Resurrection that were adopted in 1983.

6 Q. All right. Were those the bylaws that were in effect
7 during the time we're now talking about, 2011, 2012?

8 A. Yes, sir.

9 Q. Okay. Would you tell us from looking at these bylaws
10 what the amendment procedure was to amend these bylaws?

11 A. The amendment procedure was to present the proposed
12 changes at an annual meeting and then also at a subsequent
13 meeting, a subsequent annual meeting for vote.

14 Q. So it took -- tell the Court what an annual meeting is
15 for purposes of giving her a frame of reference.

16 A. Our annual meeting is held the second Sunday in January
17 or at some other time appointed by the vestry with no less
18 than one week's notice.

19 Q. So it's a yearly --

20 A. A one-time-a-year annual meeting.

21 Q. So in effect, it takes a year to amend these bylaws?

22 A. Yes, sir.

23 Q. All right. Is there any restriction in these bylaws
24 about amending them?

25 A. No, sir.

1 Q. Is there any third-party approval required as contained
2 in these bylaws?

3 A. No, sir.

4 Q. Did the Church of the Resurrection seek any third-party
5 approval from either the national church or the Diocese of
6 South Carolina before it moved forward with amending these
7 bylaws?

8 A. No, sir.

9 Q. Briefly, Ms. McMeekin, if you refer to the bylaws,
10 what's the notice requirement for the annual meeting?

11 A. If it's not on the second Sunday in January, it's one
12 week's notice.

13 Q. All right. And with regard to the annual meetings that
14 took place and any special meetings, was that the notice
15 period used or was it more or less?

16 A. It was more.

17 Q. What was it?

18 A. Our general procedure was to give a minimum of ten days'
19 notice.

20 Q. And what kind of notice?

21 A. Mail.

22 Q. Okay. Also, did the parish use any other means to
23 transmit or communicate to its members that an annual meeting
24 was to take place?

25 A. It was announced during services and in service leaflets

1 and any other correspondence that went out such as
2 newsletters.

3 Q. And with regard to these minutes that we've so far
4 discussed and we're going to discuss, is that the process of
5 notice that was given?

6 A. Yes, sir.

7 Q. Okay. Did Church of the Resurrection move to amend
8 these 1983 bylaws?

9 A. Yes, sir, we did.

10 Q. Okay. Let's look at Resurrection Exhibit 13, please,
11 ma'am. And just tell us briefly, if you would, what is this?

12 A. These are minutes of the annual parish meeting held
13 January the 22nd -- excuse me -- January the 22nd, 2012.

14 Q. All right.

15 MR. BRYAN: I'm going to be redundant, but can't help
16 myself, Judge.

17 Q. Was notice given?

18 A. Yes, sir.

19 Q. Was a quorum present?

20 A. Yes, sir.

21 Q. And let's talk about what took place at the meeting,
22 Ms. McMeekin. What was to take place at the meeting with
23 regard to the bylaws?

24 A. We were to present the bylaws and vote on them.

25 Q. Okay. Were they presented?

- 1 A. They were.
- 2 Q. Were they voted on?
- 3 A. Yes, sir.
- 4 Q. And what was the result of the vote to amend the bylaws?
- 5 A. The result was in favor. The votes cast in favor were
- 6 129; those opposed were 1.
- 7 Q. All right. And, Ms. McMeekin, I'm going to ask you for
- 8 just for -- not having a lot of documents, we've only got the
- 9 final bylaws in evidence, but I want you to look over at
- 10 Exhibit 18, so jump ahead with me a second.
- 11 A. Okay.
- 12 Q. And I want you to tell the Court whether or not that
- 13 document is the exact document that was submitted at the
- 14 parish meeting on January 22nd, 2012, and voted on at the
- 15 parish meeting?
- 16 A. Yes, sir, it is.
- 17 Q. Except it wasn't signed yet, was it?
- 18 A. Correct.
- 19 Q. All right. And while I'm thinking about it, was that
- 20 document sent out in the written notice to every member?
- 21 A. Yes, it was.
- 22 Q. All right. I'm going to move off the bylaws a moment
- 23 and I'm going to pick back up. I'm going chronologically, if
- 24 you can follow. And I'm going to go now to catching that
- 25 name change. Okay?

1 So we're going to look at RS-14. Tell the Court what
2 that is, please, ma'am.

3 A. That is the minutes of a special meeting of the parish.

4 Q. And with regards -- just -- you don't need to go into
5 the other business, not relevant to the Court's matters
6 today, but if you would tell the Court what took place at the
7 meeting with regard to the name change glitch that occurred
8 with another entity having the Church of the Resurrection
9 name?

10 A. There was a motion that we change our name to the Church
11 of the Resurrection, Surfside.

12 Q. Add Surfside to Church of the Resurrection?

13 A. Correct.

14 Q. Was it voted on?

15 A. It was voted on.

16 Q. What was the result of the vote?

17 A. It was approved and the result of the vote was 98 votes
18 in favor; 1 opposed; 1 abstention.

19 Q. All right. Was a quorum present at the meeting?

20 A. A quorum was present.

21 Q. Was proper notice given of this special meeting?

22 A. It was given. And please forgive me, I gave you the
23 wrong totals there.

24 Q. All right.

25 A. The vote in favor of the resolution was, votes in favor,

- 1 96; votes opposed, 4; no abstentions.
- 2 Q. All right. And I'm not sure if I asked you, but just
- 3 specifically with regard to this meeting, I think you just
- 4 said notice was given?
- 5 A. Yes, it was.
- 6 Q. Just like you described, by mail with minimum of ten
- 7 days?
- 8 A. That's right.
- 9 Q. Let's go to RS-15, Ms. McMeekin. Have you got it?
- 10 A. Yes, sir.
- 11 Q. What is that?
- 12 A. That is the amended articles of incorporation with our
- 13 name change.
- 14 Q. And the name changed to what, Ms. McMeekin?
- 15 A. The Church of the Resurrection, Surfside.
- 16 Q. And did you sign that article's amendment?
- 17 A. Yes, I did.
- 18 Q. And did it get filed with the Secretary of State?
- 19 A. Yes, it did.
- 20 Q. And is that the name of the church today?
- 21 A. It is.
- 22 Q. Now, Ms. McMeekin, I would ask you to look at RS-16.
- 23 A. Yes, sir.
- 24 Q. What is represented in Exhibit RS-16?
- 25 A. It's the minutes of the special vestry meeting held on

- 1 January the 3rd, 2013.
- 2 Q. Were you present?
- 3 A. Yes, sir.
- 4 Q. Was a quorum present?
- 5 A. Yes, sir.
- 6 Q. Was everybody there?
- 7 A. Yes, sir, everybody was there.
- 8 Q. Was notice of that meeting given?
- 9 A. Notice was given.
- 10 Q. Did you get the notice?
- 11 A. I did.
- 12 Q. And what resolutions were considered by the vestry at
- 13 that special meeting, Ms. McMeekin, with regard to the issues
- 14 in this Court?
- 15 A. Three resolutions were offered, the first was to ratify
- 16 the name change that had been approved at the parish meeting;
- 17 the second was --
- 18 Q. Can I stop you?
- 19 A. Yes.
- 20 Q. I know I asked you a question and I'm stopping you, but
- 21 let's go one at a time.
- 22 A. Okay.
- 23 Q. So with regard to the name change ratification, was that
- 24 voted on separately or as a group with the other two?
- 25 A. These were voted on separately.

1 Q. All right. Did the name change get voted on by the
2 entire vestry on that day?

3 A. It did.

4 Q. And did it -- how did it result?

5 A. It passed unanimously.

6 Q. Okay. Now tell me what No. 2, Resolution 2 was.

7 A. The second resolution was to adopt the proposed bylaws,
8 subject to the approval at the annual parish meeting.

9 Q. Okay. And the form of those bylaws that the vestry
10 considered in Resolution 2, I want to ask you again if
11 that -- except for the signature, is it identical in form and
12 content to what's contained in Exhibit RS-18?

13 A. It is.

14 Q. All right. And how did the vestry vote on the proposed
15 bylaws?

16 A. Passed unanimously.

17 Q. All right. And next, this -- and other parishes, I
18 think, had similar resolutions. Now we've got a resolution,
19 No. 3, tell us what that is.

20 A. This resolution clarified the vestry's position with
21 relationship to the national church and the Diocese of South
22 Carolina.

23 Q. And the date of this meeting is when?

24 A. January the 3rd, 2013.

25 Q. And what action did the vestry take on this resolution?

1 A. The vestry passed it unanimously.

2 Q. Now, Ms. McMeekin, are copies of the resolution attached
3 to that exhibit? It might be a little bit hard to read,
4 unfortunately.

5 A. Yes, sir.

6 Q. And tell me if you signed each of those resolutions.

7 A. I signed all three of them along with the secretary of
8 the vestry, our clerk.

9 Q. All right. And are these three resolutions in the exact
10 form as shown in the original records of the Church of the
11 Resurrection, Surfside?

12 A. Yes, sir.

13 Q. Now, Ms. McMeekin, let's go back to the bylaws. I want
14 you to turn to RS Exhibit 17. Got it?

15 A. Yes, sir.

16 Q. And what is that?

17 A. Those are the minutes of the annual parish meeting held
18 January the 13th, 2013.

19 Q. And with regard to the bylaws -- that's all I care about
20 in this piece of evidence -- what happened?

21 A. There was a motion to accept the bylaws as presented and
22 that motion carried.

23 Q. And of the bylaws that were considered by the
24 congregation on January 13, 2013, in the exact same form
25 except unsigned, as shown in Exhibit RS-18 --

- 1 A. Yes, sir.
- 2 Q. And it had been previously submitted to the congregation
3 the year prior, January of '12?
- 4 A. Yes.
- 5 Q. And had been voted on just a week or so before by the
6 vestry?
- 7 A. Correct.
- 8 Q. Same form?
- 9 A. Yes.
- 10 Q. And you said the results of the vote; did you tell us
11 that?
- 12 A. Not yet.
- 13 Q. All right.
- 14 A. In favor, 146; opposed, 2; with 10 abstentions.
- 15 Q. Was a quorum present?
- 16 A. A quorum was present.
- 17 Q. And was notice of that meeting given as you've described
18 earlier?
- 19 A. Yes.
- 20 Q. And was a copy of that same set of bylaws sent again to
21 the members with their notice?
- 22 A. Yes, sir.
- 23 Q. Any reference in those new bylaws to the national
24 church, the defendant, the national church?
- 25 A. There is no reference.

1 Q. Any reference in those bylaws to the plaintiff, Diocese
2 of South Carolina?

3 A. No, sir, there is no reference.

4 Q. All of that was removed from the 1983 bylaws --

5 A. Yes, sir.

6 Q. -- any references?

7 A. Yes.

8 Q. Other changes were made as well?

9 A. Yes, it was a complete revision.

10 Q. Ms. McMeekin, with now the resolution of the vestry that
11 we talked about in Exhibit RS-16, that is the third
12 resolution, does that third resolution essentially contain
13 the link between the Church of the Resurrection, Surfside and
14 the Diocese of South Carolina, the plaintiff, Diocese of
15 South Carolina?

16 A. It does.

17 Q. All right. Ms. McMeekin, I want to ask you about the
18 property of the Church of the Resurrection that's in issue in
19 this case, so we're going to go backwards. Okay?

20 A. Okay.

21 Q. Look at number RS-6, if you would, please, ma'am.

22 A. Okay.

23 Q. Got it? Do you know what that is?

24 A. Yes, sir, it's the deed to our property on bypass 17
25 where the parish building is located.

1 Q. Do you know who the grantor, I guess I should say, was?

2 A. The grantor was Ruth Gaul.

3 Q. And describe her connection, if any, to the Church of
4 the Resurrection, Surfside.

5 A. Long-term parishioner.

6 Q. Did she give this property to the church?

7 A. Yes, sir.

8 Q. When I say the church, I mean the Church of the
9 Resurrection, Surfside?

10 A. Yes, sir.

11 Q. How much property did she give to the Church of the
12 Resurrection, Surfside?

13 A. Seven acres.

14 Q. Was the seven acres raw land or was there some building
15 on it?

16 A. It was raw land.

17 Q. Did the Church of the Resurrection build any buildings
18 on it or place any buildings on that property?

19 A. We built a building on it and two buildings have been
20 placed on it.

21 MR. BRYAN: Could we have the photographs?

22 Q. Just for identification and reference now, I want you to
23 tell the Court what that photograph up on the screen is right
24 now.

25 A. That's a photograph of our parish building.

1 Q. All right. There's another photograph.

2 A. That's the inside of our -- that's the nave of the
3 church.

4 Q. All right. And then another photograph?

5 A. That's the disciple house.

6 Q. And is that located on the same set of --

7 A. Excuse me, that one's the youth building.

8 Q. Youth building.

9 Is that on the same seven-acre site on that Gaul deed I
10 just talked about?

11 A. Yes, sir.

12 Q. And what -- we've got another picture. What's that?

13 A. That is the disciple house.

14 Q. All right. And is that on the same seven acres that
15 Ms. Gaul gave to the --

16 A. Yes, it is.

17 Q. -- Church of the Resurrection?

18 A. Yes, it is.

19 Q. How did the Church of the Resurrection get the money to
20 build the buildings?

21 A. Through donations by parishioners and a loan.

22 Q. All right. Does the church still owe some money on it?

23 A. Yes, sir.

24 Q. Did the national church give the Church of the
25 Resurrection any money to build any of those three buildings?

1 A. No, sir.

2 Q. Did the national church give Resurrection any money to
3 buy any of the personal property and contents of any of those
4 three buildings?

5 A. No, sir.

6 Q. I'm going to ask you to look now at a deed marked RS-7.

7 A. Okay.

8 Q. What is that?

9 A. That's the deed that represents the purchase of our
10 rectory in Deerfield Plantation.

11 Q. And does a rectory just mean a house --

12 A. Yes, it does.

13 Q. -- where a minister lives?

14 A. Yes.

15 Q. Priest, okay.

16 Does Resurrection still own that?

17 A. It does.

18 Q. Did the national church give Resurrection any money to
19 buy that property?

20 A. No, sir.

21 Q. Does Resurrection have -- have these deeds been changed,
22 anything been sold --

23 A. No, sir.

24 Q. -- of these?

25 Okay. Is this all the property, to your knowledge, that

1 Resurrection owns?

2 A. Yes, it is.

3 Q. Has Resurrection or any members of Resurrection, any
4 officers of Resurrection, any board members of Resurrection,
5 signed any document to place any trust on either of these two
6 properties --

7 A. No, sir.

8 Q. -- in favor of anybody?

9 A. No, sir.

10 Q. Any entity?

11 A. No, sir.

12 Q. Any other entity other than the Church of the
13 Resurrection, Surfside?

14 A. That's right, no, sir.

15 Q. Now, let's look at the back of the exhibits. We're
16 going to flip to the end, and I call your attention to RS-19.

17 A. Okay.

18 Q. What's that?

19 A. That is the quitclaim deed given by the Protestant
20 Episcopal Church in the Diocese of South Carolina to the
21 Episcopal Church of the Resurrection.

22 Q. All right. And what's Exhibit 20, RS-20, Ms. McMeekin?

23 A. RS-20 is also a quitclaim deed given by the Right
24 Reverend Mark Lawrence, Bishop of the Episcopal Diocese of
25 South Carolina.

1 Q. Do you know if Resurrection asked the diocese for either
2 of these two deeds?

3 A. I believe that Resurrection did request a quitclaim
4 deed.

5 Q. Did they request both of them, one of them, do you know?

6 A. No, sir, just one.

7 Q. All right. Did you have any contact with the diocese
8 about that?

9 A. No, sir.

10 Q. Do you know anything about it?

11 A. I was aware that we received them.

12 Q. All right. And are you aware that they have been filed?

13 A. Yes, sir.

14 Q. It shows on the document, doesn't it?

15 A. Yes, it does.

16 Q. At this time, Ms. McMeekin, does the Church of the
17 Resurrection, Surfside have any relationship with the
18 defendant, the national church?

19 A. We do not.

20 Q. At this time, Ms. McMeekin, or at any time has the
21 Church of the Resurrection, Surfside had any connection with
22 the defendant, the Episcopal Church in South Carolina?

23 A. Yes. I'm sorry, in South -- I'm sorry --

24 Q. The defendant.

25 A. -- the other -- the other Episcopal --

1 Q. Yeah, there's a defendant --

2 A. Please, excuse me.

3 Q. -- called the Episcopal Church in South Carolina?

4 A. No, sir.

5 Q. Do you understand my question?

6 A. I do understand your question --

7 Q. All right.

8 A. -- and we do not.

9 Q. Has there ever been a connection or relationship between
10 the unincorporated association known as the defendant, the
11 Episcopal Church in South Carolina --

12 A. No.

13 Q. -- and Resurrection?

14 A. No.

15 Q. Has the Church of the Resurrection ever elected any
16 delegates to attend any convention of the defendant, the
17 Episcopal Church in South Carolina?

18 A. No, sir.

19 Q. Has the Church of the Resurrection ever authorized any
20 of its members, directors, officers, anybody to attend on
21 behalf of Resurrection any function of the defendant, the
22 Episcopal Church in South Carolina?

23 A. No, sir.

24 Q. Has the Church of the Resurrection ever authorized the
25 defendant the Episcopal Church in South Carolina to use the

1 name or any symbol or any photograph or any representation of
2 Church of the Resurrection, Surfside or its organization or
3 its property?

4 A. No, sir.

5 Q. And that question would include any mark, logo, seal;
6 same question.

7 A. That's correct.

8 Q. None?

9 A. None.

10 Q. Nothing. Do you know approximately how many members
11 there are at the Church of the Resurrection today?

12 A. We have about 350.

13 MR. BRYAN: That's all the questions I have,
14 Ms. McMeekin. The lawyers for the defendants will have some.
15 Thank you.

16 THE COURT: All right. Counsel?

17 MS. KOSTEL: Thank you, Your Honor.

18 THE COURT: Yes.

19 CROSS-EXAMINATION BY MS. KOSTEL:

20 Q. Good afternoon, Ms. McMeekin.

21 A. Good afternoon.

22 Q. My name is Mary Kostel. Just a couple questions to
23 follow up on your testimony.

24 You testified -- you said no when asked did the national
25 church give any money to build any of the church's buildings

1 MR. TISDALE: Excuse me just one second.

2 THE COURT: Oh, maybe you do.

3 Q. Just one more question, Ms. McMeekin. Why did the
4 parish change its name as you testified?

5 A. We were making changes and we are generally known in our
6 community as the Church of the Resurrection, we changed it to
7 clarify how we commonly call ourselves.

8 Q. And before the name change, did it contain the word
9 Episcopal?

10 A. It certainly did.

11 Q. Why did you remove that name?

12 A. We removed the name, as I said, to clarify how we were
13 perceived in the community, which is the Church of the
14 Resurrection.

15 MR. TISDALE: All right. Thank you.

16 Thank you, Your Honor.

17 THE COURT: All right. Redirect?

18 MS. KOSTEL: Your Honor, I'm sorry, Mr. Tisdale has
19 asked me to finish up.

20 THE COURT: Oh, okay, I'm sorry. I thought you already
21 had asked questions.

22 MS. KOSTEL: I did, and I was trying to pass some to
23 Mr. Tisdale. It's up to you, Your Honor.

24 THE COURT: Okay.

25 MS. KOSTEL: It might be faster.

1 Q. Okay. And on the last page, Ms. McMeekin, Article 9,
2 Section 1?

3 A. Any article or part of any article or these bylaws which
4 may be in conflict with the constitution and canons of the
5 Diocese of South Carolina or with the Protestant Episcopal
6 Church in the United States are void.

7 MS. KOSTEL: Thank you.

8 THE COURT: All right. Any redirect?

9 MR BRYAN: No, Your Honor, amen.

10 THE COURT: All right. You may come down.

11 (Recess held.)

12 (Plaintiff's Exhibits R-1 through R-26 premarked for
13 identification.)

14 MR. HORGER: Your Honor, for the record, I'm Bob Horger.
15 I represent the Redeemer. We'd call our first witness,
16 Julius P. Thompson.

17 JULIUS PINCKNEY THOMPSON, III,
18 being first duly sworn, testified as follows:

19 MR. HORGER: I understand from the defendants -- we have
20 26 exhibits, Your Honor, and there are no objection to any of
21 the exhibits.

22 MR. TISDALE: No objection.

23 MS. KOSTEL: No objection.

24 THE COURT: Thank you. And how have you designated
25 them?

1 MR. HORGER: They're all R-1 through 26.

2 THE COURT: Okay. Thank you. In evidence without
3 objection, 1 through 26.

4 MR. HORGER: Thank you, ma'am.

5 (Plaintiff's Exhibits R-1 through R-26 admitted into
6 evidence.)

7 DIRECT EXAMINATION BY MR. HORGER:

8 Q. Mr. Thompson, where do you live?

9 A. Holly Hill, South Carolina.

10 Q. And what do you do for a living?

11 A. I'm a farmer.

12 Q. What is your educational background?

13 A. I have a bachelor of science in agronomy from
14 Clemson University.

15 Q. Are you a member of the Church of the Redeemer?

16 A. I am.

17 Q. How long have you been a member?

18 A. 35 years.

19 Q. Were you baptized in the church?

20 A. I was.

21 Q. Did you get married in the church?

22 A. I was.

23 Q. Do you hold a position in the church currently?

24 A. I am the senior warden.

25 Q. What is the role of the senior warden?

1 A. Senior warden is the highest lay officer in the church.
2 In the absence of the rector, conducts all meetings of the
3 vestry and parish meetings.

4 Q. Do you have a current -- do you currently have a rector
5 in the church?

6 A. We do not.

7 Q. And do you have a vestry at the church?

8 A. We do.

9 Q. What is the role of the vestry?

10 A. It serves as the board of directors of the corporation
11 and the church.

12 Q. Can you give us just a brief history of the church? Do
13 you have some knowledge of the history of the church?

14 A. I do. The church was reorganized after the
15 Revolutionary War at the site of an old Anglican church that
16 had dissolved after the Revolutionary War in the 1840s,
17 1850s. And then in the late 1800s, the church decided to
18 move to a more central part of town and so it moved to our
19 current Russel Street location and we've been operating there
20 ever since.

21 Q. And since that time have you continuously carried on
22 religious activities?

23 A. We have.

24 Q. Do you have offices of the church?

25 A. We do.

1 Q. And just generally what offices do you have, without the
2 names?

3 A. The wardens and the secretary and treasurer.

4 Q. Is the church incorporated?

5 A. It is.

6 Q. And how long has it been incorporated?

7 A. At least since 1922.

8 Q. If you could please refer to Exhibit R-1.

9 A. Okay.

10 Q. Could you identify that exhibit, please?

11 A. That is our certificate of incorporation that was filed
12 in 1922.

13 Q. And moving from the incorporation, I want to ask you
14 about the property that the church owns. First, generally
15 tell me what property the church owns.

16 A. The church -- the main plant of the church is on Russel
17 Street in Orangeburg and we have a sanctuary, office
18 buildings, a parish hall, Sunday school rooms, a youth
19 building. And then we also own what we call Camp Anderson
20 which is a 40-or-so-acre piece of property out in the
21 country, have a pond and an outdoor chapel and we sometimes
22 use it for church functions.

23 Q. That's a recreational area basically?

24 A. That's correct.

25 Q. I'm going to ask you to look at R-2 and identify that

1 document for me, please.

2 A. It's one of the deeds of the Russel Street property.

3 Q. And then if you'll look at R-3 and identify that
4 document for me also.

5 A. It's where we transferred the deeds into the
6 corporation.

7 Q. That deed would have been transferred after you
8 incorporated?

9 A. After we incorporated, yes, sir.

10 Q. Okay. And if you could refer to Exhibit R-4 and
11 identify that for me, please.

12 A. It's another deed to the Russel Street property we refer
13 to as the Lowman property.

14 Q. And that's part, as you said, the Russel Street --

15 A. Part of Russel Street.

16 Q. And R-5, could you identify that also?

17 A. Again, that's part of the Russel Street property and
18 that's known as the Smith property.

19 Q. All those properties so far we've named have been
20 purchased by the church; is that correct?

21 A. Yes, sir.

22 Q. And if you'd turn to R-7.

23 A. Okay.

24 Q. Can you identify that for me, please, sir?

25 A. R-7 are 18 deeds that were put together as -- it was

1 heirs' property that went together to make up Camp Anderson.

2 Q. So those deeds generally are several deeds that you have
3 that make up the Camp Anderson property?

4 A. That is correct.

5 Q. Now, could you look at R-6, Exhibit R-6?

6 A. Okay.

7 Q. Could you identify that for me, please, sir?

8 A. That is the quitclaim deed issued to the Church of the
9 Redeemer relinquishing any rights that the diocese or the
10 bishop may have on our property.

11 Q. Did the church -- do you know the circumstances of
12 receiving that deed?

13 A. We just received it.

14 Q. Did you ask for it?

15 A. No, sir.

16 Q. What's your understanding of what the purpose of the
17 deed is or what the deed has -- the effect of the deed?

18 A. Again, it just relinquished any rights that the diocese,
19 the bishop, may would have had on our property.

20 Q. Now, the church has bylaws?

21 A. Yes, sir.

22 Q. Do they call them bylaws or constitution?

23 A. Constitution and bylaws, yes, sir.

24 Q. As part of the constitution, how do you amend the -- how
25 are they amended?

1 A. They're amended by having two annual -- two parish
2 meetings; one where the amendments would be read and a second
3 one where it would be voted on.

4 Q. Let me ask you to look at R-8 and identify that document
5 for me, please, sir.

6 A. R-8 is the January 2011 church monthly newsletter that
7 is sent out at the beginning of every month and this one is
8 giving notice to our 2011 parish, annual parish meeting.

9 Q. These documents -- tell me what the time frame of
10 sending these documents is.

11 A. You know, we had all kind of things go in here, acolyte
12 schedules, different things. And the parish administrator
13 gets them to the printer and they are -- the congregants
14 receive these on or before the 5th of every month.

15 Q. I want you to look at Exhibit 9 and I'd ask you if you
16 can identify Exhibit 9 for me.

17 A. Exhibit 9 are the minutes for the 2011 annual parish
18 meeting.

19 Q. Do those minutes accurately reflect what took place at
20 that meeting?

21 A. They do.

22 Q. And was there some discussion at that meeting concerning
23 the amendment of the Church of the Redeemer's bylaws?

24 A. There were. There was a discussion to strike references
25 to the national church from our bylaws during that meeting.

1 Q. Was any vote taken at that time?

2 A. No, sir.

3 Q. Those were read only at that point in time?

4 A. That is correct.

5 Q. I'd ask you to look at Exhibit R-10.

6 A. Those are the minutes from our -- for our December 2011
7 vestry meeting.

8 Q. And with respect to the articles of incorporation of the
9 church, was any action taken?

10 A. Yes, in 1993 we had added an exhibit, this Exhibit C to
11 our articles, and the vestry voted that day to remove it.

12 Q. And is that shown as Exhibit C?

13 A. Yes, sir, it is.

14 Q. And that's what was deleted?

15 A. Yes, sir.

16 Q. Would you have a quorum there at that meeting?

17 A. Yes, sir, we did.

18 Q. And what was the vote at that meeting?

19 A. It was unanimous.

20 Q. In terms of deleting that provision from your articles,
21 what was the next step?

22 A. Ask me the question again.

23 Q. After you -- after the vestry voted to delete that from
24 your articles, did you need to have a parish meeting to deal
25 with that issue?

- 1 A. Yes, we did.
- 2 Q. And I show you Exhibit 11 and ask you to identify
- 3 Exhibit 11.
- 4 A. Again, it's our monthly newsletter. This one is January
- 5 of '12 and it gave notice to the vote that was going to take
- 6 place; first the vote to change the bylaws that we had read
- 7 the year before and then also to amend our articles, which
- 8 the vestry had done in their last meeting.
- 9 Q. Could you tell me -- look at page 4 and tell me if
- 10 that's the notice.
- 11 A. Those are the notices, yes, sir, and they were also
- 12 posted in the church.
- 13 Q. Do you also -- with respect to your annual parish
- 14 meetings, do you have other notices that go out?
- 15 A. Yes, e-mail notices, as well as in the church bulletin
- 16 several weeks prior leading up to.
- 17 Q. This notice would have -- I think you testified earlier,
- 18 this notice would have gone out --
- 19 A. On or before the 5th of January.
- 20 Q. Okay.
- 21 A. Yes, sir.
- 22 Q. Let me ask you to look at page 6.
- 23 A. Okay.
- 24 Q. There's a notation there, it looks like in pencil, can
- 25 you explain that to me?

1 A. Yes. The meeting took place on January the 22nd just
2 like the -- it's printed. And during the discovery, the
3 parish administrator had to pull all these things back out,
4 and she must have gotten confused and scratched off and wrote
5 in pencil January the 20th, 2013, but it was January the
6 22nd, 2012.

7 Q. The meeting in '13 was January 20th; is that right?

8 A. That is correct, yes, sir. She just got confused.

9 Q. All right. I ask you to look at Exhibit R-12. Tell me
10 what that exhibit is.

11 A. These are the minutes from the 2012 annual parish
12 meeting held at the church.

13 Q. And do they accurately represent what took place at that
14 meeting?

15 A. Yes, sir.

16 Q. Were you at the meeting?

17 A. I was.

18 Q. Was there a quorum at the meeting?

19 A. Yes, sir, it was.

20 Q. Was there a vote to change these bylaws as indicated
21 here in the minutes?

22 A. It was.

23 Q. And was there a vote to approve the articles --
24 amendment to the articles of incorporation?

25 A. There was.

1 Q. And were there -- do you remember the vote?

2 A. Yes, both measures passed unanimously by the
3 congregation.

4 Q. All right. Sir, I'm going to ask you to look at
5 Exhibit 13 for me, please. Can you identify that document?

6 A. That's our restated articles of incorporation with the
7 Secretary of State.

8 Q. Let me ask you to flip over to Exhibit C of that
9 document.

10 A. Okay.

11 Q. Is that where the change was made?

12 A. That's right. That's the same revision that we had
13 voted on both by the vestry and by the congregation.

14 Q. Do you know why the articles of incorporation were
15 restated at that date -- on that date?

16 A. Because the Secretary of State said that the laws had
17 changed since the last time our articles were amended and
18 that we were required to restate them by law.

19 Q. And those -- were those -- was that amendment as
20 submitted to the Secretary of State, or were those restated
21 articles as submitted to the Secretary of State, were they
22 signed by all members of the vestry?

23 A. Yes, they were.

24 Q. I want you to turn to R-14, Exhibit R-14.

25 A. Okay.

1 Q. And also in connection with that I want you to look at
2 R-15.

3 A. Okay.

4 Q. Now, could you tell me what R-14 is?

5 A. 14 are the minutes from our special called vestry
6 meeting held December 23rd, 2012.

7 Q. And what did the -- what took place at that meeting?

8 A. We discussed R-15, which was our commitment to the
9 continued diocesan relationship with the Diocese of South
10 Carolina.

11 Q. And was that -- was that resolution passed at that
12 meeting?

13 A. It was, unanimously.

14 Q. What is your understanding of what the resolution --

15 A. The resolution, you know, took place -- time frame was
16 the national church had put restrictions on our bishop who
17 was duly elected by our diocese. We did not agree with it.
18 The diocese at this time had already separated from the
19 national church and we were aligning our allegiance to the
20 diocese.

21 Q. And what about the bishop?

22 A. And to the bishop.

23 Q. All right, sir, and could you turn over to Exhibit R-16?

24 A. R-16 is a letter sent to the congregation from our
25 rector at the time, Frank Larisey, which was going to let the

1 congregation know that we were going to have a reading at our
2 annual parish meeting of proposed changes to the bylaws and
3 to the certificate of incorporation, and it also announced
4 that we were going to have a second special called parish
5 meeting in February.

6 Q. And what were the changes?

7 A. We were going to remove references to the diocese from
8 both the bylaws and the articles.

9 Q. Also as a part of that exhibit is another document
10 behind it, it appears to be a newsletter; is that --

11 A. Yeah, that newsletter, again, January 13 newsletter,
12 which gave notice, again, to the annual parish meeting.

13 Q. All right. If you could look at Exhibit R-17 with me,
14 please.

15 A. Okay. This is our vestry minutes from our January the
16 13th vestry meeting, and in that meeting the vestry voted and
17 approved to strike Exhibit A which is found on the second
18 page from our articles of incorporation.

19 Q. Okay. That's shown as Exhibit A, I think you mentioned;
20 is that right?

21 A. Yes, sir, that's correct.

22 Q. And what was the vote on that?

23 A. It was unanimous.

24 Q. And did you then have another meeting, another parish
25 meeting on January 20th, your annual parish meeting?

1 A. We did.

2 Q. And R-18, tell me what that is.

3 A. We read and discussed, debated, the proposed changes to
4 our articles and to our bylaws that struck reference to the
5 diocese.

6 Q. And, again, were you present at that meeting?

7 A. I was.

8 Q. Do these minutes accurately reflect what took place at
9 that meeting?

10 A. They do.

11 Q. Did you have a quorum at that meeting?

12 A. We did.

13 Q. And the last document -- well, let me -- after page 2
14 there, it says, proposed changes to articles of
15 incorporation. Is that what was discussed there?

16 A. All right. My page 2 is still on the bylaws. I might
17 not be looking at the same thing you're looking at.

18 Q. Okay. Let me ask you this, did you discuss -- the
19 minutes reflect that you discussed both the articles and the
20 bylaws --

21 A. That's correct.

22 Q. -- change?

23 A. Both of them.

24 Q. -- is that correct?

25 A. Yes, sir, that was correct. We discussed them both.

1 Q. And then attached further to that is a document entitled
2 Proposed Amendments 1/3/2013.

3 A. Right, okay, that's where I was earlier, I'm sorry.

4 Q. Okay.

5 A. I skipped ahead. I apologize.

6 Q. That's okay.

7 A. And so here, this is where we're showing the proposed
8 changes that we were going to vote on that coming February.

9 Q. Let me back up a page and ask you if that page dealt
10 with the articles of incorporation changes?

11 A. Okay. And that's -- we were going to remove the
12 references to the diocese out of our articles.

13 Q. Pursuant to your notice, did you have a meeting on
14 February the 19th -- 17th, excuse me?

15 A. February 17th, we did.

16 Q. And what took place at that meeting?

17 A. We voted to amend our bylaws and our articles of
18 incorporation as we had discussed the month prior.

19 Q. What was the vote at that meeting?

20 A. Again, unanimous.

21 Q. Did you have a quorum at that meeting?

22 A. We did.

23 Q. If you'd look at R-20 --

24 A. Okay.

25 Q. -- and identify that document for me.

1 A. That's the amendment to our articles filed with the
2 Secretary of State.

3 Q. And what does Exhibit 8 show?

4 A. It shows that the vote that we -- the vestry had voted
5 on as well as the congregation to strike references to the
6 diocese in our articles.

7 Q. Let's move to September 30th, 2013, and I ask you to
8 look at Exhibit R-21.

9 A. Okay. This is a letter sent to the congregation
10 notifying them of an upcoming parish meeting, special called
11 parish meeting, signed by the former rector and myself as
12 senior warden, and we were asked to vote on the
13 restatement -- reaffirm our restatement of our articles that
14 we had done back in May of 2012.

15 Q. And did that document describe what you had done
16 previously with the restatement of articles?

17 A. It did.

18 Q. And that would have been sent --

19 A. This was a mailed letter to everybody on the -- in the
20 congregation.

21 Q. All right. And would have been mailed approximately
22 what date?

23 A. Well, it's dated September 30th, so as soon as she would
24 have gotten it out.

25 Q. Okay.

- 1 A. I mean, probably that day or the day after.
- 2 Q. And if you could move to R-22.
- 3 A. Okay.
- 4 Q. Explain to me what that document is.
- 5 A. It's our October vestry meeting of that year. And the
- 6 vestry passed a resolution where we reconfirmed and
- 7 reaffirmed the previously restated amendments to our church
- 8 articles of incorporation.
- 9 Q. That's a two-page document?
- 10 A. These vestry minutes?
- 11 Q. Yes.
- 12 A. Yes, sir, it is. I'm on page 2.
- 13 Q. And the resolution is on page 2?
- 14 A. Yes, the resolution is on page 2. That's what we voted
- 15 on.
- 16 Q. Okay. Ask you to look at R-23 and explain to me what
- 17 that is.
- 18 A. That was the special called -- this is the minutes of
- 19 the special called parish meeting that the letter that was
- 20 written the end of September alluded to. And that's where
- 21 the church reconfirmed and reaffirmed the approval that the
- 22 vestry and the congregation -- where they restated the
- 23 amendments of the church's articles of incorporation.
- 24 Q. And what was the vote on that?
- 25 A. Again, as all the votes, both of the vestry and the

1 congregation, it was unanimous.

2 Q. And you had a quorum at that meeting?

3 A. Yes, sir.

4 Q. You had where I counted, I think, at least three
5 congregational meetings, parish meetings. Did you ever have
6 anyone voting against any of these --

7 A. Never did. I mean, we -- we -- you know, this was an
8 issue that we're -- we talked about and we explained to
9 people what was going on, what we were doing, and we had, you
10 know, people who had had concerns. And then once we
11 explained the concerns, then we brought it to a vote; the
12 vote was unanimous.

13 Q. Look at R-24 for me, please.

14 A. Okay.

15 Q. Can you identify that document?

16 A. These are a copy of the constitution, commonly known as
17 bylaws, of the Church of the Redeemer as of the year 2000.

18 Q. Is this how they appeared before the amendments that we
19 talked about?

20 A. That is correct.

21 Q. And if you could turn to R-25 for me, please --

22 A. Okay.

23 Q. -- and just identify it.

24 A. These are the amendments when we struck references to
25 the national church.

1 Q. The first two pages show some strikeouts, and the second
2 pages of the second group of pages show no strikeouts.

3 What's the difference?

4 A. Well, everything else we kept the same.

5 Q. Well, is --

6 A. We didn't change anything else.

7 Q. Is the second group of pages a clean copy of --

8 A. Oh, I'm sorry, I'm sorry. I thought you were talking
9 about the rest of the bylaws.

10 Yes, the second whole group of bylaws is a clean copy of
11 our bylaws, how they are today.

12 Q. All right. And could you take a look at R-26 for me.

13 A. Okay.

14 Q. Could you tell me what that document --

15 A. These are the final or revised bylaws that contain all
16 the votes that we've done since 2012, how our bylaws are
17 today.

18 Q. Do you have any knowledge of any funds that the Church
19 of the Redeemer has received from the Episcopal Church?

20 A. I do not.

21 Q. Has the Church of the Redeemer, to your knowledge, made
22 any contributions to the Episcopal Church or to any of its
23 missions?

24 A. Not to my knowledge.

25 Q. Has the church at times made contributions to the

1 Diocese of South Carolina?

2 A. We have. Some years we do, some years we haven't.

3 Q. Some years you've made contributions and some years you
4 have not?

5 A. Yes.

6 Q. Do you have any relationship whatsoever with the
7 Episcopal Church in South Carolina?

8 A. We do not.

9 Q. And are you required to obtain the permission of either
10 the defendants to make any of these changes?

11 A. We are not.

12 Q. And are you required by the diocese, the South Carolina
13 diocese to make any of the -- permission to make any of these
14 changes?

15 A. We are not.

16 MR. HORGER: Okay. Answer any questions the defendants
17 have.

18 THE COURT: All right. Who's going first? Ms. Kostel?

19 CROSS-EXAMINATION BY MS. KOSTEL:

20 Q. Mr. Thompson?

21 A. Yes, ma'am.

22 Q. Mary Kostel. You testified, I think, that Redeemer was
23 in existence for quite some time. You were talking about a
24 reorganization after the Revolution?

25 A. That's correct.

1 Episcopal Church, for doctrinal reasons?

2 A. No, sir.

3 Q. What were the reasons?

4 A. The major reasons were after the All Saints, Waccamaw
5 case it was apparent that we needed to protect our property,
6 and so we started doing that. And then when they, we felt,
7 unduly attacked our bishop, we left with the diocese.

8 Q. Was there any other reason?

9 A. No, sir.

10 MR. TISDALE: Your Honor, thank you very much. I don't
11 have any further questions.

12 THE COURT: All right. Redirect?

13 MR. HORGER: One question, Your Honor.

14 REDIRECT EXAMINATION BY MR. HORGER:

15 Q. Mr. Thompson, has the Church of the Redeemer ever made
16 contributions to the diocese with direction that none of that
17 go to the national church?

18 A. Yes. I was looking through vestry minutes over the last
19 several months and found occasion where the church instructed
20 their -- instructed their diocesan pledge especially not to
21 go to the national church.

22 MR. HORGER: Thank you, sir.

23 THE COURT: All right. Recross?

24 MR. TISDALE: No, thank you, Your Honor.

25 MS. KOSTEL: None.